

BOROUGH OF BARROW-IN-FURNESS



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PLANNING ENFORCEMENT POLICY

June 2007

1 INTRODUCTION

- 1.1 This Policy Statement is a comprehensive review of the 'Best Practice for Planning Enforcement' adopted by the Planning Committee on 21st November 2000. It has been introduced in recognition of the importance attached by the Authority to the achievement of successful planning enforcement and to assimilate a number of changes in its implementation that have taken place in recent years, as follows:
- in June 2005 the Overview and Scrutiny Committee (Economy and Regeneration) carried out a thorough review of the operation of the service and made recommendations that have been incorporated in this Policy.
 - in August 2006, the Planning Committee adopted some Local Performance Indicators for enforcement that are now included in the quarterly report to the Committee, together with some additional management information.
 - legislative changes such as the introduction of Temporary Stop Notices,
 - liaison with other authorities in Cumbria on best practice.
- 1.2 The principles of good enforcement contained within the Concordat will not by themselves serve to demonstrate that an enforcement service is offering "best value". However, a service which sets out clear standards of performance and which provides clear information in line with the principles will obviously be able to refer to such issues when assessing whether a local community feels that best value is being achieved in any particular service.
- 1.3 Local residents and businesses have a right to expect that harmful activities are dealt with effectively. The integrity and reputation of the Council's planning functions relies upon enforcement to ensure that development is undertaken in accordance with planning permission and that unauthorised activities do not go unchecked. It is therefore essential that a Local Planning Authority operates an effective, efficient and consistent planning enforcement function. The planning system relies on these broad facets for its overall success – the development plan, development control and enforcement, each of which must be rigorously and carefully exercised and each of which must support the other two. A popular analogy is that they equate to the three legs of a milking stool.
- 1.4 The Council receives approximately 300 – 400 planning complaints each year. A whole range of case types occur from domestic extensions, commercial developments, unauthorised changes of use of land or buildings, advertisements, wasteland sites, works to Listed Buildings and protected trees. The vast majority of these are dealt with in a relatively short period of time as there is either no breach of control or the matter can be resolved without formal action.
- 1.5 The Council has one planning Enforcement Officer within the Development Control Section employed to investigate complaints and report serious breaches to members on a regular basis. Close liaison is maintained with Building Control to monitor most developments. Planning Officers are also involved when matters reach appeal stages or court proceedings. Legal proceedings are undertaken by the Councils' Legal Department, in association with that of South Lakeland District Council.

1.6 This is a policy statement document and encompasses the principles which will underpin the Councils approach to enforcement. The aim of setting out Council Policy and Practice is to:

- achieve a consistent and fair approach to enforcement matters;
- assist in the smooth running of the Service;
- help provide value for money and to make best use of existing resources;
- give clarity to the public as to how the Council will respond to their concerns.

It cannot however bind the Council or fetter its discretion in particular matters. There will always remain a discretion whether and how to proceed on the Council's part having regard to all the applicable circumstances.

2. OVERALL POLICY STATEMENT

2.1 The purpose of the policy is to identify and encourage best practice in the enforcement of planning control for the benefit of the residents of the Borough. The main principle is that the Council will endeavour to provide a fair and consistent enforcement service to protect the environment of the area and the amenity of its citizens.

2.2 In doing this the Council will uphold the objectives of the planning policies contained within the Development Plan which currently comprises the Borough Local Plan Review, its Housing Chapter Review and the Cumbria and Lake District Joint Structure Plan.

2.3 In addition to development plan policy, the Council is obliged to have regard to relevant central government planning guidance including Circular 10/97 'Enforcing Planning Control' and Planning Policy Guidance Note 18, both of which assist in dealing with breaches of planning control.

2.4 The Council is also governed by the applicable statutory provisions contained in the Planning Acts and the way in which the law courts have interpreted these provisions in decided cases.

3. GENERAL GUIDELINES

3.1. The Council will take action against significant breaches of planning permissions and against development which has not got approval;

3.2. The Council will wherever possible avoid taking enforcement action against a trivial or technical breach which causes little or no harm to amenity;

3.3. Formal enforcement action will only be used where the activity or development is clearly detrimental to the amenities of the locality or to any other material consideration e.g. Development Plan Policy objectives;

3.4. Careful consideration will be given to all the options available or whether to initiate formal action in the following ways:-

- a. Request submission of an application if the development is considered likely to be recommended for approval.

