

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

PLANNING ENFORCEMENT POLICY

1. Introduction

- 1.1 The planning system regulates the development and use of land in the public interest under powers conferred by the Town and Country Planning Act 1990 (The Act). The District Council, acting as local planning authority, has a duty to operate the legislation save for certain types of development that are the responsibility of Leicestershire County Council, for example mineral extraction.
- 1.2 Development which takes place without planning permission or consent, or is in breach of conditions of planning permissions may be the subject of enforcement action. Depending on the nature of the breach the Council may respond by serving an Enforcement Notice or taking proceedings in the Magistrates' Court.
- 1.3 This Council considers that to maintain its credibility as a local planning authority it is necessary to have an efficient and effective planning enforcement system. It will devote sufficient resources to ensure that appropriate action is taken against unauthorised development within the District.
- 1.4 The Council will be particularly vigilant in dealing with breaches of planning control which threaten areas afforded special protection such as Sites of Specific Scientific Interest, Conservation Areas and Listed Buildings, or result in threats to the health and safety of its citizens.

2. Decision Making in relation to Development

- 2.1 Section 54a of the Town and Country Planning Act 1990 (as amended) states that local planning authorities should determine the merits of development proposals in accordance with policies in the adopted development plan unless material considerations indicate otherwise. The same criteria are used to consider the merits of development that has taken place prior to permission being given or is otherwise in breach of planning control.

3. Type and Incidence of Enforcement Problems

- 3.1 In the period 1999-2000 the Authority registered some 200 complaints about unauthorised development.
- 3.2 A significant proportion of these cases can be said to be of a minor domestic nature and often arise from neighbour disputes. Whilst these are occasionally traumatic for the individuals concerned they rarely result in issues of wider public amenity and it is rare for the Authority to become involved formally with the serving of Notices and the like.
- 3.3 There are also a significant number of cases centred around the display of unauthorised signs. This arises for a combination of reasons: regular changing of signs in the business world through mergers, new images, etc., poor education and knowledge of admittedly complicated regulations by the business community and the Council's rightful insistence on high standards in those Conservation

Areas which are also commercial centres, particularly Ashby-de-la-Zouch. There are also sign companies who display signs in the knowledge that they are unlikely to obtain consent but know that they will obtain income from advertising pending formal action by the Council.

- 3.4 There is a small but nevertheless significant number of cases which have been ongoing for a number of years and have proved difficult to resolve. These typically concern unauthorised commercial activity, lorry parks or caravan sites.

4. Resources to be devoted to the enforcement of Planning Control

- 4.1 The Authority takes its responsibilities to ensure compliance with planning control seriously. To this end it employs a Senior Planning Officer and two Planning Support Officers whose principal duties are concerned with investigating breaches of planning control and monitoring compliance.

- 4.2 These officers work within the Development Control Section, a team of twelve professional and administrative support staff who will assist where necessary on enforcement work.

- 4.3 Subject to what follows authority to serve enforcement notices, prosecutions and the like is reserved to the Council's Planning Group (other than in the case of serving notices in emergencies where the power can be exercised by the Manager of Planning and Environment) which meets every three weeks. The authorisation of prosecutions are subject to the Council's legal officers being satisfied that the evidence is sufficient and that a prosecution would be in the public interest.

5. Procedures: Complaints about alleged unauthorised development

- 5.1 All complaints/enquiries about an alleged contravention must be made to the Authority in writing. The complaint will then be investigated. Anonymous enquiries will not be investigated unless there are public safety implications or exceptional circumstances, such as works to Listed Buildings. Complaints referred by District Councillors will also be investigated.

- 5.2 Written complaints or enquiries about alleged unauthorised development will be acknowledged within three working days.

- 5.3 It is the authority's aim to inspect the development or breach complained about within ten working days of the receipt of the initial letter and write to advise of the outcome of the initial investigation within fifteen working days.

- 5.4 The authority will seek to resolve any complaints found to constitute a breach of planning control by negotiation where possible, but formal legal action will be taken if necessary. If the solution to the problem involves the submission of a planning application, the complainant will be notified in writing. Any further written comments will be taken into account in determining the application.

- 5.5 In some cases the authority may ask complainants to collect evidence. In those circumstances information will normally be collected on a pro forma sent to the complainant.

