

# **Proposed** **HAMBLETON DISTRICT COUNCIL** **LOCAL ENFORCEMENT PLAN**

Showing changes from the 2008 Enforcement and Compliance Policy.

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## ~~Planning Enforcement & Compliance Service –~~ ~~ENFORCEMENT & COMPLIANCE POLICY~~

### **INTRODUCTION**

~~1.1 The Core Strategy for Hambleton District's Local Development Framework – sets out a "Vision for Hambleton" which includes the following:~~

~~"The development of vibrant and prosperous market towns and sustainable rural communities will have been supported. .... This will have been achieved~~

*in ways that reduce the impact of society on the environment, improve the quality of design of the built environment and protect and enhance Hambleton's environmental assets..."*

The planning system is a key factor in the delivery of this vision.

- 1.2—The planning system exists to control the development and use of land in the public interest. The planning system can only achieve its objectives if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system. The system relies on informed decision-making within a statutorily approved framework and policy context. As planning decisions affect the daily lives of individuals and the commercial interests of business and land owners it is not surprising that alleged breaches of planning control generate highly contentious situations. It is incumbent upon the local planning authority to resolve these matters. Hambleton District Council's Enforcement and Compliance Service aims to achieve these resolutions by providing an efficient and effective service.

The framework within which the Service operates is set out in this Enforcement and Compliance Policy. The Policy has been formulated with regard to: the Planning Acts; the Governments' Enforcement Concordat; relevant government guidance and circulars; the Council's Local Development Framework; the Human Rights Act and the Regulation of Investigatory Powers Act. The main elements of the legislative framework and guidance relating to enforcement are set out in **Annex 1** of this Policy. The enforcement tools available to the Local Planning Authority in the exercise of its enforcement function are explained at **Annex 2**.

- 1.4—The Enforcement and Compliance Policy makes clear what those undertaking unauthorised development and those objecting to it should expect from the Local Planning Authority. The Policy also explains how the Local Planning Authority will prioritise and undertake its investigations. These procedures will be reviewed on a regular basis.

- 1.5—The basic principles of the Enforcement and Compliance Policy are:  
Hambleton District Council will place a high priority on compliance with planning law. It recognizes however, that many breaches of planning law, although unlawful, do not constitute a criminal offence — until there is non-compliance with an enforcement notice.  
Hambleton District Council will always endeavour, as expressly required in Government advice, to resolve matters via negotiation. Formal enforcement action will be used as a reasonable and last resort.  
Hambleton District Council will exercise proportionality in applying the law and securing compliance; and in relating the type of action taken to risks and costs. Hambleton District Council, via the delegated powers of the *Enforcement Manager*, will decide whether or not to commence enforcement action. The Local Planning Authority recognizes that enforcement is a discretionary procedure, which relies upon the test of expediency. Although there is a duty on the Local Planning Authority to investigate alleged breaches of planning control, there is no mandatory requirement to undertake enforcement action.

## **1.0 INTRODUCTION**

1.1 This policy statement relates to Hambleton District Council's Planning Enforcement service. and describes how the Council will undertake the role of enforcing planning control.

1.2 Planning enforcement powers are discretionary and must be exercised fairly and in the public interest. The Government's policy on planning enforcement is in the National Planning Policy Framework (NPPF) 2012, paragraph 207:

*"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control....and take action where it is appropriate to do so."*

1.3 This Local Enforcement Plan explains how the Council will manage enforcement proactively, in a way that is appropriate to its area. How it will:

- (a) Respond to alleged cases of unauthorised development
- (b) Monitor compliance with planning decisions;
- (c) Take action where it is appropriate to do so.

1.4 It is also important that the service is delivered in a way that is responsive to the needs of business, in line with the Council's aim to be "business friendly". Enforcement allegations often concern business activity and whilst all allegations must be investigated and steps taken to control breaches where it is expedient to do so, the Council must seek to understand the likely impact of proposed action on business and only take such action where it is necessary and in the public interest. That is consistent with this more specific aim of the Council Business Plan: "To ensure that the Planning Service supports the sustainable economic growth and development of the District."

1.5 The Core Strategy for Hambleton District's Local Development Framework - sets out a "Vision for Hambleton ", which includes the following:

*"The development of vibrant and prosperous market towns and sustainable rural communities will have been supported. ....This will have been achieved in ways that reduce the impact of society on the environment, improve the quality of design of the built environment and protect and enhance Hambleton's environmental assets..."*

The planning system is a key factor in the delivery of this vision.

1.6 The planning system exists to manage the development and use of land in the public interest. The system is not to protect one persons rights against the activities of another. The planning system can only achieve its objectives if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the

planning system, to monitor the proper implementation of planning decisions and to respond to development that arises without permission. The system relies on informed decision-making within a statutorily approved framework and policy context. As planning decisions affect the daily lives of individuals and the commercial interests of business and land owners it is not surprising that alleged breaches of planning control generate highly contentious situations. It is incumbent upon the Council to respond to these matters appropriately. Hambleton aims to do this by providing an efficient and effective planning enforcement service.