- b. Negotiation with applicants/agents.
 - c. Planning Contravention Notice – to be served whenever the local planning authority suspect that a breach of planning control has occurred.
 - d. Breach of Condition Notice – to be served whenever the local planning authority suspect that a condition attached to a planning consent has been breached.
 - e. Enforcement Notice – to be served where the local planning authority are satisfied that there has been a breach of planning control and it is expedient to issue a notice having regard to the provisions of the development plan and to any other material considerations.
 - f. Stop Notice – to be served where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the compliance period with an Enforcement Notice.
 - g. Injunction – where the local planning authority consider it expedient for any actual or apprehended breach of planning control to be restrained by an injunction, they may apply to the High Court or County Court for an injunction to restrain that breach.
 - h. Wasteland Notice (Section 215 Notice) – where it appears to the local planning authority that the amenity of a part of their area is adversely affected by the condition of the land.
 - i. Cumbria Act 1982 – to enable the local planning authority to seek removal of unauthorised advertisements within Conservation Areas or Area of Special Control.
 - j. Legal Action under the Advertisement Regulations in the Magistrates Courts to secure removal of unauthorised advertisements.
 - k. Requisition for Information (Section 330 Notice) – to seek information as to ownership of or persons having an interest in premises or land.
 - l. Completion Notice to be served where the local planning authority are of the opinion that a development that has been commenced will not be completed within a reasonable time period.
 - m. Temporary Stop Notice – where the local planning authority consider it essential that unauthorised development is halted for 28 days to allow more information to be gathered and/or for its effects to be assessed.
 - n. Notice under Section 225 for the removal of a placard or poster.
- 3.5. Failure to comply with the terms of the aforesaid Statutory Notices may result in the Council taking further legal action through the Magistrates/County Courts.
- 3.6. Notices will not be served merely because development is unauthorised, there must be a cogent planning objective in doing so.

- 3.7. The Council will keep complainants and interested parties aware of progress on enforcement matters or why enforcement action is not being taken.
- 3.8. It is clearly understood that the consequences in terms of penalty and appeal rights applicable to different notices vary widely. Implications of non-compliance will be made clearly known.

4. **ENFORCEMENT PROCEDURES**

- a. All complaints written or verbal will be acknowledged within 3 working days.
- b. In line with Council policy all letters will be fully acknowledged within 10 working days.
- c. All complaints will be treated as confidential as far as possible within the authority.
- d. Anonymous complaints will not be pursued unless there is a clear or unacceptable breach of planning control involved.
- e. A full investigation of the current facts and planning history will be carried out. A visit to the site to establish whether a breach has occurred will take place within 5 working days.
- f. If a breach is found the original complainant will be notified of the extent of this in writing and the action that is proposed to be taken. This in many cases will involve a consultation with our Legal Advisers and a report to the Planning Committee for proposed action to be endorsed.
- g. If a breach is found, the owner/occupier of the property/land will be advised in writing. Where possible attempts will be made to negotiate with owner/occupiers to resolve the breach of control prior to any action being taken. Invitations will be made to submit a planning application where any harm being caused can be controlled by appropriate conditions.
- h. All cases will be considered in line with current Council policy before any recommendation is made as to whether or not enforcement action is necessary.
- i. Where the Enforcement Officer, in consultation with the Development Control and Enforcement Manager, considers that material harm is being caused and it has not been possible to negotiate any means for this to be overcome, he will request the preparation of an Expediency Report by the relevant Case Officer or District Officer. This report will be submitted to the Development Control and Enforcement Manager for him/her to authorise it for submission to the Planning Committee. A copy of the Expediency Report forms Appendix A. All Committee reports will conform to the format in Appendix B.
- j. All complainants and offenders will be informed in writing of the Council's proposed course of action at the earliest opportunity following the Council's decision on appropriate action.

- k. Where formal action is necessary, statutory notices will be served with reasonable or appropriate timescales for compliance, together with an accompanying letter and/or guidance note which will explain the consequences of non-compliance.
- l. The Council will seek to pursue any failure to comply with statutory notices.
- m. The Council will where appropriate apply to the Magistrates Court for warrants for entry to inspect premises, and to seek injunctions to stop unlawful activity/use.

5. GENERAL PRINCIPLES

5.1 Standards

In September 2000 the Council became a signatory to the Government's Enforcement Concordat under which it has adopted the Concordat's principles with regard to standards, openness, helpfulness, complaints about the service, proportionality and consistency. The text of the document is reproduced in Appendix C.

6. CASE PRIORITY ASSESSMENT LIST

- 6.1 Enforcement action can be a long and involved process requiring a lot of staff time. Consequently it is necessary to prioritise cases to ensure that vigorous action is taken against the most damaging breaches of control and less urgent matters are dealt with as resources become available. The Council will investigate the following matters on a priority basis:

Level 1 (High)

Unauthorised alterations to or demolition of listed buildings.

