

Kirklees Council Development Management Compliance Strategy

Contents

1. Purpose of the Strategy
2. Introduction
3. Planning Enforcement
4. Deciding when and what Planning Enforcement action is appropriate
5. Harm in Planning terms
6. New Complaints and Cases
7. Expectations – What happens to your complaint?
8. Priorities for taking Planning Enforcement action and Timescales for investigating complaints:
 - Our Approach to the Discharge of Planning Conditions
 - Once Development Starts on Site
9. What factors will we take into account?
10. Monitoring and Performance of the Strategy
11. What if someone complains about you?
12. What to do if something goes wrong

1. Purpose of the Strategy

- 1.1 This Strategy aims to help you get the best out of the Development Management Compliance Team. It sets out the main principles and procedures the Council will adopt to regulate and monitor development and how it will communicate with residents, developers and businesses, prioritise cases coming into the service and the range of options and actions available to the Local Planning Authority to remedy any given situation.
- 1.2 The purpose of the Development Management Compliance Strategy is to give clarity to the residents of Kirklees about how to report suspected breaches of Planning and then what Planning Enforcement actions can be taken when breaches of Planning Permissions or authorised development takes place. The Strategy is also aimed at giving clarity to developers and business owners about what they can expect should breaches of Planning occur. The Strategy seeks to ensure appropriate development is undertaken which helps preserve the environment and maintains confidence in the planning system. The Development Management Compliance Team investigates breaches of planning control and seeks to deal with them in a positive way that maintains the environment and special character of the areas within Kirklees. In order to give the best possible service, it is vital that we give clear guidance on what we *can do* and how we balance demands on our services against the resources available to us.
- 1.3 The Council has a range of Enforcement functions across different service areas, for example Environmental Health, Highways, Licensing and Planning. The Development Management Compliance Strategy sits within the Council's overarching Enforcement Strategy which is led by the Public Protection team within Environmental Health. The Development Management Compliance Strategy relates to Planning matters which are set out in detail within this Strategy. Where complaints are received which have issues wider than Planning matters a cross Council service coordinated response will be provided.
- 1.4 The Council is committed to seeing the development and improvement of the District for all our residents and businesses and through the policies of the Development Plan and the Kirklees Council's Corporate Plan 2018-20. The Development Management Service teams are committed to achieving the outcomes in these Plans for Kirklees. The Development Management Service is committed to providing high levels of customer care. The Development Management Charter sets out how we deal with planning applications and consult with local residents. The Development Management Compliance Strategy sits alongside this Charter and will be reviewed regularly to ensure the priorities in the Development Management Compliance Strategy continue to help support the Council's wider aspirations and prioritises for Enforcement.

2.0 Introduction

- 2.1 We are a large Metropolitan district authority which includes the thriving University town of Huddersfield and the stunning Pennine countryside. We have ambitious plans to kick start the regeneration of Dewsbury and enhance the experience of visiting and living in Huddersfield Town Centre. We have diverse towns and villages ranging from Dewsbury at the edge of Leeds to Holmfirth at the edge of the Peak District. The heritage of the historic buildings and the diverse topography across Kirklees linked with its noticeable green environment helps give the Districts its unique character.
- 2.2 Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another. The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended) the Planning (Listed Buildings and Conservation Area) Act 1990 (as amended). This legislation is supported by Government advice, which includes the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (PPG).
- 2.2 Planning enforcement is complex and takes time; it rarely results in immediate action to stop a breach as investigation is required. Formal enforcement action is also discretionary and is not appropriate in every case. The Local Planning Authority must consider the extent of the breach and its impact in deciding whether it is expedient to take action, and what action would be appropriate in each case.
- 2.4 From the information we give below, we hope that you will be able to measure our performance and decide if we have met our own demanding standards. Should you be unhappy with our performance, we hope that Council officers can rectify any problems or explain why we cannot meet your expectations.