1.7 The framework within which the Service operates is set out in this Local Enforcement Plan. The Plan has been formulated with regard to: the Planning Acts; the Planning Practice Guidance; relevant government guidance and circulars; the Council's Local Development Framework; the Human Rights Act and the Regulation of Investigatory Powers Act. The main elements of the legislative framework and guidance relating to enforcement are set out in **Annex A**. The enforcement tools available to the Council in the exercise of its enforcement function are explained at **Annex B**. **Also appended to this Local Enforcement Plan are two guidance documents relating to the control of advertisements in rural areas and control of advertisements on Council owned properties.**

1.8 The purpose of the Local Enforcement Plan is to make clear what those undertaking unauthorised development and those objecting to it should expect from the Council. The Plan also explains how the Council will prioritise and undertake its investigations. These procedures will be reviewed on a regular basis.

1.9 The Government introduced the Planning Practice Guidance in March 2014 "Ensuring Effective Enforcement" and has been updated since. The guidance gives an overview of planning enforcement and the different options available to local planning authorities to tackle possible breaches in a proportionate way. This policy should be read in conjunction with the Planning Practice Guidance.

## **2.0 Key principles of the Local Enforcement Plan**

### A: Objectivity

2.1 The Council will judge the "development", not "who" is responsible for it or how it came about, and will therefore choose from the following options in deciding how to act:

- Where considered that unconditional planning permission would have been granted, because the development meets the requirements of Local and National Policy the submission of a retrospective planning application within a reasonable time scale will be requested.

- Where it is felt that planning conditions could make the development acceptable, under Local and National Policy, the correct approach is to request a retrospective planning application within a reasonable time scale. If an application is not received within a reasonable time scale, enforcement action may be justified if the Council can demonstrate that appropriate planning conditions would be necessary to overcome harm caused by the development.
- Where the development cannot be made acceptable in planning terms, the Council will not seek a planning application but will instead set a realistic time limit for cessation, or relocation of the development, and will be prepared to serve an enforcement notice if suitable progress is not made within that time scale.

2.2 What would be a reasonable time scale for submission of an application will vary depending on the nature and complexity of the development in question. 21 days should be adequate in most cases and more time will only be agreed where it is demonstrated to be necessary.

2.3 A planning application is the most appropriate way to consider the merits of development and to allow affected neighbours and other interested parties to have their say. It is therefore appropriate to encourage retrospective planning applications..

#### B: Proportionality

2.4 The response to a breach of control should be proportionate to the harm it causes. This plan guides the appropriate response to various breaches of planning control. Harm will be assessed according to the degree of conformity or conflict with national and local planning policy, in much the same way that planning applications are evaluated. Enforcement is not punishment, but an appropriate response to something that is unacceptable in planning terms.

#### C: Justice

2.5 Enforcement action will not normally be pursued while a planning application for the same development is under consideration, or when the matter has been taken to appeal. The Council will deal with applications as quickly as possible in these circumstances to limit any uncertainty or loss of amenity. The Council must deal with the application fairly before proceeding with enforcement action as necessary.

2.6 Justice must be seen to be done and therefore we will clearly explain the reasons for our decisions..

2.7 Hambleton District Council will:

- Place a high priority on compliance with planning law. It is recognised however, that many breaches of planning law, although unlawful, do not constitute a criminal offence – until there is non-compliance with an enforcement notice;
- Always endeavour, as required in Government advice, to resolve matters via negotiation over a defined period, normally 21 days. Formal enforcement action will only be used where it is felt that reasonable negotiation will not succeed;
- Exercise proportionality in applying the law and securing compliance; and take account of the risks and costs of taking action and not taking action; and
- Via the delegated powers of the Development Manager, decide whether or not to commence enforcement action. The Council recognises that enforcement is a discretionary procedure, which relies upon the test of expediency. Although there is a duty on the Council to investigate alleged breaches of planning control, there is no mandatory requirement to undertake enforcement action.

### **Our Commitments**

## **2.0 THE HAMBLETON APPROACH TO ENFORCEMENT.**

- 2.81** Hambleton District Council will seek to ensure that enforcement procedures and decisions are always consistent, fair and appropriate. The ~~Local Planning Authority~~Council therefore makes the following commitments.

~~**Commitment 1** – The Local Planning Authority will, in the first instance, always seek to negotiate a resolution by being flexible and considering genuine alternative solutions to resolving breaches.~~

**Commitment 1** – The Council will, in the first instance, always seek to negotiate a resolution within a reasonable time scale (normally 21 days) by being flexible and considering genuine alternative solutions to resolving breaches.

~~**Commitment 2** – The Local Planning Authority will comply with its own timescales for commencing formal enforcement action; unless there are exceptional circumstances which require different timescales to be used. This will be determined by the Enforcement Manager and Development Control Manager.~~

**Commitment 2** - The Council will comply with the timescales for commencing formal enforcement action set out in section 4 below; unless there are exceptional circumstances which require different timescales to be used.

~~— **Commitment 3** — In considering whether to take enforcement action the Local Planning Authority will not give weight to the fact that development may have commenced.~~

~~— **Commitment 4** — In considering whether to take enforcement action the Local Planning Authority will not give weight to non-planning considerations.~~

**Commitment 3** – In considering whether to take enforcement action the Council will not give weight to non-planning considerations.

~~— **Commitment 5** — Decisions not to take enforcement action, or to close a case, will be made by the Enforcement Manager and Development Control Manager in conjunction with the Ward Member. Reasons for these decisions will be recorded in writing.~~

**Commitment 4** - Decisions not to take enforcement action, or to close a case involving a breach of planning control, will be made by the Development Manager in consultation with the Ward Member(s) where appropriate. Reasons for these decisions will be recorded in writing.

