



**BOSTON BOROUGH
COUNCIL**

Enforcement Policy

PLANNING

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PLANNING ENFORCEMENT POLICY

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PLANNING

1. BACKGROUND

- 1.1 Weaknesses in the effectiveness of the enforcement system were clear in the 1980s when loopholes in the legal powers meant that recipients of Enforcement Notices, would 'string out' the process by various delaying tactics. This led to a major report by Robert Carnwath QC in 1989, 'Enforcing Planning Control'. The Carnwath report led directly to new and substantially improved powers to enforce planning control in 1991.
- 1.2 The Town and Country Planning Act 1990, PPG 18, 'Enforcing Planning Control', and DETR Circular 10/97, 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' set out the current legislation and guidance to local planning authorities on planning enforcement control. The Circular was accompanied by a 'Good Practice Guide for Local Planning Authorities', which is both long and helpful.
- 1.3 The Government encourages Local Planning Authorities to publish and publicise their policies on enforcement. The policies should explain the Council's enforcement procedures and practice.
- 1.4 The Good Practice Guide recommends that a statement of enforcement policy will address:-
 - (1) the main planning policies applicable in the Council's administrative area, as stated in its development plan.
 - (2) the type and incidence of enforcement problems.
 - (3) the resources (financial and staff) to be devoted to enforcing planning control, as part of the authority's planning function or in association with their other enforcement responsibilities.
 - (4) the procedure for dealing with complaints about alleged unauthorised development .
- 1.5 PPG 18 reminds Local Planning Authorities (LPAs) that they 'have a general discretion to take enforcement action when they regard it as expedient'. 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 or buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity in the locality of the site). To put these comments into perspective however, they are prefaced by the remark that 'nothing in this Note should be taken as condoning a wilful breach of planning law'.
- 1.6 The Good Practice Guide reminds LPAs that Section 73A of the Act enables retrospective planning permissions to be given. The authority's approach to enforcing planning control over unauthorised development should not therefore be stricter, for planning purposes,

than it would be when considering the merits of a prior application for planning permission before development starts. The authority should not use their enforcement powers solely to compel someone who has carried out unauthorised development which is acceptable on its planning merits, without the imposition of any planning conditions, to pay the planning application fee the authority would have received if an application had been submitted to them.'

2. CORE OBJECTIVES FOR ENFORCEMENT

- 2.1 The carrying out of works without the necessary permission is not a criminal offence (except in certain, limited circumstances) and thus the response from the Council to a legitimate complaint has to be measured and reasonable. The recipients of formal notices in most cases enjoy a right of appeal and the Council must always be able to demonstrate that it has acted reasonably and in accordance with the development plan.
- 2.2 The Council recognises the importance of establishing effective controls over unauthorised development or use of land to assist in the preservation and enhancement of the qualities of the built and natural environment of the area and to protect public amenities. It therefore will not condone wilful breaches of planning control. It will exercise its discretion to take enforcement action if it is considered expedient to do so. While all legitimate complaints will be investigated, some trivial or technical breaches of control that cause no harm to public amenity may not justify action.
- 2.3 The Enforcement Officer will investigate breaches of planning control using whichever methods are appropriate to reach a satisfactory conclusion as resources permit. This will usually include a visit to the site of the alleged breach and, if appropriate, meetings with the aggrieved parties. Where appropriate the Enforcement Officer will involve other agencies in any investigation, either other Council officers or outside authorities, depending on the type of breach.

3. MAIN PLANNING POLICIES

- 3.1 The main planning policies applicable to Boston Borough Council are those contained in the Development Plan. The components of the Development Plan are the East Midlands Regional Plan and the Boston Borough Local Plan, with the latter being used for day-to-day planning purposes. The Local Plan was formally adopted in April 1999. It is currently being reviewed as part of the Local Development Framework, but the 1999 version will continue to have status until the formal stages of the replacement document have been completed. The Boston Borough Interim Plan, although not a part of the development plan, was adopted for development control purposes in February 2006.
- 3.2 Further guidance given to local authorities on enforcement is contained in: -
 - Planning Policy Guidance Note 18 'Enforcing Planning Control'
 - Planning Policy Guidance Note 19 'Control of Advertisements'
 - Enforcing Planning Control: Good Practice Guide for Local Planning Authorities
 - Department of the Environment Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements'

Legislation on procedure is contained in the Police and Criminal Evidence Act 1984, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act (RIPA) 2000. These will be considered in Part 6, which covers the Council's Procedures for Dealing with Enquiries and Complaints.

