

**Copeland**



# **Copeland Borough Council Development Control**

## **Planning Enforcement Manual**

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# **Copeland Borough Council** **Planning Enforcement Manual**

## **Introduction**

This manual outlines the procedures that Copeland Borough Council follows in the handling of planning enforcement complaints. The manual is intended to be applied to a wide variety of situations and explains the approach which should be adopted by the Council when carrying out its legislative duties.

The integrity of the whole planning system, putting policies of the Council into practice through development control decisions, depends on those involved in compliance and enforcement being equal partners in the planning process. This part of the process is the most litigious, technically complex and sensitive component of a development control regime.

Effective planning enforcement is vital to ensuring that permissions and consents are faithfully implemented as well as dealing with unauthorised developments. If the authority's planning enforcement is not efficiently organised and resourced much of its efforts on planning applications will be wasted and negative messages will be sent to the community.

Copeland Borough Council deal with breaches of planning control, advertisement control, works carried out to listed buildings, works carried out to buildings in a conservation area and works carried out to protected trees.

Planning enforcement issues involving waste and mineral extraction are dealt with by Cumbria County Council as are applications dealing with their own buildings and property (e.g. schools and libraries)

## Copeland's Aims

At Copeland Borough Council the emphasis is on trying to achieve a negotiated solution without recourse to formal action. However it is important to ensure that cases are not allowed to drift and that clear deadlines are set, diarised and followed up by the Planning Enforcement Officer.

The Council aims to carry out both reactive and proactive planning enforcement. The Planning Enforcement Officer will monitor a selection of recent planning applications in relation to pre-commencement and other planning conditions. Furthermore the Planning Enforcement Officer will monitor recent applications received from Building Control to ensure that there are no potential planning enforcement matters. This will help to establish planning enforcement in its place in the management of the development process, delivering good outcomes for the community rather than enforcement being an isolated activity responding only to failures in planning control.

In March 1998 the Council corporately subscribed to the Government's **Enforcement Concordat**, which is based on four key principles:

1. **Consistency** – to ensure that similar enforcement issues are dealt with in a similar way.
2. **Fairness** – to ensure a fair and even handed approach and that decisions are not influenced by gender, ethnic origin or religion, political or any other beliefs of any potential offender or victim.
3. **Transparency** – to ensure that any enforcement action taken is easily understood by residents, businesses and the public. Furthermore to keep anyone making an allegation or subject to an allegation informed of the progress of any investigation so far as is reasonable.
4. **Proportionality** – to ensure that any enforcement action taken in regard of any breach of planning legislation is in proportion to the actual or potential harm.

In March 1998 the Council agreed the following policy statement to guide planning enforcement action in the Borough:-

*“The Council will aim to provide a **fair, consistent and effective** planning enforcement service to the residents of Copeland. Enforcement action will be taken to protect the environment of the Borough, and the quality of life of the residents. When taking planning enforcement action the Council will always be **mindful of the need to protect and regenerate the local economy.**”*

Areas of Planning Enforcement include:

- Operational development without planning permission
- Unauthorised changes of use
- Breach of planning conditions

- Enforcement of Advertisement Regs
- Unauthorised works to listed buildings and buildings within Conservation Areas
- Control of untidy land under s215 TCPA 1990
- Enforcement of Tree Preservations Orders
- Enforcement of Hedgerow Regs
- Enforcement of Hazardous Substances Regs

The three most frequent breaches of planning control within the Borough are:

- **Operational development without planning permission**
- **Unauthorised changes of use**
- **Breach of planning conditions**

The Planning Enforcement Officer's functions include:

- Recording and acknowledging complaints.
- Investigating and gathering evidence of breaches.
- Informing suspected developers that they are in breach of planning law.
- Negotiating with developers/owners/occupiers.
- Drafting and serving notices.
- Closing and filing all complaints and related enforcement action.

If court proceedings are necessary the Council's Head of Legal & Democratic Services will be advised so that appropriate action may be taken.