~~— **Commitment 6** — The Local Planning Authority will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Local Planning Authority will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.~~

**Commitment 5** – The Council will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.

~~**Commitment 7** — The Local Planning Authority will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.~~

**Commitment 6** - The Council will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.

~~**Commitment 8** — The Local Planning Authority will deal with all users of the Enforcement and Compliance Service in an honest, responsive and courteous manner.~~

**Commitment 7** – The Council will deal with all users of the Planning Enforcement Service in an honest, responsive and courteous manner and will keep Ward Members and Town and Parish Councils informed.

### **3.0 Controlling development**

#### **3.1 Respond to alleged cases of unauthorised development.**



3.2 When a written allegation of breach of planning control is received the Enforcement Officer will follow the five steps to assist in identifying whether the alleged breach is a matter that can be controlled using Planning Enforcement tools and whether any action would be in accordance with this policy.

- What is the alleged breach of planning control
- Is there evidence that a breach of planning control has occurred
- What harm has arisen from the alleged breach of planning control
- What action could be taken to address the alleged breach
- Would the action that could be taken be appropriate, proportionate and expedient

3.3 If the allegation is found to not be a breach of planning control or that there is no, or insufficient, evidence to demonstrate that there is a breach of planning control the case may be unable to proceed to the later stages.

3.4 If a breach of planning control is found to exist but no harm can be demonstrated then it is unlikely that any formal action would be appropriate and proportionate. In this circumstance an application may be requested to regularise the breach. Following a request and irrespective of whether an application is made or not the case is likely to be closed with a resolution to take no further action.

3.5 Where a breach has occurred and evidence shows that there is harm that can be controlled by planning enforcement tools, and the landowner is unwilling to control the development themselves and where formal action is appropriate and proportionate further consideration will be given to formal action using the tools identified at Annex B.

### **3.6 Monitoring compliance with planning decisions**

3.7 When the Council notifies neighbours of planning applications, it allows people to understand the changes that are proposed in their local area. In order to maintain public confidence in the planning system it is important to ensure that any subsequent changes are only made with good reason. However, it is important to bear in mind that alternative forms of development might have been approved, and therefore any variation must be considered objectively. But first it is necessary to ensure that the process is managed as well as possible.

3.8 The Council makes approximately 1,000 planning decisions each year and the planning acts allow three years for the implementation of these decisions. The Council cannot predict when a project will start and so it is not possible to systematically monitor the uptake of every decision.



However, the following arrangements are in place to maximise the effectiveness of monitoring:

- Planning decisions, with conditions and the reasons for them, are recorded and available for inspection;
- The submission of details required by conditions allows general monitoring of the uptake of permission;
- Information is shared with other regulatory regimes such as building regulations or premises licensing;
- Planning officers are expected to check progress on key sites when inspecting new ones in the vicinity; and
- Completion of new housing and commercial floor space is monitored on an annual basis.

3.9 In addition, the Council relies on information from interested local people and organisations. How we co-operate with other bodies and how we use this information are described in section 6 below. The wide notification of planning applications and decisions allows greater public involvement in planning matters and this provides a valuable monitoring resource.

## **4.0 Priorities for taking action**

### **4.03.0 PRIORITIES**

3.14.1 In order to manage resources appropriately it is necessary for the ~~Local Planning Authority~~Council to adopt a priority system for responding to and dealing with alleged breaches of planning control. Complaints regarding breaches of planning control will be investigated in accordance with the order of priority set out below, relating to the degree of harm or danger.

4.2 In all cases whether a breach of planning control has taken place, and if so the priority to be afforded to dealing with it, will be reviewed following an initial investigation and inspection of the site. All priorities may therefore be subject to change as the facts are established.

following order of priority.

**Category 1** – any immediate and irreparable harm to our best assets within the natural or built environment, or public safety. The best assets are often identified by planning constraints, such as Tree Preservation Orders, protected hedgerows, trees and buildings within Conservation Areas (including Article 4 Directions) and Sites of Special Scientific Interest.

For example:

- Unauthorised works to protected trees; or
- Unauthorised works to listed buildings; or
- Any use or structure falling within planning control that presents an immediate and serious danger to the public. This will be determined in liaison with the emergency services and other regulatory agencies, who may have more appropriate powers.

Initial response: site inspection the same working day (this may be the next working day if the complaint is received after 3pm)

**Category 1**—any immediate and irreparable harm to the natural or built environment, or public safety.

For example:

~~unauthorised works to protected trees~~

~~damage to listed buildings~~

~~any use or structure falling within planning control that presents an immediate and serious danger to the public.~~

**Response time**—~~action / site visit within same working day~~

**Category 2** – any unauthorised development or activity which causes, or has the potential to cause, clear and continuous harm or danger to the public; or the built or natural environment, including the living conditions of residents.

For example:

- noise disturbance resulting from non-compliance with operating conditions; dangerous vehicular access arrangements.

**Response time** – site inspection action / ~~site visit~~ within 2 working days

**Category 3** - any unauthorised development or activity where there is a risk of material harm to the environment and / or some harm to residential amenity.

