

Subject: Planning Enforcement Protocol

Ward: All Wards

Parish: All parishes

Recommendation: To recommend to Council that Council agree to adopting and publishing the Cannock Chase Council Planning Enforcement Protocol.

Background:

Following an investigation undertaken by the Local Government Ombudsman in respect to how the Council dealt with a complaint regarding development at 26 Watermint Close, the Ombudsman instructed, amongst other things, that the Council should produce a local enforcement plan in accordance with government guidance within six months of the ombudsman final decision.

The development control service has produced a draft Planning Enforcement Protocol (attached at appendix 1) which sets out the Council's policy for the enforcement of planning control within the district, including: -

- (i) The range of enforcement powers that the Council can have recourse to.
- (ii) The principles that guide the implementation of enforcement investigations
- (iii) Key objectives
- (iv) Enforcement priorities
- (v) Enforcement Site Inspection Time scales

It is considered that the Protocol will give greater clarity to all interested parties of the approach that will be taken to Planning enforcement.

APPENDIX 1



CANNOCK CHASE COUNCIL

PLANNING ENFORCEMENT PROTOCOL

DRAFT

1. **Introduction**

The planning system operates to regulate development and the 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 the residents, visitors and businesses from the harmful effects of unauthorised development.

This protocol sets out Cannock Chase District Council's policy for the enforcement of planning control within the district.

2. **Breaches of Planning Control**

The Council has a duty to investigate alleged breaches of planning control. A breach of planning control broadly means the carrying out of development without the grant of planning permission from the Council, or deemed permission by government order. A breach will also include the carrying out of development without compliance with the approved plans or any conditions attached to a planning permission.

The Council has powers to remedy proven breaches by statutory and other means. It is our policy to exercise these powers appropriately and proportionately so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission. The purpose of this policy is to ensure that councillors and officers, external agencies and the general public are aware of the Council's approach to its enforcement responsibilities.

Unauthorised works to listed buildings, trees covered by Tree Preservation Orders, trees within a Conservation Area and advertisements also come within the scope of planning control but unlike the breaches identified above constitute a criminal offence.

The Council also investigates offences under the Hedgerows Regulations 1997 and High Hedge complaints under Part 8 of the Anti-social Behaviour Act 2003.

3. **Legislative Framework and Government Guidance**

Local Planning Authorities have powers within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control and have powers to remedy proven breaches by statutory and other means.

The following sets out the legislative framework applicable to breaches of planning control:

The Council's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations:

The Town and Country Planning Act 1990 (as amended)

The Planning (Listed Building and Conservation Areas) Act 1990

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Town and Country Planning (Tree Preservation) Regulations (England) 2012 (as amended)

The Town and Country Planning (General Permitted Development) Order 2015 (as amended)

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Advice from Central Government on planning enforcement is set out in the following documents:

The National Planning Policy Framework (March 2012) replaced Planning Policy Guidance Note 18 “Enforcing Planning Control” (PPG18, December 1991). Within the National Planning Policy Framework, a single paragraph (207) relates to enforcement, which states:

“Enforcement

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”.

The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the Council to act in a way that is incompatible with a Convention right.

4. **Key Objectives of Planning Enforcement**

The main objectives of planning enforcement are:-

- To remedy undesirable effects of unauthorised development
- To bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined.

5. **Approach to Enforcement**

The integrity of the development management process depends on the readiness to take enforcement action when it is considered expedient to do so. Parliament has given Councils the primary responsibility for taking whatever enforcement action is

necessary within the area for which it is the Local Planning Authority. (A private citizen cannot initiate planning enforcement action). The enforcement of matters relating to waste management and mineral workings within this district are the responsibility of Staffordshire County Council.

Whilst nothing in this protocol should be taken as condoning a wilful breach of planning law, the Council's enforcement powers are discretionary and will only be exercised when it is considered expedient to do so. 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 merit protection in the public interest;
- ensuring any enforcement action is commensurate 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 which are considered to cause no harm to amenity. For example, work that is slightly larger than Permitted Development Rights allow for;
- ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop;
- statutory time limits for taking enforcement action;
- relevant planning policies and other material considerations.

The Council will also have regard to which power (or mix of powers) is best suited to dealing with any particular breach of control to achieve a satisfactory, lasting and cost effective remedy.

The identity of persons reporting suspected breaches of planning control will be treated as confidential. However, where the success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach of planning control, the Council will discuss with the person whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal enforcement action or a prosecution.

6. **Resources**

The Council views breaches of planning control very seriously and therefore has a dedicated officer based within the Planning & Economic Development Team. The officer is responsible for: -

- Investigating reports of alleged breaches of planning control.

- Determining whether breaches of planning control have occurred.
- Initiating and progressing authorised enforcement action.
- Providing advice to users of the planning enforcement service.

The Enforcement Officer receives support from planning officers and solicitors of the Council when required. In some cases other specialist officers may also provide support.

7. **Investigation of Suspected Breaches of Planning Control**

Breaches of planning control can be reported to the Council either by visiting the Civic Centre, by letter, email or telephone.

