



Stockton on Tees Borough Council Local Enforcement Plan

MARCH 2024



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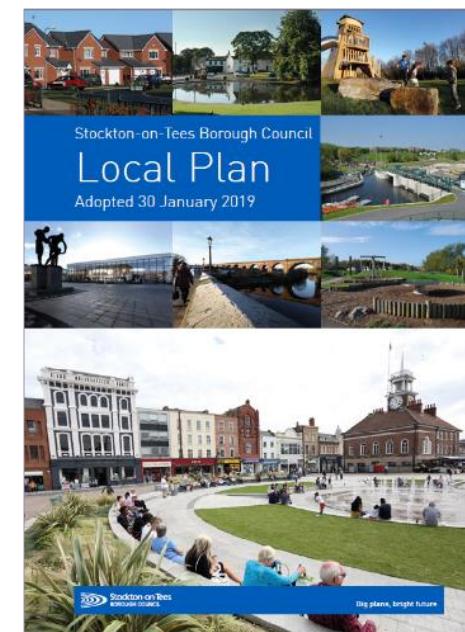
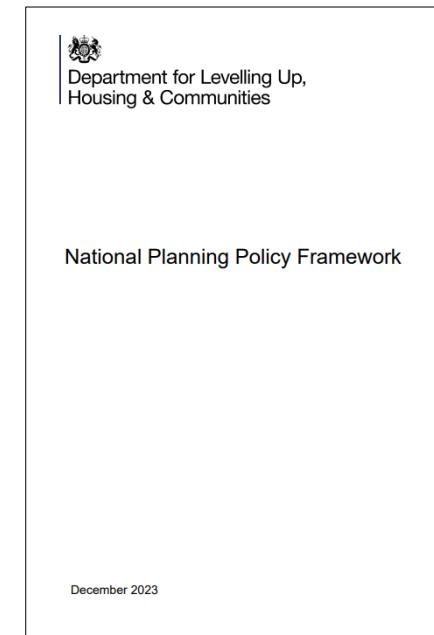
The Five Lamps Thornaby

1. INTRODUCTION;

- 1.1. The National Planning Policy Framework (NPPF) encourages effective enforcement action to maintain public confidence in the planning system. It recommends that local planning authorities (LPA's) publish a local enforcement plan to help proactively manage planning enforcement in a way that is appropriate to their area. As set out in the NPPF, planning enforcement action is discretionary, and the local planning authority should act proportionately in responding to suspected breaches of planning control.

- 1.2. Stockton-on-Tees Borough Council believes that planning compliance has an important role in ensuring that the policies of the Local Plan are effective and high standards of development are achieved across the Borough.

- 1.3. The planning enforcement function sits within the Planning Services team and the purpose of this local enforcement plan is to set out our approach to processes and investigating alleged breaches of planning control.



2. PLANNING ENFORCEMENT PROCESS;

2.1. Planning enforcement is a reactive service whereby requests are made for potential breaches of control to be investigated. These requests can come from the public, elected members, stakeholders, or council employees.

General process;

2.2. Once a case is received it will be logged and allocated to an officer to investigate. Initially the enforcement process involves an assessment as to whether there is a breach of control or not.

2.3. In certain cases, the investigation may require a site visit to establish whether a breach of planning control has taken place. There may also be some occasions where a series of visits are required to be able to establish if there is a breach in planning control.

2.4. Where there is no breach of planning control, the investigation will be closed, the relevant parties informed, and no further action taken. Where a matter has been previously investigated and no breach of control was found, there will be no reinvestigation of the case unless the complainant is able to provide substantive evidence of the alleged breach.

2.5. If a breach of planning control has occurred, then a more detailed assessment of the breach and its associated impacts will often be required. In some circumstances the complainant may be advised that additional evidence is required to assess the impacts and may be asked to provide diaries and records over the nature and type of activity. The use of photographs with a time/date stamp is always beneficial evidence.

2.6. The council may also need to liaise with other council departments or outside bodies to be able to form a view on the impacts of a breach in planning control.

