

**Planning Enforcement
Management Plan**

December 2018

1. Introduction

At Selby District Council we have a duty to protect our district and customers from harm associated with breaches of planning control. Key to this is ensuring compliance with planning obligations and conditions and taking appropriate action against unauthorised development.

- 1.1 You can currently raise potential concerns with us in the following ways:
 - Complete an online form on the relevant page (for example fly-tipping) on our website www.selby.gov.uk
 - Call us on 01757 705101
 - Email us at planningenforcement@selby.gov.uk
 - Tell us at Access Selby, Market Cross Shopping Centre, Selby, YO8 4JS
 - Write to us at: Planning Enforcement, Selby District Council, Civic Centre, Doncaster Road, Selby, YO8 9FT
 - Tell your local Community Officer
 - Tell your local Councillor – Councillor details can be found on our website.
- 1.2 An Enforcement Management Policy (EMP) details the ways in which Planning Enforcement will consider and investigate any concerns raised to protect our residents, businesses, and the environment, whilst following the principles of good enforcement. It states what you can expect from us and what approach we will be taking in terms of priorities and quality control so that we are transparent and accountable.
- 1.3 Through this policy we are looking to promote trust between the Council and our customers including those we regulate. As part of this we have a duty to manage our resource effectively and strategically. In this way we will also be clear about matters we will not or cannot act upon and our rationale.
- 1.4 Everything we do is to help us improve our service to you and to support the Corporate Plan 2015-2020 (available to view at www.selby.gov.uk)

2. Principles

- 2.1 The Town and Country Planning Act 1990 sets the regulatory framework for planning enforcement. National Planning Policy Framework (NPPF) together with National Planning Practice Guidance (NPPG) give guidance and advice on enforcement principles. The Corporate Enforcement Policy sets the overall parameters of action we will take and this plan gives specific detail to

supplement this. By the appropriate use of enforcement powers provided in legislation having regard to guidance, policy and the following principles we ensure effective service delivery:

- 2.2 Proportionate** – it is our policy to exercise our enforcement powers appropriately, proportionately and rigorously so that development takes place in accordance with relevant legislative requirements, planning conditions and obligations. NPPF requires us to negotiate resolution of breaches where possible. Such negotiations may involve the reduction, cessation or modification of an unauthorised use or activity. It is also important we are responsive to the needs of business, in line with the council's aims to. The council must only take action where it is necessary and in the public interest. However, any negotiations will not be allowed to hamper or delay decisions on enforcement action where the breach of control causes serious harm to amenity or any other identified High Priority issues.

- 2.3 Consistent** – each case is unique and will be assessed as such. Consistency comes through the application of principles, policy and professional experience and training. Cases will be judged on reliable, relevant and robust information enabling Officers to choose the most appropriate enforcement action. Success of this policy will be measured by the Enforcement Team's performance against any relevant service standard(s) and/or success measure(s) and benchmarking of performance data.

- 2.4 Transparent** – where possible it is our aim to be accessible and open with everyone involved in a case. We will outline what we can and cannot do and how we intend to work with those involved in line with legal guidance and best practice. Our officers will not allow any prejudices or personal beliefs to influence their judgement.

- 2.5 Accountable** – We aim to make it as easy as possible for those involved in enforcement cases to give us feedback. We do this by following our Comments, Compliments and Complaints Policy which can be found on our website.

- 2.6** Only those officers duly authorised to do so will undertake enforcement activities with the benefit of appropriate training and paying due regard to legal and policy requirements which will ensure that they make reliable and robust decisions and to give appropriate and accurate information.

- 2.7 Targeted** – Enforcement action is discretionary so we will focus on those higher impact cases and manage our resources effectively to enable this. National guidance provides that local planning authorities should usually avoid taking formal enforcement action where there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area or development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;

However, in certain circumstances legislation is more prescriptive and this will limit the discretion of the officer. Formal action must be justified and proportionate and we will consider risk to the authority in all matters as we have a duty to our residents to manage our finances responsibly whilst delivering decisive enforcement action.

2.8 The following sections of this management plan set out how will manage our approach to planning enforcement in a practical sense. This approach is fully underpinned by the principles highlighted above.

