

CARLISLE CITY COUNCIL



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Carlisle City Council

PLANNING ENFORCEMENT POLICY

&

GOOD PRACTICE GUIDE

Adopted by Council 12/09/2007

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PLANNING ENFORCEMENT POLICY & GOOD PRACTICE GUIDE

1.0 Introduction

1.1 This policy statement encompasses the principles, which will underpin the Council's approach to planning enforcement. The aim of this Policy is to:

- Achieve a consistent and fair approach to enforcement matters.
- Give clarity to the public as to how the Council will respond to their concerns.
- Assist in the smooth running of the service.
- Provide value for money and make best use of existing resources.

2.0 Policy Statement

2.1 The purpose of this guide is to identify and encourage best practice in the Enforcement of unauthorised development or a breach of planning control, which is causing harm to the amenity of the area, or which compromises policies designed to ensure the protection of trees and hedgerows. The main principle is that the Council will provide a fair and consistent enforcement service to protect the environment of the District and the amenity of its citizens.

2.2 The Council is also governed by the applicable statutory provisions contained in the Town and Country Planning Act 1990, the Town and Country Planning (Trees) Regulations 1999, the Hedgerow Regulations 1997, the Anti-Social Behaviour Act 2003 and how the Law Courts has interpreted these provisions (Case Law).

2.3 In exercising its enforcement functions, the Council has regard to relevant Government Planning advice, including Circular 10/97 'Enforcing Planning Control' and Planning Policy Guidance Note 18 'Enforcing Planning Control' both of which provide detailed guidance on how to deal with breaches of planning control.

- 2.4 The Council also applies the planning policies contained within the Development Plan, which currently comprises the Carlisle District Local Plan, Cumbria and Lake District Joint Structure Plan and Regional Planning Guidance.
- 2.5. Planning conditions are imposed on planning permissions to improve the quality of the development and in some cases enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. It is therefore essential to ensure that they are correctly and properly discharged and if not enforcement action will be taken where it is considered expedient to do so.

3.0 General Guidance

3.1 PPG 18: Enforcing Planning Control

- a. Local Planning Authorities (LPA's) have a general discretion to take enforcement action, when they regard it as expedient ;
- b. LPA's have the responsibility to take whatever enforcement action that may be necessary, in the public interest;
- c. In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and building meriting protection in the public interest;
- d. Enforcement action should be commensurate with the breach of planning control to which it relates;
- e. It is not an offence to undertake development without first obtaining planning permission; and
- f. Whilst it is clearly unsatisfactory for anyone to carry out development without first obtaining planning permission an enforcement notice should not normally be issued solely to 'regularise' development which is acceptable on its planning merits. In such situations LPA's should seek to persuade the developer to seek permission for it, if permission is required.

- 3.2 Having taken the above guidance into consideration and if considered necessary, formal action will be taken in the following ways:

Minor Breaches

- a. Request for submission of an application.
- b. Negotiation with applicants/agents.

More Serious Breaches

1. Requisition for Information (Section 330 Notice) – to seek information as to ownership of or persons having an interest in premises or land
2. Review of specific issues, resulting in appropriate action from the following options
 - 2a. Planning Contravention Notice – to be served whenever the Local Planning Authority suspect that a breach of planning control has occurred
 - 2b. Breach of Condition Notice – to be served whenever the Local Planning Authority suspect that a condition attached to a planning consent has been breached.
 - 2c. 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.
 - 2d. 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.
 - 2e. 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.

- 2f. Disamenity 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 and building.
- 2g. Cumbria Act 1982 – to enable the Local Planning Authority to seek removal of unauthorised advertisements within Conservation Areas or Areas of Special Control.
- 2h. Legal Action in the Magistrates Courts to secure removal of unauthorised advertisements, which are not located in Areas of Special Control for Advertisements.
- 2i. 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.
- 2j. Remedial Notice – to be served regarding any action which may be required to be taken by or on behalf of the Council pursuant to its duties and responsibilities under Part 8 of the Anti-Social Behaviour Act 2003.
- 2k. Decision Letter – where the Local Planning Authority has made investigations regarding Tree Preservation Orders.

3.3 Failure to comply with the terms of a Statutory Notice that may be served can result in the Council taking further legal action through the Magistrates/County Courts.

4.0 Enforcement Procedures

4.1 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; consequently, less urgent matters are dealt with as resources allow.

