

# DEVELOPMENT CONTROL AND LICENSING COMMITTEE

24<sup>TH</sup> JUNE 2014

## PLANNING ENFORCEMENT POLICY

**Report of the Director for Places (Environment, Planning & Transport)**

STRATEGIC AIM:	<b>Creating a sustained environment</b>		
KEY DECISION	YES	DATE ITEM FIRST APPEARED ON FORWARD PLAN	28 MARCH 2014

### 1. PURPOSE OF THE REPORT

1.1 To review the Council's Planning Enforcement Policy

### 2. RECOMMENDATIONS

2.1 **That the Committee adopt the revised Planning Enforcement Policy.**

### 3. REASONS FOR THE RECOMMENDATIONS

3.1 The existing policy was agreed by Council in 2009. The purpose of such a policy is to set out how the Council will deal with enforcement complaints. The National Planning Policy Framework at paragraph 207 advises that Councils prepare a local enforcement plan. The policy (attached as Appendix 1) has been reviewed for 5 key reasons:

- a) The recent adoption of a Planning Enforcement Prioritisation Scheme by the Development Control and Licensing Committee on 25 June 2013, which is not covered by the existing policy;
- b) To encourage the use of the internet for the receipt of complaints;
- c) To put in place a consistent target across all complaints for an initial response to be given to the complainant within 20 working days;
- d) The existing policy is not in the corporate format; and
- e) A need to update the policy after 5 years of operation.

3.2 A copy of the existing policy is attached as Appendix 2 to assist Members in assessing the changes.

3.3 With the recent retirement of the previous Enforcement Officer and the deletion of a Compliance Officer from the establishment there is a need to maximise the efficiency of how the enforcement service operates. This has reduced the overall resources to 1 FTE. To reduce manual handling of paper and to ensure that complainants provide the information needed the policy now encourages complainants to use our web based form rather than more traditional methods of contacting us, although these are still available.

This also maximises the use of the recently purchased software to process enforcement complaints efficiently.

- 3.4 The current policy was approved by the Full Council but advice from the Council's solicitor is that this is a matter that should be decided by this Committee.

#### 4. RISK MANAGEMENT

<b>RISK</b>	<b>IMPACT</b>	<b>COMMENTS</b>
<b>Time</b>	L	The Policy is in place and this is only a review
<b>Viability</b>	M	The Policy needs updating and to reflect the resources available in 2014.
<b>Finance</b>	L	As this is only a review of the existing policy there are no significant financial implications.
<b>Profile</b>	M	This is a public facing part of the service and this policy sets out the service the public can expect.
<b>Equality and Diversity</b>	M	An Equality Questionnaire has been completed. No adverse impacts have been identified and an EIA is not required.

**Background Papers**  
None

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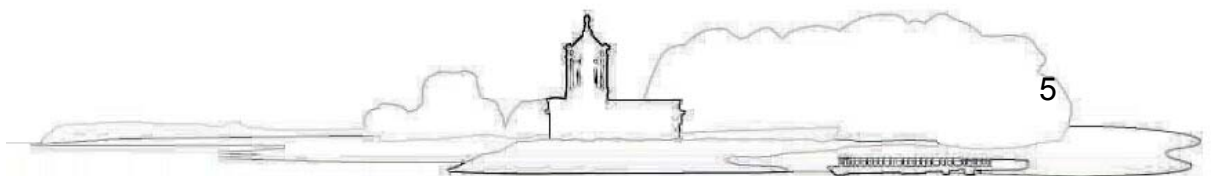
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# PLANNING ENFORCEMENT POLICY

