



PLANNING ENFORCEMENT SERVICE STANDARDS AND POLICIES

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1.0 INTRODUCTION

1.1 This document compliments the Council`s corporate enforcement policy that was adopted in 2013.

2.0 SERVICE AIMS

2.1 Standards

To operate the planning enforcement service in accordance with the published service standards, which set out the level of service and performance the public and businesses can expect. We will regularly review these standards taking account of the views of stakeholders.

2.2 Openness

To provide information and advice in plain language on the policies and procedures of the service, and to communicate this mainly by electronic means whilst giving access for all. We will maintain confidentiality for those persons who wish the Council to investigate a breach of planning control.

2.3 Partnership

To work with the community on compliance with planning controls on the basis that prevention is better than cure, and to ensure that our efforts are coordinated with other enforcement agencies within and outside the council.

2.4 Helpfulness

To provide a courteous, efficient and responsive service with appropriate publicised contact points.

2.5 Feedback about the service

To operate the council`s compliments, suggestions and complaints procedure in an accessible, effective and timely manner.

2.6 Consistency

To use the council`s planning enforcement powers in a fair and consistent manner.

3.0 SERVICE STANDARDS

3.1 These are the standards the service seeks to achieve in the handling of all planning enforcement cases.

- All enquiries for enforcement investigation will be registered and acknowledged in writing within seven working days of receipt. The enquirer`s details will be held confidentially, with the exception if the enquiry is received from a Councilor and/or Parish Council carrying out their

official Council duties.

- If a complaint is made by a ward Councilor, the Parish Clerk for that area will also be notified, and vice versa.
- Anonymous enquiries will not be investigated.
- A site inspection will be carried out within the priority timescales set out at 3.2 of this document, if an inspection necessary. Each case will be assessed on its own merits.
- Once a site visit has been carried out and/or when all the full information required is gathered, the case will be assessed to establish whether a breach of control has taken place. A response will be made to the enquirer, developer and/or owner of the site, under investigation, setting out whether a breach has taken place and any proposed further action, or to make further inquiries to obtain additional required information.
- Where it is considered that a breach of planning control may be made acceptable by the granting of a conditional planning permission, an application will be invited by letter, allowing 28 days for submission. This time-frame may be extended if considered necessary by the Enforcement Officer, and any extension of time will be assessed on its merits, on an individual case-by-case basis. The enquirer will be informed if an application is submitted. Any submitted application will be subject to normal public consultation procedures.
- Prior to the serving of a formal notice the council will normally allow the owner(s) of the site under investigation an opportunity to discuss the matter by telephone, letter, site or meeting, This will include any steps which can be taken to avoid action by the council and the right of appeal of the owner(s).

Once it has been determined that enforcement action will be taken and land ownership investigations complete a relevant notice will be served.

- If a notice is not complied with a decision will be made as to whether it is in the public interest to initiate prosecution proceedings, initiate direct action proceedings (if eligible), or if it is no longer in the public interest to pursue further. If the case is eligible for prosecution, the Council will aim to pass the case through to the Councils` Legal Services within 4 weeks. If direct action is to be commenced, the process will be started within 4 weeks in line with the Councils Procurement Framework.
- Where enforcement action is deemed necessary the enquirer and the owner(s) of the site under investigation, will be informed of that decision.
- Access to progress updates will be given to the enquirer and any other party with a legitimate interest in the issue (such as ward Councilor's and parish councils), on a regular basis.
- Appeals will be processed in accordance with the Government's timescales.

3.2 All complaints are risk assessed and given a priority score. This is so the Council can ensure that cases with a higher priority are given attention quickly.

Set out below is the scoring matrix for initial complaints

4.0 STAGE 1 SCORING

Risk assessment and priority score of the alleged breach.

Reference:

Location:

To be scored when complaint is registered, prior to site visit.

Effect of breach	Baseline Score	Total Score
Public Health	20	
highway parking	2	
visual amenity	3	
residential amenity	3	
highway safety	15	
listed building	15	
Conservation Area	8	
environmental impact - major	20	
Environmental impact - minor	5	
District wide impact	20	
Total		

Priority; High = 16 or above, Medium = 7-15, Low = 6 or below

Site visit times

High = within 4 working days or sooner.

