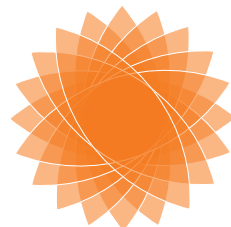




A Guide to Planning Enforcement



districtnk
100 flourishing communities
North Kesteven District Council

This document is available in large print, Braille, audio tape, electronic formats such as CD, or in a different language. For a copy please contact Environment and Public Protection at the Council using the following options:

Phone: 01529 414155 (main switchboard) or 01522 699699 (if calling from a Lincoln number)

Minicom: 01529 308088

Fax: 01529 413956

Web: www.n-kesteven.gov.uk

Email: enforcement@n-kesteven.gov.uk

Environment and Public Protection
North Kesteven District Council
Kesteven Street
Sleaford
Lincolnshire
NG34 7EF

Contents

| | |
|---|----|
| Introduction | 4 |
| Is planning permission required? | 5 |
| What is Planning Enforcement? | 5 |
| What is the purpose of Planning Enforcement? | 6 |
| What is harm? | 7 |
| Who can complain? | 7 |
| In what circumstances can a complaint be made? | 8 |
| How do I make a complaint? | 8 |
| What happens after I have made a formal complaint? | 9 |
| What happens next and what action can the Council take? | 11 |
| What can you expect | 12 |
| How long will it take? | 13 |
| What if someone complains about you? | 14 |
| What can developers or property owners expect from us? | 15 |
| What do we ask of developers and property owner? | 15 |
| What to do if something goes wrong | 16 |
| Where to get more information | 16 |
| How to contact Planning Enforcement | 16 |

Introduction

This leaflet aims to help you get the best out of the Planning Enforcement Service. It sets out the service area and explains how North Kesteven District Council carries out its enforcement activities.

The Council exists to serve you. In order to give the best possible service, it is vital that we give clear guidance on what we can do and how we balance demands on our services against the resources available to us.

The Council receives approximately 300 planning enforcement complaints every year. Because of the often lengthy and complex nature of planning investigations and limited staff resources, it is necessary to give priority to those cases where the greatest harm is being caused.

From the information we give in this document, we hope that you will be able to measure our performance and decide if we have met our own demanding standards. Should you be unhappy with our performance, we hope that Council Officers can rectify any problems or explain why we cannot meet your expectations.

Is planning permission required?

Planning enforcement can only be considered where building work or a change of use needs planning permission. An initial investigation by the enforcement officer will seek to determine this.

Certain types of building works or changes or use are defined as 'permitted development' meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) Order 2008. Help in understanding 'permitted development' can be found in booklets published by the Department of Transport, Local Government and the Regions (DTLR).

What is Planning Enforcement?

Nevertheless, most building/engineering work and changes in the use of land or buildings need planning permission from the Council. Sometimes development is carried out without planning permission or does not properly follow the detailed plans which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.

Other situations that can be considered for planning enforcement includes:

- > Unauthorised display of advertisements;
- > Unauthorised work to buildings listed as being of special architectural or historic interest;
- > Unauthorised demolition of certain buildings within a Conservation Area;
- > Untidy land and buildings

The term used to describe such cases is 'breach of Planning control'.

What is the purpose of Planning Enforcement Action?

Planning laws are designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.

Carrying out work of changing the use of land or buildings without planning permission is not a criminal offence. In most cases the Council will give an opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will quickly take firm action.

The Council must operate its enforcement activities within government guidelines and in accordance with Council policy. This means that:

- > The Council must decide whether the breach of control unacceptably affects the quality of life;
- > Action should not be taken just because development has started without planning permission;
- > The Council does not always have to take action, however the particular circumstances of the case must always be considered;
- > It is not proportionate to take formal action against a minor breach of control that causes no real harm;
- > But enforcement action will be taken quickly when it is necessary.

What is harm?

Harm resulting from a breach of planning control could concern amenity or highway safety issues, and could include noise nuisance, loss of daylight or privacy, or danger from increased traffic. Harm to the visual amenity of an area could occur, for example, through unauthorised work to a Listed Building, demolition within a Conservation Area or unauthorised works to a protected tree.

Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.

This harm would not, normally include:

- > Loss of value to a neighbouring property;
- > Competition to another business;
- > Loss of an individual's view or trespass onto someone else's land.

It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and would not involve the Council.

Who can complain?

Anyone who believes that a breach of planning control has occurred can make a complaint. Please be prepared to identify yourself so your complaint may be investigated. It is often not possible to investigate anonymous complaints due to lack of witnesses or evidence.

Please note: All complainant details are dealt with in confidence. In some cases, it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by providing information and acting as a witness at an appeal or in Court. The Council's Enforcement Officer will explain what may be required so that we can keep you informed of what action will be taken.