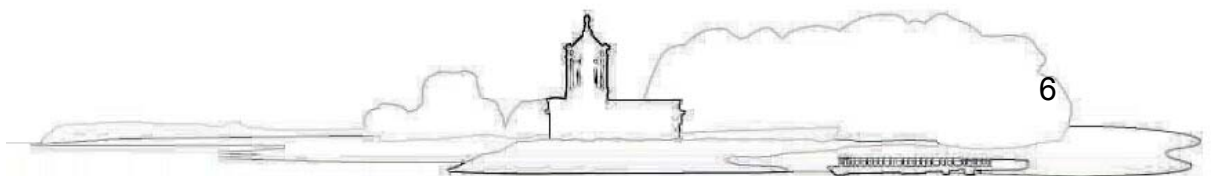
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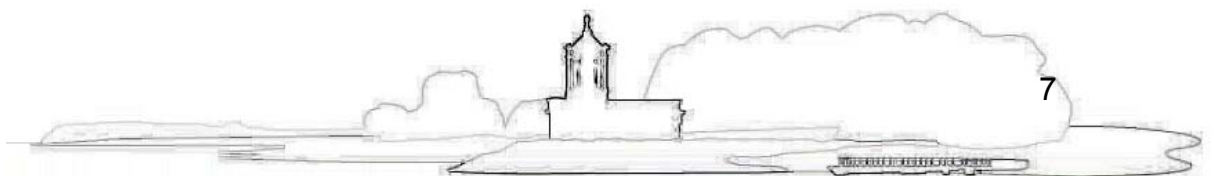
### **Summary of document**

To provide a clear guidance on how we deal with Planning Enforcement. Fair and effective enforcement is essential to protect the quality of life for those who live, work and visit Rutland. It also protects the quality of the County's built and natural environment.



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# RUTLAND COUNTY COUNCIL ENFORCEMENT POLICY

## 1.0 INTRODUCTION

1.1 Rutland County Council has the responsibility and power to enforce breaches of planning control. The decision to enforce in each case is at our discretion. The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit Rutland and the quality of the county's built and natural environment. This planning enforcement policy explains the planning enforcement service and what you can expect from it. Specifically it covers:

- What is a breach of planning control;
- How you can request an investigation;
- How we prioritise investigations;
- How we will carry out an investigation and how we will keep you informed;
- What you can do if a request for an investigation is made about your development; and
- The enforcement actions we can consider.

1.2 Trees that are subject to a Tree Preservation Order or are within a Conservation Area are included within this policy. However, there is separate legislation and an application process to deal with issues concerning the impact of high hedges on neighbours. The enforcement policy does not relate to high hedges. If you have a query concerning high hedges please read our documents; 'A guide to the New High Hedges Legislation' and 'High Hedges – Criteria for resolving disputes', which are available on our website: [Make a High Hedge Complaint](#)

## 2.0 THE PRINCIPLES OF GOOD ENFORCEMENT

- 2.1 We follow the Government's Concordat on the Principles of Good Enforcement Practice as outlined below.
- 2.2 **Standards:** to publish clear standards of service and performance through this enforcement policy.
- 1.3 **Openness:** to provide information and advice in plain language on the rules, and discuss problems with anyone experiencing difficulties either because of a breach of planning or as the result of an investigation. We will not normally make personal details available, such as a name, telephone number or address (see Section 3), but our decision-making processes will be transparent to make sure that everyone has confidence in the service.
- 2.3 **Helpfulness:** to work with all parties to resolve investigations without formal action if practicable. We will tell you who is dealing with the investigation and how you can contact them. We will give explanations for the actions we take and any rights of appeal.
- 2.4 **Consistency:** to carry out duties in a fair, just and consistent manner taking into account the particular aspects of each case. When we decide whether to take enforcement action, we must consider meeting the objectives and policies of the development plan and other material considerations. This seeks to make sure that development does not take place in inappropriate locations. Each decision will also take into account the particular circumstances of the site and surrounding area; level of harm being caused; and any relevant planning history, such as previous refusals or grants of planning permission or appeals for similar developments
- 2.5 **Proportionality:** to take action, when it is necessary, in relation to the risks posed and the seriousness of the breach. Some incidents or breaches of regulatory requirements have the potential to cause serious risk to public health and safety, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing. There may be occasions when the breach of regulations will justify action. Any such action will only be taken in accordance with the law, and after due consideration has been given to any Convention Rights, under the Human Rights Act 1998 and the Equality Act 2010 that may be affected by such action. However, our resources are limited, and it is essential to use available resources to maximum effect. In planning terms, this means where there is the most harm to amenity or the environment. Our decisions are not based on who is complaining or how loudly.
- 2.6 **Complaints about the Service:** to provide well-publicised, effective and timely procedures, and explain our complaints procedure.