Medium = within 10 working days or sooner

Low = within 18 working days

3.3 After the initial site visit a further priority scoring (Stage 2), is carried out and if necessary the Expediency Test. This is the test which determines whether it is appropriate, proportional and in the public interest for enforcement action to take place. The form for this determination is set out below;

5.0 STAGE 2 SCORING – PRIORITY ALLOCATION

- Each complaint will be allocated scores as set out below to assess its harm. The total score will provide its 'harm score', in which its priority will be based. *(If the breach of planning control has received a refusal of planning permission, it will not be necessary to assess the harm).*
- If no breach of planning control is established, no further action is to be taken, at this time.

CATAGORIES	POINTS ALLOCATION	SCORE
Has the breach already taken place?	Yes (1) No (0) - close case.	
Is the breach:	Worsening (2) Stable (0)	
Age of breach:	Within 3 months of immunity (2)	
Is the harm:	Widespread (2) Local (1)	
Irreversible harm?	Yes (2) No (1)	
Does the breach affect public health?	Yes (2) No (0)	
Does the breach affect visual amenities?	Yes (1) No (0)	
Does the breach affect residential amenities?	Yes (2) No (0)	
State how:		
Does the breach affect highway safety?	Yes (3) No (0) (May require notification to LCC Highways)	
Does the breach affect any other safety issue?	Yes (2) No (0)	
If yes, state what issue(s):		
Does the breach affect a Listed Building?	Directly (3) The setting or character (1)	
Is the breach adjacent to a listed building?	Yes (3) No (0)	
Is the breach within a Conservation Area?	Yes (3) No (0)	
Environmental impact:	Major (3) Minor (1)	
Notification to Environment Protection?	Yes/No (circle)	
Causing a (potential) Statutory Nuisance?	Yes (1) No (0) (May require notification to Environmental Services)	
Displaying of an advertisement:	Yes (2) No (0)	
TOTAL:		

Scores:

16 or above = (High priority) This indicates that there is significant potential harm from unauthorised development and therefore any case that scores 16 or above will be given a high priority in terms of officer resource. Therefore this means that landowners/occupiers will only get one opportunity to remedy the breach before enforcement is considered.

6 - 15 = (Medium priority) This indicates that there is some potential harm from unauthorised development, officer resource will be allocated to deal with this case but this means that landowners/occupiers will be encouraged to negotiate a remedy to the breach either by the submission of a planning application or mitigation or remediation of the breach.

5 or below = (low priority) This is a minor breach with minimal harm and in the majority of cases does not warrant further action.

6.0 DECISION MAKING ON CASES

6.1 Proportionality - The council has a wide range of planning enforcement powers, but must act in accordance with national policy and guidance. If the council considers that a breach of planning control has occurred, officers must then decide whether or not this is sufficiently material harmful as to require action to be taken in the public interest, having regard to the facts of the case. Once a site visit has been carried out and it has been established that a breach of control has taken place, then every case will be subject to a general test called "The Expediency Test".

6.2 The Expediency Test

The 'expediency' test will usually involve Officers assessing:

1. Whether the breach is in accordance with the policies of the development plan, which is the Adopted East Lindsey Local Plan and the National Planning Policy Framework;
2. The breach against any other material planning considerations;
3. Whether had a planning application been submitted before the development occurred, permission would have been likely to have been granted
4. Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest;
5. Whether action would be proportionate with the breach to which it relates;
6. Whether action is plainly necessary.
7. Whether a criminal offence is being committed.

The Council has a duty to ensure proper consideration is given to all relevant material planning considerations. Officers when assessing expediency must determine how these factors are weighted for each case, and provide justification for any weightings given.

In cases where there has been previous involvement or there will likely be future involvement of the Council's Development Management Service; consultation with the relevant Development Management Officer will take place prior to concluding the expediency assessment to ensure consistency of decision making. This will include discussions around enforceability and reasons for conditions attached to planning decisions.

In cases where specialist knowledge may be required to determine the expediency of taking action, the Planning Enforcement Officer will consult the relevant department or authority prior to concluding the expediency decision.

Material Planning Considerations

Material planning considerations can include the following:

- visual impact on the surrounding area;
- loss of privacy to neighbouring occupiers;
- development overbearing to neighbouring occupiers or the area;
- loss of daylight/sunlight;
- creation of nuisance such as noise or smells;
- increase or unsafe access/traffic implications.
- health and safety concerns
- harm to ecology in the area
- crime (or fear of)
- economic impact of the development
- related previous or pending planning decisions
- cumulative impact of development
- Personal factors (only in exceptional circumstances)

The following factors will not be taken into account when assessing expediency:

- Breaches of restrictive covenants
- Private disputes
- Competition between businesses
- Damage to property
- Boundary or other land disputes
- Reduction in value of land or property

6.3 At one end of the scale, if there is a breach of control but no or minor material harm is identified, the matter could be treated as a 'technical breach' or is considered de minimis, with no further action to be taken. The owner of the site will be invited to 'regularise' the situation by submitting a planning application but if they choose not to do so the Council will not pursue the matter any further.

