

SECTION 4

# **North Somerset Council**

## **REPORT TO THE PLANNING & REGULATORY COMMITTEE**

**DATE OF MEETING: 20 NOVEMBER 2019**

**SUBJECT OF REPORT: LOCAL ENFORCEMENT PLAN UPDATE**

**TOWN OR PARISH: ALL**

**OFFICER/MEMBER PRESENTING: HEAD OF PLANNING**

**KEY DECISION: NO**

**REASON:**

### **RECOMMENDATIONS**

That the updated Local Enforcement Plan and the Advertisement Protocol set out in Appendix A and Appendix B be approved with immediate effect.

#### **1. SUMMARY OF REPORT**

A Local Enforcement Plan is required to guide the priorities for enforcement action. The current plan was approved by the Committee July 2012 and was subsequently updated and approved by the Committee in May 2017. It superseded an enforcement policy first agreed in 2003 and updated in 2006. The plan has been updated again to reflect current operational practice and team names and is attached as appendix A. The existing Advertising Protocol has also been updated and reproduced in Appendix B for reconfirmation. Proposed changes are show using track changes.

#### **2. POLICY**

Government guidance is given in the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG). Effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area; maintain the integrity of the decision-making process; and help ensure that public acceptance of the decision-making process is maintained.

### **3. DETAILS**

#### **Background**

The National Planning Policy Framework (NPPF) states 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 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.

The NPPG states that the preparation and adoption of a local enforcement plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process.

The current Local Enforcement Plan can be found at the following link.

<https://www.n-somerset.gov.uk/wp-content/uploads/2017/06/local-enforcement-plan.pdf>

#### **The Local Enforcement Plan’s policies for enforcement**

The plan is required to give clarity and openness to the day to day management of the enforcement service and to guide the use of resources. The current plan was last considered by the Planning and Regulatory Committee in May 2017. The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively and in a way that is appropriate to their area. The plan has been updated to reflect current activities and resources and is brought back to Committee for approval.

This Local Enforcement Plan sets out priorities for investigation, explains what will be investigated and what will not, and outlines the council’s general discretionary powers regarding planning enforcement. The updated plan is unchanged other than in to clarify when complainants will be updated and to reflect organisational changes (e.g. team names). Due to current resources and workloads the enforcement team does not now generally provide an initial response to the complainant within 20 working days. Instead, a response is given later in the process. The plan has been updated to reflect this. This document also sets out the council’s approach to handling planning related enforcement matters including the control of signs and advertisements.

The local enforcement plan, together with the NPPG, are the principal sources of guidance on the local approach to enforcement. Since an enforcement policy was first introduced in 2003, this approach has proved a valuable tool in managing workloads despite staff turnover and change.

#### **4. CONSULTATION**

No formal consultation is required

#### **5. FINANCIAL IMPLICATIONS**

The work is undertaken within existing resources

#### **6. LEGAL POWERS AND IMPLICATIONS**

This report has no direct legal implications

#### **7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The enforcement service plays a role in guiding and regulating development that addresses the issues of climate change and sustainable design and construction.

#### **8. RISK MANAGEMENT**

Complaints and actions are prioritised according to risk. Risk assessments are carried out on a case by case basis as and when required.

#### **9. EQUALITY IMPLICATIONS**

Enforcement action will be proportionate to the breach of planning control and is subject to an expediency assessment. Consideration to the Human Rights Act 1988 is given during enforcement investigations.

#### **10. CORPORATE IMPLICATIONS**

The Enforcement service plays a role in meeting a number of corporate aims and performance indicators.

#### **11. OPTIONS CONSIDERED**

Continuing with the existing agreed Local Enforcement Plan

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## **APPENDICES**

Appendix A – Local Enforcement Plan  
Appendix B – Advertising protocol

## **BACKGROUND PAPERS**

The documents referred to in the report.

## APPENDIX A

### Development Management Delivery and Enforcement Team Local Enforcement Plan

2019

#### Introduction

The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This Local Enforcement Plan sets out priorities for investigation, explains what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. The plan sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling planning related enforcement matters.