## 3.0 WHAT IS A BREACH OF PLANNING CONTROL?

- 3.1 There are certain breaches of planning control that constitute criminal acts from the outset. Such breaches include:
- unauthorised work to a listed building;
  - unauthorised demolition of an unlisted building in a Conservation Area;
  - unauthorised works to “protected” trees; or
  - unauthorised advertisements.
- 3.2 It is not an offence to undertake development without firstly obtaining planning permission. However, if enforcement action is taken against unauthorised development and the requirements of an enforcement notice are not satisfied within the specified period, an offence has then occurred, which can be pursued in the Court. Because planning enforcement operates to protect the public interest rather than the interest of one particular individual, there are certain issues that we cannot take into account. For example:
- loss of value to property;
  - competition with other businesses;
  - rights to a view;
  - trespass; or
  - breaches of covenant.
- 3.3 These are not planning matters and therefore are not included in any assessment of harm. The test of a breach is how much harm it causes. Harm from breaches of planning control takes many different forms, including the following:
- impact on visual or residential amenity;
  - impact on highway safety;
  - loss of amenity for the public in general;
  - loss of amenity for occupiers and users of surrounding land; and buildings or on the environment in general.
- 3.4 There may be damage to the area’s historic buildings and environment through, for example, unauthorised work to listed buildings, or failure to comply with the conditions attached to consent. The demolition of an unlisted building in a Conservation Area can also cause harm. Harm can similarly occur if unauthorised development undermines the policies of our Development Plan, or could set a precedent which, if repeated, would undermine the policies of the Development Plan. An example could be a new house in the countryside.
- 3.5 The local environment can also be harmed by not taking action, just as much as actively undertaking unauthorised works. Where land or buildings are neglected their condition can adversely affect the amenity of the area.



## 4.0 HOW YOU CAN REPORT A POTENTIAL BREACH

- 4.1 We prefer you to report potential breaches in writing to the Planning Department. This can be done using the [Enforcement Complaint Form](#) on the Councils website. Sometimes, for example where someone is doing unauthorised work to a listed building, it may be necessary for you to telephone us during office hours. We will ask you to identify yourself and give contact details so that we can keep you informed in writing at key stages. We will consider anonymous requests for investigations; however, anonymous reports often do not give us enough information. Therefore looking into anonymous requests for investigations will be at the Council's discretion.
- 4.2 It is our policy not to reveal the identity of the informant, or information which is likely to reveal the identity of an informant to an alleged offender. We may be asked to reveal the identity of an informant under the Data Protection Act 1998, but we will always apply the rights of the individual in accordance with that Act and any other appropriate legislation.
- 4.3 Whilst you can write, email or telephone us with a complaint we would prefer it if you could use the online form, as this is the most cost effective option for the Council.
- 4.4 In addition you may wish to notify your local County Councillor, or Parish Council. Through whatever route you request your investigation; it helps if you provide us with as much information as possible about your concerns, particularly:
- the name and address of the alleged contravener;
  - the location of the site;
  - what has happened; the length of time it has been happening and an indication of whether it is still continuing;
  - an explanation of the harm that it is causing to you specifically, your neighbours or the area generally; and
  - what you consider would be a satisfactory outcome.

