



EAST RIDING  
OF YORKSHIRE COUNCIL

# Draft Planning Enforcement Plan

February 2019

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## **1 Introduction**

- 1.1 Councils are encouraged to produce a Local Enforcement Plan to set out how they will manage enforcement proactively and respond to breaches of planning control. This document is the draft Enforcement Plan for East Riding of Yorkshire Council's Planning and Development Management Service. The Plan sets out how planning enforcement is to be delivered and the principles adhered to control harmful development and to maintain trust in the planning system. The plan encompasses all of Planning and Development Management Services functions including protected trees and listed buildings.
- 1.2 The Planning Enforcement team is part of the Planning and Development Management Service. The service covers an area over 900 square miles in size and determines 6,500 decisions each year. The enforcement team investigates around 1400 complaints a year and monitors planning conditions and legal agreements.

## **2 The Purpose and Remit of Planning Enforcement**

- 2.1 The planning system is concerned with works which physically alter the land or change its use. It exists to promote the best use of land and to safeguard individuals, business and the environment from harmful development. Planning decisions are taken within a legislative and regulatory framework and in accordance with national and local policy. The Town and Country Planning Act (T&CPA) 1990 (as amended) provides the statutory basis for most planning enforcement matters, including trees. Tree enforcement is also governed by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. The statutory powers for listed building enforcement are provided principally by the Planning (Listed Buildings and Conservation Areas) Act 1990. The East Riding Local Plan (ERLP) seeks to manage development to ensure best use of land. The policies within the East Riding Local Plan and within the National Planning Policy Framework are a material consideration alongside statutory provisions in assessing the harm of a breach of planning control.
- 2.2 The purpose of planning enforcement is to ensure that development is undertaken in accordance with regulations and planning permissions and where it is undertaken without permission to ensure that harmful development is dealt with effectively.
- 2.3 Development requiring planning permission includes:
- most types of building works;
  - engineering works;
  - material changes of use to land including buildings.
- 2.4 Development undertaken in breach of a planning permission may include failure to comply with plans or conditions which are incorporated into a planning permission. Planning enforcement also investigate complaints about untidy land or buildings which adversely affect amenity. Consent is required for works to listed buildings, works to protected trees and to display advertisements.
- 2.5 Unauthorised works 'for the demolition of a listed building or for its alteration or extension in any manner which would affects it character as a building of special architectural or historic interest' is an offence. Failure to comply with a condition attached to a listed building consent is also considered an offence. Unlike planning enforcement breaches there is no time limit upon Listed Building enforcement.

- 2.6 Planning Enforcement cannot take action if there is no breach of planning control, or the dispute concerns boundary disputes, covenants, deeds or civil issues. Enforcement action cannot be taken against permitted development. This is development that benefits from permission by virtue of the General Permitted Development Order, provided that certain limits and conditions are met. Advertisements that comply with specific conditions and limitations within the relevant class of the Advertisement Regulations may not require an application for advertisement consent. In certain cases developments may become immune from planning enforcement action by virtue of the passage of time. This is a complex area of planning law. Undertaking work without the relevant permissions and consents or in breach of conditions can lead to serious consequences so it is advisable to seek professional advice from the Council or from a Planning Agent if you are proposing to undertake works. Follow link to [Pre-Application Enquiry Form](#)

### **3 The Principles of Investigation and Decision Making**

- 3.1 Planning Enforcement strives to achieve a balance between the freedom of individuals to alter or enjoy their property as they wish with the need to safeguard amenity, safety and the environment. Whilst Planning Enforcement must be dealt with on a case by case basis, the Planning Enforcement team aim to deal with complaints in a clear and consistent manner. 4 Confidentiality and Data Protection
- 3.2 The identity of complainants (excluding Parish/Town Councils and East Riding of Yorkshire Council Ward Members) is kept confidential and we will ensure that information relating to individuals and business is treated carefully and in accordance with the General Data Protection Regulations (GDPR) whilst also complying with the Councils statutory responsibilities FOI and EIR.

### **4 Fairness and Equality**

- 4.1 Officers will treat each case on its own merits. Investigations will be conducted with an open mind and all relevant facts will be considered whether they point towards or away from a breach. We will seek to follow best practice for undertaking investigations and carrying out the planning enforcement function.