3.0 Planning Enforcement

3.1 Development is sometimes carried out without planning permission or does not properly follow the detailed plans or conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively. The law gives the Council powers to take enforcement action but there is no duty to do so. Enforcement action is not automatic and requires a degree of judgement to determine whether it would be in the public interest.

3.2 Certain types of building works or changes of use however are defined as 'permitted development' meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning [General Permitted Development] Order 2015. Help in understanding 'permitted development' can be found in booklets published by the Department for Communities & Local Government and via the Planning Portal. <http://www.planningportal.gov.uk/permission/>

3.3 Planning enforcement can only be considered where the Building Work or Material Change of Use being undertaken requires planning permission. An initial investigation by the enforcement officer will seek to determine this. There are a number of other situations that can be considered for planning enforcement which includes:

- Unauthorised display of advertisements;
- Unauthorised works to protected trees;
- Unauthorised work to buildings listed as being of special architectural or historic interest;
- Unauthorised demolition of certain buildings within a Conservation Area;
- Unauthorised storage of certain quantities of hazardous materials;
- Land that is in such a poor condition that it adversely affects the amenity of the area.

3.4 The term used to describe such cases is, 'breach of planning control.' There can be many reasons why a breach of control has occurred ranging from a simple oversight or lack of knowledge to a deliberate attempt to secure development that is unacceptable. These factors are all considered in deciding how to prioritise cases coming into the service.

4.0 Deciding when and what Planning Enforcement action is appropriate

- 4.1 The National Planning Policy Framework stipulates that “effective enforcement is important as a means of maintaining public confidence in the planning system” Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.” It is important that the public have confidence in the planning system. The enforcement service investigates possible breaches of planning control and seeks to deal with them in a positive way either through negotiation or direct action.
- 4.2 Planning laws are designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.
- 4.3 Carrying out work or changing the use of land or buildings without planning permission is not a criminal offence. In most cases the Council will give the owner an opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will take firm action quickly.
- 4.4 The Council must operate its enforcement activities within Government guidelines and in accordance with Council policy. This means that:
- The Council must decide whether the breach of control unacceptably affects the quality of life or amenity of an area;
 - Action should not be taken just because development has started without planning permission;
 - The Council does not always have to take action but the particular circumstances of the case should always be considered;
 - The council will not normally take formal action against a minor breach of control that causes no real harm simply to ensure the submission of the necessary applications.
 - **However:** Enforcement action will be taken quickly when it is necessary

5.0 Harm in Planning terms

- 5.1 Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows. Harm to the visual amenity of an area could occur for example through unauthorised work to: - a listed building, demolition within a Conservation Area or work to a protected tree as well as on going building works and operations.
- 5.2 Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.
- 5.3 In dealing with planning enforcement matters and decisions to take action we will always have regard to:
- Objectives of the development plan comprising the UDP and the emerging Local Plan (which when adopted will replace the UDP) by ensuring that unauthorised development does not undermine the purpose and credibility of its policies and proposals;
 - Planning permissions and consents by ensuring that developments are largely in accordance with approved plans, conditions and obligations;
 - Protection of listed buildings, conservation areas, protected trees and other scheduled sites in the built and natural environment;
 - Protection of residential amenity from undue disturbance resulting from commercial activities and from inappropriate domestic and commercial buildings e.g. noise, dust, overshadowing, loss of outlook;
 - Where serious harm is being caused, enforcement action will be swift and proportionate to remedy the effects of the breach of planning control.

Harm would **not**, for example, include:

- loss of value to a neighbouring property;
 - competition to another business;
 - loss of an individual's view or trespass onto someone else's land;
 - Party wall issues;
 - Private civil issues relating to for example covenants or maintenance of private roads.
- 5.4 It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.
- 5.5 Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.