2.7. All of the information and evidence is then considered and a decision as to whether it is expedient to take enforcement action against any breach of planning control or not, is then taken.



3. WHAT IS A BREACH OF PLANNING CONTROL

3.1. Enforcement of planning legislation can often be complex and is in some circumstances also a lengthy process to go through. This is because a balance needs to be considered between upholding planning policies, safeguarding the amenity of an area and the rights of individuals to use or alter their property as they choose.

3.2. Nevertheless, the council has the ability to take enforcement action when a breach of planning control has occurred provided that it is deemed appropriate, and those powers are set out within the Town and Country Planning Act 1990.

3.3. The council is required to give those responsible for unauthorised works the opportunity to put matters right before taking formal enforcement action. If the council's actions are considered unreasonable, too harsh or legally incorrect any enforcement action can be overturned by the Planning Inspector or the courts and the council can also be liable to pay any associated costs.

When does a breach of planning control occur?

3.4. A breach of planning control is defined within the Town and Country Planning Act (section 171A), a breach occurs when development has occurred without having the required planning permission, or when the development is not being carried out in accordance with any of the imposed planning conditions.

3.5. A breach of planning control can also occur when development is carried out without obeying the relevant limitations or conditions

which are set out within the Town and Country Planning (General Permitted Development Order) 2015.

3.6. The most common breaches of planning control that the council deals with include;

- where something has been built without planning permission
- when the use of land or a building has altered without permission
- where unauthorised advertisements have been installed
- when conditions attached to planning approvals have not been complied with
- the poor condition of land impacting on the visual amenities of the wider area.

3.7. The onus to apply for planning permission rests with the land/property owner. If any remedial works are required, then the property owner/developer will be liable for the full extent of any associated costs. In addition, any breach of planning control may show as part of a property search should you wish to sell your property in the future.

3.8. However, it is not necessarily a criminal offence to carry out development without planning permission. However, **in the event unauthorised development involves advertisements, works to**

protected trees or listed buildings, or if a formal planning enforcement notice has been served and it has not been complied with, then a criminal offence may have occurred, and the council may seek to take all necessary legal action to resolve the situation.

What cannot be considered under planning enforcement?

3.9. The planning enforcement process has a very clear legal framework and it must be related to both planning legislation and be something which would require/have planning permission.

Those matters which do not fall within the planning remit will not be investigated and we will inform you the reason why the planning department will not investigate. Where sufficient information is provided and any matter falls within the responsibility of other areas of the Council then they will be redirected to the appropriate department(s).

Many of those common aspects which do relate to planning include;

- neighbour disputes
- land boundaries or ownership disputes
- deeds of covenant issues
- works to party walls
- parking of commercial vehicles on the highway

- parking a caravan within the residential boundary of a property
- use of / development on highways or pavements.
- dangerous structures
- internal alterations to houses (unless a listed building or creating a separate dwelling/flat)



Wynyard Woodland Park

4. REPORTING A BREACH OF PLANNING CONTROL

4.1. Stockton on Tees Borough Council will investigate those complaints which it receives in writing as this helps us to maintain a clear audit trail so that there is no misunderstanding of what is being complained about and also prevents any malicious complaints being received.

4.2. **The council has an on-line form which can be used to submit any planning enforcement queries. This is the easiest and quickest way to get a planning enforcement concern looked at.** Alternatively email and letter will also be accepted where we have the required minimum level of information. Telephone calls will only be accepted where the unauthorised works relate to a listed building or protected tree.

4.3. **We will not investigate any anonymous complaints, complaints which rely on an email address or those which do not include the necessary mandatory information.**



Stockton Town Centre – Fountain

4.4. The minimum level of information that must be provided includes;

- your name and address,
- telephone number or e-mail address.
- location of the building or site
- nature of the activity
- explain what problems the development/use is causing to you (e.g. noise, traffic, smells, overshadowing).