For example:

- Works or uses with where works, or uses, have the potential to cause material long term damage to the environment;
- developments and uses which are clearly contrary to established policies.

**Response time** – site inspection action / ~~site visit~~ within 5 working days

**Category 4** – breaches of planning control causing limited, or no material harm to the environment, or the amenity of residents.

For example:

- unauthorised uses or development, which would be likely to receive planning permission.

**Response time** - site inspection action / ~~site visit~~ within 10 working days

4.3 Breaches of planning conditions will be dealt with in accordance with the above priorities.

4.4 The Development Manager will determine within which category an alleged breach falls.

~~Breaches of Condition identified by the Compliance Officer will be dealt with in accordance with the above priorities.~~

~~3.3 The Enforcement Manager will be responsible for determining within which category an alleged breach falls.~~

## **45.0 TIMESCALES & TARGETS**

~~45.1~~ In order to ensure that all those involved in the process are aware of what should happen and when, the following actions with timescales have been ~~agreed set~~. These timescales and targets for action are intended to give consistency, certainty and transparency to the process of enforcement. The Local Planning Authority has sought to devise an approach, which is equitable to all parties, particularly in terms of the frequency and manner in which information is provided. Where these timescales require input from others, it will be necessary to balance them with other commitments.

~~5.2~~ A small proportion of unauthorised development activity may occur outside of normal working hours. The Council does not have sufficient resources to respond to anything but the very highest priority cases, i.e. Category 1, outside of normal office hours. The nature of any “out of hours” response will be determined by managers on a case-by-case basis.

~~5.3~~ The ~~Local Planning Authority Council~~ considers it essential to keep Ward Members and Town and Parish Councils informed, given their role as a valuable source and disseminator of information in the local community. As a consequence contact with Ward Members and Town and Parish Councils are included within the Local Enforcement Plan’s Enforcement and Compliance Policy’ timescales and targets for action.

~~4.25.4~~ Within 3 working days of a complaint being received the Local Planning Authority will issue an acknowledgement to the complainant giving

- The name and contact details of the case officer;
- Information about the procedures that will be followed; and
- An indication of the likely time scale.

~~the name and contact details of the case officer.~~

~~5.54.3~~ ~~Officers from the Local Planning Authority’s Enforcement and Compliance Service will visit inspect~~ the site and/or take action in accordance with the timescales set out in the Priority Categories 1 – 4, as detailed above.

~~5.6~~ Within 10 working days of the site inspection, officers will contact the complainant to advise of progress, detailing whether and how the matter will be progressed.

~~5.7~~ Officers will contact the operator or landowner to advise of the Council’s views and recommended action, with timescales within 10 working days of the site inspection. A meeting will be offered if it was not possible at the site inspection.

5.8 The next steps will depend on the seriousness of the breach of planning control:

**Category 1**

4.45.9

The Council will determine the appropriate course of action from the following options within 5 working days of a breach being identified:

- (a) Serve a Planning Contravention Notice where necessary;
- (b) Commence formal enforcement action (such as issuing a Temporary Stop Notice or an Enforcement Notice and Stop Notice);
- (c) Close the case (because a breach has not occurred);
- (d) Invite a regularising application; or
- (e) Identify any further evidence that is needed in order to make an informed choice between options (b), (c) and (d) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced immediately.

Where option (e) is selected, progress of the investigation will be subject to weekly review.

~~The Local Planning Authority will contact the complainant within 10 working days of the site visit to advise of progress. Detailing whether and how the matter is to be progressed.~~

~~4.5 The Local Planning Authority will contact the operator or landowner being complained against within 10 working days of the site visit to advise of the Local Planning Authority's views and recommended action, with timescales. The landowner/operator will be offered a meeting with the case officer if such a meeting was not possible at the site visit.~~

~~4.6 The Local Planning Authority will, if necessary, serve a Planning Contravention Notice in all Category 1 matters within 10 working days of a breach being identified.~~

~~4.7 The Local Planning Authority will commence formal enforcement action, (such as issuing an enforcement notice), in all Category 1 matters within 3 weeks of a breach being identified, if the issue has not been resolved by either negotiation, voluntary action, or by the submission of a planning application to~~

~~regularize the matter. Should the application be refused formal enforcement action will be commenced immediately.~~

## **Category 2**

5.10 The Council will determine the appropriate course of action from the following options within 10 working days of a breach being identified:

- (a) Serve a Planning Contravention Notice where necessary;
- (b) Commence formal enforcement action (such as issuing an Enforcement Notice);
- (c) Close the case (because a breach has not occurred);
- (d) Invite a regularising application; or
- (e) Identify any further evidence that is needed in order to make an informed choice between options (b), (c) and (d) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced within 5 working days of the refusal.

Where option (e) is selected, progress of the investigation will be subject to fortnightly review.

