

## RUTLAND COUNTY COUNCIL

### PLANNING ENFORCEMENT POLICY 2009

#### 1 INTRODUCTION TO ENFORCEMENT POLICY

- 1.1 The Enforcement Policy has been prepared in accordance with: *Enforcement of Planning Control: Good Practice Guidance for Local Planning Authorities*.
- 1.2 The planning system regulates the development and uses of land in the public interest under powers conferred by the *Town and Country Planning Act 1990* and the *Listed Buildings and Conservation Areas Act 1991*. Background advice is given to local planning authorities by Central Government in *Planning Policy Guidance Note 18 – Enforcing Planning Control*, (published December 1991).
- 1.3 Rutland County Council expects land owners and developers to comply with planning legislation and not to carry out development until the necessary planning permission has been obtained. In most cases no problems arise. When development does take place without permission the Council has a full range of enforcement powers available to it to establish:
- whether a breach of planning control has taken place;
  - what harm has been caused as a result of the breach;
  - what action, if any, is required to remedy the situation.
- 1.4 The aim of the Planning Enforcement Service is to achieve a balance between amenity and other interests of acknowledged importance with the need to enable acceptable development to take place, despite it already having started. The consideration of the planning merits of individual cases will be of paramount importance and decisions on enforcement by the County Council cannot be prejudiced by the development having commenced. Whilst any breach of planning control is unwelcome, it is recognised that it is not an offence to carry out unauthorised development in its own right, (although unauthorised work to a Listed Building is a criminal offence). All developers and landowners who proceed with development without the necessary permission should understand that they do so at their own risk and the fact that development has commenced will not result in a presumption that retrospective consent will be granted.
- 1.5 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states;

*... if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations dictate otherwise.*

The same criteria is used to consider the merits of development that has taken place prior to permission having been given or is otherwise in breach of planning control.

(for more details of the Policy context, refer to Appendix 1)

- 1.6 The County Council receives a large number of complaints each year about unauthorised development. A significant proportion of these cases are minor in nature often arising from neighbour disputes. It is recognised that such complaints can be stressful for those individuals affected but can often be dealt with in a short period of time where there is either no breach of planning control or, relate to minor technical breaches resolved through officer negotiation without formal action.
- 1.7 A range of case types occur throughout the County i.e.:-
- Unauthorised extensions to residential properties.
  - Unauthorised commercial development.
  - Unauthorised material changes of use including farm buildings.
  - Unauthorised display of advertisements
  - Untidy land affecting amenity.
  - Unauthorised works to Listed Buildings.
  - Unauthorised works to protected trees.
  - Unauthorised mineral extraction and engineering works.

## **2 OBJECTIVES OF THE ENFORCEMENT PROCESS**

- 2.1 Complaints are received by a personal visit to the offices, letter, telephone and email as well as from Members or Officers. Anonymous complaints are registered and an initial site visit carried out but not necessarily progressed further. All information provided at this stage remains confidential.
- 2.2 New enquiries/complaints will be given a priority rating in accordance with the list stated in Section 3 of this policy document. However, the aim is to acknowledge all enquiries within 3 working days.
- 2.3 A full investigation of the facts and assessment of the planning history will be carried out. This may require the service of a Planning Contravention Notice. The timescale for completing the investigation

will vary depending upon the caseload, the priority assigned to the case and the complexity of the matter.

- 2.4 If no breach of planning control is found, the case will be closed and the person who originally notified the Council about the matter will be advised in writing.
- 2.5 If a low priority case is not resolved within six months of receipt and where no formal action could be recommended, the case will be closed under delegated arrangements. The person who originally notified the Council about the matter will be advised of this in writing.
- 2.6 If a breach of planning control is found, the property owner and/or the occupier will be advised of this in writing. Where possible and appropriate, attempts will be made to negotiate to resolve the breach without the need for formal action. All cases will be considered in line with current planning policy and advice, before a recommendation is made as to whether or not enforcement action is appropriate. A decision to take action must be well founded and a recommendation of enforcement action will not be made against mere technical breaches of planning control which are not contrary to development plan policy.
- 2.7 The person(s) who originally notified the Council about the matter will be advised in writing of the Council's decision.
- 2.8 Where enforcement action is taken, priority will be given to dealing with any appeal or legal action arising from this, so as to ensure that the authority's response and submission documents meet the required time limits of the appeal process.
- 2.9 The Council is committed to treating all recipients of enforcement action fairly, keeping them informed of action being planned or taken at each stage, and informing them of any rights of appeal. In particular, regard will be had to the Human Rights Act 1998 and Section 19 of the Race Relations Act 2000. However, when decisions are taken relating to enforcement action, the public interest must be taken into account. Decisions will therefore be taken by balancing private rights, the public interest and resources required to take action.
- 2.10 The Council will assess each case individually to ensure that a pragmatic approach is taken to securing compliance with any valid Notice. The Council will apply to the Courts for warrants for entry to inspect premises, injunction and, if necessary, committal proceedings to ensure compliance with Notices.