The Council will acknowledge receipt of a reported breach of planning control normally within 3 working days. The acknowledgement will either be by letter, email or telephone and will provide the name and contact details of the investigating officer. If on the initial receipt of a complaint it is obvious that it is not a planning matter or there is deemed to be no breach of planning control the complainant will be advised. If the reported breach relates to a function or activity enforced by another Council service (e.g. fly-tipping or statutory nuisance) the complaint will be forwarded to the relevant department.

We will update the complainant as our investigation is progressing. This may be to explain that a planning application is going to be made, that we are monitoring the situation or that we are considering taking formal action.

To avoid the unnecessary use of resources in responding to hoax or malicious allegations, anonymous reports of suspected breaches of planning control will only be pursued where an initial site visit reveals a clear breach of planning control. All other anonymous reports will not be pursued beyond an initial site visit.

When a complaint is made, it is treated in confidence and the details of the complainant are not shared. If, however, the breach is serious enough that we decide to prosecute, we would need to name the complainant at that point. We would contact the complainant where this is necessary.

Enforcement Priorities

The following sets out the Council's priorities for investigating alleged breaches of planning control or reported criminal offences.

To make the most effective use of available resources, the Council will investigate alleged breaches of planning control in accordance with the priorities listed in table 1 below. The priorities take into account the significance and impact of the breach, the level of harm caused and also the need to react expediently. For example traveller incursions or unauthorised works to listed buildings often require immediate investigation in order to prevent loss of historic features which may be irreplaceable.

Other complaints are minor in nature such as certain breaches of conditions which may not be causing any direct harm and therefore do not require immediate investigation.

As an investigation of a particular case proceeds, for example after a site visit, it may become necessary to change the priority level.

Table 1 - Enforcement Priorities

| Priority | Type of Breach |
|---------------------|--|
| Priority 1 – High | <ul style="list-style-type: none"> - Works to listed buildings (demolition/alteration/disrepair); - Demolition or significant development in a conservation area; - Works to trees covered by a Tree Preservation Order or in a Conservation Area; - Development causing serious and immediate/irreparable harm, particularly to protected ecology or causing serious danger to the public; - Traveller incursions. |
| Priority 2 – Medium | <ul style="list-style-type: none"> - Operational development already in progress; - Development where potentially immune from enforcement within 6 months; - Development causing serious harm to amenity; - Breaches of condition/non compliance with approved plans causing serious harm to amenity. |
| Priority | Type of Breach |
| Priority 3 - Lower | <ul style="list-style-type: none"> - Other operational development which is complete; - Changes of use resulting in some harm to amenity; - Advertisements (other than fly-posting); - Breaches of condition/non compliance with approved plans causing non-serious harm to amenity. |
| Priority 4 – Low | <ul style="list-style-type: none"> - Changes of use resulting in no harm to amenity; - Untidy land (other than where comes under Environment & Health legislation); - Anonymous complaints. |

Upon receipt of a reported breach of planning control or reported criminal offence as set out in section 2, the Council will endeavour to conduct an initial site inspection in accordance with the priorities listed in table 1 and within the timescales detailed in table 2 below.

Table 2 – Enforcement Site Inspection Timescales

| PRIORITY | SITE INSPECTION TIMESCALE |
|-----------------|----------------------------------|
| Priority 1 | Within 1-2 working days |
| Priority 2 | Within 5 working days |
| Priority 3 | Within 10 working days |

| | |
|------------|------------------------|
| Priority 4 | Within 15 working days |
|------------|------------------------|

We can make visits out of normal working hours where it is appropriate to do so.

Planning Enforcement Officers are not empowered to physically stop unauthorised works on site but can issue enforcement proceedings which can lead to prosecution. Considerable back office support is required to administer enforcement proceedings and accordingly investigations are contained to normal office hours.

8. **Enforcement Options**

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

Option 1 – No further action

The Council may, following initial investigation decide that there has been no breach of planning control or that the breach is minor or insignificant in nature, or that there is insufficient evidence to pursue the matter.

Option 2 – Further investigation required

It may be necessary to carry out further investigations from the initial site inspection to determine whether a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or further information from the complainant, site owner or other parties.

In certain 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. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.

Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice or Requisition for Information to obtain information relating to the suspected breach or site ownership details.

Option 3 – Negotiate a solution

Where it has been established that a breach of planning control has occurred, the Council will normally attempt 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 of 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,

the Council will consider whether or not it is expedient to take formal enforcement action.

Option 4 – Retrospective application for planning permission

Where a breach of planning control has occurred, but no harm is being caused, or any harm 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 timescale. 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.

Option 5 – Formal enforcement action

Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers listed in table 3 below is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control and each case is assessed on its own merits.

The decision to take enforcement action or commence a prosecution will be taken in accordance with the delegation arrangements detailed in the Council's Constitution.

There are rights of appeal to the Secretary of State against an Enforcement Notice/Listed Building/Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices there is no right of appeal to the Secretary of State and these may only be challenged by application for judicial review to the High Court. In the case of Section 215 Notices, prosecutions and injunctions, appeals must be made through the Courts.

