



# South Tyneside Council

## AREA PLANNING GROUP & BUILDING CONTROL

### ENFORCEMENT POLICY July 2008

#### **1 Introduction**

- 1.1 This policy sets out the standards and guidance that will be applied by the Area Planning Group and the Building Control section when acting in its role as enforcing authority across its wide range of relevant legal powers or duties. The policy applies to enforcement affecting both members of the public and the business community. South Tyneside Council formally adopted Government's Concordant on Good Enforcement in March 1998.
- 1.2 Enforcement is not limited to formal enforcement powers, such as the service of notices or prosecution, but includes the monitoring of sites to ensure compliance with any consent and relevant conditions and the provision of advice to help the public comply with legislation.

#### **2 Policy Statement**

- 2.1 Fair and effective enforcement is essential to improve and protect the health, safety and quality of life of the people who live, visit and work in South Tyneside. Often a decision about enforcement action has implications for many people, either directly or indirectly and the enforcement of planning and building control is no exception. Sometimes, development is carried out without the necessary permissions being sought or obtained. On other occasions, work is not carried out in accordance with the plans that the Council has approved and, in other cases, required works are not properly actioned. All are breaches of the relevant controls and can have an adverse effect upon people's lives.
- 2.2 The Area Planning Group and the Building Control section carry out a wide range of legal duties under the various Acts and Regulations. This policy applies to all aspects of the enforcement of Planning and Building Control including;
  - Works carried out without the necessary permissions
  - Works not carried out in accordance with the permissions granted
  - Unauthorised works to protected trees or buildings
  - Dangerous structures
  - Untidy Sites

- 2.3 The Government has given the Council primary responsibility for taking enforcement action where it is necessary in the public interest within its administrative area. A private citizen cannot initiate planning enforcement action. The Commissioner for Local Administration (the local ombudsman) has held that there can be “maladministration” where the Council has failed to take effective enforcement action, which is plainly necessary. When determining if enforcement action is appropriate, we will decide if the unauthorised development affects public amenity or the existing use of land or building merits public protection in the public interest.
- 2.4 The level of enforcement action will be commensurate with the breach of planning or building control to which it relates. It is usually inappropriate to take formal enforcement action against a trivial or technical breach that causes no harm to public safety or amenity in the locality of the site.
- 2.5 We will invite the owner/occupier to voluntarily remedy the harmful effects of an unauthorised development, but where this fails, we will not allow negotiations to hamper or delay any enforcement action that may be required to make the development acceptable or compel it to stop

### **3 Statement of Objectives**

- 3.1 We fully acknowledge and endorse the rights of individuals and will ensure that all enforcement action will take place in strict accordance with the Police & Criminal Evidence Act 1984 (as amended), the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.
- 3.2 When deciding to take enforcement action under planning powers, we will bear in mind that it is not an offence to carry out development without first obtaining any necessary planning permission. Where it may initially appear that there is some probability that planning permission would be granted for the development (including those cases where some minor amendment to the work as carried out would make it acceptable), we will invite the developer to submit a retrospective application together with the appropriate fee. To invite an application does not suggest that the Council would grant planning permission.
- 3.3 Whilst we do not condone the carrying out of development without first obtaining the necessary planning permission, an Enforcement Notice will not normally be issued for unauthorised development, which is acceptable on its planning merits. We will take the appropriate action under planning powers to enforce only against those parts of a development that are unacceptable and affect public amenity.
- 3.4 Other types of development, such as the display of advertisements without the consent of the Council or the works to a listed building without the necessary listed building consent, do constitute an offence that can be prosecuted in the Magistrates Court. Whilst we will make every effort to resolve such matters informally we will pursue any case in the Magistrates Court where it is in the public interest to do so.
- 3.5 Building Control enforcement is different to the planning process. An offence, which can be prosecuted in the Magistrates Court, can be

committed at various stages of the development where the developer fails to comply with the requirements of the Building Act 1984. We will attempt to resolve a situation without recourse to formal action, but will use such powers where all other attempts have been exhausted.