There are Five Key Stages in the handling of Planning Enforcement:

1. Receipt and Recording of Complaints
2. Investigate and Identify whether there is a breach of planning control
3. Decide on whether or not to take action
4. Formal Enforcement Action
5. Non-Compliance with enforcement

## **STAGE 1 - Receipt and Recording of Complaints**

Enquiries are received by letter, email, telephone, or in person. All enquiries, other than those which are clearly not a planning enforcement matter, will be registered on a computer database and given a unique reference number.

To assist the Council's investigations complainants will be asked a set of questions including:-

- Where is the location of the breach?
- What is the nature of the breach?
- What harm is the breach causing?
- When did you first notice the breach?
- Who is responsible for the breach?
- Do you have any evidence to assist us with our investigations?

The Planning Enforcement Officer will complete the Planning Enforcement Complaints Proforma.

### **Anonymous Complaints**

Before an investigation of an anonymous complaint is made Officers must ensure that the complaint is not a malicious complaint or a repeated complaint that has already been dealt with in the past. In cases where there is a past history of malicious complaints, complainants will be reminded that their identity will remain confidential and that the Council would require them to provide their name to ensure the complaint is genuine.

### **Confidentiality**

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant authorises otherwise, or the complainant gives evidence at public hearing, inquiry or court case.

It must be recognised that in some cases the identity of the complainant may become apparent to the transgressor despite the confidentiality policy of the Council.

### **Prioritisation**

The Council will prioritise each registered complaint and will adjust its focus accordingly. Complaints will be categorised into four priority levels. The more serious and urgent potential breaches will be given higher priority. The four priority levels are assigned as follows:

#### **Emergency Priority**

Breaches of Listed Building Consent where demolition is taking place

- Breaches of Conservation Area Control where irreparable damage to the character or appearance of a Conservation Area may be caused.
- All reports of unauthorised development which represent a serious danger to members of the public
- Breaches of Tree Preservation Orders where trees are under threat and are likely to be lost

**Response** – Wherever possible an **immediate inspection** of the site in order to contain the situation and record findings

- Within **3 working days a written response** to all interested parties
- Formal action to be taken as soon as is reasonably possible.

### High Priority

- Works carried out to trees in a conservation area.
- Breaches of planning control, including **breaches of conditions which result in serious visual harm** or result in **serious loss of residential amenity**, for example by reason of noise, smell or other forms of environmental pollution.
- Unauthorised development which, without intervention, would be nearing immunity from enforcement action by virtue of either the 4 or 10 year immunity rule.
- Breaches of Listed Buildings or breaches in Conservation Areas that are not considered an emergency (breach not irreparable)
- Breaches of the requirement of an Enforcement Notice
- Unauthorised development which, without intervention, would be nearing immunity from enforcement action by virtue of either the 4 or 10 year immunity rule.

**Response** – Inspection of the site within **5 working days** to assess the situation and record findings

- Written response within **5 working days** to all interested parties.
- In the absence of a positive response to remedy the breach of planning control **formal action commences within 28 days**

### Medium Priority

- Unauthorised advertisements in the open countryside or on business premises in central shopping areas and other areas excluded from the Areas of Special Control for Advertisements unless these result in a potential highway danger.

- Breaches of Planning Control, including breaches of conditions, not resulting in serious visual harm or not resulting in serious loss of residential amenity.

**Response** – Inspection of the site within **10 working days** to assess the situation and record findings

- Written response within **10 working days** to all interested parties.
- In the absence of a positive response to remedy the breach of planning control **formal action commences within 28 days if deemed appropriate**

### Low Priority

- Anonymous complaints not resulting in serious visual harm or causing serious loss of residential amenity.
- Disputes between neighbours not resulting in harm to wider amenity or residential amenity.
- Unauthorised development which, if retrospective planning permission were to be applied for, would comply with Local Plan Policies and which is not about to become immune from enforcement action.

**Response** – If deemed necessary an inspection of the site within 10 days in order to assess the situation and record findings.

- Within 10 working days a written response to all interested parties
- Unlikely to result in formal planning enforcement.

### Targets

- Complaints will be registered and prioritised within two working days of their receipt.
- Acknowledge any complaint made in writing within three working days of receiving it and the complainant will be given the name and phone number of the Enforcement Officer and the Council's Approach to Planning Enforcement Guidance Notes.



## **STAGE 2 – Investigate and Identify whether there is a breach of planning control**

### **Initial Investigation**

Analysis of the site and its planning history. This may establish at the outset whether there has been a breach of planning control.

