



PLANNING ENFORCEMENT POLICY STATEMENT

SEPTEMBER 2018

Contents

1.	Introduction.....	3
2.	Council’s Vision for Enforcement	3
3.	Openness	4
4.	General Approach and The Role of Planning Enforcement.....	4
5.	Expediency.....	5
6.	The Role of Enforcement.....	5
	Reactive	5
	Proactive.....	6
7.	Investigating Suspected Breaches of Planning Control	6
8.	Typical Breaches of Planning Control	6
	Examples of typical breaches include:.....	6
	8.1. Building / Engineering Operations	6
	8.2. Material Changes Of Use	7
	8.3. Non - compliance with Conditions	7
	8.4. Unauthorised Display of Advertisements.....	7
	8.5. Contravention of Tree Preservation Orders.....	7
	8.6. Unauthorised work to Listed Buildings.....	7
9.	Prioritisation	7
	9.1. High priority.....	7
	9.2. Medium priority:	8
	9.3. Low priority:	8
10.	Notification of Outcome.....	9
	10.1. Where no further action is proposed:.....	9
	10.2. Where further investigation is required:.....	9
	10.3. Where a breach of planning control is established:.....	9
11.	Regularisation of breaches of planning control:	10
	11.1. Negotiating a solution:	10
	11.2. Retrospective application for planning permission:.....	10
12.	Consideration of Enforcement Action:.....	10
13.	Powers Available to the Local Planning Authority	11
	13.1. Planning Contravention Notice (PCN):	11
	13.2. Breach of Condition Notice (BCN):	11
	13.3. Enforcement Notice:	11
	13.4. Stop Notices:.....	12

13.5.	Temporary Stop Notice:	12
13.6.	Section 215 Notice (Untidy Land):.....	13
14.	Prosecutions:	13
15.	Injunctions:	13
16.	Direct Action:.....	14
17.	Register of Enforcement Notices:.....	14
18.	Powers of Entry:	14
19.	Monitoring:.....	15
20.	Protection of Officers:	15
21.	Conclusion	15

1. Introduction

The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised development as well as ensuring that people have confidence in the planning service. An effective enforcement service is essential to a credible planning service.

The Enforcement Service is not an isolated activity responding only to failures in the planning system. It is an integral part of the Council's overall Development Management function to deliver good community outcomes in line with the National Planning Policy Framework and Planning Practice Guidance. It also aims to provide a service that helps the Council achieve its priorities that are set out within the Corporate Strategy.

This Enforcement Policy Statement aims to encourage improved standards of enforcement by setting out the principles and priorities governing the delivery of the service and by identifying and adopting good practice. It is important to ensure that Councillors and Officers of the Council, external agencies and the general public understand how planning enforcement operates and what it can do. As such this policy is aimed at these groups to help them get the best out of the Development Management Service.

This Enforcement Policy Statement sets out how planning enforcement operates in terms of the powers available and the priorities that will be adopted in dealing with complaints and alleged breaches of planning.

2. Council's Vision for Enforcement

Breaches of planning control are viewed very seriously; each case is considered on its merits. The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the Council to intervene before serious harm to amenity occurs as a result.

The Council will act positively and swiftly in tackling breaches of planning control in accordance with the considerations and processes described within this Policy Statement and will not hesitate to use the full range of powers vested in it to achieve a satisfactory solution.

3. Openness

Officers will provide a report to the Council's Planning Committee on a quarterly basis to update Members of the more complex and/or contentious enforcement investigations or any that have been requested by Members to be included within the report, highlighting any actions and outcomes.

Officers will provide information and advice in a clear and straightforward manner.

Officers will keep all interested parties informed as to the progress of an investigation.

Where formal action is necessary, officers will make it clear why the Local Planning Authority intends to take, or has taken, enforcement action.

Conversely, where it is deemed not to be expedient to take enforcement action, any complainants will be informed of the reason for this decision.

The Council will endeavour to protect the identity of members of the public who bring breaches of planning control to our attention.

The enforcement register is available on the Council website www.rugby.gov.uk

In some circumstances the most appropriate action may be to involve other services/agencies, whose legislation and powers may provide a faster/better resolution. As such information received or gathered by the enforcement team may be shared with other service areas in the Council i.e. Environmental Services, benefits or other enforcement agencies such as the Police, Warwickshire County Council, Trading Standards where that would be appropriate.