Confidentiality

4.5. All planning enforcement matters are treated with a high degree of discretion and officers will not disclose any information which relates to the person(s) reporting the breach of planning control.

4.6. Where formal action is being taken and you have previously provided evidence to support an investigation you may be asked to give that evidence at a hearing, but before then you will be asked if you are prepared to do that. Most complaints are dealt with without the need for formal action.

4.7. Under the Freedom of Information Act 2000, if a request is made for the identity of the complainant or for information which may identify the complainant, we will not disclose your details. In some circumstances the information may be required to be disclosed by law. In such cases you will be contacted for your permission.

5. HOW WE WILL INVESTIGATE AND ASSESS A BREACH OF CONTROL

- 5.1. In order to make an effective use of resources, all incoming enforcement cases will be categorised and given an appropriate priority based on the information provided (see table 1).
- 5.2. This will determine the broad timetable for processing any enforcement matter. The priority rating may be changed by the planning department following an assessment of any relevant planning history and any site visits, in case where it is deemed necessary.
- 5.3. The associated timeframes and key waypoints for dealing with enforcement action (table 2) are indicative and give a broad timeline for the majority of cases. In some circumstances there may be unforeseen delays (such as the complexity of a case, protracted negotiations or at times of high workloads within the department), where such matters arise the council will try to notify any complainant at an appropriate time.

TABLE 1; ENFORCEMENT PRIORISATION CATEGORIES

The three enforcement priorities;

Emergency – these cases will involve circumstances where there is a high likelihood that irreversible harm will occur if the council do not act immediately i.e. unauthorised felling/pruning of protected trees or unauthorised works to listed buildings;

High Priority – these cases will include matters where there is a high likelihood that there will be (or the potential for) significant harm to be caused within the surrounding area i.e. unauthorised uses/activities which are causing significant noise/disturbance; breaches in conditions which affect residential amenity; or circumstances which affect highway safety.

Low Priority – these cases will typically be matters which do not pose a significant threat to an area or are unlikely to result in immediate or irreversible harm i.e. building of walls/fences; unauthorised advertisements.

The investigation

- 5.4. Initially we will carry out some desk-based checks. Should there be no breach in planning control then the investigation will cease at this point. Where there is a potential breach, the case priority level will be established and the case officer will investigate further. This may include a site visit to help establish whether there is a breach of planning control. The majority of site visits are made without prior arrangement, and it is generally unnecessary to visit a complainant's property or to meet with them. At the end of an investigation we will decide what the next steps may be (case action determined) which could include deciding not to pursue enforcement action; to seek a retrospective application; or whether the use of more formal powers may be necessary if any appropriate resolution cannot otherwise be reached.
- 5.5. **Officers are authorised under Section 196A of the Town and Country Planning Act 1990 to enter (at any reasonable hour and when it is reasonably necessary), land to ascertain whether there is any breach of planning control.** However, officers do not have powers to force entry into any house and we will leave a card to try and arrange a convenient time to visit. In rare cases, officers may apply for a warrant.
- 5.6. As part of the site investigation officers will ask questions, take photographs and measurements. This information will be used to ascertain whether a breach of planning control has taken place.

TABLE 2; PLANNING ENFORCEMENT WAYPOINTS

Action	Priority Level		
	Emergency	High	Low
Register complaint	Immediately	Within 2 working days	Within 2 working days
Start initial assessment process	Within 24 hours	Within 5 working days	Within 5 working days
Initial response to complaint	Within 48 hours (excluding weekends)	Within 10 working days	Within 10 working days
Commence investigation	Within 48 hours (excluding weekends)	Within 4 weeks	Within 6 weeks
Enforcement Case Action Determined	As soon as is possible if significant or irreversible harm is occupying	Within 8 weeks	Within 12 Weeks