Depending on the findings, a site visit will be carried out within 10 days (or even sooner depending on the nature of the breach).

### **Site Visit**

All enforcement officers should have with them on site:-

- A digital camera
- A digital voice recorder
- A mobile phone
- Authority to enter land
- Council ID
- Measuring tape
- Protective clothing, and boots

A site visit note is to be compiled which records:

- time and date of the site visit
- what was evidenced at the site visit
- details of any person spoken to and contents and nature of the conversation.
- photographs of the site and the breach of planning control to accompany the records.

If access to a site is denied or the Enforcement Officer is asked to leave the site a record should be made if possible of the name of the person and the time. The officer should leave the site immediately. On return to the office the matter should be discussed with the line manager and a decision made whether an explanatory letter of rights of entry would be appropriate, or warrant of entry sought.

Remote sites in the Borough may require to be visited by two members of staff and where serious confrontation is anticipated a Police escort should be obtained. All cases of violence or aggression against staff should be recorded on the site visit note.

### **Identifying whether there has been a breach**

After carrying out a site visit it may still not be apparent whether there has been a breach or not. In these circumstances the Enforcement Officer should carry out further investigations within the Council and with the appropriate outside bodies and agencies to gather further evidence before determining

whether a breach has taken place and/or to determine the appropriate course of action.

It might be required that the Enforcement Officer will have to contact the owner/developer of the land where there is a suspected breach and try to obtain information from them to ascertain whether a breach has occurred.

If the owner/developer is unwilling to provide information it may be necessary to use statutory provisions for the requisition of information:-

- A **Planning Contravention Notice (“PCN”)** - will be served when the Planning Enforcement Officer has reason to suspect a breach of planning control. However a PCN cannot be used in relation to listed buildings, advertisements or protected trees.
- A **Request For Information (“RFI”) s330 Notice** – will be served on those who have an interest in the premises where there is an alleged breach of planning control including unauthorised development, adverts, trees and listed buildings.
- **s16 Notice** (Local Government (Miscellaneous Provisions) Act 1976) – will be served to ascertain ownership, occupation, and management of land and building and is particularly useful when timescales are tight as it has a 14 day response time.

Where it has been decided that there is no breach, the complainant and the owner/developer will be notified within 10 days and no further action will be taken.

## **STAGE 3 – Decide on whether or not to take action.**

### **Case Review**

Where there is a breach it must be decided whether or not to take action. Planning enforcement is a discretionary function and formal enforcement action will only be taken where a breach of planning control has occurred and it is expedient to do so. Emergency priority and High priority cases will invariably require a quick decision.

### **Decision to Take Action**

Depending upon the nature of the breach, one of three options will normally apply where it is decided to take action:-

- The alleged offender is invited to submit a retrospective planning application with a view to seeking to remedy the breach within a set time limit;
- The alleged offender is asked by means of a letter to remedy the breach within a set time-limit;
- The alleged offender is required by means of a legal notice to remedy the breach (i.e. Enforcement Notice, Breach of Condition Notice, Stop Notice, Temporary Stop Notice, 'Section 215' Notice or Completion Notice.)

### **Negotiation**

Negotiation is an essential part of the Planning Enforcement process. Applications seeking retrospective permission should be sought where it is judged that planning permission would be likely to be granted, conditionally or unconditionally, or where an application provides the best forum for considering the planning merits of the case. Such applications will also be the best means of obtaining the views of Parish Councils, neighbours, statutory bodies and other interested parties.

However, applications seeking retrospective permission will not be sought where an initial assessment indicates that there is no reasonable prospect of permission being granted. It must be made clear that the invitation to submit a retrospective application does not imply that an application will necessarily be approved. It will be judged on its own merits in the normal way.

If an alleged breach is only acceptable where it would be controlled by means of planning conditions where a retrospective application is not made then the Council will normally move to formal enforcement action.

### **Breach “acceptable”**

Where an alleged breach is considered to be acceptable in planning terms without the imposition of planning controls, and where an application for retrospective planning permission is not forthcoming, the matter will not

normally be pursued on the grounds of inexpediency and the case will be recommended to be closed through the Expediency Test procedure.