6.0 New Complaints and Cases

- 6.1 Anyone who believes that a breach of planning control has occurred can make a complaint. Except for urgent cases, all complaints should be made preferably by e mail to planning.enforcement@kirklees.gov.uk or alternatively in writing. Complainants who have difficulty writing down their concerns can contact the Customer Service Centre for assistance (see useful contacts). Please be prepared to identify yourself so that your complaint may be investigated and give as much detail as possible including the address and the nature of your concerns. It is often not possible to investigate anonymous complaints due to lack of witnesses or evidence however each case will be assessed on its own merits and allocated a priority rating accordingly. Where a retrospective application for permission is made to regularise unauthorised development, publicity and consultation will be carried out, and people given the opportunity to comment before a decision is taken.
- 6.2 In urgent cases please contact the Customer Service Centre (Tel 01484221000) and give as much detail as possible of your concerns. If you also raise your complaint with a Councillor, please advise them of any contact you may have had with the Compliance Service and give them the name of the officer you have spoken to or who is dealing with your complaint where possible.

All initial complaints are dealt with in confidence and details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. The Council's Development Management Compliance Team will explain what may be required of you in these cases.

7.0 Expectations – What happens to your complaint?

- 7.1 Written complaints will aim to be normally acknowledged within 3 working days of receipt and each case will be individually assessed on its merits. You will be informed of the name of the Enforcement Officer who will be dealing with your complaint. The officer will then check the council's records, inspect the site and interview witnesses if needed in order to establish whether a breach of planning control has occurred. You will receive an update once these initial checks have been undertaken which will advise how the case is likely to progress. If a breach has occurred that is harmful the person responsible may be asked to put it right, either by the making of a planning application or by stopping the unauthorised work. If this approach fails, the Council can then consider taking formal enforcement action. The Council may prosecute offenders who do not comply with an Enforcement Notice.
- 7.2 Where the Council decides not to take formal enforcement action or no breach of planning control has taken place, the complainant can request to be informed of the reason for the Council's decision. These matters would mainly relate to development that would be granted planning permission without conditions.
- 7.3 Where it is decided to take enforcement action in response to a breach of planning control, the council has a range of statutory powers available to it to seek information about, and to remedy the activities being undertaken and the persons involved. Wherever possible, except in the most serious circumstances we will seek to engage with landowners to address matters without the need for a formal notice. This is often more successful, quicker and economical than formal enforcement options. When this has failed, the council can serve statutory notices setting out what actions are required to remedy the breach of planning control and when necessary take prosecution action, seek court injunctions and undertake works in default.
- 7.4 There are statutory time limits within which enforcement action must be taken or the breach becomes immune and the unauthorised development is then lawful. For example, enforcement action cannot be taken against building works or the change of use of a building to a single dwelling, including the subdivision of a house into self-contained flats, if the development took place more than four years ago. The time limit in respect of other changes of use or the failure to comply with planning condition is ten years. There is no statutory time limitation on taking action against works to listed buildings.

8.0 Priorities for taking Planning Enforcement action and Timescales for investigating complaints

- 8.1 Within the Development Management Compliance Team there are 3 categories of complaint depending on the alleged breach of planning control.

Priority 1 where there is a likelihood of irreparable harm occurring, we will aim to visit the site within 3 working days of the complaint. This includes works to protected trees, Listed Buildings and demolitions within a Conservation Area as well as other works that are considered to be causing immediate and irreparable harm to the amenity of an area including development commencing ahead of discharge of precommencement planning conditions.

Priority 2 where there is a significant nuisance or impact on amenity, we will aim to visit within 7 working days.

Priority 3 This relates to less urgent cases and we will aim to visit within 20 working days.