- 3.6 In some cases, development has been carried out without the planning permission, but it could be made acceptable following the submission of a retrospective application and the imposition of conditions (i.e. the control of hours). In such cases, we will invite the appropriate applications. Where the development refers to commercial activity, every effort will be made to safeguard the business, but we will seek to ensure that the development is carried out or continued within acceptable limits.
- 3.7 If no application is submitted, we will consider what level of enforcement action is appropriate. We may commence enforcement action if the development is considered to be unacceptable and the situation can only be remedied by removing the unauthorised development or change of use or by imposing conditions on a granted planning permission. If a formal notice is served, it will contain the reason why the Council considers such action is expedient and what works are required to remedy the situation within a given timescale. The recipient will then have no doubt why such action is warranted or what is required to do in order to alleviate or remove the breach.
- 3.8 Having regard to the Council's economic development function, we will encourage unacceptable, even if established, commercial uses to relocate to more suitable sites to safeguard employment. This will be done within reasonable deadlines. What is reasonable will depend on the particular circumstances including the nature and extent of the unauthorised development, the time needed to negotiate for, and secure an interest in the alternative site and the need to avoid disruption in the relocation process. If the timescale for relocation is ignored, it will usually be expedient for the Council to take enforcement action. In that event, the compliance period in the notice will specify a reasonable period to complete the relocation or cease the use.
- 3.9 Where an unauthorised use is considered to be unacceptable and there is no realistic prospect of it being relocated to a more suitable site, we will not allow the operation or activity to continue at its present level, if at all. Some developments cause serious harm to the amenity of the surrounding area and cannot be remedied to make them acceptable. We will normally take vigorous enforcement action, including, if appropriate, the service of a stop notice to remedy the breach urgently or prevent further serious harm to public amenity.

#### **4 Enforcement Priorities**

- 4.1 There are 2 key types of enforcement activity, reactive – responding to complaints and proactive – monitoring of developments and any relevant conditions.

##### **Reactive:**

The Council received in excess of 400 complaints for each of the last three years in respect of breaches of planning and building control matters. We

must give priority to those cases that cause the greatest harm, but we appreciate that some breaches, however small, will cause concern. We will investigate all complaints, which are received whether they are made in person, in writing, by telephone or by e-mail but the complaints will be dealt with in the priority outlined below. The identity of the complainant will be confidential and the complainant will be kept informed of progress on the case. We will not normally investigate anonymous complaints. It is recognised that some complainants may feel uncomfortable providing details to the authority and in these cases the Planning Enforcement Team can provide advice on possible courses of action.

#### 4.2 Reactive enforcement cases will be prioritised in the following order

##### Urgent Priority:

- Unauthorised works to listed buildings
- Unauthorised works to protected trees
- Dangerous Buildings or Structures

For these cases, the first site visit will be made within 2 working days from the receipt of the complaint and we will endeavour to visit 100% of the sites within this timescale.

##### High Priority:

- Unauthorised changes of use or works to any building, which adversely affects the health, safety, or welfare of people in or around the building or causes excessive loss of amenity
- Unauthorised works or changes of use that have been refused retrospective planning permission
- Unacceptable forms of development in a Conservation Area

For these cases, we will endeavour to ensure that the first site visit will be made within 3 working days of the receipt of the complaint. The performance standard is to visit 80% of sites within the agreed period.

##### Low Priority:

- Development that is not in accordance with approved plans and/ or conditions and is contrary to a decision by the Council
- Resolving untidy sites
- Development that is considered be acceptable and would have been granted planning permission
- Unauthorised advertisements

For these cases, we will endeavour to ensure that the first site visit will be made within 10 working days of the receipt of the complaint. The performance standard is to visit 75% of sites within the required period.

#### 4.3 The Council will acknowledge the receipt of any complaint in writing within 5 working days. Furthermore, the Council will update all complainants in writing within 15 working days of the receipt of the complaint. We will endeavour to acknowledge and update 80% of the complainants within the agreed periods.

- 4.4 When prioritising cases, we will consider what level of harm is caused by the breach. Harm could include amenity or safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows. Harm to visual amenity of an area could occur by unauthorised works to a listed building or works to a protected tree. Harm does not include the loss of value of a neighbouring property, competition with another business or loss of an individual's view or trespass onto someone else's land. We will not ignore lesser breaches of planning or building control. Some cases will simply take longer to investigate.
- 4.5 We will follow the Government advice and use persuasion and negotiation where possible to resolve breaches. This often proves to be the quickest and most effective method of resolving the matter. If persuasion and negotiation are not successful, then we may commence enforcement action
- 4.6 After thirteen weeks, we will reassess all enforcement cases that have remained unresolved. If there is no significant harm caused by the development and it is not proposed to take formal action, a decision will be made to close the case using the delegated authority scheme. Complainants will be advised of the Council's decision in writing.
- 4.7 We will follow the Government advice and use persuasion and negotiation where possible to resolve breaches. This often proves to be the quickest and most effective method of resolving the matter. If persuasion and negotiation are not successful, then we may commence enforcement action.
- 4.8 For planning matters there is a right of appeal to the Secretary of State (dealt with by the Planning Inspectorate) against an Enforcement Notice. If an appeal is lodged, the notice does not take effect and the requirements of the notice are suspended until the outcome of the appeal. The appeal process can be lengthy. We will adhere to the Government's deadlines to minimise the length of the enforcement process.
- 4.9 If an appeal is allowed, we can take no further action. If the appeal is dismissed, the period of compliance with the Enforcement Notice begins from the date of the Inspector's decision letter. The Inspector has the power to vary an Enforcement Notice providing that it does disadvantage either party. If the developer fails to carry out the works required by the Enforcement Notice within the given timescale, then they can be prosecuted in the Magistrates Court. In certain circumstances, we will enter the site and carry out the works at the developer's expense. This only happens at the end of the enforcement process.