## 5.0 HOW WE PRIORITISE COMPLAINTS

- 5.1 The Council's resources are limited. It is therefore necessary to target available resources to have the maximum effect. In planning terms this means where there is the most harm to amenity or the environment, not necessarily a response to who is complaining or how vociferously.
- 5.2 The Council has an [Enforcement Prioritisation Scheme](#) (Appendix 1) for enforcement complaints.
- 5.3 The Council has established a set of priorities to reflect the importance it places on the quality of life for its residents and businesses, and the need to protect the special character of the built and natural environment of the County. The categories are intended as a set of guiding principles, rather than attempting to list every possible eventuality.
- 5.4 Regardless of who has made the complaint we will assign it a priority category. Prioritisation of the complaint then sets a performance standard for the first visit.
- 5.5 **Priority 1** – first inspection the day of the complaint:
- Unauthorised works in progress to a listed building;
  - Unauthorised works in progress to a protected tree.
- 5.6 **Priority 2** - first inspection within 2 working days of receipt:
- Unauthorised demolition or partial demolition of a building which is considered essential to retain;
  - Unauthorised development which has been undetected and where the time limit for enforcement action will expire within the following six months; or
  - Use of land causing serious harm to the locality or the natural environment.
- 5.7 **Priority 3** – first inspection within 7 working days of receipt:
- Any unauthorised development or non-compliance with a planning agreement, which is causing harm; or
  - Unauthorised development in a Conservation Area.
- 5.8 **Priority 4** – First inspection within 10 working days of receipt:
- Display of illegal advertisements;
  - All other complaints relating to unauthorised development not falling in any of the above categories; or
  - Untidy land.

## 6.0 HOW WE WILL INVESTIGATE A COMPLAINT

6.1 We will acknowledge all requests for planning enforcement investigations in writing within three working days of receiving it. We will visit all sites within the period set out above for each of the four priorities. Wherever possible we will visit high priority investigations on the same day that we receive the request.

### 6.2 No Breach And No Further Action

6.2.1 After undertaking an investigation we may decide not to take any further action. This might be because the breach is too minor, or because there is no breach of planning control. Alternatively, the works might be within the amount of development which can be carried out without planning permission (The exact detail of what is 'permitted development' are set out by Central Government in the Town and Country Planning (General Permitted Development) Order 1995).

6.2.2 Similarly, we may decide not to pursue an enforcement investigation, even if there is a clear breach of planning control, because it is 'not expedient' to take action. This might be because although the breach is more than just a minor or technical breach, the harm it causes is not significant, and in our opinion formal action would not be in the public interest. In reaching such a decision we must balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm but whose progress might be delayed as a result. In both these circumstances we will close the case file and notify in writing everyone who has been involved in the investigation. We will also, without prejudice to the outcome, notify the owner so that they can make an application to seek regularisation.

6.2.3 The time it takes to resolve each enforcement investigation will vary depending on:

- The nature of the concerns;
- The extent of investigations that need to be carried out;
- The harm which is being caused; and
- The resources that are available.

6.2.4 Where we serve an enforcement notice there is a right of appeal, which will add several months to the timescale. Therefore, it is not possible to give an average time for resolving an investigation. In all cases we will write to you within 20 working days to tell you the results of our investigation and tell you what will happen next. We will keep you informed throughout the process in writing at key stages.

## 7.0 ENFORCEMENT ACTION WE CAN USE

7.1 After we have received a complaint and undertaken an investigation and established that there is a breach of planning control, we have a number of formal options available to assist in resolving the breach. Not all options will be suitable in each case. Some actions will need to be authorised by the Development Control and Licensing Committee, whilst others can be authorised by officers. For details please see the Council's Constitution. The following link takes you to the relevant pages. [Scheme of Delegation - Development Control](#)

### 7.2 Breach of Condition Notice (BCN)

We can serve a BCN on the developer or occupier when they do not comply with conditions imposed on a planning permission. If they do not comply with the requirements of the BCN we can take legal action. It can only be used to secure compliance. It does not apply to breaches of control related to listed buildings, advertisements or protected trees. We will use this procedure in preference to the service of Enforcement Notices where appropriate. It is a criminal offence to fail to comply with a BCN within the period for compliance specified.