- 8.2 The table below identifies the order of enforcement priorities that will generally be applied to cases coming into the Compliance Team:

8.3 These priorities can change should further information be received or the initial site visit raise further issues. In a number of cases it will sometimes be necessary to

1	A	High	Unauthorised works (including alteration, partial demolition or demolition) to a Listed Building or a building within a Conservation Area
1	B	High	Unauthorised works to trees that are protected, either by a Tree Preservation Order or by virtue of the tree being situated within a Conservation Area, or involving works to a hedgerow that is protected by law
1	C	High	Any other unauthorised development which in the opinion of the local planning authority causes irreversible and serious demonstrable harm or presents an immediate and serious danger to the public including serious breaches of conditions related to construction activities (expanded below table in 8.4).
2	D	Medium	Unauthorised development/activities within the green belt, a Site of Special Scientific Interest, within a Conservation Area, within an Area of Article 4 Direction or within any other national or locally-designated site of nature conservation
2	E	Medium	Any unauthorised development/activity or breach of a planning condition which in the opinion of the local planning authority causes demonstrable, continuous harm to the locality especially the town centres, or the living conditions of local residents
2	F	Medium	Unauthorised advertisements which have a detrimental impact upon public/highway safety or visual amenity
2	G	Medium	Unauthorised development where the time limit for pursuing enforcement action might expire within 6 months (excluding categories above)
3	H	Low	Technical breaches of planning control that marginally exceed permitted development rights
3	I	Low	Minor variations from approved plans that do not, in the opinion of the local planning authority, appear to cause demonstrable harm to the locality or the living conditions of local residents
3	J	Low	Unauthorised advertisements that in the opinion of the local planning authority, lie outside any of the categories listed above.
3	K	Lowest	Minor unauthorised development that would be likely, in the opinion of the local planning authority, to receive retrospective planning permission or would result in formal enforcement action not being instigated.
3	L	Lowest	Complaints that are made anonymously

undertake further monitoring to build up a picture of the nature and scale of the problem. We will on occasion ask complainants to assist us in this process by keeping log sheets over a period of time.

8.4 Our Approach to the Discharge of Planning Conditions

8.5 We have clearly identified our enforcement priorities. Those of the highest priority are most likely to end up with formal action being taken. For items A and B we will be reacting to actual works. For item C relating to planning conditions past experience shows that where development starts on site without key conditions being discharged this causes complaints and concerns from within local communities. In the worst cases the Council and its residents – both existing and future – are left uncertain as to whether they are properly protected. Trying to rectify this retrospectively usually diverts resources away from more positive aspects of the service which is dealing with planning applications, discharging conditions and assisting with delivery.

8.6 We want to try to avoid this situation as it undermines confidence in the planning system and does not present a considerate and positive aspect to development.

8.7 To tackle this, unless details are very close to being agreed by the Council, it is likely that action will be taken where critical conditions have not been discharged. In these cases it is likely that the Council will seek to bring about an end to activities as quickly as possible until we are satisfied that measures are in place to protect local communities. This may mean the use of Stop Notices. Those of most concern are those which may affect public safety or amenity or key infrastructure. Typically, but not exhaustively, these include conditions/agreements which cover:

- Land contamination and remediation
- Highway Improvements – in particular those required for capacity or safety reasons
- Structural matters
- Noise insulation and protection
- Odour and other pollution remediation
- Drainage and Flood Management
- Site Construction Management including tree protection
- Hours of operation including construction deliveries
- None compliance with conditions relating to Affordable Housing or other key infrastructure required by Planning Permission.

8.8 To ensure that we avoid this situation we will work very closely with agents and developers to ensure conditions are phased or staged and are reasonably worded

so that development can commence promptly. In return however we expect that details of conditions are submitted for discharge and are agreed with Development Management before the relevant stage of work commences. To help we will always seek to agree the detailed content of conditions or agreements before any permission is granted. In that way then everyone is clear on expectations.

8.9 Once Development Starts on Site

8.10 In addition to the above we will monitor proactively Major Development sites and put in place arrangements so that conditions can be dealt with promptly as part of our compliance function. In our experience once development starts on site matters are best dealt with where site management is strong, clear and effective with a clearly named contact points for the Council and residents.