### **3 CASE PRIORITY ASSESMENT LIST**

Levels are categorised according to their importance and judged against the following:

#### **LEVEL 1 (HIGH)**

- Unauthorised demolition or partial demolition of 'listed' and other buildings which are essential to be retained;
- Felling or works to Protected Trees;
- Any unauthorised development which causes immediate and irremediable harm to a locality, (such as a Conservation Area) or which is likely to result in significant harm to amenity;
- Unauthorised development where the time limit for enforcement action will expire within the next 6 months;
- Existing cases that are the subject of appeal deadlines or court action.

#### **LEVEL 2 (MEDIUM)**

- Breaches of conditions
- Breaches of planning control which are contrary to policies as set out in the Development Plan;
- Where buildings are under construction;
  - (a) Where no planning permission exists (could be 'permitted' development),
  - (b) Where planning permission has been granted, but development may not be in accordance with the approved details.
- Unauthorised display of advertisements;
- Unauthorised uses of land;
- Untidy land.

### **LEVEL 3 (OTHERS)**

- All other breaches of planning control not covered in Level 1 or 2, where there is no significant harm to the Council's policies or objectives;
- Individual advertisement problems not covered in Level 2;
- Temporary breaches of planning control which will resolve themselves without formal action;
- Matters where a favourable recommendation would be made if an application to authorise the development were made.

It has to be emphasised that enforcement of planning control can be a simple process or it can take an extremely long time, especially where evidence has to be gathered. The legal procedures are lengthy and time consuming and where appeals are lodged, matters can take months to conclude. Formal action is not always the best solution; negotiation can often result in a more satisfactory outcome for all.

## **4 TYPES OF NOTICE**

4.1 **Planning Contravention Notice (PCN)** – A PCN requires a land owner or occupier to give information to the Council on the use of land where it appears that a breach may be taking place. This power enables the Council to establish quickly whether a breach is taking place. Failure to respond to the notice is an offence which can result in a prosecution and fine.

### **4.2 Enforcement Notice**

- Material change of use
- Operational development

A notice which is served specifically to require a breach of control to be remedied e.g. the removal of an unauthorised extension to a building or the cessation of an authorised use of land. Failure to comply with a valid enforcement notice is an offence which can result in a prosecution or fine.

4.3 **Stop Notice** – this notice can be served at the same time as an Enforcement Notice to ensure that the provisions of the Notice are immediately effective where there are special reasons for doing so.

- 4.4 **Temporary Stop Notices (TSN)** – this notice can be served if the unauthorised development is causing very serious harm and which cannot wait for the service of an Enforcement Notice or Stop Notice. It is a temporary arrangement that only lasts for 28 days. Only one such Notice can be served. Failure to comply with a TSN is a serious offence which can result in prosecution and a fine.
- 4.5 **Breach of Condition Notice (BCN)** – this notice requires the owner or occupier of the land to comply with conditions imposed on a planning permission e.g. hours of opening at a hot food take-away. Failure to comply with the BCN is an offence which can result in a prosecution and fine.
- 4.6 **Injunction** – these are powers granted to the Courts to restrain any actual or expected breach of control. Failure to comply with an injunction is a serious offence which can result in prosecution, custodial sentence and significant fines.

**There is a right of appeal against all of the above enforcement procedures except against the service of a BCN.**

In addition to the above the Council has a range of powers to deal with specific breaches of planning control, examples of these include:

- **Listed Building Enforcement Notice**
- **Listed Building Repairs Notice**
- **Prosecution for unauthorised display of outdoor advertisements or discontinuance of existing displays**
- **Prosecution for the unauthorised works or felling of trees subject to protection**
- **Section 215 Notices relating to untidy or unsightly land**
- **Hedgerow Replacement Notices**

## **5 PENALTIES**

- 5.1 The penalties that are available to the Council if formal action is not complied with within the prescribed timescale are as follows:-

### **Prosecution**

- Non-compliance with notice
- Display of unauthorised advertisement
- Unauthorised work to a Listed Building
- Unauthorised works to a protected tree

Any such action is subject to the Council's Legal Team being satisfied as to the evidence.