Unauthorised works to trees, covered by Tree Preservation Orders or in Conservation Areas.

Unauthorised development which causes demonstrable harm or loss of amenity in the locality.

Breaches of planning conditions which result in demonstrable harm or loss of amenity.

Works to buildings in Conservation Areas which would cause demonstrable damage or loss of character.

Breaches of planning control or conditions which cause demonstrable harm to the amenities of neighbouring properties, or have an unacceptable environmental impact or have a clear conflict with the Local Plan.

Level 2 (Medium)

Unauthorised advertisements in conservation areas.

Unauthorised advertisements affecting highway safety.

Unightly and run down buildings or sites that cause a significant loss of amenity to the local area and justify the serving of a Wasteland Notice under Section 215 of the Planning Act 1990.

Level 3 (Low)

Flyposting/other advertisements not covered in Level 2.

Technical breaches of planning control where there is not serious detriment to amenity.

Minor works involving boundary walls, fences, sheds and satellite dishes except those affecting conservation areas or listed buildings.

Temporary breaches of control which will be resolved without recourse to formal action.

Level 4

Development found on investigation to comply with the definition of Permitted Development or for some other reason(s) not to require consent.

Minor issues which in the professional judgement of the Director of Regeneration and Community Services warrants no further action shall be delegated to him/her.

7. DELEGATED POWERS

7.1 The Council's Constitution contains the following delegated powers with regard to enforcement:

B. To take, after consultation with the Planning Panel any necessary enforcement action including the service of a stop notice or a Temporary Stop Notice under Section 171(E) of the Planning Act 1990.

D. To determine minor issues falling within the Case Priority Assessment List Level 4 of the Council's Enforcement Policy Guidance which in the professional judgement of either the Director of Regeneration and Community Services or Development Control and Enforcement Manager warrant no further action (Minute No. 384 Planning Committee, 21st November, 2000).

L. To exercise the authority's functions under Section 225 of the Planning Act 1990.

8. UNAUTHORISED DEVELOPMENT BY SMALL BUSINESSES OR SELF-EMPLOYED PEOPLE

8.1 Where unauthorised developments has been carried out by an owner or occupier or operator of a small business or self-employed person, consideration shall be made whether to allow the business to continue operating acceptably from the site or operate less intensively. Where agreement cannot be reached, a planning contravention notice shall be served

which shall convey the Councils determination not to allow the development to continue by default.

- 8.2 If, following informal discussion, a mutually satisfactory compromise cannot be reached, including the possibility of relocation, and formal enforcement action is considered essential; the local planning authority's intentions to take such action will be made clear, at the outset, to the owner or operator of a small business or self-employed person.
- 8.3 When an enforcement notice has been served which provides a small business or self employed person reasonable time to discontinue the unauthorised development from the site or to relocate, and serious attempts are shown by the owner or occupier to comply with the requirements of the enforcement notice, the requirements of the notice may be waived or relaxed, which would provide additional time to enable the small business on self-employed person to relocate or cease operating from the site.
- 8.4 If an owner or occupier of a small business or self-employed person is unwilling to discontinue an unauthorised activity or re-locate to an alternative acceptable site, an enforcement notice shall be issued providing a realistic compliance period to cease the activity and enable relocation if required. Where it is evident to the local planning authority that serious attempts are being made to comply with the requirements of the enforcement notice, consideration shall be given to waive or relax any requirement in the notice, including the compliance period.

9. **MONITORING**

- 9.1 The Enforcement Officer receives weekly information from the Building Control Section on commencements and completions. These allow the relevant planning permissions to be checked to see if there are conditions that need to be monitored for compliance.
- 9.2 Where notification of a start on a new housing development or a major commercial development is received from Building Control the Enforcement Officer will arrange to visit the site and carry out measurements to ascertain whether or not the work conforms with the approved plan.
- 9.3 The Council has also now adopted non-statutory Start Notices which will be sent out to the applicant with their planning permissions and which they will be asked to complete and return when the development commences. A copy forms Appendix D.

10. **CASE MANAGEMENT**

- 10.1 A monthly meeting between the Enforcement Officer, Development Control and Enforcement Manager and Director of Regeneration and Community Services is held to discuss current cases and, where necessary, for the Director and Development Control and Enforcement Manager to give direction to the Enforcement Officer on how to proceed with cases. At the meetings the delegated powers referred to under the Case Priority Assessment List, Level 4 referred to above in Section 6 will be exercised.
- 10.2 Quarterly and Annual Reports on enforcement activity are submitted to the Planning Committee. These discuss current trends and issues and, cover the

work of the Enforcement Section over the period in question and contain the following statistics:

Cases outstanding at the start of the period
Cases received during the period
Cases closed during the period
Cases outstanding at the end of the period
Requisitions for Information
Enforcement Notices Issued
High Hedge Applications
Sources of Complaint (%)
Reasons for Closure (%)

10.3 On 1st August, 2006 the Planning Committee also agreed to the receipt of quarterly and annual returns on the following Local Performance Indicators:

1. % of complaints that have a site visit within 8 days.
2. % of non-anonymous complaints that have an acknowledgement letter within 3 working days.
3. No. of complaints resolved within 90 days and how resolved.
4. % of cases resolved through negotiation.