#### Section 1: Priorities

**1. To make the most effective use of resources, allegations about suspected breaches of planning control will be investigated thoroughly and accurately with a priority rating of 'High', 'Medium' or 'Low' depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses.**

##### High Priority

1. Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area.) or any other development that causes irreversible demonstrable harm.
2. Unauthorised works to trees covered by a tree preservation order (TPO) or in a Conservation area.

##### Medium Priority

3. Any unauthorised development/activity which, causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
4. Breach of a condition, which results in serious demonstrable harm to amenity in the neighbourhood.
5. Unauthorised development in an AONB, SSSI (or other national *or local* designation of nature conservation), or Conservation Area or where an article 4 direction has been issued.

6. Unauthorised development, which is the source of significant public complaint (significant public complaint can be quantified as five or more independent sources complaining about the same alleged breach of planning control).

7. The erection of unauthorised advertisements that have a detrimental impact on highway safety.

#### Low Priority

8. Any unauthorised development where the time limit for enforcement action will expire within the next six months.

9. Unauthorised development, which is *not* the source of significant public complaint.

10. The display of unauthorised advertisements which do not cause a danger to highway users.

11. Unauthorised development which would be likely to receive planning permission if a planning application were to be submitted.

12. Developments that are unlikely to require planning permission.

The council receives approximately 700 complaints regarding alleged breaches of planning control each year. Although many of these do not result in a formal enforcement action, many require lengthy investigations, site surveillance or legal action over several months. Resources are also limited, and it is essential to use them to the maximum effect. Therefore the council must give priority to those cases where greatest harm is caused. Depending on the seriousness of the alleged breach and available resources the target response times for initial response will be as follows:

#### **High Priority cases (1 and 2)**

A site visit will be made within 1 working day.

#### **Medium Priority cases (3 to 7)**

A site visit will be made within 10 working days

#### **Low Priority cases (8 to 12)**

A site visit will be within 20 working days

#### **Target timescales**

The initial assessment and the level of priority will be dependent upon the information provided at the time. Once investigations commence the priority level may change following the initial site visit or on receipt of additional information. All cases will be kept under review. The complainant will be advised of progress and also the outcome at the end of the investigation. The target timescales for progressing investigations are as follows:

- We will register complaints within five working days, providing an acknowledgement to the complainant by letter or by email.
- ~~Provide an initial response to the complainant within 20 working days of the registration date as to how it intended to process the matter.~~
- Contact the complainant at the start and end of the case and at key stages during the investigation.
- Seek to close 80% of all cases within 26 weeks (six months) of the registration date.
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**2. Complaints about alleged breaches of control should be submitted by way of the online 'report a breach' form on the council's website.**

Complaints will be registered provided the complainant provides their name, address telephone number and full details of the breach involved and the harm arising from it. Anonymous complaints will not be entertained, although the complainant will be encouraged to refer the matter to either their elected ward member or their Parish Council representative to advance their complaint, should they wish to remain anonymous.

The service will not normally provide updates on individual cases. Complainants will be notified once the investigations are complete.

To avoid malicious complaints, anonymous allegations of breaches of planning control will not normally be entertained. Every effort, however, will be made to reassure anybody wishing to make a complaint that his or her details will be kept confidential so far as other legislation permits it to be. Should they still wish to remain anonymous, then every effort will be made to encourage the complainant to refer the matter to either their local ward member or to their Parish Council representative. Where a local ward member or Parish Council puts forward a complaint on behalf of a local resident or other third party, the ward member will not be recorded as the complainant.

Due to high workloads and limited resources it is not be possible for the Delivery and Enforcement Team to keep responding to complainant requests for updates on individual cases. Complainants will be updated however at key stages and once the investigations are complete.

**3. In order to ensure effective liaison and communication with ward members and Town and Parish Councils, a list of current breaches will be provided on a regular basis together with an update on progress on individual cases.**

The council will also, where appropriate, publicise enforcement cases where successful outcomes have been achieved.