### 7.3 Enforcement Notice

We will serve this when we are satisfied that there has been a breach of planning control and that it is appropriate to take action. With an enforcement notice the recipient(s) must take the specific steps with a set time period. Failure to comply with a notice is a criminal offence. The recipient(s) of a notice have a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient(s) lodge an appeal we will tell all objectors and neighbours of the appeal and how they can make representations to the Planning Inspectorate. Any representations are available for public inspection.

### 7.4 Injunction

We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

### 7.5 Planning Contravention Notice

This is the main method for local councils to obtain information on a suspected unauthorised development. It will usually set out a list of questions about the site/development. We can offer a formal meeting to allow additional oral information to be given. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

## 7.6 **Section 215 Notices**

We can serve these in relation to untidy land or buildings when the condition of land or buildings negatively affects the amenity of an area. This requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. Recipient(s) have a right of appeal to a magistrates' court if they consider the serving of the notice is unjustified. Failure to comply with the notice is an offence. We may also do the works ourselves and charge the owners

## 7.7 **Section 330 Town and Country Planning Act 1990**

We use this power to get information, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or persons receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

## 7.8 **Stop Notice**

We can serve these with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after we have served it, although we can reduce this period if necessary. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal; failure to comply with the notice is an offence.

## 7.9 **Temporary Stop Notice**

We can serve these where we consider that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. In addition it is temporary and only lasts for 28 days. There is no right of appeal to the Secretary of State. A judicial review can challenge the validity and propriety of our decision.

## 7.10 **Prosecution**

We can commence Court proceedings where a formal notice has been breached. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal Notices, e.g. unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. These proceedings can include:

- a prosecution; and
- a formal caution – this is a formal process where you formally admit the offence. It may be referred to at the sentencing stage if you are

ever found guilty of a subsequent offence. We may also take it into consideration when we decide whether or not to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution, we must be able to prove that:

- the building or tree was protected;
- there has been a breach of a formal notice (Listed Buildings);
- who has carried out, caused, or permitted the works (Listed Buildings or Protected Trees);
- the works were carried out without our consent (Listed Buildings or Protected Trees); or
- the works were not exempt works (Listed Building or Protected Trees).

We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors.

#### **7.11 The Evidential Test:**

We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.

#### **7.12 The Public Interest Test:**

We will only bring a prosecution where this is in the public interest. We may apply cautioning in cases where a prosecution can properly be brought, but where we do not consider such action is appropriate in the circumstances of the case. We will use cautions in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

#### **7.13 Direct Action**

We do have the power, in special circumstances and as a last resort, to make sure an enforcement notice is complied with by carrying out the required steps ourselves in default of the owner or occupier's action. We can recover all the cost incurred from the owner. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.

## **8.0 WHAT YOU CAN DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT**

- 8.1 We understand that in many cases a breach of planning is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage. In some cases a request to investigate may be made against your property. If it is possible to investigate the concerns without disturbing you and establish that there is no breach of planning control, we will not contact you.
- 8.2 Depending upon the level of harm being caused we will be prepared to discuss with you what alternative solutions might be acceptable, rather than the complete removal or rebuilding of the development. However, this approach will not mean that you can delay any response or action that you have agreed to do. We expect you to respond within the stated timescales and we will pursue prosecutions for non-responses to formal notices. We will not allow long drawn out negotiations to hold back the taking of action. In many cases, particularly where the works are likely to be acceptable, perhaps with some minor changes, we will give an opportunity to submit a retrospective application. This is so that we can consider the development in more detail and, if appropriate, control it through planning conditions.
- 8.3 You should be aware that development which required but does not have planning permission is unauthorised, and remains subject to potential enforcement action for a set number of years. In the case of building works, or the use of a building for living accommodation, the time period is four years after completing the works or occupying the accommodation. Where the breach is an unauthorised change of use of land or buildings, or is the breach of a planning condition, the time period is ten years.
- 8.4 If you subsequently wish to sell a property, which has been subject to unauthorised works or a change of use, you may find the sale is delayed or lost as a result. You should also be aware that we usually make mortgage providers aware of breaches of planning permission and we will send them a copy of any formal notice or decision about planning enforcement. Within the Council, the Planning Service advises the Land Charges section of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding.
- 8.5 Our planning enforcement staff will make themselves known to the landowner/developer when they enter a site, but it is not always appropriate or possible to give advance warning of a site visit. Enforcement officers are legally entitled to enter land and property. You do not have to be there for an enforcement officer to enter onto your land and make a site visit. If it is necessary to enter your house, (as opposed to just the garden) you are entitled to 24 hours notice.