4. General Approach and The Role of Planning Enforcement

We believe that prevention is better than cure. Our role therefore involves actively working with members of the public, parish councils, businesses and others who need advice to ensure compliance with legislative controls.

The Local Planning Authority is primarily responsible for taking whatever planning enforcement action is deemed necessary within their area. The Council will always exercise its planning enforcement powers rigorously when it is considered necessary to do so.

The enforcement team is only able to investigate breaches of planning control and cannot become involved in trying to resolve non-planning issues such as legal or neighbour disputes.

5. Expediency

In considering the issue of expediency, the Council will have regard to:

Whether the breach of planning control unacceptably harms public amenity, or the existing use of land and buildings merits action in the public interest.

Ensuring any enforcement action is proportionate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control that are considered to cause no harm to amenity. Enforcement action cannot be entered into as a form of “punishment”. “Punishment” is not a proper motive for serving an Enforcement Notice. The fact that a planning application, if required, may not have been submitted is not a reason in itself for serving a Notice. In assessing the merits of the case, the Local Planning Authority will take into account the same considerations as it would, had an application for planning permission been submitted.

Ensuring that, if initial attempts to persuade the owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be necessary to make the development acceptable on planning grounds or to compel the breach to cease.

Statutory time limits for taking enforcement action.

Relevant national planning policies including Planning Practice Guidance (PPG) under the heading ‘Ensuring effective enforcement’ sets out the basic priorities of the enforcement of planning control. This can be found at www.gov.uk or by using the following link:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

6. The Role of Enforcement

The primary role of enforcement is twofold:

Reactive – Responding to complaints and breaches of planning control. The Council receives approximately 800 complaints per annum that require formal investigation, in addition to general enforcement related enquires. Many of these complaints were resolved within a relatively short period of time as it was either established that no breach of planning control had taken place, or the complaint related to minor technical breaches of planning control that could be resolved without formal action. Other complaints led to formal enforcement action being taken to resolve the breach.

Proactive – Monitoring new development to assess compliance with conditions and ensure the quality of approved development is not eroded and to ensure that any requirements of the Local Planning Authority are met, including compliance with Section 106 Agreements. A proactive role also includes taking action under Section 215 of the Town and Country Planning Act 1990 which allows the Local Planning Authority to require proper maintenance of land if it appears that the amenity of a part of their area is adversely affected by the condition of land in their area.

7. Investigating Suspected Breaches of Planning Control

Reporting a Suspected Breach - Reports of suspected breaches of planning control can be made in writing or by telephone, email or completing an online form on the Council's website. When reporting suspected breaches of planning control, it is helpful if you have as much information as possible about the current and previous situations e.g. the exact address, when the activities started, the nature of the suspected breach and the names and addresses of known persons responsible.

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless either the complainant authorises otherwise, or the complainant is required to give evidence at a public hearing, inquiry or court case. The recent implementation of the Freedom of Information Act 2000 does not apply in these circumstances, and the identity of complainants will not be revealed to third parties unless any of the circumstances outlined above apply.

In some cases, the success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach of planning control. In such cases the Council will discuss with the complainant whether they are willing to relinquish their confidentiality, and provide the required evidence, before proceeding with formal enforcement action or a prosecution.

8. Typical Breaches of Planning Control

Undertaking development without the required planning permission: or

Failing to comply with any condition or limitation subject to which planning permission has been granted.

Examples of typical breaches include:

8.1. Building / Engineering Operations

e.g. - residential development - unauthorised extensions, outbuildings, fences etc.

8.2. Material Changes Of Use

e.g. - Change of use of building/land not permitted under the Town and Country (General Permitted Development) Order 1995 (as Amended).

- use of land for unauthorised storage (caravans, vehicles, plant, storage containers etc.)

- use of land as unauthorised extension to a residential curtilage.

8.3. Non - compliance with Conditions

e.g. - Submission of required details

- Hours of operation or other time constraints

- Implementation of planting schemes

8.4. Unauthorised Display of Advertisements

8.5. Contravention of Tree Preservation Orders

e.g. - felling / lopping of protected trees

8.6. Unauthorised work to Listed Buildings

9. Prioritisation

All reports of suspected breaches of planning control will be logged onto the Council's enforcement database and will be investigated and progressed in accordance with a priority rating of 'High', 'Medium' or 'Low' depending on the nature of the breach and the degree of harm caused.

