

Planning Enforcement Update – 3 November 2017

Planning Issues

1. Introduction

Given recent enquiries about enforcement activity in the District it is appropriate to provide information on enforcement activities this year to date.

It is important to remember that planning enforcement must be discretionary, proportionate, expedient and reasonable. An enforcement notice is a last resort. First an alleged breach has to be specified, then there's a stepped approach and period for compliance. Once a notice is served, the subject has 28 days to appeal or it takes effect. Failure to comply is then a criminal offence.

These are the possible grounds of appeal on an enforcement notice:

- Planning permission should be granted
- Never happened
- Isn't development anyway
- Out of time – four years or ten years usually
- Not properly served – owners/occupiers
- Excessive steps
- More time please

Limits and consequences include:

- Variation of notice
- Failure to deal with all breaches at once – no second chances.
- Community Protection Notices – a new tool, lots of advantages, but limited use.
- Conditions monitoring – breach of condition notice.

The new Planning Investigator for monitoring including CIL and S106 Triggers has been in post since July.

2. Information

During 2016, there were 304 individual complaints/representations in relation to alleged planning breaches queries – with 252 working days per year that equates to 1.4 complaints per day. All sites were visited at least once. Of these, 153 became full enforcement files. The remaining 151 enquiries were resolved.

- 32 planning application requested and subsequently approved
- 26 identified breaches resolved through remedial works
- 13 were not expedient to enforce
- 190 were closed with no breach identified
- 43 files open at year end - applications pending/submitted/under negotiation or where sites are to be monitored

For the period **1 January 2017 to 26 September 2017**, 195 full enforcement files were created. 21 general enquiries did not proceed to full enforcement investigation because these were matters that were quickly resolved and are brief in their nature/duration.

Clearly, resolving breaches on site on the spot (or through subsequent expeditious written or verbal negotiations) is by far the most cost-effective means of rectifying contraventions. In some cases, preliminary action is taken through the service of S330 or Planning Contravention Notices (formal requisitions for information), and this often has the secondary benefit of resolving the breach at that stage.

Of these 195 full enforcement files, 107 (55%) have been resolved:

- 26 by way of planning application and approval, one of which was approved by way of appeal.
- 11 identified breaches resolved through remedial works being undertaken
- 11 matters were either found to be immune from enforcement, not expedient to pursue, or de minimis
- 59 matters were closed with no breach identified

The remaining 88 live cases are matters where files are left open for ongoing review, those where a planning application is awaiting determination, or an application has been requested (but either not yet received or validated), and finally those marked for possible enforcement.

3. Notable cases and notices served in 2017

Community Protection Warning letter served on Avant Homes in Daventry (15.02.17), following breaches of hours of construction
Community Protection Notice served on Avant Homes, Daventry (21.06.17) - marked improvement in compliance, with only one off breaches subsequently reported

Planning Contravention Notice served on Newnham Turn Farm, Dodford (15.03.17)

Planning Contravention Notice served on All Green Farm West Haddon (26.05.17) - no breach found and file closed with an option to revisit.

S330 Notice served on landowner in Arthingworth concerning unfinished building (02.06.17). Dialogue was subsequently undertaken with the planning agent, with construction and associated scaffolding in operation, without formal subsequent enforcement required to date given progress. The site will be periodically monitored to ensure that the appearance of the resultant building is satisfactory, and is used for the correct purposes.

S330 Notice served on Shelleycotes Road, Brixworth (26.07.17) regarding new fence and resulting highway safety and amenity issues. This did not result in the removal or alteration of the relevant section of fence. Accordingly, an

enforcement report is being taken to the 11th October meeting of the Planning Committee.

S330 Notice served on car repair/untidy site in Moulton (22.09.17). There has been a welcome improvement in the condition of the overall site, but the investigation remains ongoing, and open to possible enforcement depending on progress.

Portacabins in Hannington have been removed through dialogue without formal enforcement. Community Protection Warning/Notice were considered but not required in the final analysis (see attachment).

Before



After



A container was approved by way of an application but not clad as per conditions. The matter was resolved through dialogue without the need for formal enforcement.

Before



After



- Successful appeal of a Treehouse in Draughton. Following refusal of permission, the planning merits for enforcement were strong in this particular case from the Council's perspective, and were very likely to be pursued by the Council post-decision. However, the Inspector controversially approved the treehouse at appeal, despite its acute overlooking of the neighbouring residence. Accordingly, this serves as a very good example to justify waiting until any appeal period has expired until formal action is commenced.



4. Some other pending and under consideration

Without prejudice, given discretionary nature of enforcement at all times:

- Untidy site in Moulton. Possible S215 Notice or Community Protection Warning/Notice if required (informal dialogue currently ongoing to improve situation)
- Untidy site in Woodford Halse. Possible S215 or Community Protection Warning/Notice if required (informal dialogue currently ongoing to improve situation)

The work of the enforcement team involves considering retrospective (and sometimes perspective) planning applications. A timely example is the detailed report for the single traveller application at Barby approved at the 11 October meeting of the Planning Committee. Although the officer recommended approval, the case would have possible enforcement implications if the application had been refused, or if there are any possible subsequent deviations of any permission granted.

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