### **5 Discretion and Expediency**

- 5.1 Planning Enforcement itself is not discretionary - there is a statutory duty to investigate potential breaches of planning control, however if it is found that a breach of planning control exists then the power to take enforcement action is a discretionary power of the Council.
- 5.2 Government guidance on enforcement **Ensuring Effective Enforcement** advocates a risk-based and proportionate use of formal enforcement powers to tackle breaches of planning control. Our focus is on remedying harm rather than punitive action. It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes little or no harm to amenity in the locality of the site.
- 5.3 Each case will be considered on its merits, the facts and the degree of harm. We will use powers proportionately and will target our resources at the most harmful breaches of planning control. We will consider whether it is expedient to commence enforcement action in connection with the development in light of local and national planning policies.

5.4 Where it is determined that a breach exists but formal action is not justified we will make a record of the reasons why and will update the complainant.

5.5 Where a breach is ongoing and it is expedient to do so officers will consider the specific facts of each case in conjunction with legal services and whether it is appropriate to use formal powers (set out in appendix 1) to seek to remedy breaches of planning control

## **6 Record Keeping/Scrutiny**

6.1 Referrals are logged and details retained as set out in the department's retention schedule and the Council's Data Protection Policy. The logging of complaints enables officers to ensure that all referrals are followed up and action is taken as appropriate.

## **7 Contacting the Planning Enforcement Team**

7.1 Wherever possible initial contact should be made through the [online complaints form](#) so that sufficient details can be recorded to enable a proper understanding of the concerns reported. Identity of complainants is kept confidential.

7.2 Notifications of alleged breaches of planning control can also however be made by e-mail, post, telephone or via the Council's website:

**email:** [planningenforcement@eastriding.gov.uk](mailto:planningenforcement@eastriding.gov.uk)

**website:** [www.eastriding.gov.uk](http://www.eastriding.gov.uk)

Planning Enforcement  
East Riding of Yorkshire Council  
County Hall  
Beverley  
East Riding of Yorkshire  
HU17 9BA

## **8 Priorities and Actions**

8.1 Referrals will be prioritised based on what appears to be their significance on receipt and initial background checking in accordance with the following table. Priority will be reassessed and kept under review when the site has been visited and regularly as further information becomes available.

<b>Factors Determining Potential Seriousness</b>	<b>Target response for visit or initial investigation</b>	<b>Priority</b>
<ul style="list-style-type: none"> <li>• Activities that have the potential to cause irreparable harm to nationally designated sites such as Sites of Special Scientific Interest, Scheduled Ancient Monuments, Listed Buildings and locally designated Biodiversity Action Plan Priority Habitats such as ancient woodlands.</li> <li>• Development that poses an immediate and significant threat to human health and safety (may also be referred to other depts./agencies).</li> <li>• Ongoing unauthorised works to protected trees.</li> <li>• Breaches likely to be consolidated/significantly worsened without prompt action.</li> </ul>	Within 1 working day	1
<ul style="list-style-type: none"> <li>• Activities resulting in serious ongoing disturbance to third parties through noise, smells, traffic flow etc.</li> <li>• Activities resulting in loss of heritage assets and removal of significant landscape features.</li> <li>• Activities resulting in clear harm to the environment.</li> <li>• Unauthorised works to listed buildings or protected trees where those works have ceased.</li> <li>• Non-compliance with pre-commencement conditions which may significantly affect the outcome of the development.</li> </ul>	Within 5 working days	2
<ul style="list-style-type: none"> <li>• Breaches of condition.</li> <li>• A breach causing problems which may be resolved through limited modification.</li> <li>• Boundary features and buildings within gardens.</li> <li>• Activities causing minimal disturbance to third parties.</li> <li>• Unauthorised advertisements.</li> <li>• Untidy land.</li> </ul>	Within 10 working days	3