An **Expediency Test proforma** is required to be completed with a brief summary given in respect to relevant planning policies and material considerations. The proforma is required to be signed by the Enforcement Officer and the Development Control Manager under the Scheme of Delegation. The Expediency Test proforma must be placed on the enforcement file as a record to show how this decision has been reached. The enforcement file can then be recorded as closed.

It is acknowledged that the circumstances surrounding a particular breach may change (e.g. an unauthorised business use intensifying). To that end the decision taken is ultimately based on the circumstances of each individual breach at the time and is by no means final. Should there be a change in circumstances which could require enforcement intervention, the file should be reopened and investigations recommence.

## **STAGE 4 – Formal Enforcement Action**

Central Government provides Planning Enforcement with a number of legislative powers. Where it is satisfied that a breach of planning control has occurred, the Council may consider using its statutory powers to seek to remedy the breach. These powers are discretionary and will only be used where it is considered expedient to do so.

It must be remembered that formal enforcement action cannot itself remedy a breach of planning control. Its purpose is to coerce the alleged offender into doing so. However, failure to comply with a formal notice is an offence which may lead to prosecution, injunction or direct action.

### **Temporary Stop Notices**

If the Council is **sure** that there has been a breach then it has the powers to serve a Temporary Stop Notice which requires the alleged offender to stop development for 28 days. This period gives the Council opportunity to investigate the breach in more detail and decide what action, if any, it wants to take.

### **Planning Contravention Notices (“PCN”) and Requests For Information (“RFI”)**

The Council has the ability to formally request information from the alleged offender and other parties by means of a PCN or RFI (as discussed in Stage 2). There is a statutory requirement to respond to PCN or RFI within 21 days. It is an offence for the respondent to fail to do so or to give incorrect information.

The purpose of the PCN and RFI is to obtain information from the alleged offender about the site, who owns it, the identification of other relevant interested parties, the breach itself and any other relevant information.

The PCN and RFI do not commit the authority to any action. When drafting a PCN or RFI it should be remembered that:-

- It is an investigative tool – draft questions to obtain or corroborate evidence
- Use “Plain English”, not jargon
- Ask as many questions as needed. Don’t forget that the recipient does not have to tell you more than you ask.
- Consider whether a Time and Place meeting is appropriate/necessary and if so include a request that the Enforcement Officer be notified as to whether this offer will be taken up.
- State who should be present at a meeting and what will be on the agenda.

A formal legal notice (i.e. Enforcement Notice, Breach of Condition Notice, Stop Notice, Section 215 Notice or Completion Notice) should not be served

on the alleged offender unless firm details have first been obtained. The serving of a PCN or RFI may be authorised by the Development Control Manager and Head of Legal and Democratic Services respectively.

### **Enforcement Notice**

After trying to resolve the issue through negotiation and discussion the Enforcement Officer will issue an Enforcement Notice as a last resort. If the Council is prepared to serve an Enforcement Notice then ultimately it must be prepared to take action to secure compliance with the Notice. It is therefore important that at the time, formal authority is given to serve a notice.

If it is considered expedient to serve an Enforcement Notice, the officer must also be able to demonstrate rather than assert that the unauthorised development is causing “harm” in planning terms. This is particularly important as the reasoning will be carried forward into any enforcement notice that is served and will be the basis of the Council’s case in any subsequent appeal. This must be clearly written down and be available on the file. A standard template should be used to ensure consistency and that all relevant matters, including whether the enforcement notice should be backed by a stop notice, have been considered.

The template should enable the officer to identify relevant policies, the material considerations taken into account and the weight given to them and the response to any requests for information, any human rights issues, action proposed and steps required, period for compliance and reasons. Careful consideration is needed of the steps the enforcement notice will require the recipient to take to comply with it, particularly the consequences of under-enforcement, and the timescale(s); these are matters which can assist at a later stage when dealing with an appeal or claim for cost (which apply in all types of enforcement appeals). These issues must be discussed at the regular meetings with the line manager.

In order to comply with legislation details of the Enforcement Notice should be entered immediately into the Enforcement Register. This includes a cover note, the Enforcement Notice and a memo to the Land Charges Officer.