Typically, cases will fall into the following categories, although this is not an exhaustive list:

9.1. High priority

Unauthorised demolition, partial demolition or alterations (internal and external) to a Listed Building.

Demolition of a building in a Conservation Area that is causing immediate and irreparable harm.

Works to trees subject to a Tree Preservation Order or within a Conservation Area.

Material change of use of agricultural land to unauthorised encampment.

Development that causes significant harm or danger to the amenities of neighbouring residents and the general public or is contrary to significant policies in the Local Plan.

9.2. Medium priority:

The erection of unauthorised advertisements causing serious harm to amenity or public safety and/or a detrimental impact on highway safety.

Unightly buildings or untidy land that are causing serious harm to the amenity of neighbouring residents.

Breach of condition, which results in serious demonstrable harm to the neighbourhood.

Unauthorised development, which is the source of significant public complaint (significant public complaint can be quantified as 5 or more independent sources complaining about the same alleged breach of planning control).

9.3. Low priority:

Other advertisements, except where they cause serious harm to the amenity of neighbouring residents.

Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months.

Minor works i.e. gates, walls, fences, domestic outbuildings and satellite dishes.

Untidy land, except where it causes serious harm to the amenity of neighbouring residents.

In most cases, a site visit will be required to establish whether or not a breach of planning control has occurred. The initial site visit will be conducted within the following timescales:

High priority cases – within one working day.

Medium priority cases – within five working days.

Low priority cases – within ten working days.

On completion of the initial site visit, the findings will be assessed, with a view taken as to how the investigation will proceed.

N.B – It is not illegal to breach planning control. It only becomes a criminal offence if a valid Enforcement Notice, a notice under Section 215 of the Town and County Planning Act or Tree Preservation Order has not been complied with. It is also an offence to breach regulations within The Town and Country

Planning (Control of Advertisements) (England) Regulations 2007 and to undertake works to a Listed Building without Listed Building Consent or certain works to trees which are more than 7.5cm in diameter at 1.5m above ground level within a Conservation Area without consent.

10. Notification of Outcome

10.1. Where no further action is proposed:

When it is proposed to take no further action either because no evidence of a breach has occurred and the works do not require consent/permission, a minor breach has occurred or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified either verbally or in writing within 7 working days of the initial site visit that no further action will be taken and an explanation of the Council's reason(s) provided.

10.2. Where further investigation is required:

Where it is not possible to determine from the initial site visit whether or not a breach of planning control has occurred, the person reporting the suspected breach of planning control will be notified either verbally or in writing within 7 working days of the initial site visit that further investigation is required. Further investigation may involve additional site visits, documentary research, seeking advice from other Services or Agencies and seeking information from the person reporting the suspected breach of control or from the owner or other persons responsible for the land or buildings.

In some cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach.

Where the Council suspect that a breach of planning control has occurred, it may serve a Planning Contravention Notice on the person(s) being investigated to obtain information relating to the suspected breach.

In cases where further investigation is required, the person reporting the suspected breach of planning control will be notified either verbally or in writing within 7 working days of the Council determining whether or not a breach of planning control has occurred, and if so, what course of action the Council intends to take.

10.3. Where a breach of planning control is established:

Where a breach of control is established, the person reporting the suspected breach will be notified of the course of action that the Council intends to take to

secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:

- Attempt to negotiate a solution.
- Invite the submission of retrospective application for planning permission
- Instigate formal enforcement action.

11. Regularisation of breaches of planning control:

11.1. Negotiating a solution:

Where a breach of planning control has occurred, the Council will normally try to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, the Council will proceed with formal enforcement action where it is expedient to do so.

11.2. Retrospective application for planning permission:

Where a breach of planning control has occurred, but no harm is being caused, or any harm caused might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action.

12. Consideration of Enforcement Action:

The Council will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control. In taking formal enforcement action the Council will be prepared to use all enforcement powers available proportionate with the severity of the breach.

Where it is established that a breach of planning control has occurred the Council will determine whether or not to take formal enforcement action, and

the nature of such action. In determining this, the Council will have regard to the level of harm resulting from the breach. In assessing the level of harm, the Council will have regard to relevant national and local planning policies, and other material considerations, including the consideration of the person(s) that are directly at harm.