### **Default Action**

- Carry out works where a notice has not been complied with.  
(costs recovered from offender)

## **6 HOW WE DEAL WITH A COMPLAINT**

- 6.1 If the initial investigation shows that no breach of planning control has taken place, the complainant will be informed of this within 5 working days of the investigation file being closed. If the complaint is not a planning issue, we will endeavour to direct the complaint to the relevant body.
- 6.2 Where it is not possible to find out whether a breach of planning control has taken place, we may issue a 'Planning Contravention Notice'. This requests information on precisely what is taking place and an explanation as to why no planning permission has been sought. In cases where no response has been received following initial letters to a contravener, a Planning Contravention Notice will be served after a period of 2 months. The complainant will be kept informed of any response we receive to the notice.
- 6.3 Where a clear breach of planning control has taken place, we will provide help and advice to owners/occupiers and offer all reasonable opportunity for the matter to be resolved informally where appropriate. We will invite the submission of a planning application, where appropriate, in line with Government advice. In such circumstances it may be possible to make amendments or impose conditions which can overcome concerns of neighbours and/ or complainants. Once submitted, an application will be

treated on merit in relation to planning policies in the same way as any other application. We will take formal enforcement action if the matter cannot be resolved in a reasonable time or by any other means, providing it is appropriate and expedient to do so.

- 6.4 If an application is not submitted, we will prepare a report for the Development Control and Licensing Committee to decide whether or not further enforcement action should be taken. The complainant will be advised of the Committee decision within 5 working days of that decision.
- 6.5 The name and address of any complainant will remain confidential to the Council. However, if an appeal is lodged or, if representations are made on any subsequent planning application, these will become public documents as a background paper in due course.
- 6.6 Enforcement Notices are documents served by the Council which may require the use of land to stop and/or any buildings or structures that do not have planning permission to be removed. The Council must find out the names and addresses of all the owners and occupiers of the property and make sure that the notice is served on them. The notice itself has to be precise as to what action the Council wants taken and by what date. There are rights of appeal to The Secretary of State for Communities and Local Government and the notices can be challenged if they are inaccurate.
- 6.7 When conditions imposed on planning applications are not complied with or are ignored, the Council can serve a 'Breach of Condition Notice' on the developer or occupier. If the Notice is not complied with, legal action can be taken. There are no rights of appeal to the Secretary of State against the service of a Breach of Condition Notice. The Council may therefore use this procedure in preference to the service of an Enforcement Notice where appropriate.
- 6.8 The complainant will be informed when notices are served, what action is required and when the period for compliance expires. We aim to inform complainants within five days of the Notice being served.
- 6.9 The complainant will be informed of any appeal that is lodged against an enforcement notice and the grounds upon which the appeal is made. They will then be able to make further comments to the Planning Inspectorate. **It must be stressed that at this stage the names and addresses cannot be kept confidential.**
- 6.10 Arrangements to inspect the premises will be made by the officer dealing with the case no later than 10 working days after the



compliance period runs out in order to establish whether the requirements of the enforcement notice have been satisfied.

6.11 If the unauthorised development remains in place after the enforcement notices become effective, the Council will start legal action as soon as possible and taking into account the Code of Crown Prosecutors. The complainant will be kept informed of the outcome of any prosecution. As a last resort the Council can consider carrying out works itself to remedy the breach.

6.12 The Enforcement Officer will:

<p>Investigate all enquiries within a maximum of 15 working days of the complaint being entered into the Local Planning Authority's computerised recording system. This will include any necessary site visits and a check of any relevant planning history of the site.</p>	<p>Within 3 working days of all enquiries being entered into the Local Planning Authority's computerised recording system, write to the complainant informing them that the matter will be investigated. This letter will also include the contact details of the investigating officer and the reference number allocated to that particular investigation.</p>	<p>Report back to complainants after the complaint has been fully investigated to advise findings. At any time during the investigating period, the complainant can contact the investigating officer to enquire about progress of their complaint. On the completion of investigations into a complaint, the Authority will advise the complainant of whether formal action is to be taken or not and the reasons for the decision arrived at.</p>
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6.13 Delegated powers exist for officers to:-

- (1) Issue and serve a Planning Contravention Notice
- (2) Issue and serve a Temporary Stop Notice

All other Notices currently (2009) require Committee Authorisation to Issue and Serve. Consideration will be given to extending officer delegated powers for the issuing of other notices in future.

A record of all complaints received and resolved cases will be reported to the Development Control and Licensing Committee quarterly.

All formal action taken by the Authority will be reported to the Development Control and Licensing Committee for their information on a quarterly basis.

6.14 Legal Advice:

On occasion, expert external legal advice will be sought, as necessary.

6.15 All inspecting officers will carry identification.

6.16 Action by the Council:

- will take into account the rights of those making the complaint as well as those being complained about,
- will be in accordance with the law,
- will pursue legitimate planning aims
- will be proportionate to the harm caused.

