





# Contents

## Allerdale Planning Enforcement Plan

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# 1

## Introduction

### Introduction

Allerdale Borough Council recognises that effective enforcement is important as a means of maintaining public confidence in the planning system. As highlighted in the National Planning Policy Framework, or NPPF, enforcement action is however discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.

The NPPF recommends that local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.

This plan sets out how the Council will monitor the implementation of planning permissions, investigates alleged cases of unauthorised development and take action where it is appropriate to do so.

### What is a breach of planning control?

A breach of planning control is defined by the Town and Country Planning Act 1990 as:

- The carrying out of development without the required planning permission; or
- Failing to comply with any condition subject to planning permission has been granted.

The Council also has a range of related enforcement powers relating to listed buildings, advertisements, protected trees and the condition of land and buildings.

# 2

## When will we take enforcement action?

The Council has the discretion to take enforcement action when it is considered it would be expedient to do so having regard to the Local Plan and any other material considerations.

It is important that the Council addresses breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area.

Addressing breaches of planning control without formal action may however often be the best way of dealing with the issue. For example, a breach of planning control could be the result of a genuine mistake and when the breach is identified the owner of the property takes action to remedy the breach. It is not an offence to carry out works without planning permission.

Whilst the Council does not condone any wilful breach of planning control any action we take must be proportionate to the breach of planning control having regard to the impact of the breach and the harm that arises from this.

The Council will not normally take enforcement action where:

- There is a trivial or technical breach which causes no material harm or adverse impact on the amenity of the site or the surrounding area.
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development or 'punish'

the developer.

- Where the submission of a planning application would be an appropriate way forward to regularise the situation for example where conditions can be imposed to mitigate any impacts arising from the development.

In considering whether to take enforcement action the Council must consider the provisions of the Human Rights Act 1999. There is a clear public interest in enforcing in a proportionate way. In deciding whether to take action we will consider the potential impact on the health, housing needs and welfare of the proposed action and those who are affected by a breach of planning control.

There are certain time limits after which it will not be possible for the Council to take enforcement action.

- Operational development becomes immune from enforcement action four years from the date it is substantially complete.
- Changes of use of land or buildings become immune from enforcement action ten years from the date the unauthorised use commenced with the exception of a change of use of to a dwelling which becomes immune after four years.

Breach of conditions become immune from enforcement action ten years from when the breach continuously commenced

# 3

## If enforcement action is appropriate, what options are available to us?

### Inviting a retrospective application

The submission of a retrospective application will be invited to regularise situation where the development accords with planning policy and there is a realistic prospect that planning permission would be granted.

An invitation to submit a retrospective application does not mean that it will be granted. The application will be considered by the Council in the normal way.

### Obtaining further information

Effective enforcement action relies on the Council having accurate information about an alleged breach of planning control.

In some cases it may be necessary to serve a planning contravention notice which requires the submission of information relating to the uses or activities that may be contributing to a breach of planning control.

It is an offence to fail to respond to the notice or provide false or misleading information.

### Enforcement Notice

An enforcement notice can be served in relation to unauthorised development or use of land or buildings. An enforcement notice must be served on anyone with an interest in the land and clearly state what the breach of planning control is, what steps are required to

remedy the breach and what the period is to comply with the notice. The Council must provide a reasonable period for compliance which must be not less than 28 days.

The notice does not have to seek to remedy the whole of the breach of planning control if there are aspects of the unauthorised work that are considered to be acceptable.

Anyone who receives an enforcement notice has a right of appeal to the Planning Inspectorate. An appeal must be made before the enforcement notice comes into effect which is normally 28 days after it is served.

It is an offence not to comply with the requirements of an enforcement notice once the period for compliance has elapsed and there is no outstanding appeal.

### Enforcement action against deliberately concealed breaches of planning control

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. In such circumstances planning enforcement legislation enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

# 3

## If enforcement action is appropriate, what options are available to us?

It is necessary for the Council to apply to the Magistrate's Court for a planning contravention order within 6 months of sufficient evidence of the breach of planning control coming to the attention of the local planning authority.

