

Blaby District Council **Policy**

Planning Enforcement Policy

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Review History			
Version*	Reviewed By (Job Title)	Review Completion Date	Brief Description of Changes (add 'no changes required' if applicable)

*Version number remains the same if no significant changes are made upon review.

Document Definition / Approval & Review

Defining the document type and how it is approved and reviewed

Blaby District Council policies **‘outline a set of rules or principles that govern how the council (or services within the council) will operate’**.

Key published documents are approved for publication in line with the approval matrix illustrated in the Key Published Document Procedure.

Unless agreed by exception, key published documents must be reviewed at least **every 3 years** from the date of approval.

Significant updates/changes must also seek reapproval in line with the approval matrix.

Scope

To what and to whom this policy applies

This policy sets out the general principles and guidelines that Blaby District Council will adopt in relation to Planning Enforcement and is designed to provide its customers with a concise and transparent understanding of the enforcement process.

It also sets out our service standards, at Appendix 1, so that our customers know what to expect of us.

Terms & Definitions

Definition of any acronyms, jargon, or terms that might have multiple meanings.

Term	Definition
Development	the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
Breach of planning control	the carrying out of development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted.

Policy Sections

Section 1 Introduction – The purpose and reason for the policy.

- 1.1 The integrity of the planning system (development strategy and the development services function) is underpinned by the District Planning Authority's capability to take enforcement action where necessary. The three aspects work together as the planning trinity, ensuring the effective control of development across Blaby District. There are two strands to planning enforcement which are as follows:
 - a) Reactive enforcement – which involves investigating complaints received by the District Planning Authority, by local residents, members and other parties, and.
 - b) Proactive enforcement – which involves safeguarding development via compliance with planning permissions, conditions and other associated documents.
- 1.2 This Policy recognises that the majority of people wish to comply with planning legislation; and is designed to support them to do so, whilst also ensuring that we can at the same time take a firm and robust approach with those who do not.

Section 2 – What is Planning Enforcement

- 2.1 Planning enforcement primarily investigates allegations of breaches of planning control and then takes action where it is considered appropriate and necessary to do so. It is a vital part of the planning process but is a very complex area. This is due to the fact that the Town and Country Planning Act seeks to strike a balance between the freedom of owners to use or alter their property as they wish, with the need to safeguard the amenities of an area against significant and irreparable harm.

Section 3 – Should Enforcement Action Be Taken

- 3.1 When it is technically possible to take enforcement action against unauthorised development within the legislation, the District Planning Authority is required to determine whether such formal action would be 'expedient'. Planning is a permissive regime and is not punitive which means that formal action is a discretionary tool and all the relevant planning circumstances must first be taken into consideration.
- 3.2 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier. Formal action, in accordance with the relevant legislation, only takes place where it is expedient to do so and where other means to resolve the problem have failed. Ordinarily formal action will only be taken as a last resort and where the breach of planning control is causing significant or irreparable harm to the amenity of the area or is a breach of planning policy. The impact of some unauthorised development is more harmful than others and therefore enforcement action must always be appropriate and proportionate to the seriousness of the breach of planning control.
- 3.3 The National Planning Policy Guidance paragraph 10 advises that "*Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy...*" and continues at paragraph 11 by stating that "*Enforcement action should, however, be proportionate to the breach of planning control to which it relates*".

Section 4 – The Harm System

- 4.1 The Harm system allows breaches of planning control to be scored according to their seriousness. Scoring is based on the following criteria:
- a) Status of a breach
 - b) highway safety issue
 - c) other safety issues
 - d) if the breach causes or potentially causes a statutory nuisance
 - e) the age of the breach
 - f) if harm exists and whether it is irreversible
 - g) is there a breach of a planning condition
 - h) if the breach occurs in a conservation area or a sensitive site
 - i) if the development sets an undesirable precedent
- 4.2 Each case is scored following a set pro-forma in order to deliver a consistent result. However, there is provision which allows for exceptional circumstances to be taken into consideration whilst making an assessment of a breach of planning control.

Section 5 – Principles of Enforcement

- 5.1 Effective enforcement is paramount which is highlighted by Paragraph 59 of the National Planning Policy Framework which states that:

“Effective enforcement is important to maintain 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...”