**Proactive:**

The Council granted almost 1200 applications in 2007/2008 and around 350 applications to discharge conditions. Conditions are critical to ensure that a high quality of development is achieved and amenity is protected. It is now proposed to be proactive and to turn attention to the monitoring of key conditions and sensitive developments that have been granted the necessary consents to ensure that the works are carried out in accordance with the approved plans. This protocol sets out the priorities for proactive enforcement. Due to the current staffing levels in the Planning Enforcement Team, it will not be possible to check every permission that is granted by the

Council. If breaches of planning control are discovered, they will be investigated in accordance with the priorities listed in paragraph 4.2.

4.10 Where developers use the Council's Building Control service, the notification of the commencement of the development will target the necessary inspections. The inspections will continue until the identified elements of the scheme are carried out to the satisfaction of the Council. The level of inspection could vary from a single visit to check out the setting of a new dwelling to a regular visit ensuring tree protection measures are in place to long term inspections for a conversion of a listed building.

4.11 In cases where developers choose not to use the Council's Building Control service or Approval under the Building Regulations is not required, the site will be monitored to ensure that the commencement of works is identified at an early stage. In addition, the developer will be requested to notify the Planning Enforcement Team when it is proposed to commence the development. It should be noted that there is no statutory obligation for the developer to comply with such a request.

4.12 The priorities for monitoring schemes that have planning permission will be as follows:

#### Priority 1

- All major developments. A major development is categorised as any residential development for ten or more dwellings or any commercial development of more than 1,000 square metres.
- Significant works to a listed building

#### Priority 2

- Other key developments where it is considered that the scheme will impact on the public realm.

#### Priority 3

- Other developments where there is a specific or identified need

4.13 For building regulation related matters there is also a right of appeal to the Secretary of State for a determination, if there is some question as to whether the works are in conformance with the regulations. However this is not a normal course of action as it is usually quite evident if the regulations have been breached.

## **5 Shared Enforcement Roles**

5.1 Legislation to protect the public and preserve and enhance the environment is enforced by various enforcement agencies both within and outside the Council. We will work with other departments of the Council, central government, other local authorities and other regulators to bring breaches of planning control to a satisfactory conclusion.

5.2 Where there is a shared enforcement function (Environment Agency, English Nature, Tyne & Wear Fire Brigade etc), officers will notify the

relevant enforcement agency of a breach for which that agency is responsible.

- 5.3 Where the Area Planning Group and Building Control and another enforcement body, all have the power of enforcement, we will liaise with that body to ensure effective co-ordination, having regard to the respective legislation, to avoid inconsistencies, and to ensure that the most appropriate action is taken to resolve any breach.

## **6. Assistance from the Public**

- 6.1 The assistance of the public is often crucial to the success of enforcement action by the Council. Due to the level of building activity being carried out in South Tyneside, it is not possible for the Council to identify all breaches of planning and building control, given the current staffing levels. The Council will encourage the public to provide any information that may assist in resolving an enforcement case. We will treat such information with confidence unless it is necessary to use it at an appeal or in court when the information will be made public. In such a case, we will seek the individual's consent before making it public.

## **7. Equality & Diversity Statement**

- 7.1 The Authority is committed to equality of opportunity for all people regardless of age, race, colour, ethnic or national origin, nationality, religion and belief, gender, marital status, employment status, disability, sexual orientation, social class, responsibility for children or dependents, trade union membership, unrelated criminal convictions or any ground that cannot be justified.
- 7.2 Accordingly, the Authority will make its services, facilities and resources accessible and responsive to the people and communities of the Borough. The Authority will work towards meeting the requirements of the Race Relations (Amendment) Act 2000, which are:
- Eliminating unlawful discrimination
  - Promoting equality of opportunity
  - Promoting good relations between people of different racial groups
- 7.3 We will work in accordance with the Councils' Race Equality Scheme. If requested, we will ensure that documents are translated into the principal black and minority ethnic languages and asylum seeker languages. Interpreters will also be used for those people who have difficulties understanding English via the use of a language line.
- 7.4 We will also work in accordance with the Council's Equality and Diversity Policy, which covers gender, disability, age, sexuality and transgender, religion and belief and race. Staff will receive equality and diversity training to ensure that they understand their responsibilities to promote this issue.