- 8.6 If you actively prevent an enforcement officer from entering onto your land we will get a warrant to enter the site. Once we have secured a warrant, any obstruction to access the site will be considered a criminal offence.
- 8.7 We will use the information we get from a site visit to help assess the harm being caused and what further action we may need to take. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience. Most decisions to serve a formal notice are authorised by the Development Control and Licensing Committee, a very few are made by a senior officer with the involvement of the enforcement officer.
- 8.8 Enforcement staff will be happy to explain the different notices and to help you understand the implications. However, enforcement staff will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a qualified planning consultant or another appropriate property professional. If you cannot afford to employ a consultant you can contact Planning Aid. Planning Aid is a voluntary service which offers free independent, professional advice.



## 9.0 ENFORCEMENT OF TREE PRESERVATION ORDERS OR CONSERVATION AREA TREES

9.1 Trees that are the subject of a Tree Preservation Order or trees that are within a conservation area are protected by planning legislation. In general, you need to get authorisation from us before you do any work. This includes cutting down, uprooting, lopping or topping. It is a criminal offence to wilfully damage or wilfully destroy a protected tree.

9.2 There are two offences which apply when a protected tree is damaged or destroyed:

- Anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in any way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000 (the fine is unlimited if there is a trial in the Crown Court). The Courts have decided that it is not necessary for a tree to have been rendered useless as an amenity; and
- Anyone who does unauthorised works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500.

9.3 Any proceedings for these offences must be brought within six months of the date the offence was committed.

### 9.4 Investigations

The initial investigation will be a check to establish:

- whether the tree is protected;
- whether any consent or permission has been granted; and
- who is doing the work.

A site visit will also be carried out.

### 9.5 If You Do Unauthorised Works

9.5.1 As with planning enforcement complaints, officers investigating unauthorised works to protected trees have a right to enter land to carry out investigations and will take photographs that may be used as evidence later.

9.5.2 You will be given an opportunity to give your version of events during the investigation. However, if it appears that you did the works then you will be cautioned because you may have committed a criminal offence. The caution will be issued by officers under the Police and Criminal Evidence Act 1984.

9.5.3 If you remove a tree through unauthorised works (or because it is dead, dying or dangerous – remember that the onus is on those carrying out the work to prove that the tree was in such a condition

as to warrant its removal), you have an automatic duty as the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless we waive the requirement).

9.5.4 The replacement tree is then subject to the same protection as the tree that was lost. We can serve a Tree Replacement Notice within a period of four years to make sure you comply. There are rights of appeal against Tree Replacement Notices.

## 9.6 **Our Considerations Whether or Not to Take Action**

9.6.1 We will make decisions as to what action to take in cases of unauthorised works on trees based on the public interest test. Each case will be considered on its own merits. We would not normally bring a prosecution unless the unauthorised works have resulted in a loss of public amenity. In most cases we will not normally bring a prosecution if we would have granted consent (or raised no objection) for the works done had you applied for it.