~~4.8 The Local Planning Authority will contact the complainant within 10 working days of the site visit to advise of progress. Detailing whether and how the matter is to be progressed.~~

~~4.9 The Local Planning Authority will contact the operator or landowner being complained against within 10 working days of the site visit to advise of the Local Planning Authority's views and recommended action, with timescales. The landowner/operator will be offered a meeting with the case officer if such a meeting was not possible at the site visit.~~

~~4.10 The Local Planning Authority will, if necessary, serve a Planning Contravention Notice in all Category 2 matters within 5 weeks of a breach being identified.~~

~~4.11 The Local Planning Authority will commence formal enforcement action in all Category 2 matters within 8 weeks of a breach being identified, if the issue has not been resolved by either negotiation, voluntary action, or by the submission of a planning application to regularize the matter. Should permission be refused formal enforcement action will be commenced immediately.~~

## **Category 3**

5.11 The Council will determine the appropriate course of action from the following options within 15

working days of a breach being identified:

- (a) Serve a Planning Contravention Notice where necessary;
- (b) Commence formal enforcement action (such as issuing an Enforcement Notice);
- (c) Close the case (because a breach has not occurred);
- (d) Invite a regularising application; or
- (e) Identify any further evidence that is needed in order to make an informed choice between options (a), (b) and (c) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced within 10 working days of the refusal.

Where option (e) is selected, progress of the investigation will be subject to fortnightly review.

~~4.12 The Local Planning Authority will contact the complainant within 10 working days of the site visit to advise of progress. Detailing whether and how the matter is to be progressed.~~

~~4.13 The Local Planning Authority will contact the operator or landowner being complained against within 10 working days of the site visit to advise of the Local Planning Authority's views and recommended action, with timescales. The landowner/operator will be offered a meeting with the case officer if such a meeting was not possible at the site visit.~~

~~4.14 The Local Planning Authority will commence formal enforcement action on Category 3 matters as and when it considers it appropriate, but in any event within 6 months of a breach being identified if the matter remains unresolved.~~

#### **Category 4**

5.12 The Council will only commence formal enforcement action if it considers it expedient to do so having regard to the available resources. Any cases unresolved after a period of 9 months will be reviewed by the Development Manager to determine the appropriate action.

~~4.15 The Local Planning Authority will contact the complainant within 10 working days of the site visit to advise of progress. Detailing whether and how the matter is to be progressed.~~

~~4.16 The Local Planning Authority will contact the operator or landowner being complained against within 10 working days of the site visit to advise of the Local Planning Authority's views and recommended action, with timescales. The landowner/operator will be offered a meeting with the case officer if such a~~

~~meeting was not possible at the site visit.~~

~~4.17 The Local Planning Authority will only commence formal enforcement action on Category 4 matters if it considers it appropriate to do so. Any cases unresolved after a period of 9 months will be reviewed by the Development Control Manager to determine the appropriate action.~~

### **All categories**

~~4.185.13~~ The ~~Council Local Planning Authority~~ will inform complainants of any pertinent information, or significant progress in the case and will invite comment.

~~4.195.14~~ The ~~Council Local Planning Authority~~ will normally inform the operator/landowner at least 7 days prior to enforcement action commencing to advise them of this fact and the implications for them. (Unless planning permission ~~there~~ has previously ~~been submitted an application which has subsequently~~ been refused).

~~4.205.15~~ The ~~Council Local Planning Authority~~ will inform complainants and the relevant Ward Member(s), Town or Parish Council, to advise them that enforcement action has commenced, within 7 days of that action commencing.

~~4.215.16~~ If an application is submitted to regularize a breach the complainant, Ward Member(s) and the Town or Parish Council will be informed of the application in writing.

~~4.225.17~~ An exception to the above will be if the ~~Enforcement Team Leader/Development Control Manager in agreement with the Head of Legal Services and /or the~~ and in consultation with the Chairman of the Planning Committee consider the immediate serving of a Temporary Stop Notice necessary which will be implemented, and then the Ward Member(s) notified.

~~then this will be enacted, and Ward Members notified.~~

~~4.235.18~~ The ~~Enforcement Team Leader with the agreement of the~~ Development Manager will decide if and when a case is closed. The reasons given for closing a case will be recorded.

4.24 The ~~Local Planning Authority~~Council will, within 7 working days of a case being closed, write to the complainant, Ward Member(s) and the Town or Parish Council and the landowner /operator complained against to explain the Local Planning Authority's actions.

4.25 The ~~Local Planning Authority~~Council will seek to adhere strictly to the above timescales and targets - unless the ~~Enforcement Manager, with the agreement of the~~ Development ~~Control~~ Manager, considers that exceptional circumstances apply, such that these timescales are varied. (For example; bereavement or; confirmed and secured resolution of the matter within a different timescale).

4.26 The Local Planning Authority expects to achieve these targets in 90% of cases.



## **5.06.0 PROCEDURES**

### **Anonymity**

- 6.1 The most effective way to report a suspected breach of planning control is by using the “Report” function on the Council web site’s home page and selecting the “Alleged Breaches of Planning Control” option, which opens an online form. This ensures that all the information the Council needs to be able to investigate the matter is collected.
- 6.2 Complaints about alleged breaches of control will also be accepted by letter, e-mail, telephone, or in person, provided the complainant gives their name, address and telephone number. However, if it is necessary to ask for additional information that would have been provided by use of the online form, the investigation of the matter may be delayed.
- 6.4 The identity of complainants will be treated as confidential and the general public will not have access to the Council’s enforcement files. Information that has been submitted in confidence can be exempted from disclosure under the Freedom of Information Act 2000 and the Data Protection Act 1998 would require any personal information including names, addresses, telephone numbers and email addresses to be removed from any information the Council has to release. These measures protect the anonymity of complainants and allow the Council to carry out its enforcement duties effectively.
- 6.4 However, if the investigation proceeds to formal action, resulting in prosecution in the High Court or at public inquiry, it may not be possible for the Council to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation before the Council goes to court or public inquiry. If a complainant is unwilling to appear in court or at a public inquiry it may not be possible to continue with the action.
- ~~5.1 Complaints about alleged breaches of control will be accepted by letter, e-mail, telephone, or in person, provided the complainant gives their name, address and telephone number. Anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public safety, or the natural or built environment.~~
- ~~5.2 The Local Planning Authority will protect the identity of complainants, which will be treated as confidential and the general public will not have access to the Local Planning Authority’s enforcement files. However, if the investigation proceeds to formal action, resulting in prosecution in the High Court or at public inquiry, it may not be possible for the Local Planning Authority to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation before the Local Planning Authority goes to court or public inquiry.~~