### **Enforcement Appeals**

Enforcement Notices have “a Right to Appeal” attached and can therefore generate an appeal workload. The Planning Enforcement Officer should note the percentage of Enforcement Notices that are appealed against because this would indicate whether or not the judgement in pursuing cases is accurate and reliable.

It can often be the case in enforcement appeals that the alleged contravenor does not reveal the full picture until the very last minute, which can put the Council to unnecessary and sometimes abortive work or maybe require adjournment of an appeal for fresh information to be considered. Costs can be claimed in all types of enforcement appeals. Staff should therefore always

record the time and costs incurred in appeal work. The Council should always make a claim for costs against an appellant if it considers they have acted unreasonably and, as a result, the Council has incurred unnecessary costs.

### **Stop Notice**

A developer who receives an Enforcement Notice has the right of appeal as discussed above. If they decide to appeal the Enforcement Notice is suspended until the appeal is determined. Therefore, in emergency and high priority situations, the Planning Enforcement Officer should consider serving a Stop Notice.

A Stop Notice must relate to an Enforcement Notice and may require an activity to cease until the date when the compliance period specified in the Enforcement Notice expires.

A Stop Notice is prohibitory and cannot require positive action to be taken (e.g. demolition) it can only require an activity to cease or reduce.

Before issuing a Stop Notice the Council should consider the likely affect of a Stop Notice including a cost/benefit assessment in relation to any local businesses affected by the Notice that operates in or within the vicinity of the site. This would particularly be a concern if it was regarding the cessation of an unauthorised use.

A Stop Notice must come into effect in less than 28 days. If the Notice is to come into effect in less than three days the Notice must also specify the reasons to why it is expedient for the Stop Notice to come into effect in less than three days.

### **Section 215 Notice**

Although not a provision of the Enforcement Section of the Planning Act, section 215 ("s215") of the Town & Country Planning Act 1990 provides a local planning authority with the power in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area.

There is no right of appeal against a Section 215 notice to the Planning Inspectorate, only an appeal under s217 in a Magistrates Court and failure to comply with a s215 is a criminal offence.

The final draft of a s215 notice will be signed off by the Head of Legal & Democratic Services.

Once a notice has been served the Enforcement Officer should:-

- Put a copy of the notice on the file
- Send a copy to Land Charges as it is a registrable land charge
- Diary the date for compliance (28 days)
- At the end of the compliance period carry out a site visit

- If the work has not been done or not completed satisfactorily send a letter allowing another 7 days
- Diary the new deadline
- Check the site at the end of the new compliance period
- If the work has been done the s215 file can be closed
- If the work has not been done commence a prosecution.

### **Breach of Condition Notice (“BCN”)**

Development without complying with a pre-commencement condition that prohibits any development before a particular requirement has been met can mean that the whole development is unauthorised and action will be needed to regularise the situation and therefore a BCN will not be appropriate.

The Planning Enforcement Officer should seek legal advice on the nature of such a condition, the nature of the breach, and how best to take enforcement action.

When the Enforcement Officer finds a breach of condition of planning permission he/she will need to:-

- Identify the permission and the relevant condition(s) which are being breached
- Check that the relevant permission has actually been implemented and have evidence that they have asked the person(s) to comply with the condition(s)
- Check that 10 years have not elapsed from commencement of the breach.
- Consider the enforceability of the condition(s) in the light of the “tests” in Circular 11/95; any unenforceable conditions should be noted and brought to the attention of the Development Control Manager.
- Decide whether a BCN is the appropriate enforcement tool i.e. full compliance is required and whether there is sufficient evidence to stand the legal test of “beyond reasonable doubt”. The person(s) to be served with the notice must have sufficient control to secure compliance.
- If there are several conditions or different types, whether more than one notice is required. This can get over a case being dismissed because one element has not been proven and increases the level of fines payable on summary conviction.
- Decide if the breach is ongoing, whether to serve a Temporary Stop Notice as a BCN must be given 28 days to come into effect.
- If a BCN is not appropriate consider whether it would be expedient to serve an Enforcement Notice for Breach of Condition(s); this allows for under-enforcement and direct action in default.