### Stop Notice

Where we consider that a breach of planning control is causing serious harm and that the relevant activity should cease before the expiry period for compliance of an enforcement notice, we can serve a stop notice which prohibits the carrying out of that activity on the land to which the enforcement notice relates. A minimum of three days has to be given for the notice to take effect, however the notice can take effect immediately if we can demonstrate there are special reasons for doing so.

A stop notice should prohibit only what is essential to safeguard amenity or public safety in the neighbourhoods or to prevent serious or irreversible harm to the environment in the surrounding area.

Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances.

### Temporary Stop Notice

A temporary stop notice can be used in certain

circumstances where it is necessary to act quickly and where it is expedient to do so. A temporary stop notice can only require an activity to cease or to reduce or minimise the level of activity associated with the breach of planning control.

A temporary stop notice should prohibit only what is essential to safeguard amenity or public safety in the neighbourhoods or to prevent serious or irreversible harm to the environment in the surrounding area.

A temporary stop notice expires 28 days after it is issued and it is not possible to issue a further temporary notice in relation to the same activity.

### Breach of Condition Notice

A breach of condition notice can be served in circumstances where there is a breach of a condition attached to a planning permission or a breach of condition relating to permitted development as stated in the general permitted development orders.

A minimum of 28 days must be given for the compliance period and there is no right of appeal. Failure to comply with a breach of condition notice is a criminal offence for which the persons responsible can be prosecuted.

# 3

## If enforcement action is appropriate, what options are available to us?

### Unauthorised advertisements

The Council has a range of powers to control unauthorised advertisements. This includes fly-posting.

The Council can service notice requiring an unauthorised advertisement to be removed. If this notice is not complied with the Council has powers to remove or obliterate the unauthorised advertisement.

### Injunction

The Council can in certain circumstances apply to the Courts for an injunction to restrain a breach of planning control.

The Council will only consider applying for an injunction as a last resort and only where there have been persistent breaches of planning control over a long period and/or other enforcement options have been, or would be ineffective.

The Council will have to justify to the Court the reasons for seeking an injunction rather than using other enforcement powers.

### Rights of entry

Authorised council officers have the right to enter land for purposes that are essential for the effective enforcement of planning control. The circumstances in which a council officer can enter land are defined in law as:

- to ascertain whether there is or has been any breach of planning control on the land or any other land;
- to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- to determine how any such power should be exercised; and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry.

The Council must give 24 hours advanced notice of the intention to exercise a right of entry to a building used as a dwelling house.



# 3

## If enforcement action is appropriate, what options are available to us?

### Listed building enforcement

The enforcement provisions relating to listed building are broadly similar to the planning enforcement provisions however there are some key differences:

- there are no time limits for issuing listed building enforcement notices although the length of time that has elapsed since the apparent breach may be a relevant consideration when considering whether it is expedient to issue an enforcement notice.
- carrying out work without the necessary listed building consent is an offence where the works materially affect the historic or architectural significant of the building.



### Enforcement and protected trees

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands of particular amenity value to local communities. In general, it makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree protected by that Order without the authority's written permission.

### Untidy Sites

Where the appearance of land or buildings is considered to adversely affect the amenity of the area, we can serve a notice on the land owner requiring the land or buildings to be cleaned up. This notice is referred to as an "untidy site notice". The notice would specify steps for improving the site and if these steps are not carried out within the specified time period, the recipient of the notice can be prosecuted.

As part of our pro-active approach to enforcement matters, we routinely monitor the appearance of land and buildings within our Town Centres and consider the use of untidy site powers an important tool in achieving our vision of *thriving town centres that are attractive and welcoming*.