### **Anonymous complaints**

- 6.5 To avoid the risk of malicious or vexatious complaints, anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public safety, or the natural or built environment.

### **Joint working**

- 6.6 Officers will co-operate with and seek appropriate assistance from other Council services and from other bodies, including licensing and environmental health officers, North Yorkshire County Council, North Yorkshire Police and North Yorkshire Building Control Partnership.
- 6.7 Where another body has more effective powers and is prepared to use them to achieve similar results it may not be necessary to also take action under the planning acts.
- 6.8 Many investigations, and the assessment of the planning applications that follow, rely on information provided by local people and by Parish and Town Councils. Whilst legal responsibility for the enforcement of planning control rests solely with the District Council, we will, on request, meet the Parish or Town Council to discuss the evidence and available options and seek to agree the appropriate course of action in conjunction with the Ward Member.

### **Rights of entry**

- 6.9 Officers are granted rights of entry by the Town and Country Planning Act 1990.
- 6.10 Section 196A states that: “any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land (except a dwellinghouse where 24 hours notice of intended entry must be given to the occupier)...to determine whether there is or has been a breach of planning control”. In planning law, “dwellinghouse” excludes flats and residential caravans but the Council will afford occupiers the same 24 hour notice period. It is not necessary to give 24 hours notice to enter a garden or other land belonging to a dwellinghouse, just the building itself, although the Council will always pay due regard to rights to privacy.
- 6.11 Any person authorised to enter land in pursuance of such a right of entry or under warrant is required to produce evidence of such authority and also state the purpose of entry, if requested, under Section 196C (1) (a) of the Act before entering. It is an offence to wilfully obstruct entry where the correct procedures have been followed.
- 6.12 Sections 324 and 325 give more general rights of entry for planning purposes. Other legislation enables similar rights of entry in connection with listed buildings, trees and hedgerows, advertisements and hazardous substances matters, together with various powers within the Local Government (Miscellaneous Provisions) Acts of 1976 and 1982.

6.13 Hambleton's Planning Officers carry identity cards bearing their name, post title and photograph authorising them to enter land to investigate planning enforcement complaints. Officers will always introduce themselves and explain the purpose of their visit.

### **Councillors**

6.14 Councillors do not have rights of entry under Town and Country Planning legislation.

6.15 Discussions on site between Council Members and parties to a planning enforcement issue are not encouraged under the Councils' Code of Practice. It is appropriate for Members to enter land and/or buildings by prior invitation at a formal site visit duly authorised by the Planning Committee.

### **Recording alleged breaches of planning control**

6.16 All complaints and allegations received will be recorded onto the Council's Enforcement database. 5.3—All complaints and allegations received, subject to the anonymity clarification, will be recorded onto the Local Planning Authority's Enforcement data base. This will be updated as necessary. When a breach has occurred this will be recorded on the database and the information retained by the Local Planning Authority Council.

### **5.4—Comments and Complaints**

6.17 Hambleton District Council ~~The Local Planning Authority~~ is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the Service should first discuss any concerns with the Enforcement Development Manager. If you remain dissatisfied the Council has a formal Complaints Procedure, a separate leaflet is available explaining how to go about this. The Council will record and monitor the number of comments and complaints it receives about the service and these will be published in an Annual Report on the service.

5.56.18 If anyone considers that the Local Planning Authority Council has not ~~done~~ sufficiently investigated an issue, or that the decision not to initiate enforcement action is not well-founded, they may also, in certain circumstances refer the matter to the Local Government Ombudsman, or apply to the High Court for judicial review. A leaflet explaining how to complain to the Local Government Ombudsman about possible maladministration by the Local Planning Authority is available, but it may be necessary to consult a solicitor about the possibilities of a legal challenge.

### **5.56.19 Monitoring & Review**

The Planning Service will publish data relating to the work of the Planning Enforcement Service as part of the Planning Annual Monitoring Report. This will measure the Service's performance in relation to the current Service benchmarks. In addition the Service will monitor its performance in relation to targets, casework levels, type and number of notices served and cases resolved on a quarterly basis.

Furthermore, this Local Enforcement Plan, The Enforcement and Compliance Service will produce an Annual Report. This will measure the Services' performance in relation to the current Service benchmarks. In addition the Service will provide quarterly updates recording performance in relation to targets, casework levels, type and number of notices served and cases resolved. Furthermore, this Enforcement and Compliance Policy, and its standards, will be reviewed every 3 years.