3.3 Following the Carnwath recommendations, a wider range of legal powers became available for enforcement purposes. These now include:-

- Planning Contravention Notice
- Breach of Condition Notice
- Enforcement Notice
- Stop Notice/Temporary Stop Notices
- Injunction
- Prosecution/Simple Caution
- Section 215 Notice
- Default/Direct Action

3.4 The service of each of these types of Notice is delegated to Officers through the Council's Scheme of Delegation.

4 TYPE AND INCIDENCE OF ENFORCEMENT PROBLEMS

4.1 Many complaints can be resolved in a relatively short period of time and the majority of these can be dealt with without formal action. For instance there may be no breach and therefore no action needed; regularisation is achieved through a successful planning application or the breach is dealt with by the owner rectifying the matter after discussion. However, any negotiations which are carried out should not be allowed to hamper or delay formal enforcement action that may be required to make any development or use more acceptable on planning grounds or conversely compel it to stop.

5 RESOURCES

5.1 The Council recognises the importance of establishing effective control over unauthorised development and proactively monitoring approved development for compliance. Enforcement work is a technically complex component of the development control regime involving professional planning and legal considerations.

5.2 Planning enforcement activity is labour intensive, and thorough investigation of the relevant planning history and painstaking evaluation of the facts are the foundation of effective enforcement.

5.3 The Enforcement Officer is under the direct line management of the Development Control Manager.

5.4 Legal services are provided by Legal Services Lincolnshire, a service based at district and county level providing legal services to Lincolnshire districts. Where necessary further external specialist professional advice is sought, for example on trees, agricultural issues, archaeological or architectural matters.

- 5.5 Investigations may involve other Borough Council departments (see paragraph 2.3 above) and outside bodies. It is clearly important to liaise closely with them as appropriate, to avoid wasteful duplication of effort but also to explore possible joint action. In some cases, the objective (which may just be to stop an unauthorised activity) could well be met by letting other agencies use their own legislation.
- 5.6 Regular liaison is maintained with counterpart officers of most of these agencies in order to keep working relationships effective.

6 PROCEDURE FOR DEALING WITH ENQUIRIES AND COMPLAINTS

The need for Action

- 6.1 The receipt of all validly made complaints are entered and maintained within the enforcement system.
- 6.2 Complaints and enquiries are recorded and allocated a unique case reference number. Ideally, all complaints should be made in writing or via the Council's website, however complaints over the telephone will be accepted and a pro-forma completed at the time of the call. Anonymous complaints will not be recorded or allocated unless there is an unambiguous breach of planning control readily identified which meets the criteria of an Immediate Action priority in paragraph 6.4 below. Complaints made in writing are preferred so that the nature of the complaint is clear and the harm that it is causing is understood.
- 6.3 All complaints are to be treated as confidential. However, the nature of the complaint may make it obvious to the subject of the complaint who the complainant is, and the complainant will be advised of this but assured that his/her details will not be revealed or confirmed directly by the Council to the subject. However, such details may be required to be disclosed if the case ever proceeds to prosecution. The receipt of complaints will be acknowledged in writing within 5 working days of receipt.
- 6.4 The Enforcement function will maintain a priority rating for handling complaints based upon the discretion and professional judgment of the investigating officer. All complaints received from a member of the Council will be given at least a Medium Priority.

Immediate Action

Investigation commences within one working day of receipt*

- Serious alleged breaches including threat to health and/or safety of the public or irreversible damage to the built or natural environment (for example threats to the fabric of listed buildings, Scheduled Ancient Monuments, protected species and their habitats, protected trees).