**Section 2: Decision-making**

Policies 4 to 11 give guidance on the decision-making process.

**4. The council will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach.**

There are 4 key considerations that govern the enforcement process:

- a) A breach of planning control is not a criminal offence (other than in a few limited circumstances) and therefore immediate action is not usually an option.
- b) Enforcement action can only be taken where it is expedient to do so, which means the council cannot take action against a development for which planning permission would have been granted had it been applied for in the normal way.
- c) Negotiation will be used to try and resolve enforcement issues other than in the most serious cases before formal action is taken. This has implications for the length of time the process can take.
- d) It is open for people to apply for planning permission retrospectively in an attempt to regularise unauthorised development.

In deciding whether to take enforcement action the council will have regard to the development plan and to any other material considerations including national policies and procedures. In considering whether it is expedient to take enforcement action the decisive issue for the council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Enforcement action is discretionary, and the council will act proportionately in responding to suspected breaches of planning control.

Where it is assessed that it is possible that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. Enforcement action is not taken simply because there has been a breach of planning control. It is not a “punitive” measure. The council would not take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment.

In some cases, the delivery and enforcement team might need to ask complainants to help by keeping a log of activities to help provide evidence of a breach. If complainants are unwilling to do this the council may not be able to pursue the case due to insufficient evidence being available. A successful prosecution may rely on those collecting such details being prepared to give evidence in court.

The council will seek to work with those in breach to voluntarily resolve contraventions to avoid formal action having to be taken. When this is not possible or appropriate, and it is considered expedient to take formal action to resolve a breach, the main options for action are summarised as follows:

a) Breach of Condition Notice

Can be used where conditions imposed on a planning permission have not been complied with.

b) Enforcement Notice

This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

c) Section 215 Notice

Can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.

d) Stop Notice

Can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the council may be liable to pay compensation if it is later decided that such a notice was not appropriate.

e) Temporary Stop Notice

These take effect immediately from the moment they are issued, and last for up to 28 days. A temporary Stop Notice would be only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

f) Injunction

This involves seeking an order from the court preventing an activity or operation taking place.

g) Direct Action

The council may enter land and take the necessary action to secure compliance when enforcement notices are in effect. The council will seek to recover all cost associated with carrying out works. This is only used in extreme cases where resources allow.

In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account.

**5. In considering whether to take enforcement action the council will not give weight, either way, to the fact that development may have commenced.**

Other than in very specific situations (for example, works to listed buildings) it is not a criminal offence to carry out development without planning permission and it is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments.

The test to be applied will be “would planning permission have been granted for this development had it been the subject of a planning application?” Any retrospective

planning application submitted to rectify a breach of planning control will not be treated any differently from an application made in advance of the works being carried out.

**6. Decisions not to take enforcement action will normally be made by the Delivery and Enforcement Service Manager or the Head of Development Management as agreed through the delegation arrangements. Reasons for not taking action will be recorded in writing.**

It is in the public interest that decisions not to take enforcement action are properly recorded and that Councillors have the opportunity to refer matters to committee if necessary.

With cases where a retrospective planning application has been requested but not received, the subsequent course of action (i.e. to take no further action or to pursue enforcement action) may be agreed in consultation with the ward member depending on the issues involved. The complainant will be notified as to the reason for the agreed action.

**7. The council will not allow prolonged negotiation to delay essential enforcement action.**

While the council will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set in accordance with the priority accorded to the case.

**8. In situations where an unauthorised development may only be made acceptable by the imposition of appropriate planning conditions, a planning application will be sought to regularise the development. Where such an application is not forthcoming within an agreed time scale, an enforcement notice may be served together with a statement that the Council would be prepared to grant planning permission subject to specified conditions.**

The council will aim to ensure that where a development is considered to be acceptable, but which remains unauthorised, then the service of a notice along with a statement will protect the interests of future owners/developers.

**9. In considering whether to take enforcement action, the council will not give weight to non-planning considerations.**

Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership disputes, loss of a view or breaches of covenant.