6.17 What is retrospective consent?

Retrospective consent is planning permission which is granted for development after it has been carried out. The Council is aware that this can cause much annoyance throughout the community.

However, guidance from central government makes it clear that Local Planning Authorities may put themselves at risk of a costs award if they "over" enforce (i.e. issue an enforcement notice which is overturned on appeal by a Planning Inspector who decides that consent should clearly have been granted retrospectively). All the government advice emphasises that planning enforcement notices should only be issued where there is unauthorised development which is a clear breach of the planning system and which results in sufficient "harm" that it should not be allowed to remain (i.e. would not be granted retrospective consent)

## **7 HOW YOU CAN HELP US**

### **A: For those carrying out development:**

7.1 To enable us to provide you with as efficient a service as possible, please bear the following points in mind:-

- If you are unsure as to whether planning permission is required, please contact the planning department for advice prior to starting any work.
- If you already have planning permission check to see if any conditions attached to that planning permission should be satisfied **before** starting work and ensure you build in accordance with approved plans. If you want to make any

changes please contact the planning case officer before carrying out work not shown on approved plans.

**A leaflet is available – please ask for one, or download a copy from the Council’s website.**

**B: For those complaining about unauthorised development:**

- When advising us of an alleged breach of planning control, please
  - (a) ensure you provide full and accurate details for the alleged breach, including site location;
  - (b) full details of your name and contact arrangements so that we can keep you informed of the progress in our investigations.
- If you need to contact us after the initial complaint, please quote our enforcement reference number which will be given on any letters to you.
- Please advise us if the alleged breach of planning control ceases or of any other change in circumstances.
- Please treat our staff with courtesy – they are trying to help you, but the remedy may not be immediate.

**A leaflet is available – please ask for one, or download a copy from the Council’s website.**

You can contact us:	by telephone on	01572 758 261/2
	by fax on	01572 758 373
	by e-mail	<a href="mailto:planning@rutland.gov.uk">planning@rutland.gov.uk</a>
	by post	Community Services Planning Department Catmose Oakham Rutland LE15 6HP

## **APPENDIX 1**

### **POLICY CONSIDERATIONS**

- The main policies applicable to RCCDC are those contained within the Development Plan which currently comprise:-
- The Rutland Local Plan (July 2001) with saved policies;
- The Leicestershire, Leicester and Rutland Waste Local Plan (2002) with saved policies until replacement;
- The Leicestershire Minerals Local Plan (1995) with saved policies until replacement;
- Regional Spatial Strategy 8 of the East Midlands Regional Plan (March 2009).
- Large rural parts of Rutland are designated as Areas of Particularly Attractive Countryside, where there is a presumption against inappropriate development.
- Within the built environment there are 34 Conservation Areas. Rutland also has some 1800+ listed buildings.
- In addition to development plan policy, central government planning policy guidance in the form of circulars and notes are relevant including circular 10/97 “*Enforcing Planning Control: Legislative Provision and Procedural requirements*” and *Planning Policy Guidance Note 18* are relevant to the approach used in dealing with breaches of planning control.

## **APPENDIX 2:**

### **ESTABLISHMENT**

- The County Council takes its responsibilities to ensure compliance with planning control seriously and employs one Planning Enforcement Officer within the Development Control Section of Community Services who investigates cases from initial receipt of enquiry and, if necessary, through appeals to the Planning Inspectorate and court action. The Council also currently employs a Planning Compliance and Section 106 Monitoring Officer, five Planning Officers, a Conservation Officer and a Development Control Manager within the Development Control Section.
- The Enforcement Officer is responsible for the post of Compliance and Section 106 Monitoring Officer. That post holder is responsible for monitoring the compliance of all planning conditions attached to planning applications, assisting the Enforcement Officer where required and for the monitoring compliance of Section 106 Agreements, (legal agreements to secure contributions' required as a result of development such as for play equipment, highway works, etc.). The post holder also assists in the recovery of monies required to be paid to the authority through S.106 agreements and monitors its use.
- Legal support is given by the Head of Legal Services and by solicitors.
- Where necessary, external specialist professional advice is sought, e.g. in relation to trees or court action.
- The responsibility for authorising the service of notices, instigating prosecutions etc. is taken by the Development Control and Licensing Committee (other than in the case of serving Planning Contravention Notices and Temporary Stop Notices which is delegated to The Head of Regulatory Services). The Committee meets every four weeks. The authorisation of formal enforcement action and/or prosecution proceedings is subject to the Council's legal officers being satisfied that the evidence is sufficient and that any such action would be in the public interest.