9.6.2 In considering whether to bring prosecution, we will have regard to the likelihood of you repeating the offence and the degree to which a prosecution would act as an effective deterrent. We will also have regard to any financial advantage perceived to have been gained by carrying out the unauthorised works, and whether you have been prosecuted, cautioned or warned for similar offences in the past.

9.6.3 We can take into account any expression of regret, helpfulness and co-operation with the investigation and also any indication that you were acting in good faith.

9.6.4 We will normally require the planting of replacement trees, irrespective of whether you have been prosecuted or cautioned. When we require replacement planting, we will monitor to make sure it is done. If necessary we can serve a replanting notice to secure replacement planting, which can be invoked if the landowner does not voluntarily carry out replacement planting.

## **10.0 UNTIDY LAND OR BUILDINGS (SECTION 215 NOTICES)**

10.1 Under Section 215 of the Town and Country Planning Act 1990 we have the power to require an owner/occupier to carry out improvement works to their land or building if the condition of the land or building is causing harm to the amenity of an area.

10.2 It is our decision whether the extent of any harm to amenity of the area is serious enough to justify the service of a Notice requiring the site to be cleaned up. The Notice will specify exactly what steps the owner must carry out to improve the site. In assessing the harm, we will consider both the site and its surroundings.

### **10.3 Where We Will Serve Notices**

10.3.1 As with all enforcement investigations, we will allocate resources where they can be most effective and where the greatest harm is being caused. We will not use these Notices where there are more specific powers available to address the concern.

10.3.2 It is likely we will use a Section 215 Notice in connection with a prominent and derelict site, particularly if it has started to attract fly tipping, or an important town centre street frontage that has fallen into disrepair, particularly if it falls within a Conservation Area. We would also serve a Notice where the condition of a piece of land impacts upon the wider landscape.

10.3.3 If a residential property is particularly run down, or a garden is overgrown, or cars/domestic items are being left in the garden to rot, then we can serve a Section 215 Notice. However, our policy is that a garden which is merely untended, or a house that needs some cosmetic maintenance, for example, where a window or window frame needs to be replaced, would not qualify for a Section 215 Notice.

10.3.4 We cannot normally serve a Section 215 Notice on a site which is untidy as a result of building works that have planning permission.

### **10.4 Scope of The Notice**

10.4.1 The scope of works that can be required in Section 215 Notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting.

10.4.2 If it is necessary for the improvements to involve work which would normally require planning permission, for example the re-building of a garage, then we will not be able to cover these works in a Section 215 Notice. In such cases, we would require a separate planning permission and therefore the use of other enforcement powers may be more appropriate.

## 10.5 Action Available to Us

10.5.1 We will write to the owner before serving a Section 215 Notice advising that it will be served unless the site is tidied up.

10.5.2 Where a Notice becomes effective but it is not complied with, we will explain the action the Council can take which could involve:

- direct action where we will carry out the works ourselves and charge the owner for all costs incurred; or
- prosecution in the Magistrates Court. A successful prosecution may result in a fine of up to £2,000 and a criminal record.

10.5.3 The course of action will vary from site to site, and in some cases we can pursue both direct action and a prosecution. Where we cannot immediately recover cost we will register a charge on the property with the Land Registry, thus assuring full costs recovery plus base-rate interest.

## 11.0 NATIONAL GUIDELINES

- 11.1 Department for Communities and Local Government – [National Planning Policy Framework \(March 2012\)](#);
- 11.2 Department for Communities and Local Government – Planning Policy Guidance (March 2014)
- 11.3 Central/Local Government Concordat on Good Enforcement (March 1998);
- 11.4 Development Control – A Charter Guide, published by the National Planning Forum (April 1994).

## Appendix 1

# Rutland County Council District Council Planning Enforcement Prioritisation Scheme

## Purpose

This document sets out the Council's Planning Enforcement Prioritisation Scheme in relation to the handling of allegations concerning a breach of planning control. It assesses the planning harm that a contravention is perceived to cause and provides a process for the 'closure' of some minor breaches of planning control.