3. Investigating the issue(s)

3.1 Breaches will be acknowledged and we may seek further information. On allocation of the case we will provide the name of the Officer investigating the matter and details of how they can be contacted. To ensure our response is proportionate, targeted and consistent we will assess all cases against the following criteria.

- 1. An assessment of whether there is evidence of a breach of planning control;**
- 2. The seriousness of the alleged breach(es), including:**
 - a. Risk to the public, protected buildings (e.g. Listed Building), sensitive designations (e.g. Green Belt) or the natural environment (e.g. trees);**
 - b. Whether the alleged breach(es) are considered to be a local priority (as set out in our Core Strategy and Local Plan;**
- 3. If considering formal notice or prosecution, whether there is enough evidence to enable us to take such action;**
- 4. Whether any further action is in the general public interest;**
- 5. The appropriate action to mitigate the harm caused by the breach;**
- 6. Where a planning application is likely to be approved we will request one but in such cases still may take no further action if no application is submitted;**
- 7. The application of all other local and national policy, guidance and legislation including the NPPF, NPPG, Selby Core Strategy and Local Plan and Corporate Enforcement Policy.**

3.2 To ensure we are **accountable** we will:

- Provide information (subject to policy and GDPR) and commentary to individuals and organisations so as to remain transparent at all times;
- Enforce key local planning policy through proactive action;
- Keep all directly involved interested parties informed as to the progress of an investigation;
- Where formal action is necessary, make it clear as to why the Local Planning Authority intends to take such action;
- Where it is decided that it is not expedient to take enforcement action inform complainants of the reasons for this;
- Where immediate action is considered necessary we will give an explanation as to why with a timescale for implementation;
- Where the Council issues a statutory notice, all parties served with a copy of the notice will be informed of the appeal procedure and advised in writing of the consequences of non-compliance with such a notice;
- Be prepared to prosecute individuals or organisations who do not comply with a formal notice, and when appropriate or feasible take direct action*.

*As part of an identified broader strategy

3.3 For **consistency** we will ensure those breaches which will give rise to the most harm have highest priority. All action will be commensurate to the seriousness of the breach to ensure that our actions are **proportionate**. The integrity of the development management process depends on the Council's readiness to take effective enforcement action when it is justifiable. We ensure this by reserving sufficient resource to enable us to be proactive in the pursuit of our strategic objectives.

3.4 To ensure **transparency** all cases will be given a Priority rating of High, Medium or Low depending on the nature of the breach and the degree of harm caused. This will dictate timescales for actions. Individual cases may be re-prioritised as the investigation progresses or circumstances change. See the below list of case types and rating:

Priority High breaches are those causing significant harm to heritage assets or sensitive sites or that will give rise to significant public safety issues or serious harm to amenity or other harm, including :

- Demolition or unauthorised works to a Listed Building, building in a Conservation Area or unauthorised works which affect scheduled ancient monuments;
- Unauthorised development affecting sensitive designations such as Green Belt; SSSIs or protected species;

- Unauthorised works to trees subject to a Preservation Order or in a Conservation Area;
- Unauthorised development that may result in serious harm to health and safety or have a significant impact on amenity;
- Managing compliance with major site Construction Management Plans or strategic conditions on sites identified as particularly sensitive.

Priority Medium breaches are those causing demonstrable harm to amenity or other demonstrable planning harm including:-

- Unauthorised works or change of use of buildings or land (not considered to be causing significant harm);
- Development contrary to key or significant national or local policies (not considered to be very serious breaches);
- Unauthorised development that is within 6 months of the statutory period of time in which action could be taken (not considered to be very serious breaches);
- Listed Buildings in need of works to protect the integrity of the structure (that are not deemed authorised);
- Compliance with key conditions on sites where this has been identified as necessary (not considered to be very serious breaches);
- Demolition work without prior notification (not considered to be very serious breaches).

Low Priority breaches are those causing minor harm to amenity or other minor harm, including:

- Unauthorised advertisements;
- Minor unauthorised works with limited amenity or other impact;
- Untidy land
- Breaches of conditions with limited amenity or other impact;
- Small scale unauthorised changes of use or operational development.