In what circumstances can a complaint be made?

Any resident in NK can make a complaint to the Enforcement Team if they have concerns that:-

- a) A development/ an activity has been carried out without planning permission/ consent, or
- b) Conditions attached to a planning permission or consent have not been complied with.

It must be noted that it is often not illegal for a person to carry out development or an unauthorised change of use, without first obtaining planning permission. Often no offence is being committed at this stage.

How do I make a complaint?

You may write to the Enforcement Section or speak to an officer over the telephone. If you prefer, you can call at the office to speak to someone in person about the matter, or send an email, fax, or submit a complaint using the Council's website at www.n-kesteven.gov.uk.

In order to process your complaint, we will require certain basic details from you.

The required information is as follows:

- > Your name
- > Your address
- > Your telephone number
- > A full description of the alleged 'breach', ie what activity/ development is taking place.
- > An accurate address of where the alleged breach is taking place.
- > The name of the person carrying out the breach (if known)
- > Any other relevant information, ie planning permission numbers.

What happens after I have made a formal complaint?

a) Recording and acknowledgement

The details of your complaint will be entered into a computer database and an officer will then be assigned to deal with it (the 'case officer'). We will also write to you within two working days of the complaint being registered to acknowledge receipt of your complaint. The letter will inform you of the case reference number and who the case officer is, along with their contact details.

All complaints are prioritised in accordance with an agreed weighting system and according to the severity of the harm being caused to the environment by the alleged breach of planning control.

b) Site visit

The case officer will visit the site between one and five working days of you making your complaint, to assess whether a breach has taken place.

c) If a breach has not taken place

If a breach has not been found, you will receive a letter informing you of our findings and that no further action will be taken.

d) If a breach has taken place

If a breach has taken place, we will write to the following people:

- > Yourself (the complainant)
- > The person carrying out the breach (the offender)
- > Any other interested parties (including Ward Members and/or Parish Councils if appropriate)
- > Any other council departments (where necessary)

e) Steps to remedy the breach

The offender will be told what must be done to remedy the situation. This will usually be one of the following:

- > To cease the unauthorised use of the land.
- > Remove the unauthorised development.
- > To submit a retrospective planning application for our consideration.

The submission of a planning application will be recommended if the granting of planning permission/consent would be likely to remedy the breach.

The offender will be given a specified amount of time to remedy the breach.

If the breach has not ceased after the expiry of a reasonable given period, the Council may proceed to serve a formal legal notice requiring the breach to be remedied. You will be kept informed of what will happen next.

If the breach consists of either of the following, then an Enforcement Notice may only be served within four years of the date of the original breach:

- > Building operations.
- > Change of use of a building to a single dwelling.

A notice may only be served within ten years of a breach for any other type of activity/development or for non-compliance with a condition imposed on a planning permission.

It is therefore important that we are informed at the time development is occurring and not months after the event.

What happens next and what action can the Council take?

The Council will first determine whether it is appropriate to take enforcement action by establishing whether a breach of control has occurred. In cases where the situation is unclear or the Council needs to ascertain who has an interest in the land, a 'Planning Contravention Notice' will be served on the owner and/or occupier of the property to obtain the facts.

Where a breach of control has taken place the Council will then make an assessment of the harm caused by the breach.

Where an assessment is made that it is likely planning permission would be granted, the person responsible would be invited to make an application for retrospective planning permission within 28 days. This would be the most appropriate form of action.

Should no retrospective application be received, the Council will commence enforcement action where the breach of control is causing sufficient harm to justify it.

If it is considered by the Council that no harm is being caused by the unauthorised development/change of use, and in principle, is acceptable based upon its planning merits, then we may decide that it is not expedient to pursue further action. In these circumstances the Councils Land Charges Section will record on the searches register that there is unauthorised development/change of use at the site which could affect the sale of the property in the future. As such, it is in the owner's best interest to resolve the matter.

In cases where the Council serve an Enforcement Notice on the owner and/or occupier of the land, the notice explains the nature of the breach of Planning control and sets out what steps are necessary to put things right, and a date by which this must be done. If the notice is not complied with, the Council may bring a prosecution in the Magistrates Court.

In most cases, people who receive an Enforcement Notice can appeal to the Planning Inspectorate of the Secretary of State for the Environment. An appeal has to set out why it is felt that the action should not be taken. The appeal can be dealt with by an exchange of letters, an information hearing in front of an Inspector or at a Public inquiry.