# 4 Complaints

## Reporting a breach of planning control

Should you wish to report a potential breach of planning control you can do so by contacting us in one of the following ways:

- In writing to: Planning Services, Allerdale Borough Council, Allerdale House, Workington, Cumbria, CA14 3YJ
- By email to: [planning@allerdale.gov.uk](mailto:planning@allerdale.gov.uk)
- On our website [www.allerdale.gov.uk](http://www.allerdale.gov.uk) by completing our planning complaint form
- By telephone: please contact the Planning Compliance Officer on 01900 702743

When contacting us to register your concern, it would be helpful if you could provide us with as much information as possible regarding the alleged breach. For example; site location, nature of the breach, details of the land owner or occupier, date the breach commenced and details of any particular problems (noise, overlooking etc.)

It is also helpful to us if you provide your name and contact details. This enables us to contact you for further information or to clarify any information provided. It will also ensure that we are able to keep you informed regarding your complaint and advised of the outcome. We appreciate that some people prefer to remain anonymous and although we

do investigate anonymous complaints, they do sometimes lack information which then hinders the enforcement process.

It is our policy to protect the identity of the complainant and all complaint files are kept confidential and are not available for public inspection. On occasion, if formal enforcement action is pursued following investigation of your complaint, it may be that we will need to rely on you to be a witness. At this stage your identity is likely to be revealed however we would always ensure we have your consent to do so first.

## What can you expect following a complaint?

Once we have received your complaint you can expect:

- to receive an acknowledgement within three working days from the receipt of your complaint;
- to receive updates as your complaint progresses advising you as to what steps we are taking to remedy any breach of planning control;
- to be notified on any planning application submitted retrospectively and given the opportunity to comment on the application; and
- to be notified of the outcome of your complaint following the investigation.

# 4 Complaints

## Prioritising Complaints

As a Council we receive a significant number of complaints relating to alleged breaches of planning control and we aim to investigate all complaints received. On occasions we may have to prioritise our investigations to ensure our resources are targeted on those breaches of planning control that are causing the most harm. Our priorities will be:

### High Priority

- Unauthorised works to a listed building
- Unauthorised works to tree protected by a Tree Preservation Order or to trees within a Conservation Area
- Works which pose a serious threat to health or safety (e.g. traffic hazard or pollution)
- Unauthorised development where the time limit for taking action will expire within 6 months of it being brought to our attention
- Development which is unlikely to be supported by the Council

### Medium Priority

- Untidy sites
- Development which is likely to be supported by the Council with limited modification (e.g. conditioning hours of operation, removing a window etc.)
- Unauthorised advertisements

### Low Priority

- Minor breaches (e.g. minor departures from approved plans etc.)



# 5

## Proactive approach to compliance

It is important that developments are carried out in accordance with the approved plans and that any conditions imposed upon planning permissions are adhered to.

Current legislation does not require a developer to notify us when a development has commenced, however we do send out commencement notices with planning approvals requesting that developers advise us when work starts. This enables us to ensure any conditions imposed on the permission have been discharged.



We also carry out spot checks to sites where development has commenced to ensure works accord with the approved plans and that any relevant conditions are adhered to.

In addition to this, we work closely with our Building Control section and cross check all building regulation applications received to ensure that they adhere to the approved planning permissions. In cases where development proposals are altered, we contact the developer and advise them of how to regularise such changes.

# 6

## Dealing with unauthorised development

If as a result of a complaint or our proactive approach to planning compliance we believe you may have carried out work without the planning permission we will contact you to discuss the alleged breach of planning control.

When we contact you the officer will identify themselves, the nature of the investigation and if we need to enter the site explain the powers available to us in relation to right of entry.

The Council will always take a positive and proactive approach to addressing the alleged breach and would prefer to work with you to find a satisfactory remedy to the complaint.

Whilst we would always prefer to resolve the issue without recourse to formal action the Council will not hesitate to exercise any of the powers available to use to ensure the impact of unacceptable development on individuals or the wider community is kept to a minimum.

### Public Register

The Council must maintain a register of enforcement and stop notices. Details of the following actions will be recorded on the register:

- enforcement notices;
- stop notices;
- breach of condition notices; and
- planning enforcement orders.

The enforcement register can be searched via our website [www.allerdale.gov.uk](http://www.allerdale.gov.uk)

Allerdale  
borough council



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