## **9 Managing Enforcement Cases**

- 9.1 We aim to acknowledge complaints within 2 working days of receipt and then notify complainants of initial findings and the priority of their complaint within 10 working days.
- 9.2 Due to the nature of enforcement complaints we will not usually give advance notice of a site visit to investigate a breach of planning control.
- 9.3 There is no standard time for resolving a breach. Some cases are resolved within a few days, others may take months or longer to resolve, particularly where formal action taken has given rise to appeals and prosecutions.
- 9.4 Persons responsible for unauthorised works will be advised of the nature of the complaint and what is considered to be required to resolve the breach. We will take a graduated and continuous review of the approach to enforcement. Unless there is an immediate and significant risk to the environment or a breach that is likely to be consolidated without prompt action then we will usually seek to resolve the breach voluntarily through negotiation and informal action. Those responsible may be asked to cease the development, demolish or modify it, to supply information or to apply for retrospective planning permission.
- 9.5 Investigations may demonstrate that there has been no breach of planning control, in which cases the developer and the complainant will be updated and the case closed.
- 9.6 Breaches will be considered and the harm of the breach assessed. If no formal action is proposed we will set out the reasons and why and will update relevant parties.
- 9.7 Where a significant breach is identified, in the first instance we will seek to resolve matters informally with the individual or business. This may result in the submission of a retrospective planning application or application for listed building consent to retain unauthorised works. Complainants and other interested parties will be notified of the planning application by the Enforcement or Conservation Officer. Approval of the application may result in no further action being taken or where conditions are attached to a permission it may be monitored to ensure compliance. If a submitted planning application is refused then we may consider the acceptability of revisions to the development and amendments to the scheme prior to the commencement of formal enforcement proceedings.
- 9.8 If an enforcement notice is already in place or if similar applications have already been refused we will consider using powers under section 70C of the Town and Country Planning Act to decline to determine a submitted application. If unauthorised development is deliberate this is a material consideration in the determination of a planning application.
- 9.9 If it is clear in the circumstances of the case that unauthorised development is unacceptable and that its harm cannot be mitigated by the imposition of conditions then an application will not be encouraged and the interested party will be asked to remedy the breach of planning control or harm to amenity. If this does not happen, or if there is insufficient progress with putting things right or submitting a planning application then we will consider the expediency of formal enforcement action.
- 9.10 Where possible we will send letters warning of intended enforcement action.

- 9.11 Where works have been undertaken which appear to constitute an offence such as in the case of unauthorised works to listed buildings, unauthorised advertisements and unauthorised works to trees persons responsible may be invited for an interview under caution to establish the circumstances of any alleged offence.

## **10 Decision Making in Respect of Protected Trees**

- 10.1 Trees can be protected by virtue of a Tree Preservation Order, by being located within a Conservation Area or by being protected as a condition of a planning application where that scheme has been implemented.
- 10.2 Unauthorised work to protected trees can vary from minor pruning or removal of small branches to serious damage or felling. The effect can vary from little or no effect on public amenity to in severe cases a seriously detrimental effect. A breach of tree protection conditions may prejudice the future health/safety/life expectancy/appearance of trees.
- 10.3 When a complaint relating to unauthorised works to a protected tree is made we will consider the specific circumstances of the case together with a range of matters that may include:
- the size of the tree/s;
  - the prominence of the tree/s in the public domain
  - the condition of the tree/s
  - the life expectancy of the tree/s
  - the severity of the offence (determined by the extent, quality and effect of works and the effect on public amenity)
  - under what regime they were protected
- 10.4 If the protected tree/s are in good condition and have significant public amenity and could not be adequately replaced by planting another tree, the Council will consider prosecution of those responsible for removal.
- 10.5 A prosecution may also be considered where works have been undertaken to a poor standard, (and are not in accordance with BS 3998) and this has resulted in significant loss of public amenity.
- 10.6 The Council will consider whether consent would have been granted had it been applied for when determining whether or not to pursue a prosecution.
- 10.7 With respect to trees in a Conservation Area, the seriousness of an offence will be judged on a case by case basis including determining if the action has resulted in harm to the appearance and character of the Conservation Area or there is a significant impact on public amenity caused by the loss of a tree that would have merited protection with a TPO.
- 10.8 Where unauthorised work has been undertaken to trees protected by conditions and the work has the potential to harm the appearance of a development the Council will consider seeking a remedy to the situation. This may include the use of formal powers to require work to cease or be modified, or to require works to be undertaken to remedy the breach of planning control or loss of amenity.



## **11 Formal Action**

- 11.1 Where negotiation fails or is not appropriate there are a number of different notices and/or actions that can be taken by the Local Authority. These are summarised in Appendix 1.