Table 3 – Formal enforcement proceedings

| Type of Enforcement Action | When will it be used? | What does it do? |
|-----------------------------------|--|--|
| Enforcement Notice | <p>The Council will consider the service of an Enforcement Notice where unauthorised operational development or change of use has taken place and it is considered expedient to do so.</p> <p>Where a breach of planning control exists and any harm caused would be removed or alleviated by the impositions of conditions on a planning permission, but the invitation</p> | <p>The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.</p> |

| | | |
|--|---|--|
| | <p>to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the expediency of serving an Enforcement Notice.</p> <p>If the breach of planning control relates to a Listed Building, of unauthorised demolition within a Conservation Area, the Council will consider the expediency of serving a Listed Building Enforcement Notice or a Conservation Area Enforcement Notice and where appropriate, commencing a prosecution in the Courts.</p> | |
|--|---|--|

| Type of Enforcement Action | When will it be used? | What does it do? |
|--|---|---|
| <p>Stop Notice</p> | <p>Where a breach of planning control is causing very serious harm to public amenity and the environment and this harm could not be removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a Stop Notice (after the service of an Enforcement Notice) in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice.</p> | <p>The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease and the date that it takes effect.</p> |
| <p>Breach of Condition Notice</p> | <p>Where the breach of planning control relates to non compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, the Council will consider the expediency of serving a Breach of Condition Notice.</p> | <p>The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.</p> |
| <p>Section 215 Notice (Untidy Land Notice)</p> | <p>In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider the expediency of serving a Notice under s.215 of the Town and Country Planning Act 1990.</p> | <p>The Notice will specify the steps required to be taken 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.</p> |

| Type of Enforcement Action | When will it be used? | What does it do? |
|-----------------------------------|---|---|
| Prosecution | <p>The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.</p> <ul style="list-style-type: none"> (i) Enforcement Notice (ii) Listed Building Enforcement Notice (iii) Conservation Area Enforcement Notice (iv) Breach of Condition Notice (v) Section 215 Notice (vi) Stop Notice <p>The Council will also consider commencing a prosecution in the Courts where:</p> <ul style="list-style-type: none"> (a) unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area; (b) an advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored; (c) unauthorised works have been carried out to a Listed Building; (d) unauthorised demolition has taken place in a Conservation Area; (e) the recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information. | <p>Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.</p> |

| Type of Enforcement Action | When will it be used? | What does it do? |
|-----------------------------------|--|--|
| Injunction | Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Courts for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause, exceptional harm. | An injunction can stop unauthorised works from being carried out. |
| Direct Action | Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under s.178 of the Town and Country Planning Act 1990 (as amended). | The Council can (a) enter the land and take the steps; and (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. |

9. **Unauthorised Encampment**

The travelling community can experience difficulties finding an approved place to stay. This means that sometimes they stop on land without permission, including highway verges and laybys. This Council's approach is based on preventing unlawful occupation of land.

Encampments on Council land will result in legal proceedings to evict the travellers. In the case of highway land, such as verges and laybys, the matter will be taken up with Staffordshire County Council, which is the local highway authority.

Trespassing on land is a civil matter, with prevention of trespass being the responsibility of the landowner. Landowners will need to seek appropriate legal advice in these circumstances.

10. **Proactive Enforcement**

Paragraph 207 of the National Planning Policy Framework states "... Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

The Council will undertake a programme of monitoring a sample of development to ensure that:-

- (a) any necessary planning permission has been obtained.
- (b) development has been carried out in accordance with plans approved on planning permissions.
- (c) conditions attached to planning permissions have been complied with.

Investigation Officers will use information from the Council's Building Control Service to help organise the programme.

A percentage of permissions will be selected for monitoring. The Council will not select monitoring cases based on the developers involved.

11. **Violence towards Officers**

The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and will use legal action to prevent abuse, harassment or assaults on officers.

12. **Complaints about the Service**

The Council has a central complaints system. This procedure should be used by any person dissatisfied with any aspect of their dealings with the Council regarding any deviations from the provisions of this Enforcement Protocol.

Persons wishing to make a complaint should do so in writing to:-

Head of Economic Prosperity,
Cannock Chase Council,
Civic Centre, P.O. Box 28,
Beecroft Road,
Cannock,
WS11 1BG

Further details of how to make a complaint can be found at

<https://www.cannockchasedc.gov.uk/council/about-council/customer-feedback-help-us-get-it-right>.

If a person is not satisfied with the Council's response to a written complaint he or she can complain to the Local Government Ombudsman. Details of how to complain to the Local Government Ombudsman can be found on its website www.lgo.org.uk

13. **Equality Impact Statement**

It is acknowledged that age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation are protected characteristics under the Equality Act 2010.

By virtue of Section 149 of that Act in exercising its planning functions the Council must have due regard to the need to:

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

It is therefore acknowledged that the Council needs to have due regard to the effect of its decision on persons with protected characteristics mentioned.

Such consideration should be balanced along with other material planning considerations.

Should you have any queries regarding the information contained in this Protocol please contact 01543 462621 or email at www.cannockchasedc.gov.uk