3.5 We intend to respond to all breaches but in the priority order identified above and subject to resources and strategic objectives.

4 Timescales

4.1 It is important we manage cases within a reasonable time-scale. We have to balance this against demands on resources and the complexity of each case. This table sets out targets but more complex cases may require longer and we will exercise our discretion to manage each case in the most appropriate way to achieve the optimum outcome ensuring that we are **consistent** and **proportionate** in our actions. Wherever possible the maximum times below will be achieved and any departure from this will be notified to interested parties with an amended deadline in the interests of **transparency**.

	Acknowledgement*	First site visit*	Resolution***
High Priority	2 days**	3 days**	2 months
Medium Priority	3 days**	7 days**	4 months
Low Priority	3 days**	15 days**	6 months

***from receipt in enforcement section**

****working days**

*****application submitted; formal action taken or closure/not expedient**

- 4.2 Similarly, where it is decided that the breach can be regularised through the submission of a planning application we will generally require this to be submitted within 28 days. If justified we will consider allowing an extension of time. This will be evaluated on an individual case basis. Complainants will be notified if this is considered necessary.
- 4.3 Some breaches will require unsociable hours monitoring. We will endeavour to do this with the resource that we have but do not have sufficient resource to provide this service for any but High Priority cases where there are issues of significant harm that can only be identified during these hours. We encourage and support complainants to collect their own evidence in support of their concerns where it is safe and reasonable for them to do so and where it can be done in compliance with GDPR.

5 Communication

- 5.1 Where potential breaches have been highlighted they will be acknowledged quickly in accordance with the timescales identified above. Each case will have a designated Officer. We will provide the name of the Officer investigating the matter to the customer and details of how they can be contacted both via email and telephone.
- 5.2 We will keep all recorded interested parties informed as to the progress of an investigation and where formal action is necessary make it clear as to why the Local Planning Authority intends to take such action. Where it is decided that it is not expedient to take enforcement action we will inform complainants of the reasons. Where the Council issues a statutory notice, all parties served with a copy of the notice will be informed of any appeal procedure and advised in writing of the consequences of non-compliance with such a notice.

6 Matters we will not investigate:

- 6.1 When it is proposed to take no further action, because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person who complained of the breach will be notified and an explanation provided of the Council's reason(s) for the purposes of **transparency**. The following are examples of matters included in this category:

- Repeated complaints on matters that have been investigated and concluded with no evidence of further breaches (in such cases complaints will be directed to the Council's Corporate Complaints process);
- Matters that do not constitute planning breaches;
- Boundary disputes and other private law matters;
- Breaches where a regularising planning application has already been submitted;
- Anonymous complaints;
- Minor amendments to development that could have been approved as part of an original planning permission;
- Matters which amount to trivial or technical breaches which cause no material harm or adverse impact on the amenity of the site or the surrounding area.

6.2 To avoid the unnecessary use of resources anonymous reports of suspected breaches of planning control will only be pursued in exceptional circumstances. Other matters which are not considered a priority may not be actioned due to resources committed to other high priority matters and complainants will be notified of this. Formal action will not be taken where an application has been or is imminently to be submitted and is likely to be recommended for approval. We may negotiate voluntary undertakings to allow us time to resolve the matter or await the submission of a planning application where it is not a High Priority. Failure to comply with a voluntary undertaking could result in further action.

7 Proactive Monitoring

7.1 In order to maintain confidence in the Council it is important we manage development and change within national and local policy parameters. Selby Council places a high priority on the quality of life our residents can expect. . Not all departures from our policy will constitute a breach of planning regulations. Cases need to be managed to avoid jeopardising our ability to act on priority cases and those that require more protracted input.

7.2 In some cases reflecting the sensitivity of a development the Council will actively monitor planning conditions where these have been specifically designated as a priority. This will be evaluated on a case specific basis and a standard informative will be included on planning permissions which highlight these priority conditions.

8. Partnership working

8.1 In certain instances partnership working is crucial to effective enforcement. Team members will work with other colleagues including Environmental Health, (NYCC) Highways, Building Control and Council Tax to ensure we are

consistent, deal with any issue in the most efficient way and align any enforcement actions to complement each other. It is not appropriate for complainants to have to refer their concerns to each individual department and this should be managed by Officers who will share information and work effectively together.