## Background

In the past when the Council considered an alleged breach of planning control, the case was not closed until the breach of planning control was rectified. This resulted in the Enforcement Officer continuing to use resources to pursue some minor breaches of planning control that were not causing harm to public amenity and/or interest. A more efficient and effective approach is required.

## The Scheme

The Prioritisation Scheme is applied to cases which are found to be a breach of planning control following an initial site inspection. The scheme grades the 'harm' of that breach against a series of scored criteria. The agreed level of material harm is a score of 4 and above based on comparative scheme elsewhere. Where the cumulative score is 3 and under it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be small or negligible. In these instances the case will be closed and advisory letters will be sent to both the offender and the complainant. The property owner will also be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, as the breach that has occurred could affect any future sale. Once all parties have been notified the Council will take no further action. This will not apply to those cases with a score of 3 or less where it is assessed by the Enforcement Officer that the breach is unlikely to receive an unconditional grant of planning permission. In these circumstances the breach will be pursued to a successful conclusion in the normal way.

Breaches of planning control that attract a score of 4 or more will be pursued by officers until matters are resolved either through negotiation or by taking formal action.

The Prioritisation scheme will be applied to all cases involving development.

Advertisement Control, Amenity Notices and Tree/Hedgerow matters have different legislative requirements and will be dealt with separately.

Sixteen planning 'harm' factors are set out in the Prioritisation Form dealing with factors such as, the nature of the breach, safety issues, policy matters, degree of harm etc.

## **Operational Aspects**

The 'Prioritisation Form' will be completed by the Enforcement Officer within 20 working days of receipt of an enquiry. Where the alleged breach relates to a change of use of land the site should be visited a minimum of three times in that twenty day period (if necessary) to establish if a breach of control is occurring (if the initial or second visit are inconclusive).

## **Conclusion**

The Prioritisation Scheme provides:

- A quantitative and qualitative assessment of the harm to public amenity/interest;
- An open and transparent procedure;
- A quick and effective processing of cases;
- A flexible system to make efficient use of resources; and
- Equality of treatment of dealing with cases.

## PRIORITISATION FORM

TO BE COMPLETED BY AN OFFICER WHO HAS INSPECTED THE DEVELOPMENT

**All retrospective refusals of planning permission will automatically receive a full investigation – do not complete form.**

Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score on which its priority will be based. Where there is no breach of planning control found, the file will be closed accordingly.

Points Allocation			Score
1	Is the breach	Worsening/ongoing (1) Stable (0)	
2	Highway safety issue	Yes (2) No (0)	
3	Other safety issues	Yes (2) No (0)	
4	Causing a statutory or serious environmental nuisance	Yes (1) No (0)	
5	Complainant	Immediate neighbour (2) Other/Parish Council (1) Anonymous/malicious (0)	
6	Age of breach	Within 6 months of immunity (2) Less than 3 months old (1) More than 3 months old (0)	
7	Major Planning Policy Breach	Yes (1) No (0)	
8	Is there harm to a material planning consideration	Widespread (2) Local (1) None (0)	
9	Irreversible harm to a material planning consideration	Yes (2) No (0)	
10	Flood Risk	Zone 3 (2) Zone 1-2 (1) NFR (0)	
11	Breach of a planning condition or Article 4 Direction	Yes (1) No (0)	
12	Conservation Area (or adjacent to)	Yes (1) No (0)	
13	Listed building (or affecting the character or setting of)	Yes (1) No (0)	
15	Particularly sensitive site e.g. SSSI, Scheduled monument, Listed Garden, Archaeological importance	Yes (1) No (0)	
16	Undesirable precedent (please provide details)	Yes (1) No (0)	
TOTAL POINTS (SCORE)			

NB. Please see the attached Prioritisation Flow Chart for those cases where the Score is 3 or below but the Enforcement Officer, in consultation with the Planning Officer, considers that the breach would not receive an unconditional planning permission.



# 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.