13. Powers Available to the Local Planning Authority

Where negotiations fail the Authority may decide to instigate formal legal proceedings. This could result in one or more of the actions set out below being pursued.

13.1. Planning Contravention Notice (PCN):

A PCN can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose. It is only served where the Local Planning Authority has evidence to justify its suspicion that a breach of planning control exists. This is used to obtain up to date information about ownership and the alleged breach of planning control. The function of a PCN is as an extensive enquiry into the alleged breach. Recipients must provide the information request within 21 days. Failure to respond to a PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly provide false information on a PCN can result in a fine up to £5,000.

A Notice under Section 330 of the Town and Country Planning Act 1990 may be used in place of a PCN to require information as to the ownership in land.

13.2. Breach of Condition Notice (BCN):

In cases where a breach of condition has occurred it may be appropriate to serve a Breach of Condition Notice to secure compliance with conditions imposed on a grant of planning permission. Consideration should be given to the type and legality of condition breached and the steps required to remedy the breach. Once issued and served the Notice does not take effect for 28 days. Although there is no appeal against a BCN the validity of the notice can be challenged by an application to the High Court for judicial review. Failure to comply with the notice will result in prosecution in the Magistrates Court. At present the maximum fine is £1000.

13.3. Enforcement Notice:

Enforcement Notices are used if a breach of planning control cannot be solved by negotiation or it requires urgent action.

An Enforcement Notice must specify: -

- the nature of the breach
- steps required to remedy the breach
- date the Notice takes effect (usually 28 days after serving Notice)
- the period for compliance
- reasons for issuing the Notice
- boundaries of the land to which the Notice relates

There is a right of appeal against an Enforcement Notice, which must be exercised prior to the Notice coming into effect. There is no right of appeal outside of this time.

13.4. Stop Notices:

Stop Notices are used in conjunction with an Enforcement Notice to stop seriously detrimental unauthorised activities causing very serious harm to public amenity and the environment, and to ensure they do not continue, particularly if an appeal against the Enforcement Notice has been lodged.

A Stop Notice: -

- can require any or all of the uses or activities which comprise the breach of planning control to cease,
- should prohibit only what is essential to safeguard amenity or public safety or to prevent serious harm to the environment,
- should specify the activity to which the notice relates and the date it takes effect (not earlier than 3 days and not later than 28 days after the serving of the notice)
- can take immediate effect if the unauthorised activity is especially harmful and specific reasons are stated.
- may be served on any person who appears to have an interest in the land or be engaged in the unauthorised activity.
- may not be served after the related Enforcement Notice has taken effect.

There is no right of appeal against a Stop Notice. To contravene a Stop Notice is an offence, dealt with by initiating prosecution proceedings. When issuing a Stop Notice the Council will take into consideration any compensation implications that may arise from issuing this type of notice.

13.5. Temporary Stop Notice:

A temporary stop notice differs from the normal stop notice, because it does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice will be immediate, it will not be necessary to wait three days before the temporary stop notice takes effect or give reasons why the

temporary stop notice will take effect immediately. The maximum length of time that the temporary stop notice will have effect is for a period of 28 days. During this period the Local Planning Authority must decide whether it is expedient to take enforcement action.

13.6. Section 215 Notice (Untidy Land):

In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Notice under Section 215 of the Town and Country Planning Act 1990. The Notice will specify the steps required to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect. The Council will firstly write to the owner of the land or building requesting improvements to be made before considering the service of a formal notice.

14. Prosecutions:

Contravention of an effective Enforcement Notice, Breach of Condition Notice, Section 215 Notice, Tree Preservation Order and certain works to trees within a Conservation Area without consent, Stop Notice, regulations within The Town and Country Planning (Control of Advertisements) (England) Regulations 2007, and work to a Listed Building without Listed Building Consent is a criminal offence. In such cases it is open to the Local Planning Authority to initiate a prosecution for the offence.

Prosecution cases need to be thoroughly investigated. Any decision to prosecute will be taken by the Legal, Democratic and Electoral Services Manager, having taken into account the Code for Prosecutors, particularly on the issues of evidence efficiency and the public interest. This is to ensure a legally correct and sufficiently detailed and persuasive case is made to the Magistrates Court to hopefully achieve the necessary conviction.