- 5.6 If a case requires lengthy investigation complainants will be kept informed in writing of the current situation.
- 5.7 If the Council issues an Enforcement Notice, any person receiving such a document has a right to appeal. The appeal procedure will be explained. Those affected by the breach (neighbours, etc.) will be advised of the appeal and given the opportunity to make representations.
- 5.8 All complaints/enquiries are treated in confidence unless or until such time as any evidence needs to be presented in legal proceedings in order to achieve a successful outcome. Not all investigations result in the need for evidence to be presented in this way as many investigations are resolved by negotiation or by the submission of a retrospective application. Some types of development do not require planning permission because of their nature, scale and position.

6. Procedures: Action against those carrying out unauthorised development

- 6.1 An initial letter will be sent advising of the complaint. It may then be necessary to arrange a meeting to advise of the nature of the problems and what the likely solution to it may be.
- 6.2 Occasionally, the complaint may relate to the work of other sections within this division, or any other division(s) within the Authority (e.g., an unauthorised change of use to say dog breeding/boarding may also result in complaints about noise nuisance from dog barking). In such an instance a discussion will be held with officers of the relevant section/division and a decision taken to either proceed against any justified complaint across the range of Council functions or for any justified complaint to be dealt with by the most appropriate and effective means.
- 6.3 There is likely to be a range of options that may be pursued. Advice given at this stage (on a without prejudice basis) may comprise:
- (a) Suggesting that an application to seek to regularise the unauthorised development or use be made in retrospect.
 - (b) Asking for the matter to be put right by, for example, stopping carrying out an activity, removing a sign, demolishing a building or complying with a condition of planning permission.
 - (c) Suggesting that the development or use is carried out in a different way so that either it no longer amounts to a contravention or to make it more likely that an application which seeks to regularise it will succeed.
 - (d) Formally requesting additional information by requiring answers to specific questions set out in a Planning Contravention Notice. It should be noted that persons unwilling or failing to respond to such a Notice will be liable to prosecution.
- 6.4 In all the above instances reasonable timescales to enable a response will be specified.

- 6.5 If, having worked through the above procedures, a satisfactory solution cannot be achieved, the Council may need to issue an Enforcement Notice (if expedient to do so) requiring the problem to be remedied. The notice will explain clearly what is needed to be done to comply with its requirements and by what date compliance is required. There is a right of appeal against such a notice. Rights of appeal will be explained.
- 6.6 If it is concluded that the problem is so serious that to allow the unauthorised development to remain or carry on until a solution is found would be against the public interest, a formal notice requiring immediate cessation will be issued (Stop Notice).
- 6.7 Persons failing to comply with Enforcement or Stop Notices are liable to prosecution.
- 6.8 In exceptional cases (such as when an Enforcement Notice had been upheld on appeal but a deliberate and flagrant breach was continuing to the detriment of interests of acknowledged importance) the authority will apply to the court for an injunction to restrain that breach of planning control.

7. Monitoring Development for which planning permission has been granted.

- 7.1 The Council's officers will monitor compliance with those planning conditions requiring further information to be submitted or works to be carried out using the information from Building Control on starts and completions. Additionally, a precautionary visit (or visits) will be undertaken for those projects where the building control function is not carried out by the Authority and for those projects not subject to control under the Building Regulations.
- 7.2 Problems arising from any non-compliance with planning conditions imposing controls over the continuing operation of uses will be dealt with as outlined in Section 6 above.

8. Untidy Land

- 8.1 Planning legislation enables Local Planning Authorities to pursue the poor condition of land in certain circumstances where it adversely affects the amenity of the neighbourhood. The power does not extend to land where its poor conditions results in the ordinary course of events or where it is attributable to the carrying on of operations or is a use that is not in contravention of the legislation. Complaints about untidy land will be dealt with as set out in Section 6 above.

9. Flyposting

- 9.1 The Council's objective is to keep the District clear of flyposting as it is considered to be detrimental to visual amenity and in some cases can be a danger to highway users. Where an advertisement is displayed on the highway (including grass verges or street furniture such as lighting columns) the Council has powers under the Highways Act 1980 to remove it without notice. There is also provision within the Town and Country Planning Act 1990 to remove unauthorised advertisements, subject to certain limitations, as well as the provision to prosecute the person who displayed it or whose goods or business

are advertised on it. The Council's policy is to remove signs wherever it is practical to do so, or alternatively to give 48 hours for offenders to remove them. In the case of failure to comply, or where persistent offenders are involved, the Council will prosecute.

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