

## Appendix A: Reporting Procedure

1. Breaches of planning control can be reported to the Council by completing our on-line Planning Enforcement Complaints Form or contacting our Customer Service Centre on 01664 502502, or Email: [planningenforcement@melton.gov.uk](mailto:planningenforcement@melton.gov.uk).
2. The Council will endeavour to acknowledge receipt of a reported breach of planning control within 5 working days. The acknowledgement will either be by letter, e-mail or telephone and will provide the name and contact details of the investigating officer and a case reference number.
3. If on initial receipt of a complaint it is obvious that it is not a planning matter or there is deemed to be no breach of planning control the complainant will be notified. If the reported breach relates to a function or activity enforced by another Council service (e.g. fly tipping or statutory nuisance) the complaint will be forwarded to the relevant department.
4. We will update the complainant as our investigation is progressing. This may be to explain that a planning application is going to be made, that we are monitoring the situation or that we are considering taking formal action.
5. To avoid the unnecessary use of resources in responding to hoax or malicious allegations; anonymous reports of suspected breaches of planning control will only be pursued where an initial site visit reveals a clear breach of planning control. All other anonymous reports will not be pursued beyond an initial site visit.
6. When a complaint is made, it is treated in confidence and the details of the complainant are not shared. If, however, the breach is serious enough that we decide to prosecute, we would need to name the complainant at that point. We would contact the complainant where this is necessary.

## **Appendix B: Enforcement Options**

On completion of the initial site visit, the findings will be assessed, and a view taken as to how the investigation will proceed.

### **Option 1 - No further action**

1. The Council may, following initial investigation decide that there has been no breach of planning control or that the breach is minor or insignificant in nature, or that there is insufficient evidence to pursue the matter. In this case, the Council may decide to take no further action.

### **Option 2 - Further investigation required**

1. It may be necessary to carry out further investigations from the initial site inspection to determine whether a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or further information from the complainant, site owner or other parties.
2. In certain cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.
3. Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice or Requisition for Information to obtain information relating to the suspected breach or site ownership details.

### **Option 3 - Negotiate a solution**

1. Where it has been established that a breach of planning control has occurred, the Council will normally attempt to negotiate a solution to regularise the breach

of planning control without recourse to formal enforcement action (see paragraph 9.1 above).

2. Such negotiations may involve the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, the Council will consider whether or not it is expedient to take formal enforcement action.

#### **Option 4 - Retrospective application for planning permission**

1. Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances, it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action

#### **Option 5 - Formal enforcement action**

1. Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers listed in Table 3 below is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control and each case is assessed on its own merits.
2. The Decision to take enforcement action or commence a prosecution will be taken in accordance with the delegation arrangements detailed in the Council's Constitution.
3. There are rights of appeal to the Secretary of State against an Enforcement

Notice / Listed Building / Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices there is no right of appeal to the Secretary of State, and these may only be challenged by application for judicial review to the High Court. In the case of Section 215 Notices, prosecutions and injunctions, appeals must be made through the Courts.

# **Appendix C: Types of Formal Enforcement Proceedings**

## **C1 : Enforcement Notice**

1. The Council will consider the service of an Enforcement Notice where unauthorised operational development or change of use has taken place and it is considered expedient to do so.
2. Where a breach of planning control exists and any harm caused would be removed or alleviated by the imposition of conditions on a planning permission, but the invitation to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the expediency of serving an Enforcement Notice.
3. If the breach of planning control relates to a Listed Building, or unauthorised demolition within a Conservation Area, the Council will consider the expediency of serving a Listed Building Enforcement Notice or a Conservation Area Enforcement Notice and where appropriate, commencing a prosecution in the Courts.
4. The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.

## **C2. Stop Notices**

1. Where a breach of planning control is causing very serious harm to public amenity and the environment, and this harm could not be removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a Stop Notice (after the service of an Enforcement Notice) in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice.

2. The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease, and the date that it takes effect.

### **C3: Temporary Stop Notice**

1. The effect of issuing a Temporary Stop Notice will be to halt the breach of planning control, or the specified activity immediately. Before issuing a Temporary Stop Notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately.
2. A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately.

### **C4: Breach of Condition Notice**

1. A Breach of Condition Notice is mainly intended as an alternative to an Enforcement Notice for remedying a breach of condition – but it may also be served in addition to an Enforcement Notice, perhaps as an alternative to a Stop Notice, where the local planning authority consider it expedient to stop the breach quickly and before any appeal against the Enforcement Notice is determined.
2. Any recipient of a Breach of Condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

### **C5: Section 215 Notice (Untidy Land Notice)**

1. In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider the expediency of serving a Notice under s.215 of the Town and Country Planning Act 1990.
2. The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect.

## **C6: Community Protection Notice**

1. In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider the expediency of serving such Notice under the Anti-Social Behaviour Crime and Policing Act 2014.
2. A Community Protection Notice (CPN) is aimed to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. Examples include persistent untidy land and motor repairs on driveways.

## **C7: Prosecution**

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.

- I. Enforcement Notice
- II. Proceeds of Crime Act (POCA)
- III. Listed Building Enforcement Notice
- IV. Breach of Condition Notice
- V. Section 215 Notice
- VI. Stop Notice

The Council will also consider commencing a prosecution in the Courts where:

- Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area.
- An Advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored.
- Unauthorised works have been carried out to a Listed Building.
- Unauthorised demolition has taken place in a Conservation Area.
- The recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information.