The Council can also carry out other enforcement action, including:

- > Service of a 'Breach of Condition Notice' where development has taken place without compliance with a condition(s) of the planning permission;
- > Service of a notice requiring the proper maintenance of land under Section 215 of the Town and Country Planning Act 1990;
- > Prosecution in connection with unauthorised advertisement display;
- > Service of a 'Listed Building Enforcement Notice' where unauthorised work has taken place to a building listed as having special architectural or historic interest;
- > Service of a 'Conservation Area Notice' where unauthorised demolition has taken place within a designated Conservation Area.

What you can expect

Written complaints will normally be acknowledged within 2 working days of receipt and each case will be individually assessed on its merits.

You will be informed of the name of the Enforcement Officer who will be dealing with your complaint. The officer will then check the Council's records, inspect the site and interview witnesses in order to establish whether a breach of planning control has occurred.

If a breach has occurred, the person responsible may be asked to put it right, either by the making of a planning application or by stopping the unauthorised work.

If this approach fails, the Council can then consider serving an Enforcement Notice. The Council may prosecute offenders who do not comply with an Enforcement Notice.

Where the Council decides not to take formal enforcement action or no breach of planning control has taken place, the complainant will be notified in writing of the reason for the Council's decision. Updates on the progress of enforcement proceedings will be given to those who ask for the information.

How long will it take?

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity, as does the time taken for their resolution. If a person decides to appeal against formal enforcement action this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.

If the investigation indicates that a breach of Planning control has occurred and that enforcement action is justifiable, an Enforcement Notice will be served. The Notice will take 28 days to come into effect, during which time the person involved can appeal against it to the Secretary of State for the Environment. An Enforcement Notice may be quashed or revised by a planning inspector appointed by the Secretary of State.

Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.

An Enforcement Notice specifies the time period required for compliance. This period will take account of the steps required to comply with the Notice and will set a reasonable time period for their completion.

If someone does not comply with a notice they may be prosecuted with the possibility of being fined by the Courts.

The Enforcement Officer will advise you of any significant progress made as and when this occurs.

What if Someone Complains About You?

If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is and to have the opportunity to explain your side of the case. The Council does not reveal the identities of complainants.

If you are not involved or if the complaint is unfounded, no action will be taken against you. If you are involved, the Planning Enforcement Department will advise you of the nature of the breach and how it can be put right.

Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.

If you are running a business which is threatened by enforcement action, you will be helped to identify alternative premises so as to minimise the possible impact of the business. This does not mean that the enforcement action will be delayed or stopped.

If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance. You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can

determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

What can developers or property owners expect from us?

- > If we receive a complaint about your development or property we will visit the site and contact you to discuss our findings and to seek your views on the complaint received. Our findings will be confirmed to you in writing and we will make clear what, if anything, we expect of you.
- > Where necessary and feasible we will try and negotiate a satisfactory solution.
- > In case of unauthorised development that may be approved we will invite you to submit a retrospective application for formal consideration.
- > As a last resort, if a negotiated solution cannot be achieved, we may take formal enforcement action which can result in prosecution.

What do we ask of developers and property owners?

- > We ask you to work with us to resolve the problem.
- > We ask that you co-operate with us in allowing us to visit the site of the complaint to discuss the matter with you. We cannot help you resolve a breach of planning control without your co-operation.
- > If the complaints are valid, to work with us to try and achieve an acceptable solution.
- > To supply any information we request either by letter or by formal notice within the specified timescale.
- > Not to depart from approved plans or planning conditions without first obtaining formal approval.
- > Not to commence or continue with development in advance of planning approval as this will add considerable risk to the development costs.

What to do if something goes wrong

If you feel that there is an error in the way in which an enforcement investigation is being carried out, you should contact the Planning Enforcement Manager based in Environment and Public Protection. They will investigate the matter and advise you within 10 working days about what action will be taken. If more time is required to investigate you will be advised of this.

If you are still dissatisfied with the service, then you can make a formal complaint, in writing, to the Head of Environment and Public Protection. Please remember that the complaints procedure does not apply to matters that are directly related to a Council or Committee decision or where there is a legal remedy or appeals process. You can, of course, contact your local Councillor at any time.

If you remain dissatisfied with the outcome of any investigation, you may complain to the Local Government Ombudsman. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaints procedure, and will deal only with aspects of your complaint concerning the conduct of the investigation. The Ombudsman cannot change the Councils decisions.

We always welcome constructive criticism and any ideas on how we can improve Council services. Please contact us if you can suggest ways of improving the service.

Where to get more information

If you require further information or wish to comment and/or complain about this service, contact your Planning Enforcement Officer or, in their absence, the Planning Enforcement Manager.



01529 414155 and ask for the Enforcement Team.



Planning Enforcement Manager, Environment and Public Protection,
North Kesteven District Council, Kesteven Street, Sleaford,
Lincolnshire NG34 7EF



enforcement@n-kesteven.gov.uk