6. ASSESSING THE IMPACT AND WHETHER ENFORCEMENT ACTION IS REQUIRED?

- 6.1. In certain or straightforward cases where the council has sufficient information either as part of the complaint or from our own records and information then the investigation may simply be a 'desk-based exercise' in other cases site visits may be required to gain a full understanding of the alleged breach of control .
- 6.2. Where officers can find no evidence of a breach of planning control the investigation will be closed, the relevant parties informed and no further action taken.
- 6.3. In some circumstances the complainant may be asked to provide additional evidence to identify or substantiate the allegation, for example information logs, records and diaries. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.
- 6.4. The general test applied is "would planning permission likely to be granted for the development". Only material planning considerations will be part of this process. Issues such as; loss of value to property, Party Wall Act matters, competition with other businesses, land ownership disputes, loss of a view or breaches of a covenant will not be considered.
- 6.5. Where a breach has occurred and if the council consider matters can be rectified then we 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 but they can take time to resolve.

- 6.6. In other cases where further information is required, then the council may serve a Planning Contravention Notice (PCN), the main purpose of a PCN is to gather necessary information to help establish whether there is a breach of control or whether there is a case for taking enforcement action. It is an offence if the recipient of the notice fails to provide the required information. If convicted of such an offence the offender would be liable on conviction, to a fine currently not exceeding £2,500.

Exceptions

- 6.7. There are exceptions where breaches of planning control become lawful through the passage of time and in such cases no action can be taken. These include;
 - 4 years of substantial completion for operational development (i.e. structural alterations/construction)
 - 4 years for an unauthorised change of use of a building / structure to a single dwelling house
 - 10 years for any other breach of planning control (such as changes of use or breaches of condition).

7. PLANNING ENFORCEMENT ACTION AND POWERS AVAILABLE

- 7.1. In considering whether to take planning enforcement action or not, it will be necessary to take account of national planning policies including the NPPF, the Government's planning practice guidance, the relevant policies of the Local Plan and all other relevant material planning considerations.
- 7.2. Ultimately in deciding whether or not to take planning enforcement action the council must consider whether it is expedient to do so, in line with the expediency test (figure 2).
- 7.3. Should planning enforcement action be required then the council has a number of different options available to consider. In some cases there may be several which apply and the most appropriate one will be chosen. The various options which are available are identified in appendix 1.
- 7.4. If a matter is to be pursued in the courts, the council will need to consider whether the evidence held is sufficient enough to ensure that there is a realistic prospect of conviction. Any evidence must clearly prove that the offence has occurred and identify who is legally responsible for that breach.
- 7.5. There may also be circumstances where it is not in the public interest to pursue action and these will be discussed with the council's Legal

Services Team. The council will not initiate prosecution proceedings where it is disproportionate, likely to be ineffective in resolving the breach or where there is no realistic prospect of conviction.

- 7.6. Where it is necessary to use witnesses, the witness will be advised of the possible need to attend court and will be asked to provide a written witness statement. In such circumstances, if witnesses cannot or do not provide the necessary evidence, those prosecution proceedings may not be pursued.

FIGURE 2: EXPEDIENCY TEST:

This involves the Planning department assessing whether;

- the breach is in accordance with the policies of the Local Plan
- whether there are any other material planning considerations
- whether planning permission would have been likely to be granted
- whether the breach unacceptably affects public amenity
- whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest
- whether action would be proportionate with the breach to which it relates
- whether it is necessary and/or in the public interest.

8. SERVICE STANDARDS

8.1. In order to ensure that the council is providing an effective planning enforcement service, it has identified a number of ways in which it can monitor its performance and where necessary take appropriate action to remedy any shortcomings in the service it is providing.

8.2. Our service targets which ensure our performance can be measured are:

- 70% of enforcement case closed where no breach identified - 20 working days
- 60% of enforcement requests receiving an initial response (i.e whether there is no breach of control or further investigation required) within 10 working days
- 60% of planning enforcement cases, where the case actions are determined within the established priority timescales.

8.3. In all planning related matters, no two cases are the same and although the council will aim to meet with the timeframes and service standards identified there may be unforeseen delays. Where

these matters arise the council will notify any complainant of any such circumstance at an appropriate time.

Complaints about the service.