10.4 They also agreed that the following Management Information be submitted to them:

1. No. of complaints and type received.
2. No. of outstanding complaints over 90 days.
3. Sources of complaint.
4. No. of planning applications received as a result of action.
5. No. of Enforcement/Wasteland Notices and Planning Contravention Notices served.
6. No. of prosecutions.

10.5 The Quarterly report also contains a table of current updates on the individual outstanding notices.

Expediency Report

A report leading to a decision whether formal enforcement action should be taken

Enforcement reference no:

Location:

Description:

Context

The Government, in Planning Policy Guidance 18: Enforcing Planning Control advises that in considering any enforcement action the decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest. It also states that enforcement action should always be commensurate with the breach of planning control to which it relates.

PPG 18 also states that:

- It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity.
- An enforcement notice should not be issued solely because the development is unauthorised, if it is acceptable on its planning merits.
- Where an initial attempt to secure a voluntary remedy to the harmful effects of unauthorised development fails formal action should not be hampered by negotiations.

As a Local Planning Authority we have a discretionary power to issue an enforcement notice where it appears to us:

- That there has been a breach of planning control, and
- That it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.

In September 2000 we adopted the central and local government Concordat on Good Enforcement. In our enforcement policy, we have set out our commitment to the principles of good enforcement including: clear standards, openness, helpfulness, proportionality and consistency. Our policy states that when we identify a breach of control we will consider whether there is a voluntary solution, but will not let this hinder effective formal action when this is warranted. It also commits us to acting proportionately to ensure that our action is commensurate with the breach.

This report contains:

- The background to the investigation including relevant planning history
- The breach of planning control
- That we are within the relevant time limit for enforcement action
- Relevant development plan policies

- Material planning considerations including the views of any interested parties
- The reasons why enforcement action is or is not expedient in the public interest
- A recommendation

Background

Breach

Relevant time limit for enforcement action

Relevant development plan policies

Material planning considerations including the views of any interested parties

Assessment

Recommendation

On the basis of the above I recommend that

Name and Title.....Date.....

Notes

Use this report format to set out the nature of a breach and how it should be dealt with. By using it we will ensure that our decisions accord with our policy.

In the breach of control section use prevision and if your assessment includes proposed action specify this in detail.

Some options for recommendations,

The voluntary solution be agreed

A report be prepared for the Planning Committee seeking authority for enforcement action.

Under delegated powers no formal action is taken because it is not in the public interest.

Always consider advisory letters to interested parties enclosing a copy of the report when appropriate.

Agreed by Development Control and Enforcement Manager

Not agreed by Development Control and Enforcement Manager

Comments

Development Control and Enforcement Manager

Date.....

PLANNING COMMITTEE REPORT FORMAT

Background

Decision

Remedial steps to be taken

Reasons why it is considered expedient to take action

Human Rights Act

PRINCIPLES OF GOOD ENFORCEMENT

Standards

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice / information from us. Applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly. We will ensure that wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about Services

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In case where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have

arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.



START NOTICE

IMPORTANT INFORMATION – KEEP THIS WITH YOUR DECISION NOTICE

The decision notice is important. But you must read it together with the application and any approved drawings or documents.

It is your responsibility to comply. Failure to comply with the terms of an approval could mean that the work that you carry out is unauthorised and at risk of enforcement action, which could have serious consequences. We carry out a programme of site monitoring to check compliance.

Please read carefully the decision notice and ensure that you understand and comply with the requirements of any conditions. Also, you must comply precisely with any approved drawings or documents.

If you do not understand any of these requirements please contact us quoting the reference number on the decision notice.

We can assist you by providing advice and dealing with details you send to us to meet conditions. Please ensure that you give yourself time to meet the requirements of any conditions.

We recommend that you complete this **Start Notice** and return it to us when you know when work will start.

Our reference number from the decision notice:

Location:

Date when work is intended to start:

Your contact details (or attach letterhead/business card):

Name:

Address:

Telephone:

Mobile:

E-mail:

For the attention of Roger Parkinson (Enforcement Officer)

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