- 5.2 Leading on from this The District Planning Authority believes in firm but fair regulation. Underlying this are the principles of:

o **Expediency**

In deciding whether it is appropriate and reasonable to take enforcement action the degree of harm the unauthorised development is causing, or is likely to cause, will be carefully considered. Action will only be taken when it is expedient to do so.

o **Proportionality**

The question as to whether enforcement action should be taken rests entirely with the District Planning Authority. Action is discretionary and is to be used to protect the amenity of an area from serious harm. In determining whether to take enforcement action it is necessary to show that a breach of planning control is apparent, that the breach is causing harm and that it is in the public interest to take action. In addition, any action must be reasonable and proportionate to the breach.

o **Consistency**

All investigations and actions should be fair and consistent with full and proper consideration given to the material circumstances of each case following advice from Government legislation, guidance, planning policy, best practice and relevant case law.

o **Transparency**

Transparency is essential in maintaining public confidence in the service provided to regulate breaches of planning control. It forms an integral part of the role of the enforcement function, by throughout an investigation, recording explanations of what is occurring and why.

o **Targeting**

Ensuring that service resources are focussed primarily towards unauthorised developments that cause the most harm and seriousness of planning regulations.

The District Planning Authority will not allow those who persistently seek to breach planning control to negatively impact the speed, consistency and effectiveness of necessary enforcement action via the submission of erroneous planning applications.

Section 6 – Taking Formal Action

- 6.1 Except in cases where unauthorised works or uses are causing immediate and serious harm, formal enforcement action is only taken when attempts to resolve the breach amicably have tried and failed. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development. However, the District Planning Authority will not allow essential enforcement action to be delayed by protracted negotiations when unauthorised development is unacceptable in planning terms and is causing significant harm. If the District Planning Authority is unable to negotiate an acceptable resolution in a reasonable timescale the District Planning Authority will undertake formal enforcement action.
- 6.2 Formal action can consist of:
- a) Service of a formal notice – There are several formal notices that the District Planning Authority can serve in an attempt to remedy a breach of planning control, each for different purposes with differing timescales. However, in all cases the District Planning Authority will seek to use the most appropriate and effective method available to remedy a breach of planning control.
 - b) Prosecution – Non-compliance with the requirements of a formal notice such as an Enforcement Notice, Breach of Condition Notice, or a Stop Notice can lead to a prosecution. It may also be necessary to prosecute for offences such as illegal advertisements, illegal works to listed buildings, works to trees in a Conservation Area or protected by Preservation Orders without consent as well as for non-compliance with Planning Contravention Notices and s330 notices.

Before deciding to undertake a prosecution, the District Planning Authority must consider the severity of the offence as well as the intent of the offender and ensure that both evidential and public interest tests are satisfied.

- c) Direct action – There will be occasions where enforcement notices and/or prosecutions will not have the desired effect and compliance is not obtained. In such circumstances, the District Planning Authority will consider undertaking direct action to ensure remedial works are completed to comply with the relevant notice and/or Court direction resulting from a successful prosecution and will look to recover the costs of such action where possible, in line with our debt recovery policy.
- d) Injunctions - In certain cases it may be appropriate to seek an Injunction, to cease and pre-empt breaches of planning control.

Appendix 2 provides some brief information on the use and processes of various formal action available to the District Planning Authority.

Section 7 – Proactive Enforcement Monitoring

- 7.1 Numerous planning applications which are granted approval by the District Planning Authority are subject to conditions and any development can be monitored in accordance with these.

Blaby District Council monitor the progress of developments for a number of purposes including:

- Compliance with S106 legal agreements,
- Building regulations approvals and compliance,
- Council tax/Business rates monitoring.

- 7.2 If during the course of this monitoring, information is received which suggests that development may not be taking place in accordance with its planning permission, this will be passed to the enforcement team for further investigation. Failure to comply with the planning permission, by virtue of non-compliance with approved plans, imposed conditions or another breach of planning control could result in the District Planning Authority taking enforcement action.

Section 8 – Performance Indicators

- 8.1 The District Planning Authority will monitor the enforcement service using performance indicators which are designed to achieve and maintain an efficient service. This will be achieved by focussing on performance indicators that officers can meaningfully impact such as:
- time elapsed prior to recording new enforcement investigations,
 - time elapsed prior to first action on a new enforcement case,
 - time elapsed prior to advising customers of initial findings on an enforcement investigation. These are updated monthly and reported through Blaby District Councils performance reporting system.
- 8.2 These indicators will be reviewed monthly and reported on periodically.

Section 9 – Exceptions Confidentiality

- 9.1 The name and address of those informing the District Planning Authority of a possible breach of planning control will be kept confidential. However, requests for total confidentiality with regard to the information supplied limits the ability of the District Planning Authority to take action and cannot be guaranteed if the case were to be considered in the Courts. Should this arise, the complainant will be advised at the appropriate time.