6.4 At the other end of the scale, where it is assessed that a breach of control has failed the expediency test and there is no mitigation or remediation that can happen to make the development acceptable and negotiations with the landowner have failed, then, a formal notice can be served and other formal steps considered. Being in breach of planning control is not, in itself, a criminal offence, (except unauthorised works to a Listed Building, or the display of an advertisement).

6.5 The council will initially attempt to resolve all breaches of planning control through negotiation. Negotiation will not be allowed to unjustifiably delay any necessary planning enforcement action.

6.6 In cases where an application has been invited and no harm is being caused to the local area; no further formal action can be taken regardless of whether or not an application is submitted. In circumstances where the best reasonable course of action to deal with the harm being caused lies outside of planning controls; the planning enforcement team will refer the matter to the relevant department/team for action. This could be in partnership with the planning enforcement team, where appropriate. The enquirer will be made aware of any

referrals/partnership working.

7.0 PLANNING ENFORCEMENT POLICIES

7.1 It is important that the Council has a clear decision making framework for effective enforcement to take place against. Set out below are the policies that will guide our decision making.

POLICY PE1 - Initiating enforcement act

The Council recognises the importance of establishing effective controls over unauthorised development. This is to help preserve and enhance both the built and natural environment, and to protect public amenities. We will commit reasonable resources to ensure that planning enforcement control can be put into effect and maintained effectively.

As the local planning authority, we will exercise all reasonable powers (granted under the provisions of the Town and Country Planning Act 1990, including all other subordinate and amended legislation), to control unlawful development. We will take account of the policies set out in the Adopted East Lindsey Local Plan (July 2018) and the National Planning Policy Framework (July 2018) and the material considerations when deciding whether or not to commence enforcement action.

POLICY PE 1

We will assess if the breach of planning control unacceptably affects public amenities or causes harm to land or buildings before we consider taking enforcement action by carrying out the Expediency Test.

We will try to persuade an owner or occupier of land to put right voluntarily any harmful effects of unlawful development. But we will not allow discussions to hamper or delay any formal enforcement action needed to make the development more acceptable on planning grounds, or to make it stop.

POLICY PE2 – Unacceptable breaches of planning control

When a development fails the Expediency Test, negotiations have broken down or fail with owners/occupiers, and/or they have failed to comply with the Councils reasonable request to either mitigate or remove unauthorised development, it is important that the Council begins enforcement action to remedy the breach of control. It may be that an owner/occupier has submitted a planning application to try and remedy an unacceptable development, this should not delay the process of taking action if action is necessary.

POLICY PE2

We will take immediate enforcement action against any unlawful breach of planning control where it has failed the Expediency Test, negotiations with a landowner/occupier have broken down or a landowner/occupier has failed to remedy the breach within a reasonable period of time.

POLICY PE3 - Minor or technical breaches of planning control and the granting unconditional planning permission for unauthorised development.

Enforcement action must always be in proportion with the breach of planning control to which it relates. We will not normally take formal enforcement action against trivial or technical breaches of planning control that causes no material harm to amenity.

Where development has been, or is in the process of being, carried out without planning permission, we will assess it to establish if it is likely that we could grant unconditional planning permission that is permission without conditions attached to it (through the application of the Expediency Test). If we are likely to grant this type of planning permission, we may invite the submission of a retrospective planning application.

Where there is no specific planning objection to the development, we will not normally consider further enforcement action appropriate

POLICY PE3

Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm.

Where development has been carried out without planning permission and unconditional planning permission could be granted, where there is no planning objection to the development, no further formal enforcement action will be taken

POLICY PE4 - Slight or minor variations to works carried out under 'Permitted Development' rights

Some development, such as house extensions or the addition of a porch, may be carried out under certain 'permitted development rights' without the need for any Express Planning Permission from the Council. If a development exceeds the legal limits of these rights (for example, by being slightly bigger or higher than allowed), we will not necessarily take enforcement action just to counteract a slight variation of what would be permitted, or what would be considered as being acceptable by the Council. Each breach of planning control will be assessed on its own planning merits, taking into account all relevant material planning considerations.