4.2 All complaints will be treated as confidential. Successful enforcement action may, however, depend on information from complainants, for example, where formal legal proceedings are initiated and it may be necessary to rely on information provided. In such circumstances complainants would first be contacted to confirm that they wish their evidence to be used before their identity is revealed. Where complainants wish to remain anonymous (e.g. for fear of reprisal) the complaints

will be pursued but may require additional evidence before action can be taken dependent upon the type of breach of planning control involved.

- 4.3 All complaints, written or verbal, will be acknowledged within 3 working days.
- 4.4 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, wherever possible.
- 4.5 In line with Council Policy all letters will be fully responded to within 10 working days wherever possible, depending on the nature of the complaint. If a more detailed investigation is required a holding letter will be sent to the complainant within that 10 day period.
- 4.6 Where no breach is found the complainant will be notified of the reasons in writing. This, in many cases, will involve a consultation with the Head of Legal and Democratic Services.
- 4.7 If a breach is found the occupier and where applicable the owner of the property/land will be advised in writing. If appropriate, attempts will be made to negotiate with owners/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.
- 4.8 Where formal action is necessary, statutory notices will be served with reasonable and appropriate timescales for compliance, together with an accompanying letter and/or guidance note, which will explain the consequences of non-compliance.
- 4.9 The Council will pursue any failure to comply with statutory notices.
- 4.10 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.

5.0 Case Priority Assessment List

5.1 Level 1 (High)

- a. Unauthorised alterations to or demolition of Listed Buildings.

- b. Unauthorised works to hedgerows and trees covered by Tree Preservation Orders, or in Conservation Areas and where hedgerow/trees are likely to be lost.
- c. Unauthorised development, which causes demonstrable harm in the locality.
- d. Breaches of planning conditions, which result in demonstrable harm or loss of amenity.
- e. Works to buildings in Conservation Areas, which would cause demonstrable damage.
- f. Breaches of planning control or conditions, which cause demonstrable harm to AONB or Landscapes of County Importance.
- g. 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 Carlisle District Local Plan.

5.2 Level 2 (Medium)

- a. Unauthorised advertisements in Conservation Areas.
- b. Unauthorised advertisements affecting highway safety, such as advertisements on trailers.
- c. Sites requiring service of Section 215 Disamenity Notices.
- d. Monitoring of planning conditions – it is considered impracticable to check compliance with all conditions. However, the Council will aim to check compliance with all significant applications where conditions require information prior to commencement, together with applications with high levels of public interest or sensitive locations. Other applications will be monitored.

5.3 Level 3 (Low)

- a. Flyposting, and other advertisements such as banners
- b. Technical breaches of planning control where there is no serious harm to amenity.
- c. Minor works involving boundary walls, fences, sheds and satellite dishes except those affecting conservation areas or listed buildings.
- d. Temporary breaches of control which will be resolved without recourse to formal action.

6.0 Concluding Remarks

- 6.1 Enforcement of planning permissions and guidance is often a matter of discretion and judgement. Not all decisions will be clear cut and some customers of the service may not agree with the Council's course of action. In some instances the enforcement of planning matters is used as a justification by a few members of the public for complaining about the actions of neighbours. In these circumstances where resolution is not possible through planning enforcement, it maybe more relevant to involve other Council departments (for example, where noise nuisance is concerned), the police or other agencies. This Policy must be read in conjunction with relevant statutory law and planning guidance.

7.0 Principal Legislation with Enforcement Provisions

- The Town and Country Planning Act 1990.
- The Planning Compensation Act 1991.
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Town and Country Planning (Control of Advertisements) Regulations 1992.
- Town and Country Planning (General Permitted Development) Order 1995.
- Town and Country Planning (Use Classes) Order 1987.
- Local Government (Miscellaneous Provisions) Act 1982
- Caravan Sites and Control of Development Act 1960.
- Town and Country Planning (Trees) Regulations 1999.
- Cumbria Act 1982.
- Circular 10/97 – The Enforcement of Planning Control
- PPG 18 ‘Enforcing Planning Control’.
- Part 8 of the Anti-social Behaviour Act 2003.
- The Hedgerow Regulations 1997.

7.1 Related Legislation

- Human Rights Act 1998.
- Data Protection Act 1998.
- Police and Criminal Evidence Act (PACE) 1984.
- Regulation of Investigatory Powers Act (RIPA) 2000.
- Freedom of Information Act 2005.

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