8.11 Where construction is likely to be spread over a long period of time conditions relating to site construction management will be very important. A well planned site and program of works will crucial to maintaining good relationships within communities. We will consider issuing further advice on this matter but initially we will look very carefully at:

- hours of operation;
- wheel washing and street cleaning regimes;
- routing of construction traffic;
- temporary lighting;
- temporary drainage;
- local contact points for complaints; and,
- noise and dust suppression.
- Temporary Highway arrangements

If these matters are all adequately controlled then development will be more acceptable in our communities.

9.0 What factors will we take into account?

9.1 Following an initial visit we will assess what has taken place and if there is a planning breach decide the following:

- What is the planning harm – how serious is it ?
- Would it be likely to be granted planning permission (with or without conditions)?
- Is it a minor breach (technical) or more serious?
- Can we resolve it simply by negotiation or modification?
- Is action needed quickly because the development or activity is harmful and not acceptable?

9.2 The decided actions will need to be proportional to the breach and balanced with the available resource. Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution.

9.3 If the investigations indicate that a breach of control has occurred that justifies enforcement action an Enforcement Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Secretary of State for Communities & Local Government via the Planning Inspectorate. An Enforcement Notice may be quashed or revised by the Planning Inspector appointed by the Secretary of State.

9.4 Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.

9.5 An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a practical and reasonable period for their completion. However, if someone does not comply with a notice in the stated time period they may be prosecuted with the possibility of being fined by the Courts.

9.6 Where a breach of control is causing serious harm to public amenity in the neighbourhood of a site the Council can seek immediate remedial action. This action may involve the serving of a Stop Notice when an Enforcement Notice has already been issued. Temporary Stop notices may be served when an immediate cessation of the harmful activity is required, usually before an enforcement notice comes into effect. They can only last a maximum of 28 days and may only be served once.

9.7 It is helpful to contact the Development Management Compliance Team whenever you have any new information that the council needs to consider in handling the case.

9.8 Notwithstanding the above we will endeavour to provide you with regular updates regarding the progress of a case and will regularly review all our cases to ensure

the most effective action plan is in place to secure a satisfactory outcome as quickly as possible.

10.0 Monitoring and Performance of the Strategy

10.1 We will seek feedback from our customers on the quality of service they have received by requesting feedback through an annual customer survey on 10% of our cases. We will undertake case reviews of all live cases at both seven weeks and 13 weeks and continue to do so every 13 weeks until the matter has been concluded. We will aim to first time visit 80% of all new cases within the timescales stated. For 50% of cases where there is an actionable breach to reach a key milestone in case progression by 13 weeks. Monitoring against targets will be undertaken on a quarterly basis against the above performance standards. We will also measure our success rates at enforcement appeals and prosecutions across the service.

11.0 What if someone complains about you?

11.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case. If you are not involved, no action will be taken against you. If you are involved, the Compliance Team will advise you of the details of the breach and how it can be put right.

11.2 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.

11.3 In some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.

11.4 If you are running a business which is threatened by enforcement action, you will be helped to identify alternative premises so as to minimise the possible impact on the business. This does not mean that the enforcement action will be delayed or stopped.

11.5 If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

11.6 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

12.0 What to do if something goes wrong

- 12.1 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Compliance Team in the first instance. They will investigate the matter, review the circumstances and will aim to advise you within 10 days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time. If you are still dissatisfied with the service, then you can make a formal complaint – www.kirklees.gov.uk/complaints. Please remember that the complaints procedure does not apply to matters where there is a legal remedy or appeals process. You can, of course, contact your local Councillor at any time.
- 12.2 If you remain dissatisfied with the outcome of any investigation, you may complain to the Ombudsman and information on how to do this will be given to you by the Council. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.
- 12.3 We always welcome constructive criticism and any ideas on how we can improve our services. Please contact us if you can suggest ways of improving the service.

Useful Contacts

Planning.enforcement@Kirklees.gov.uk

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