15. Injunctions:

Where the Local Planning Authority consider it expedient for any actual or apprehended breach of planning control to be restrained it can apply to the High Court or County Court for an Injunction. Such an application can be made whether or not the Local Planning Authority have exercised or propose to exercise any of their powers to enforce planning control.

Similar provisions exist for seeking an injunction to prevent and stop unauthorised work on trees protected by a Tree Preservation Order or Conservation Area status and unauthorised work to Listed Buildings.

In deciding whether to initiate injunctive proceedings the Local Planning Authority will ensure:

- that all relevant considerations are taken into account
- there is clear evidence that a breach of planning control is occurring
- that the action is proportionate in relation to the breach.

When an injunction is the appropriate form of action legal advice shall be sought especially because this remedy is given only at the discretion of the Court.

16. Direct Action:

Direct Action is a “default” power that enables the Local Planning Authority to take direct action where, on expiry of the Enforcement Notice compliance period or Section 215 Notice, the steps required by the notices have not been taken.

In such cases the Local Planning Authority may:

- enter the land and take the required steps: and
- recover from the person who is then the owner of the land any expenses - reasonably incurred by them in doing so.

The Local Planning Authority will need to ensure they have acted reasonably, having considered all relevant circumstances, before deciding to take direct action as the decision could be challenged by a judicial review in the High Court.

Direct Action will always be planned, organised and implemented with the utmost vigour and due diligence to the welfare of all parties, to ensure the desired outcome.

17. Register of Enforcement Notices:

Section 188 of the Town & Country Planning Act 1990 requires that every Local Planning Authority shall keep a register of all Enforcement Notices; Stop Notices and Breach of Condition Notices which relate to land in their area. This Register has to be available for inspection by the public at all reasonable hours. A copy of the register can also be visited on the Council’s website www.Rugby.gov.uk.

18. Powers of Entry:

Any planning/enforcement officer of Rugby Borough Council are authorised to enter any land at any reasonable hour in accordance with sections s171C, s171D, s196a, ss196A, s196b, s196c, s214b and s324 of the Town and

Country Planning Act 1990 (as amended) and in accordance with the scheme of delegation and appropriate powers, to undertake their role.

19. Monitoring:

The Council monitors conditions to ensure that development is carried out in accordance with a planning permission. Failure to comply with a planning condition will be viewed seriously and appropriate action taken in accordance with the powers outlined above. The Council also actively monitors provisions made under Section 106 Agreements (Agreements regulating development or use of land).

20. Protection of Officers:

The Council is mindful that, given the nature and content within which Planning Enforcement is sometimes carried out, these could be occasions where members of staff are open to either intimidation or verbal/physical abuse. The Council wishes to make it very clear that it will not tolerate any such actions against any of its officers acting on its behalf in such matters and will take immediate and effective action against those who threaten or abuse its employees. It is important to realise that when enforcement action is instigated in respect to any breach of planning legislation, any transgressors are effectively dealing with the Council rather than any individual officer who is carrying out his or her specific duty in the matter.

In addition, where appropriate, the Council will ensure that all necessary resources required to expedite any enforcement matter to a satisfactory conclusion will be brought to bear. This can involve other agencies such as the police or outside contractors.

21. Conclusion

It is increasingly recognised that the enforcement service is a key component in the delivery of a good planning service. The introduction of this policy statement is a key step on setting out how Rugby Councils enforcement service will respond to the demands placed upon it and what its outcomes can confidentially expect from it. This document increases the transparency of the service, sets clear guidelines for all of those involved with delivering and monitoring of the service, as well as those who either use the service or are directly or indirectly affected by it.

This policy document is seen as a step in raising the profile of planning enforcement in general with a view to altering the traditional perception of enforcement as a reactive, non-statutory service to one that is increasingly

proactive and key in the delivery of an effective development management service for the Borough of Rugby.

This policy statement has been developed to ensure all enforcement activities and processes are carried out in compliance with existing legislation, best practice and in accordance with the Council's Equality and Diversity Policies.

An Equality Impact Assessment/Analysis on this policy was undertaken on 24 September 2018 and will be reviewed September 2021.

FOR PLANNING ENFORCEMENT INFORMATION

If you would like further help or advice about planning enforcement please contact: -

The Planning Enforcement Team

Rugby Borough Council, Town Hall,

Evreux Way, RUGBY, CV21 2RR