POLICY PE4

Formal enforcement proceedings will not normally be taken if development has been carried out and only a slight variation in excess of the specified limitations has occurred, with no material harm being caused.

POLICY PE5 - Imposition of conditions to make development more acceptable

Where development has been carried out without planning permission and the development could only be made acceptable by imposing conditions, we may ask for a retrospective application for planning permission to be submitted. If, after a reasonable period, we have not received an application, we may serve a Breach of Condition Notice or an Enforcement Notice. An Enforcement notice will grant planning permission only if the conditions specified in the notice are met fully, to address any material harm caused by the development.

POLICY PE5

Where development has been carried out without planning permission and it is considered permission could be granted subject to conditions, a Breach of Condition Notice or an Enforcement Notice may be served. Complying with the Notice would grant planning permission subject to conditions or the implementation of works to make the development acceptable.

POLICY PE6 - Non-compliance with planning conditions

Where we have granted planning permission and imposed conditions but those conditions have not been complied with, we will consider if it is appropriate to issue an Enforcement Notice or a Breach of Condition Notice. There is no right of appeal to the Secretary of State against a Breach of Condition Notice and, unlike an Enforcement Notice, its effect cannot be suspended by an appeal. It is a criminal offence not to comply with an Enforcement Notice or Breach of Condition Notice.

There is a right of appeal to the Secretary of State against the serving of an Enforcement Notice. Where an Enforcement Notice has not been complied with, we can go on to the land and carry out any works required by the notice ourselves and place a charge on the land, so that when it is sold the Council can recoup the costs of the works.

POLICY PE6

Where conditional planning permission has been granted for development but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice may be served, depending upon the circumstances of each case.

POLICY PE7 - Unauthorised works by businesses

One of the Council's key priorities is to support growth and the creation of employment. Sometimes businesses breach planning control and the Council is mindful that enforcement action could mean that the business has to relocate or

close down, with the result being a loss of jobs.

Where it is found that unacceptable development has been carried out by a business without planning permission, the Council will try in the first instance to either remedy the breach through negotiation or by the submission of a planning application. If that fails and enforcement action means that the business is going to have to either relocate or close then officers of the Enforcement Section will at the earliest opportunity work with officers from the Council's Economic Growth Team to try and find a suitable alternative site for the business. A timetable will be agreed for any relocation.

We may allow the unauthorised use to continue or to be reduced to an acceptable level if it is shown that there are exceptional circumstances or that impacts can be mitigated against.

If an agreement cannot be reached, we may issue an Enforcement Notice, allowing a realistic time for the unlawful development to stop, or its scale to be reduced.

POLICY PE7

Where development has been carried out by a business without planning permission and is unacceptable on the site, Officers of the Planning Enforcement Section will, at the earliest opportunity work with Officers of the Economic Growth Team to try and find an alternative site for the business with a timetable to allow for relocation. If the timetable is ignored, an Enforcement Notice may be issued, giving a reasonable time to allow any relocation to take place.

POLICY PE8 - Unauthorised development is so unacceptable and immediate remedial action is required

Where unlawful development has been carried out without planning permission and we consider that serious harm is occurring to such a degree, we may take vigorous enforcement action (including, if appropriate, the service of a Stop Notice or enforcement injunction). This would be when the breach of control failed the Expediency Test, was causing a significant public harm or a criminal offence was being committed to such a degree that there were no mitigation measures that could be taken to remedy the breach.

POLICY PE8

Where a breach of control causes significant, serious harm to a public interest, fails the Expediency Test, and/or a criminal offence has occurred that no mitigation can remedy then immediate enforcement action (including the service of a Stop Notice or an Injunction), will be taken if considered necessary.

POLICY PE9 - Unauthorised works to listed buildings

Work to a listed building normally needs Listed Building Consent and it could also require Planning Permission. Where work has been carried out without consent, a

criminal offence may have been committed. These types of cases can take a long time to resolve, they can be very complex, given the historic significance of listed buildings and often owners and occupiers carry out mitigation or remedial works slowly because of the high cost involved.

The Council will consider whether to start criminal proceedings and/or serve a formal Notice to make sure that appropriate remedial works are carried out, according to the extent and nature of the works. However, the Council will take into account the complexity of these works, given the historic relevance of the listed buildings and a suitable timetable for works will try to be agreed with the landowner or occupier. If that timetable is not adhered to then action will proceed.