**10. The council will have regard to the council's obligations and powers under other legislation.**

From time to time more effective and efficient outcomes can be achieved by use of powers outside the Town and Country Planning legislation

**11. The council will control signs and advertisements in line with the adopted advertising protocol.**

Where signs are displayed without consent, consideration will be given to the expediency of commencing prosecution proceedings for the offence. In the interest of commercial viability, discretion will be given to the expediency of action provided they do not cause any material harm to amenity or endanger public safety. All action will be in accordance with national legislation and government advice, and the council will be commensurate and proportionate in responding to suspected breaches of planning control.

**Section 3: Procedures**

**Policies 12 to 25 guide the council's planning enforcement procedures.**

**12. Accurate records will be kept including photographs.**

The collection of accurate evidence is one of the keys to successful enforcement action.

**13. The council will make efficient use of the relevant investigative powers and will justify their use as required.**

Full use will be made of Planning Contravention Notices or section 330 notices to elicit information about alleged breaches of control where evidence is not otherwise forthcoming. Where appropriate, powers of entry on to land will be used to obtain information for enforcement purposes.

**14. In carrying out its enforcement investigations the council will make efficient use of HM Land Registry records and its own records. Close links will be developed between, other Groups and Directorates of the council to achieve this.**

Information relevant to enforcement investigations is held in a variety of locations. Sources outside the Council include HM Land Registry, Parish Councils, national and local amenity groups, national bodies, (e.g.: Environment Agency, Health and Safety Executive, DVLA, Historic England). Within the council, housing and benefit records, electoral roll, and Council Tax records are all examples of areas where information relevant to enforcement investigations can be located.

**15. The council will comply with the provisions of the Police and Criminal Evidence Act 1984 (as amended) when interviewing persons suspected of a criminal offence (in so far as it applies to those being interviewed by a non police agency) and with the Criminal Procedures and Investigations Act 1996**

**and Section 222 of the Local Government Act 1972, when carrying out prosecutions.**

It is not a criminal offence to carry out development without first obtaining planning permission. However, it is an offence to erect unauthorised advertisements, fell a protected tree without consent, carry out unauthorised works to a listed building, or fail to comply with an enforcement, breach of condition, planning contravention or stop notice. For a successful prosecution to take place it is essential that the provisions of PACE, CPIA and the Code of Conduct for Crown Prosecutors are followed. Where appropriate a cost benefit assessment of pursuing a case to prosecution will take place.

**16. The council will ensure officers keep up to date with relevant enforcement case law.**

It is important to ensure that Officers acting on behalf of the council are fully aware and informed of changes in legislation or case law to ensure accuracy and professionalism are maintained at all times.

**17. The council will endeavour to allocate resources to see priority actions through to the end.**

Once a priority investigation has been commenced, the council will ensure that resources are made available in order to ensure that the matter is concluded satisfactorily. This will mean that lower priority cases have less resource allocated to them. From time to time, the council will prepare supplementary policies to deal with specific areas of focus relating to breaches of planning control which may arise.

**18. The council will be clear and precise in specifying breaches and requirements.**

Every effort will be taken to ensure that those being regulated fully understand what action is being taken, the steps that are required to remedy the breach, and the possible implications should they fail to comply with the requirements of that action.

**19. The council will use plain language.**

Clarity and understanding should be maintained at all times.

**20. The council will make sure the reasons for issuing an Enforcement Notice match its requirements.**

Only those actions necessary to remedy a breach will be included in a notice.

**21. The council will stick to procedural time limits or ask for justifiable extensions.**

In certain circumstances additional time may be required in order to comply with the council's requirements. When this is apparent, due consideration will be given to

permitting such requests so long as the apparent harm to third parties can be minimised.

**22. The council will involve the police if there is an assessed risk to personal safety of staff.**

Where there is a perceived threat to either an officer of the council or a member of the public, and following an appropriate risk assessment, the police will be requested to attend in order to ensure that safety of staff is not compromised in any way.