8.4. Should you be unhappy about with advice you have received, the action being taken, or the level service you have received by a member of the Planning Services team in exercising our planning enforcement functions please contact us on the details below;

Phone: 01642 526022

Email: planningdevelopmentservices@stockton.gov.uk

Alternatively you can complain using the council's corporate complaints process on the details below:

Phone: 01642 527521

Email: foiandcomplaints@stockton.gov.uk

APPENDIX 1: TYPES OF ENFORCEMENT ACTION

Type of Action;	
No formal action	<p>This is often the quickest way of dealing with a breach of planning control. In some instances the owner or occupier of a property acknowledges they have made a genuine mistake and takes immediate action to remedy it.</p> <p>The local planning authority will never condone a willful breach of planning law but planning enforcement action should be proportionate to the breach of control and in some cases the local planning authority may decide that it is not necessary to take action – often termed as not being expedient to take action.</p> <p>This may include circumstances where there is a trivial or technical breach of control which causes no material harm or adverse impacts or in circumstances where development is acceptable on its planning merits.</p>
Retrospective planning application	A local planning authority can invite a retrospective application where it is considered that an application is the most appropriate way to regularise the situation. However, if an application is invited it does not automatically follow that permission will be granted.
Planning contravention notice (PCN)	A planning contravention notice is often used by the council to seek information they may want for enforcement purposes, these may include asking questions about the use/operations being carried out on the land.
Enforcement notice	An enforcement notice should only be issued where the local planning authority is satisfied that there has been a breach of planning control and it is expedient to issue an enforcement notice. This will set out what the council considers to be the breach of planning control and what action(s) will be required to rectify the situation.

	An appeal against an enforcement notice can be made to the Planning Inspectorate. However, it is an offence not to comply with an enforcement notice, once the period for compliance has passed. A person guilty of an offence is liable on conviction to an unlimited fine and the council can in certain circumstances also seek to apply to recover any financial benefit obtained through the unauthorised development under the Proceeds of Crime Act 2002.
Planning enforcement order	A planning enforcement order may be necessary where a person deliberately conceals unauthorised development. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired. To take this action the council must make an application within 6 months of the council becoming aware that there has been a breach of planning control. The application must be made to a magistrates' court and a copy must be served on the owner/occupier of the land, and anyone else with an interest in the land.
Stop notice	A stop notice prohibits any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, however, it cannot prohibit the use of any building as a dwelling house or the siting of a caravan occupied by a person as his or her own main residence. It is however necessary to ensure that a stop notice only prevents what is essential to safeguard amenity, public safety or prevent serious or irreversible harm to the environment.
Temporary stop notice	Temporary stop notices are a tool that allows local planning authorities to act very quickly to address some breaches of planning control, where it is expedient to do so. The council must be satisfied that the breach of planning control stops immediately and give appropriate reasoning for serving the temporary stop notice. A temporary stop notice should only be served to safeguard amenity, public safety or prevent serious or irreversible harm to the environment. In the event a temporary stop notice is served it can last up to 28 days.
Breach of condition notice (BCN)	A breach of condition notice requires that previously imposed conditions are complied with and is an alternative to serving an enforcement notice. However, there is no right of appeal to a breach of condition notice. If a breach of condition notice is not complied with then prosecution can be sought via the Magistrates' Court.
Section 215 notice	A section 215 notice is served on a land/property owner if the land/buildings are deemed to be untidy and affect the amenity of an area. Where a notice is not complied with then a decision is made to determine whether;

	<ul style="list-style-type: none">• Action is necessary• Seek to prosecute• Carry out works in default <p>Where the council carries out the work in default it can seek to recoup the monies which could include registering a charge against the property.</p>
Advertisements	The erection of unauthorised advertisement is a criminal offence and in some cases the council may seek a prosecution. In other cases a land/property owner may be advised to seek retrospective approval.
Injunction	A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control. Proceedings for an injunction are the most serious enforcement action that a local planning authority can take and failure to comply with an injunction could result in a prison sentence for contempt of court.