### **Land Charges**



A land charge will be placed to record any Enforcement Notice, Breach of Condition Notice, Stop Notice, Section 215 Notice or Completion Notice. Notification will be given where a Notice has been complied with. A land charge is also a marker which will be viewed by solicitors acting on behalf of a potential purchaser of a property and such records can be a useful deterrent to breaches of planning control.

### **Withdrawal of Enforcement Notices**

The Council has the power to withdraw an Enforcement Notice issued by them. Where it becomes evident that an Enforcement Notice is no longer relevant because the Notice has been complied with and the breach is unlikely to occur again the Council will withdraw the Enforcement Notice. Effective Enforcement Notices are a legal charge on the land to which they relate. Withdrawal of notice allows the removal of the Land Charge.

### **Monitoring Enforcement Notices**

It is necessary to monitor whether the issue of an Enforcement Notice has been effective in remedying a breach of planning control. Therefore the Planning Enforcement Officer will visit the site no later than two days following the date of compliance with the notice.

## **STAGE 5 – Non-Compliance with Enforcement**

There will be instances where the offender does not comply with the requirements of a legal notice. This becomes an offence. A decision must be taken quickly on whether or not to pursue formal legal enforcement action.

In formally deciding whether to pursue legal action the expediency of doing so must be considered along with the cost implications associated with such action and the likely success of a prosecution case. A simple cost-benefit analysis and risk assessment should therefore be conducted. The decision must always be proportionate to the harm caused to the public interest, both in terms of the specific case but also the wider implications of not pursuing action.

The Council must also be mindful of the damage it might do to public confidence in the planning process and the message it sends out to other developers if such legal action is not taken and enforcement is not fully followed through.

Offenders will normally be given warning of the Council's intention to prosecute.

The Council has the power to enter land and undertake the steps that are specified in an Enforcement Notice when the period for compliance has expired. The Council can also recover the cost of such works from the owner of the land. If the owner refuses to pay the sum for the works carried out, the Council can register a charge over the property. This could lead to a forced sale of the property or be used as an incentive for the owner to pay up the outstanding sum. Normally works in default are only taken where a prosecution has failed to secure compliance with an Enforcement Notice, but should nevertheless be assessed on an individual basis.

### **Cautions**

Formal cautions may be issued to deal with simple and less serious offences in a swift manner. If there is a repeat of any minor offences in the future the Council can cite previously related cautions in any court hearings.

### **Prosecutions**

Each case is unique and must be considered on its own facts and merits. However, in considering a case the Council will consider the general principles outlined in the Code of Crown prosecutors. The Code of Crown prosecutors sets a two stage test when a decision to prosecute arises:-

- The test firstly requires a consideration of the evidence. An assessment of the weight and reliability of admissible evidence shall be made to establish the likely chance of proving the case. The Council will not proceed with a prosecution unless it is satisfied that there is a realistic

prospect of conviction, i.e. it is more likely than not that the alleged offender will be found guilty of the alleged offence.

- Secondly a determination if it is in the public interest to proceed. A prosecution will not proceed if the public interest factors against proceeding outweigh those in favour of proceeding. Human rights issues must also be taken into account

If the decision is taken for the prosecution to proceed then both the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (“PACE”) must be taken into account.

All interviews of persons suspected of having committed an offence must be undertaken in accordance with either Code of Practice C or E of the PACE. Code C relates to written statements whilst Code E relates to tape recorded interviews.

If an Enforcement Officer does not have reasonable grounds to suspect someone then the PACE caution is not necessary. Furthermore if the Planning Enforcement Officer is already aware that someone has committed an offence then the PACE caution is not necessary because they no longer are trying to ascertain if the person has carried out the offence.

## **Closing of Files and Conclusion**

When a breach of planning control has finally been resolved the Planning Enforcement Officer will close the file and file away enforcement work carried out in both the Planning Enforcement Register and in the Parish Register. Each file is ordered in reverse chronological order.

If the officer suspects that that a breach will reoccur in the future, they will arrange to have the site monitored.

Half-yearly reports will be made to the Planning Panel covering Planning Enforcement activities. The Half-yearly report will contain:

- Number of complaints received
- Number of complaints resolved
- Number of complaints outstanding
- Number of formal notices served
- Examples of recent complaints and their outcome