High Priority

Investigation commences within 3 working days*

- Alleged breaches that are significantly detrimental to amenity through noise, fumes, highway safety or loss of privacy

- Alleged breaches that depart from planning policy or an existing permission and which are unlikely to receive planning permission
- Contravention of conditions attached to planning permissions or planning obligations where there would be high priority demonstrable harm

Medium Priority

Investigation commences within 3-5 working days*

- Alleged breaches that may affect the setting of a listed building or the character of a conservation area
- Alleged unauthorised advertisements in conservation areas or where there are highway safety issues
- Alleged breaches that may be resolved through imposition or modification of conditions on a subsequent planning permission

Low Priority

Investigation commences as resources permit

- Other alleged breaches of a minor nature which do not cause immediate or long term harm (for example smaller domestic structures, sheds, fences, outbuildings, satellite dishes)
- Other alleged breaches of conditions where there is no immediate harm
- All other alleged unauthorised advertisements

* Note: reference to working days is normal office hours after confirmed receipt

6.5 The Planning Enforcement function does not investigate the following:

- Neighbour disputes or other civil issues including boundary disputes or enforcement of covenants. In these matters, complainants need to contact their solicitor or local citizens advice bureau
- The heights of hedges or trees. These matters are dealt with by Legal Services section of Boston Borough Council;
- The use of or development on adopted highways, pavements or highway grass verges. These matters are dealt with by The Highways Department of the Lincolnshire County Council
- Dangerous structures. The Building Control Department deal with these matters
- Fly-tipping. initial advice can be obtained from The Environment Agency or from Boston Borough Council

How the matter will be investigated

6.6 Where no breach is discovered or the alleged breach is quickly resolved, the complainant will be informed in writing that the case is closed. Where the complaint is not resolved quickly, the complainant will be kept informed as to the progress of the investigation and of the final resolution. Any person wishing to check the progress of a complaint is encouraged to contact the Enforcement Officer.

- 6.7 Where it is determined that a breach of planning control has taken place, the matter will be dealt with by negotiation if possible by attempting to persuade the owner or occupier to remedy any harmful effects of the unauthorised development without recourse to more formal action. However, where necessary, the Council will use all available powers and procedures (listed at paragraph 3.3) to obtain a remedy. In considering whether it is expedient to initiate enforcement action the Council shall have regard to current planning policies in force, this Enforcement Policy and all other material planning considerations.
- 6.8 The Council is committed to fair and transparent enforcement. As such it recognises its responsibilities under the Human Rights Act 1998 and will not discriminate against individuals or organisations. The Council has also signed up to the Government's *Enforcement Concordat 1998*. The Council's existing policies and practices support the intentions of the *Concordat* to follow policies and procedures that contribute to best value and provide information to show that the Council is observing them. Investigations will be conducted within the requirements of the Police and Criminal Evidence Act 1984 and the Regulation of Investigatory Powers Act 2000.
- 6.9 The timescale for completing an investigation will vary depending on the caseload of the Enforcement Officer, the complexity of the case and the requirements to regularise the breach. There will be regular case reviews in accordance with the Enforcement functions' own Performance Indicators.
- 6.10 Officers of the Council will inspect properties by mutual consent if deemed necessary. In cases where an unannounced visit is required, the appropriate powers of entry without warrant will be exercised by named officers under the principal Act, the Planning (Listed Buildings and Conservation Areas) Act 1990 or the Hazardous Substances Act 1990. Where entry is refused, the Council will apply for a warrant to enter.
- 6.11 This Enforcement Policy will be reviewed each year by the Assistant Chief Executive and any amendments considered by the Cabinet.