Before commencing any legal proceedings, the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

## **C8: Injunctions**

1. Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Courts for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause, exceptional harm.
2. An injunction can stop unauthorised works from carried out.

## **C9: Direct Action**

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under s.178 of the Town and Country Planning Act 1990 (as amended). The Council can:

- enter the land and take the steps required;
- recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

### **1. Right of entry**

- a. Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes (sections 196A, 196B and section 196C of the Town and Country Planning Act 1990). This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.
- b. The Act specifies the purposes for which entry to land may be authorised (section 196A(1) of the Town and Country Planning Act 1990), namely:
  - To ascertain whether there is or has been any breach of planning control on the land or any other land;
  - To determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
  - To determine how any such power should be exercised; and
  - To ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.



## **2. Unauthorised Encampments**

- The travelling community can experience difficulties finding an approved place to stay. This means that sometimes they stop on land without permission, including highway verges and lay-bys. This Council's approach is based on preventing unlawful occupation of land.
- Encampments on Council land will result in legal proceedings to evict the travellers. In the case of highway land, such as verges and lay-bys, the matter will be taken up with Leicestershire County Council, which is the local highway authority.
- Trespassing on land is a civil matter, with prevention of trespass being the responsibility of the landowner. Landowners will need to seek appropriate legal advice in these circumstances.

## **3. Proactive Enforcement**

- Paragraph 58 of the National Planning Policy Framework states "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 to do so.
- The Council will undertake a programme of monitoring a sample of developments to ensure that:-
  - any necessary planning permission has been obtained
  - development has been carried out in accordance with plans approved on planning permissions
  - conditions attached to planning permissions have been complied with. Investigation Officers will use information from the Council's Building Control Service to help organise the programme.
- A percentage of permissions will be selected for monitoring. The Council will not select monitoring cases based on the developers involved.

# Appendix D: Roles and Responsibilities

## Responsible Person - Planning Development Manager

### Duties including

- Overall responsibility for the management and delivery of Planning Enforcement service in accordance with the Council's policies and procedures
- Provide professional leadership of the Council's Enforcement Team ensuring a level of quality assurance
- Signing enforcement notices in accordance with the constitution / scheme of delegation
- Monitoring and reporting on performance indicators to Senior Leadership Team and Planning Committee
- Responsible for preparation, implementation, monitoring, reporting and reviewing of the planning enforcement policy
- Ensuring training, qualifications and resource requirements for the team to enable the implementation of the policy

## Competent Persons -

### Planning Enforcement Officer

#### Duties including

- Responsible officer for handling planning enforcement cases, including major breaches of planning controls
- Investigate planning enforcement complaints, identifying appropriate courses of actions ensuring all relevant legislation is considered and followed
- Updating customers, managers and members as appropriate
- Maintaining accurate and up to date records
- Taking necessary action where breaches of planning control have been identified
- Gathering evidence for prosecution / legal action
- Attending briefing and committees as and when required and giving evidence in court
- Assisting the Development Manager with data collection and monitoring in respect of key performance indicators
- Keep the qualifications, CPD and training updated at all times

### Planning Officers

#### Duties including

- Assisting the Planning Enforcement Officer where necessary, for instance in site visits where the site is known to the Officer
- In the absence of enforcement officer, perform all the above mentioned duties of the planning enforcement officer as directed by the managers
- Liaising where appropriate with the Planning Enforcement Officer to ensure that recommended conditions are enforceable
- Advising customers how to make enforcement complaints

### Planning & Enforcement Technical Officer/ Planning Admin Officers

#### Duties including

- Receipt and acknowledgement of incidents, notifications of breaches and complaints
- Registration and allocation of cases
- Maintaining accurate and up to date records

- Updating customers as appropriate
- Assist the planning enforcement officers and planning officers in undertaking responsibilities for minor cases as directed
- Taking necessary action where minor breaches of planning control have been identified
- Assisting the Development Manager with data collection and monitoring in respect of key performance indicators

## Legal Officers

### Duties including

- Providing support with expert advice and guidance regarding complex enforcement issues
- Provide direction to ensure compliance with the Council's governance policies
- Ensure prosecution files meet court standards
- Present prosecution files via the court system

## **Senior Leadership Oversight**

### Director of Growth and Regeneration and Assistant Director of Planning

### Duties including

- Signing enforcement notices in accordance with the constitution / scheme of delegation
- Providing strategic oversight of the service

## **Appendix E: Performance Indicators**

Key Performance Indicators to monitor the performance at service level are as below:

### **Corporate level indicators: (reported to Cabinet on quarterly basis, and planning committee on annual basis)**

- Number of enforcement cases resolved this quarter
- Number of enforcement notices issued this quarter

### **Service level indicators: (reported to planning committee on annual basis)**

- Number of enforcement cases received this quarter
- Average number of days taken to determine enforcement cases (end to end)
- Number of outstanding enforcement cases (enable identification of backlogs)
- Number of complaints received for the service
- Number of compliments received for the service
- Number of successful prosecutions
- Number of people satisfied with the service received (based on survey)

### **PS1/2 returns (reported to Government on quarterly basis and planning committee on annual basis)**

- Number of enforcement notices issued
- Number of stop notices served (excluding temporary stop notices)
- Number of temporary stop notices served
- Number of planning contravention notices served
- Number of breach of condition notices served
- Number of enforcement injunctions granted by High Court or County Court
- Number of injunctive applications refused by High Court or County Court

Annual data cleanse to be undertaken on the Uniform system to ensure information integrity.