## **12 Monitoring the Implementation of Planning Permissions**

- 12.1 Monitoring of planning permissions and legal agreements is undertaken by a monitoring officer. This is to ensure that pre commencement conditions have been approved or discharged and that conditions imposed to regulate or control the development are adhered to. Checks are also made to ensure that financial contributions forming part of a section 106 obligation to support provision of affordable housing, schools, open space etc. are paid at the correct time and that all other requirements to deliver community benefit are delivered.
- 12.2 The onus is on the land owner or developer to ensure that all the necessary consents are in place before work starts and to ensure that all conditions are complied with. Officers will undertake checks to investigate compliance with conditions where appropriate. Resources are targeted where they will be most effective. The enforcement team use a number of methods to proactively check which developments have commenced. In some cases monitoring will be limited to a paperwork exercise and on other sites (depending on the priorities in place) a more comprehensive check will be undertaken to check for full compliance with approved plans and conditions.
- 12.3 Where breaches of conditions are found we will consider the expediency of formal action to ensure compliance.

## **13 Public Consultation and Review of the Local Enforcement Plan**

- 13.1 Comments on this document are welcomed and will be considered as part of the formal public consultation exercise taking place between **4 February 2019 and 18 March 2019**. Subsequently any additional feedback will be considered as part of the review process, please email comments to [planningenforcement@eastriding.gov.uk](mailto:planningenforcement@eastriding.gov.uk).
- 13.2 The Council will review this plan regularly and at least every three years in response to changes in legislation, relevant enforcement guidance, resources and the Council's procedures.

## **APPENDIX 1 - PLANNING ENFORCEMENT TOOLS**

(Enforcement powers are dependent on the type of breach and facts of the case).

### **Powers of Entry**

Rights to enter land to investigate a breach of planning control, to consider enforcement action and to check compliance.

### **Section 330 or S16 Notice**

Notices under Section 330 Town and Country Planning Act 1990 or Section 16 of Local Government (Miscellaneous Provisions) Act 1976 can be used to identify interested parties.

### **Planning Contravention Notice**

Requires the recipient to provide information about the land and the breach of planning control. Non-compliance with the notice is an offence.

### **Enforcement Notices**

An enforcement notice describes the breach of planning control and the reasons why the Council is taking action and sets out the steps required to be taken. Enforcement Notices can also be served in respect of Listed Buildings and Breaches of Condition. There is a right of appeal against the notice to the Planning Inspectorate. Non-compliance with an enforcement notice is an offence and can result in formal action through the courts and direct action.

### **Stop Notice**

A Stop Notice can only be served with an Enforcement Notice, its purpose being to stop a harmful activity before the associated Enforcement Notice comes into effect.

### **Temporary Stop Notice**

A Temporary Stop Notice is usually used as an emergency measure to cease development that poses immediate harm to local amenity. Non-compliance with this notice is an offence and can result in prosecution.

### **Breach of Condition Notice**

A Breach of Condition Notice (BCN) may be served where there has been a breach of a condition that is attached to an extant planning permission. There is no right of appeal to the Secretary of State against this notice.

### **Section 215 Notice**

Where the condition of land or buildings is considered to adversely affect amenity, Section 215 of the Town and Country Planning Act 1990 gives the Council the power to issue an 'untidy land' notice. This may require works to tidy land or buildings, or to require enclosure, demolition, rebuilding and repair.

**Advertisement Removal Notice**

This can require the removal advertisements and display structures provided the relevant notice given. A right of appeal exists.

**Discontinuance Notice**

Can be served against an advertisement that has deemed consent.

**Prosecution**

The Local Authority will consider prosecution when evidential and public interest tests set down in the Code for Crown Prosecutors have been met.

**Injunctive Action**

Where other powers are unlikely to restrain a serious breach of planning control the Council may consider applying for an injunction. Failure to comply with the terms of an injunction is in contempt of court and could result in imprisonment and / or an unlimited fine.

**Caution**

Cautions may be used in circumstances to deal quickly with less serious offences where there is sufficient evidence to sustain a prosecution and where the offender admits the offence. Formal cautions are administered in accordance with Home Office guidelines.

**Planning Enforcement Order**

These can be used to permit the authority additional time in which to take action in cases where the development has been deliberately concealed.

**Proceeds of Crime Act (POCA)**

Where a defendant has been found guilty of non-compliance with a notice the Council may use the provisions of the POCA to seek to recover the proceeds of a criminal lifestyle.

**Urgent Works Notice**

May be served where works are urgently necessary for the preservation of a listed building, under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Repairs Notice**

A repairs notice can be served to secure works for the long term preservation of a listed building, under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The issue of a Repairs Notice is a preliminary action to the Compulsory Purchase of the listed building under section 47 of the Act.

**Replanting Notice**

Can require the replanting of replacement trees for those removed in contravention of a TPO or to enforce any condition of consent requiring replacement trees. There is a right of appeal against the service of the notice.