7 CATEGORIES OF ENFORCEMENT ACTION

- 7.1 The Council has discretion that is exclusively reserved for local planning authorities on whether or not to take enforcement action. Formal enforcement action will not be initiated where a trivial or technical breach of planning control has occurred which causes no harm to the public interest, for the reasons set out in paragraphs 1.5 and 1.6 above.
- 7.2 Appropriate consideration will need to be given to operators of small businesses or self-employed persons. In these circumstances, consideration to allow the business to continue operating from the site or operate less intensively is required. However, this will only apply where there is no serious harm to public amenity. Where there is serious harm to public amenity, formal enforcement action will be necessary which will set a realistic date for compliance. Where there is evidence that serious and meaningful attempts are being made to comply with the requirements of an enforcement notice, consideration will be given to relax any requirements in the notice, including the compliance period, depending upon the circumstances of the case and the injury to public amenity.

a) Where a breach may be capable of being made acceptable

- 7.3 Where development has been carried out without planning permission and it is considered permission could be granted, subject to conditions, the owner or occupier will be encouraged to submit a planning application on a purely without prejudice basis. If no application is forthcoming within 2 months of the formal request and the breach and harm continues, the service of a formal notice will be considered. The result of an effective notice would be to grant permission subject to the implementation of works that will make the development acceptable.
- 7.4 In limited cases, the Council may still take enforcement action pending the determination of any planning application that is submitted, dependent upon the circumstances of the breach and the progress towards any regularisation.

b) Where a breach may be made acceptable through relocation

- 7.5 Where unauthorised development has taken place which is unacceptable, but relocation is feasible, a reasonable timescale to effect relocation and/or a time period for the activity to cease, or the scale of the operations to be acceptably reduced to mitigate the harm to amenity will be suggested in writing to the owner or occupier. The Council will give all possible assistance in giving effect to a relocation. If no significant progress is made in terms of reducing the harm or relocation within 2 months of the formal request, the service of a formal notice will be considered.
- 7.6 Where there is evidence that serious and meaningful attempts are being made to secure a relocation, the requirements of any enforcement notice will reflect this in terms of giving extended periods for compliance.

c) Where a breach is clearly unacceptable

- 7.7 Where development has been carried out without planning permission and it is considered unlikely that permission would be granted, the owner or occupier will not be encouraged to submit a planning application. If negotiation to cease the use or resolve the breach is unsuccessful after giving the perpetrator reasonable opportunities, the service of a formal notice will be considered.

d) Breach of conditions

- 7.8 The failure to faithfully implement a permission or the conditions of a planning permission often raise particular issues in terms of the extent of the non-compliance or the expediency of enforcing compliance with the conditions.
- 7.9 Where it is considered that permission would have been granted, subject to conditions for the development 'as built' the developer will be encouraged to submit a planning application to regularise or vary the condition(s) on a purely without prejudice basis. If no application is forthcoming within 2 months of the formal request and the breach and harm continues, the merits of the case and the expediency of serving a formal notice will be considered.

7.10 Where it is considered that permission would not have been forthcoming for the development as implemented, the developer will not be encouraged to submit a planning application. If negotiation to resolve the breach is unsuccessful after giving the developer reasonable opportunities, the service of a formal notice will be considered.

e) Untidy land or buildings

7.11 Where a building or land is in a condition that seriously detracts from, or affects the character of an area, a notice may be served under the provisions of Section 215 of the Town and Country Planning Act 1990. The Council may issue prosecution proceedings for non compliance with the Notice. Alternatively, if the notice has not been complied with consideration shall be given to entering the land and carrying out the works in default. A charge will then be placed on the land in relation to the costs incurred by the Council in carrying out that work.

7.12 It is not appropriate to use this power excessively in cases where sites are weed-strewn. While these can look unsightly, formal action can take up much time and effort for only limited benefit. A Notice might compel the owner to cut down grass or weeds, but a few weeks later they can have grown again. Informal approaches have been shown to be more appropriate in these cases.

f) Advertisements

7.13 The display of illegal advertisements and fly posting can harm amenity or public safety. If consent would not normally be granted for the advertisement, the owner or occupier will be requested in writing to remove the advertisement. Where the advertisement continues to be displayed, proceedings will be initiated against the owner, occupier or advertising agency.

7.14 In cases of fly posting, and where resources permit, all posters illegally displayed will be removed after giving initial warning to the owner, occupier or organisation responsible for displaying the poster. The Council also reserves the right to take formal proceedings against those responsible for the fly posting.