**23. Council officers will be respectful and courteous in their dealings with all persons, both those being investigated and those requesting an investigation.**

Officers will not tolerate abusive or racist language or behaviour either in person or in correspondence.

**24. The council will be flexible and consider genuine solutions.**

Where possible, any alternative solution will be considered in order to achieve a satisfactory conclusion to a reported breach of planning control. The use of formal enforcement action will in some circumstances be as a last resort and shall not be used without first seeking a remedy by other means, for instance through negotiations.

**25. The benefits of electronic systems in recording, processing and monitoring work will be maximised.**

ICT systems are an essential tool in all spheres of planning control and their use in enforcement work will maximise the efficiency of the officers involved.

**26. Where appropriate, relevant officers will liaise with adjoining authorities and local and national enforcement groups to share enforcement experiences.**

The Delivery and Enforcement service can benefit from team working between different authorities and groups. Shared practices, procedures and experiences can all add value to the service.

**27. In order to avoid unnecessary delay, the council will issue notices 'in the alternative' where there is uncertainty over the nature of the breach.**

In some cases it may not be clear as to what the breach of control involves. For example, the siting of a mobile home may amount to a material change of use or it may be an operational development. To avoid delays, which may be caused by pursuing what can turn out to be a wrongly defined breach, alternative and composite notices will be served as appropriate.

**28. The council will only resource out of hours site visits if they are required as an essential part of an investigation into an alleged breach of planning control.**

To investigate some alleged breaches in planning control or collate evidence to instigate formal legal proceedings, where it is essential council officers will visit sites out of the normal office working hours. Out of office site visits will only be required when no other course of action/investigation will provide the necessary evidence to resolve an investigation into an alleged breach of planning control. Such visits will be planned and are not designed to form an out of hours call out service. Prior to any out of hours site visits the council will undertake a risk assessment and take all appropriate measures to ensure the safety of the staff involved.

## **APPENDIX B**

### **North Somerset Council Development Management Advertising Protocol**

It is the responsibility of the [Development Management](#) Delivery and Enforcement Team to receive and investigate complaints about alleged unauthorised advertisements.

Unlike other breaches of planning control, the display of an unauthorised advertisement is an offence. Under Section 224 of the Town and Country Planning Act 1990, it is an offence to display any advertisement in contravention of the Advertisement Regulations. The offence is subject to a maximum fine of £2,500 upon summary conviction in the Magistrates Court, with a continuing daily fine of £250 for failing to remove an unauthorised advertisement.

To achieve a balanced service to all of our service users, the council has adopted a protocol designed to clarify responsibility for controlling signs and advertisements, this is administered by its [Development Management](#)[Planning Enforcement](#) Service and [Streets and Open Spaces Service](#)[Highway Operations team](#).

All signs shall be displayed in accordance with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and the Highways Act 1980. Unauthorised advertisements are ranked as low priority according to the adopted Local Enforcement Plan and advertisement complaints are given a low priority. Only in cases where public safety is endangered or there is a clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents will advertisement complaints be given a higher priority.

The [Development Management Service](#)[Delivery and Enforcement team](#) will be responsible for controlling all unauthorised signs displayed outside the confines of the highway. The Delivery and Enforcement Team in accordance with the Local Enforcement Plan will handle complaints about alleged unauthorised advertisements.

Where such signs are displayed without exemption or deemed consent, consideration will be given to the expediency of taking enforcement action for the removal and/or prosecution of the offence. In the interest of commercial viability, discretion will be given to the expediency of action over the display of commercial advertisements, provided they do not cause any material harm to amenity or endanger public safety.

The ~~Streets and Open Spaces Service~~Highway Operations team will be responsible for the control of all unauthorised advertisements within the confines of the highway, which includes pavement and verge areas. The ~~Streets and Open Spaces Service~~Highway Operations team will be responsible for the control of unauthorised advertisements attached to street furniture.

All action will be in accordance with national legislation and government advice, and commensurate and proportionate to the offence.