### Relevant Legislation and National Guidance

#### Legislation

##### **The Acts**

- 1.1 The Town & Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, and Planning & Compulsory Purchase Act 2004 are the principal sources of law on planning enforcement. Specific advice is issued from time to time on various other matters.

#### Guidance

##### A.2 National policy advice is found in two main documents:

- The 2012 National Planning Policy Framework (NPPF);
- and
- Planning Practice Guidance – “Ensuring effective enforcement” published on-line and periodically updated

<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

##### A.3 The NPPF states that:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. 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.”*

##### A.4 The Planning Practice Guidance gives an overview of what is a breach of planning control and who can take enforcement action. It also details when enforcement action should be taken, the time limits for taking action and the importance of local enforcement plans. The Guidance sets out in detail all the options available to local planning authorities to tackle possible breaches of planning control.

##### **The Guidance**

National policy advice is found in three main documents:  
Planning Policy Guidance Note18—“Enforcing Planning Control” (PPG18);  
“Enforcing Planning Control: Good Practice Guide for Local Authorities”;  
the Government’s “Enforcement Concordat”.

PPG18—“Enforcing Planning Control” 1991—states that:

~~“Local Planning Authorities (LPAs) must have regard to this guidance in deciding whether enforcement action is “expedient” to remedy a breach of planning control, where earlier attempts to do so by informal negotiation have proved unsuccessful. The decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in “the public interest”. The following factors need to be taken into account:~~

- ~~-(a) if the unauthorised development can be made acceptable by the imposition of conditions, a “retrospective” planning application should be invited to bring the development under proper control;~~
- ~~-(b) if the unauthorised development is acceptable on its planning merits, it will not be expedient for the LPA to issue an enforcement notice to regularise the development, or to obtain the appropriate planning application fee. This would be regarded as unreasonable behaviour, and the LPA risks an award of costs in any enforcement appeal;~~
- ~~-(c) where the unauthorised development is unacceptable, but relocation is possible, a reasonable time limit should be negotiated to facilitate such relocation; and~~
- ~~-(d) where the unauthorised development is unacceptable and relocation is not possible, the LPA should take vigorous enforcement action to prevent serious harm to public amenity.”~~

~~The Good Practice Guide for Local Planning Authorities: “Enforcing Planning Control” accompanied the 1997 publication of Circular 10/97. This requires LPAs to work within the legislative framework, having full regard to relevant judicial authority, appeal decisions and national policy guidance. Careful consideration has also to be given to other legislation that impacts on enforcement investigations, such as the Human Rights Act 1998, the Police and Criminal Evidence Act 1984 (PACE), and the Regulation of Investigatory Powers Act 2000 (RIPA). The Good Practice Guide deals with the concept of the “retrospective” application. Where development has been undertaken without planning permission, the developer or land owner is entitled to seek to regularise the situation by way of a retrospective planning application, (even if enforcement action has been commenced). The Good Practice Guide states: “The authority’s approach to enforcing planning control over unauthorized development should not therefore be stricter, for planning purposes, than it would be when considering the merits of a prior application for planning permission before development starts.”~~

~~The Governments’ “Enforcement Concordat” 1998, sets out the principles of good enforcement practice. These include :-~~

- ~~(i) setting out clear standards of the level of service and performance which users of the service can expect;~~
- ~~(ii) providing widely available information and advice on enforcement matters;~~
- ~~(iii) actively working to provide a courteous and efficient service advising on compliance;~~
- ~~(iv) having well publicised, accessible, effective and timely procedures for dealing with complaints;~~
- ~~(v) minimising the costs of compliance by ensuring that any action is proportionate to the harm caused, and avoids unnecessary expense;~~
- ~~(vi) carrying out duties in a fair, equitable and consistent manner, and having arrangements in place to promote consistency;~~
- ~~(vii) providing clear and simple advice confirmable in writing to explain legal requirements and set timescales for action;~~
- ~~(viii) providing an opportunity to discuss the case and resolve matters through~~

~~negotiation unless immediate action is required; and~~  
~~(viii) providing in writing an explanation of why immediate action is required,~~  
~~and~~  
~~advice on rights of appeal.~~



## **Annex 2-B**

### **SCHEDULE OF PRINCIPAL ENFORCEMENT TOOLS**

#### **Planning Contravention Notice (PCN)**

**B.1** The power to issue a PCN lies in Section 171C of the Town & Country Planning Act 1990 (as amended). This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool. The notice requires details and information on an alleged breach of planning control to be submitted to the LPA to clarify whether a breach has occurred. Failure to respond within 21 days, or submission of false or misleading information may result in prosecution in the Magistrates Court and a potential fine.

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

**B.2** The power to issue a BCN lies in Section 187A of the Town & Country Planning Act (1990) (as amended). This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A BCN cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice. There is no right of appeal against a notice. Failure to comply with a BCN is an offence liable to prosecution and a fine up to £1,000.

#### **Enforcement Notice**

**B.3** The power to issue an enforcement notice lies in Section 172 of the Town & Country Planning Act 1990 (as amended). A LPA Council may issue a notice where it considers there has been a breach of planning control and it is expedient to do so, ie; the development is likely to be unacceptable in policy terms, or any conditions that could be imposed on any planning approval. The enforcement notice must specify:

- (i) the land to which the notice relates;
- (ii) the reasons why it is expedient to take such action
- (iii) the breach of planning control complained of;
- (iv) the steps required to remedy the breach;
- (v) the date on which the notice comes into effect; and
- (vi) the period for compliance.