POLICY PE9

Where works without consent have been carried out to a listed building and those materially affect its character and appearance either internally or externally, consideration will be given to issuing a formal Notice and/or starting criminal proceedings. If a timetable agreed for the works with the landowner or occupier is not adhered to then action will continue.

POLICY PE10 - Unauthorised development in conservation areas

The Council has a statutory duty to make sure that any development in conservation areas preserves or enhances the character and appearance of the area. Where a breach of planning control has taken place we will take account of the policies set out in the Adopted East Lindsey Local Plan (July 2018) and the National Planning Policy Framework (July 2018) and the material considerations when deciding whether or not to commence enforcement action.

POLICY PE10

Where development has been carried out in a conservation area without planning permission or conservation area consent, and the development does not preserve or enhance the character and appearance of the area, enforcement action will be considered.

POLICY PE 11 - Display of illegal advertisements

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows some types of advertisements and signs to be displayed without the need for Advertisement Consent to be granted by the Council. In many instances, however, consent is needed to display advertisements. If an advertisement is displayed without the appropriate consent, it is a criminal offence. Where the advertisement causes serious harm to amenity or public safety, we will ask for it to be removed within a specified time. If the advertisement continues to be displayed after this period, we will consider formal prosecution proceedings and any action available to secure its removal

Fly posting on buildings, street furniture and other structures usually has a visually detrimental effect. Fly posting is a criminal offence, although it is recognised that

controls to prohibit fly-posting are difficult to enforce, especially when fly posting is carried out as a clandestine activity, often late at night. Fly posting on highway land or on street furniture & buildings that are on highway land, will not be dealt with by the District Councils Planning Enforcement Team, and will be referred to Lincolnshire County Council acting as the Highways Authority, as the land owner.

Advertisements displayed on listed buildings may affect the character and appearance of the building and therefore may require listed building consent. If an advertisement is displayed on a listed building without Listed Building Consent, we will consider whether to take proceedings for its removal. This would be through serving a formal notice, taking direct action under current legislation, or via prosecution proceedings.

POLICY PE11

Where an advertisement has been displayed without express consent and causes serious harm to amenity or public safety we will ask for it to be removed. Where the advertisement continues to be displayed, prosecution proceedings and/or direct action proceedings will be commenced.

Where an application for consent has been refused, the applicant will be asked to remove the advertisement within a specified time. If the advertisement continues to be displayed, proceedings will be commenced unless an appeal has been lodged against the decision to refuse consent. Action would then be held pending the outcome of the appeal.

POLICY PE12 - Derelict or unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area. Where the condition of land or buildings is causing significant harm to public amenity, we may serve a notice ('Untidy Site Notice') under S215 of the Town and Country Planning 1990 or a Community Protection Notice, if the owner does not comply with the Warning Letter.

Both of these notices specify measures to improve the appearance of the land or buildings. Failure to comply will mean that the Council continues with prosecution proceedings and/or enter the land and carry out the works.

POLICY PE12

Where a building or land is in a condition which seriously detracts from, or affects the visual character of an area, we will ask for measures to be taken to improve the appearance of the land. If no improvement works are carried out within a reasonable time, we may serve a notice under S215 of the Town and Country Planning Act 1990 or a Community Protection Warning followed by a Community Protection Notice (CPN), under the Anti-Social Behaviour Act. If the notice is not complied with, prosecution proceedings and/or direct action proceedings can be commenced. For non-compliance with a CPN a Fixed Penalty Notice could also be issued. Direct action proceedings will involve contractors

appointed by the Council entering the land and carrying out the works in default, in accordance with the legislation.

POLICY PE13 - Lawful uses, activities or developments

Sometimes we are considering enforcement action for an unauthorised use or activity the landowner or occupier claims that the use or development is lawful. If this is the case then we may invite an application for a lawful development certificate to confirm conclusively that it is lawful.

If the applicant fails to submit sufficient evidence to the Council or by way of an application to allow us to grant a certificate, we will consider enforcement action if we are satisfied that the time in which to take action has not expired.

POLICY PE13

Where unauthorised use or development has taken place but it is claimed that the use or activity is lawful; we will invite the submission of an application for a lawful development certificate. Where a certificate application has been refused, enforcement action will then be considered in accordance with the general enforcement policies PE1 to PE7.