Section 10 – Anonymous Complaints

- 10.1 Anonymous complaints are difficult to investigate, particularly where extra information is required. They also prevent us from being able to provide feedback on the outcome of any investigation. For these reasons, complaints will only be investigated where contact details are provided unless the nature of the complaint falls within the following categories:

Advertisements; Listed Buildings; works to protected hedges and works to trees in a Conservation Area or protected by Preservation Orders

Section 11 – Further Information

- 11.1 If you wish to report an alleged breach of planning control, our preferred approach is by completing our web-form [here](#). The completion of the web-form enables Officers to receive the relevant information clearly, and therefore allows a speedier and more efficient commencement of the Planning Enforcement investigation. You can access the form and other information on the Planning Enforcement service via the Planning Enforcement pages of our website at <https://www.blaby.gov.uk/planning-and-building/planning-enforcement/planning-enforcement-information>.
- 11.2 Alternatively, it is possible to contact the Planning Enforcement Team via e-mail at planning.enforcement@blaby.gov.uk, via phone on 0116 272 7521 or via letter addressed to Planning Enforcement, Blaby District Council, Council Offices, Desford Road, Narborough, Leicester, LE19 2EP
- 11.3 Information on new cases are provided on a monthly basis to Parish Councils and Councillors. In providing information, the District Planning Authority reserves the right to withhold anything considered sensitive or confidential.
- 11.4 In rare circumstances the District Planning Authority may conclude that a provision contained in the above paragraphs is either not applicable or is outweighed by another provision or relevant factor. In this circumstance we will ensure that any decision to depart from policy guidelines is properly reasoned and based on material evidence.
- 11.5 This document can be made available on request, in other languages and formats (large print, Braille or on audio recording).

Section 12 – Net Zero Benefits

12.1 Planning Enforcement decisions made in line with this Policy will aim to support the council's Climate Change Strategy and the 2050 Net Zero District Action Plan, where possible and where this does not conflict with statutory legislation.

Appendix 1 – Service Standards

It is important that the District Planning Authority keeps its customers informed of the progress in enforcement investigations. The District Planning Authority has set the following service standards in relation to enforcement.

1. Once a report of an alleged breach of planning control is received it is aimed to be registered on the Planning Enforcement system within 3 working days of receipt and confirmation will be communicated to the complainant.
2. Following registration of an alleged breach of planning control an Enforcement Officer will aim to undertake the investigation within 10 working days.
3. An assessment of an alleged breach will then be carried out using the Harm System described in the Planning Enforcement Policy.
4. Following assessment of an alleged breach an Enforcement Officer will aim to communicate their initial findings to the complainant within 15 working days.

The District Planning Authority recognises that delays can be a source of considerable frustration for complainants and although it is not always possible to anticipate the timescale for the resolution of a case, affected parties will be kept informed of any significant progress made during the course of an investigation.

In exceptional circumstances such as those where unauthorised development is causing immediate or irreparable harm, such as current works to a Listed Building or the felling of a protected tree, an Enforcement Officer will aim to conduct a site visit within 1 working day of receipt of the report.

Appendix 2 – Formal Action

As outlined at 6.2, the District Planning Authority has various powers of formal action which it can exercise at its discretion in regard to planning enforcement. A sample of these powers are briefly set out below; however this is by no means an exhaustive list and is not intended to explain the full detailed legal considerations, but simply a general overview of some of the powers available. It is important to note that every case is different and may require a different course of action.

- i. **Enforcement Notice** – These notices can be served in relation to unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. They are served on all persons who have an interest in the land (e.g. owner, tenant, lenders) to which the notice relates. They have a statutory 28 day period before the notice comes into effect; during which time there is a right of appeal to the Planning Inspectorate. The notice is effectively suspended during determination of any appeal lodged.
- ii. **Stop Notice** – These notices are usually served where there is significant and irreparable harm being caused and the usual enforcement process would be too slow. A notice can come into effect within three days however must be served either in conjunction with or after the aforementioned Enforcement Notice.
- iii. **Breach of Condition Notice** – These notices are used in regard to the non-compliance of a specific condition relating to a planning permission, which needs to be corrected within a specified deadline. There is no right of appeal against these notices; however penalties for non-compliance are limited to a fine.

- iv. **Section 215 Notice** – These notices are used in relation to buildings and land that have become significantly untidy and are considered to adversely affect the amenity of an area. They are served on persons who have an interest in the land to which the notice relates and once complied with (e.g. the land has been cleared or tidied) there is no ongoing requirement and the notice has been satisfied. There is a right of appeal against these notices via the Magistrates Court and non-compliance constitutes a criminal offence for which recipients may be prosecuted.

- v. **Injunction** – These are mainly used where a breach of planning is severe or where there is a severe threat. They can also be used in established cases where other actions have proved unsuccessful and the harm is still to be resolved. However, injunctions are very time, labour and cost intensive due to their legal nature. As such Blaby District Council will always endeavour to recover the costs of taking this sort of action.