**B.4** There is a right of appeal. An appeal may be made to the Secretary of State before the Notice is due to come into effect, usually not less than 28 days after the date of issue. An appeal will suspend the notice until the appeal is determined. Failure to comply with an enforcement notice within the

time specified is an offence liable to prosecution in the Magistrates Court and a fine of up to £20,000, or even imprisonment.

### **Planning Enforcement Order**

B.5 Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taken enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits have expired. A local planning authority must have sufficient evidence of the apparent breach of planning control to justify applying for a planning enforcement order (Sections 171A, 171BB and 171BC of the Town and Country Planning Act 1990.

### **Direct Action**

B.6 The power for a Council to take direct action to address non-compliance with an enforcement notice lies in Section 178 of the Town and Country Planning Act 1990 (as amended). If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the Council may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

## **Stop Notice**

B.7 The power to issue a stop notice lies in Section 183 of the Town & Country Planning Act 1990 (as amended). A stop notice may be issued to support an enforcement notice. It has the effect of requiring a breach of planning control to cease. A stop notice is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the enforcement notice. It cannot be used to prohibit the use of any building as a dwellinghouse nor require the cessation of any activity which has been carried out for a period of more than four years prior to the service of the notice. Compensation may be payable by the LPA if the enforcement notice to which the stop notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution in the Magistrates Court and a fine of up to £20,000 or even imprisonment.

## **Temporary Stop Notice**

B.8 The power to issue a temporary stop notice lies in Section 171E – 171H of the Town & Country Planning Act 1990 (as amended). Introduced in March 2005, this does not require the issue of an enforcement notice. A temporary

stop notice can require the immediate cessation of a breach of planning control for a period of up to 28 days. During this 28 day period an enforcement and stop notice can be served. Can be used against the siting of caravans. There is no right of appeal. Failure to comply is an offence subject to prosecution in the Magistrates Court and a fine of up to £20,000.

## Injunction

**B.9** The power to seek an injunction in the High Court is conferred by Section 187B of the Town & Country Planning Act 1990 (as amended). Where the Local Planning Authority considers that a serious actual or intended breach of planning control is likely to take place it may seek an injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction. The granting of an injunction is at the Courts discretion. The Injunction is generally sought where an operator continues to ignore an enforcement or stop notice, or where there are irreversible consequences; ie, the threatened demolition of a Listed Building. Failure to comply with an Injunction constitutes a contempt of court and can lead to imprisonment.

## Direct Action

~~The power for a local planning authority to take direct action to address non-compliance with an enforcement notice lies in Section 178 of the Town & Country Planning Act 1990 (as amended). If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the local planning authority may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.~~

## Section 215 Notice (“Untidy Land Notice”)

**B.10** Under Section 215 of the Town & Country Planning Act 1990 (as amended) ~~an LPAa Council~~ can serve a 215 Notice: requiring land to be cleared and tidied up when its condition adversely affects the amenity of the area. ~~This can require land to be cleared and tidied up when its condition adversely affects the amenity of the area.~~ The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works shall be completed. Appeals are made to the Magistrates Court. Failure to comply is an offence subject to prosecution in the Magistrates Court and a fine of up to £1,000 or daily penalties if the nuisance persists. The ~~Local Planning Authority Council~~ may resort to direct action and seek to recover the costs of remedial works from the land owner.

## Unauthorised Advertisements

**B.11** Advertisements which are displayed in breach of the Advertisement Regulations 2007 constitute an offence and render those responsible and the owner of the land liable to immediate prosecution in the Magistrates Court and a fine. Discontinuance action, seeks to secure the removal of any advertisement displayed with deemed consent under the Regulations if the Local Planning Authority is satisfied that it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public.

## RIGHTS OF ENTRY

~~Section 11 of the Planning and Compensation Act 1991 introduced sections 196A and 196C into the Town and Country Planning Act 1990 relating to powers to enter land for planning enforcement purposes.~~

~~Section 196A (1) states that:~~

~~“any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land (except a dwelling house where 24 hours notice of intended entry must be given to the occupier)...to determine whether there is or has been a breach of planning control”.~~

~~Any person authorised to enter land in pursuance of such a right of entry or under warrant is required to produce evidence of such authority and also state the purpose of entry, if requested, under Section 196C (1) (a) of the Act before entering. It is an offence to wilfully obstruct entry where the correct procedures have been followed.~~

~~Sections 324 and 325 give more general rights of entry for planning purposes. Other corresponding legislation enables similar rights of entry in connection with Listed Buildings, Trees and Hedgerows, Advertisements and Hazardous Substances matters, together with various powers within the Local Government (Miscellaneous Provisions) Act.~~

~~Hambleton District Council Enforcement and Compliance Officers carry identity cards bearing their name, post title and photograph authorising them to enter land for the purposes of investigating planning enforcement complaints. Councillors do not have rights of entry. Discussions on-site between Members and parties to a planning enforcement issue are not encouraged under the Councils' Code of Practice. It is appropriate for Members to enter land and/or buildings by prior invitation at a formal site visit duly authorised by the Development Control Committee.~~