8.2 We are always willing to look at partnering with other organisations to help us identify best practice through bench marking. This engenders a reflective process that will enable us to innovate to improve Selby's services.

9. Statutory/Formal Notices

9.1 The following enforcement options will be available when it is considered necessary to take formal action:

- **Planning Contravention Notice** (S171C of the T&CP Act 1990) to request information on operations where it is suspected a breach has occurred;
- **Breach of Condition Notice** (Section 187A of the T&CP Act 1990). This is usually reserved for significant breaches of conditions but with maximum fine of £1,000 if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased;
- **Enforcement Notice** (S172 of the T&CP Act 1990) which can be used to impose conditions to remove harm where a planning application to regularise the use has been declined or where the use is unacceptable and it is not appropriate to negotiate or regularise the use.
- **Listed Building Enforcement Notice and Conservation Area Notice** (Town and Country Planning Act 1990 and the Planning Listed Buildings and Conservation Areas Act 1990) can be used to require steps needed to restore or alleviate effects of unlawful works. This power can be used to enter the property and carry out the works and recover reasonable expenses**;
- **Stop Notice** (S183 of the T&CP Act 1990) where a breach is causing serious harm that could not be removed or alleviated by the imposition of conditions such that it imperative the use be stopped as soon as possible. It must relate to an Enforcement Notice. The Maximum fine for failure to comply is £20,000. Costs may be levied against the authority (Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations).;
- **Temporary Stop Notice** (S171E of the T&CP Act 1990). This can be served without an accompanying Enforcement Notice and carries the same maximum fine as a Stop Notice;
- **Section 215 Notice** (S215 of the T&CP Act 1990). Can be used where the

condition or appearance of land or buildings cannot be resolved or improved by negotiation. Maximum fine is £1,000 but is augmented by a £100 per day further fine following conviction. Direct action* (S178 & S219 of T&CP Act 1990) can be taken in which the Local Authority do the necessary work (other than discontinuance of the land) and the cost of this levied (S178 & S210 of the T&CP Act 1990) against the land or property;

- **Prosecution** can be undertaken where the service of any of the above notices has not satisfactorily resolved the matter. It can also be used to deal with unauthorised works to a Preserved Tree, to secure removal of an unauthorised advertisement and works to a Listed Building where it has not been possible to resolve this.
- **Injunction** (S187B of the T&CP Act 1990) is useful for High Priority breaches with very serious amenity impact and may use this where formal Enforcement action has not been effective or as an alternative to Enforcement Notices. This is managed through the courts and requires an understanding and appreciation of planning matters in the court to be effective. It can result in incarceration and can be a costly action and should therefore be considered carefully before use.

Please visit National Planning Policy Guidance website for more details of Planning Enforcement Powers: <https://www.gov.uk/guidance/ensuring-effective-enforcement#planning-enforcement--overview>

*As part of an identified broader strategy

** carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works etc materially affect the historic or architectural significance of the building, is an offence under section 9 of that Act – whether or not an enforcement notice has first been issued; carrying out work without the required planning permission for relevant demolition, or failing to comply with a condition attached to that planning permission is an offence under section 196D of the Town and Country Planning Act 1990.

10. Appeals

- 10.1 Legislation provides for a right of appeal to the Secretary of State in given circumstances. However, to make this process as transparent as possible, we will inform individuals of any rights to representation or appeal and give information on the process involved in writing as soon as possible after the decision has been made.

11. Comments, Compliments and Complaints

- 11.1 It is our aim to be accountable for our actions. This is why we offer everyone the chance to have their say about how their experience with the Council has been. We offer this through our Comments Compliments and Complaints Policy which is available to view on www.selby.gov.uk.

12 Review

- 12.1 To ensure we are accountable we will review performance regularly and publish management reports to Executive. We will also report to an Enforcement focus group consisting of the Chair of Planning committee, Head of Planning and Principal Enforcement Officer on a regular basis. In addition we will report ofn progress in 6 months and fully review the Enforcement Management Plan every three years, but will amend as necessary to meet regulatory and policy changes.