

ENFORCEMENT CUSTOMER CHARTER AND SERVICE STANDARDS



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**The original Charter was adopted by the
Planning & Economic Development Committee
of Derbyshire Dales District Council on 25th
July 2001**

(Minute no: 151/01)

1. INTRODUCTION

At Derbyshire Dales District Council we are committed to providing high quality services which give best value, in order to maintain and enhance the environment and quality of life for all residents and businesses.

The enforcement service is essential for the effective management of the Derbyshire Dales environment. It looks at potential breaches of planning control, takes enforcement action where breaches of control have occurred and provides advice to recipients of enforcement action and the community.

This Charter aims to assist you in understanding the enforcement process. It establishes the framework for the delivery of the service and outlines our service commitments to you, our customers. These service commitments have been formulated in accordance with our Mission Statement:-

Through the provision of an efficient, professional and responsive service, we aim to protect and enhance the quality of the District's built and natural environment whilst balancing the needs of current and future generations.

Customer care is important for the Council. We encourage and welcome suggestions about how Council services can be further improved for the benefit of applicants and the community alike. We continually monitor our progress against performance criteria and aim to improve the services and standards we deliver.

We hope you will find this Charter both useful and informative.

Tim Braund
Head of Regulatory Services
Derbyshire Dales District Council

2. THE PLANNING ENFORCEMENT SERVICE

The Council has a duty to investigate breaches of planning control and has powers to remedy such breaches by statutory and other means. It is the policy of the Council to exercise these powers to ensure that development takes place in accordance with the appropriate legislation or conditions of any planning permission imposed by the Council.

This Charter outlines the procedures and standards of service that can be expected when enquiries are made about unauthorised development under the relevant legislation.

Planning enforcement can be a complex process with varying timescales. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, interested parties are kept informed and aware of what is required, and that the outcome of any action taken is commensurate with the breach of control.

3. ENFORCEMENT ENQUIRIES

The Council relies to a large extent on members of the public bringing breaches of planning control to its attention. Breaches can take a number of forms including:-

- Building works being carried out without the benefit of planning permission
- Unauthorised change of use of land or buildings
- Non-compliance with conditions imposed in respect of a planning permission
- Departures from the approved plans of a planning permission
- Unauthorised works to trees
- Unauthorised signage

Where someone considers that a possible breach of planning control has taken place they should report this using the enforcement enquiry form on the planning pages of the District Council's website, making sure all mandatory fields are completed. This will ensure that the receiving officer has an appropriate level of information to be able to establish whether a breach of planning control has occurred in an efficient and timely manner. Whilst enquiries can be made by telephone or in person, all suspected breaches of planning control need to be followed up in writing before an investigation will be carried out. Enquiries received by letter and email will be investigated, however, the speed of any investigation will depend on the quality of the information provided. The need for further information may result in delay. For this reason those wishing to report of a breach of planning control are encouraged to use the online enforcement enquiry form.

Enquiries received will be treated as being confidential. However, in the some cases the success of any subsequent enforcement action may be limited if information cannot be used as evidence where an appeal is made to the Secretary of State or prosecution sought through the Courts. In such instances the enquirer will be asked for their permission to use their details / information to support any action that is taken.

In addition, in some cases, where monitoring over a period of time is required, the Council may need to rely on enquirers helping to provide information. In such cases, the Council will provide details of what would be helpful.

Anonymous enquiries or complaints will not be acted upon.

In many circumstances, enquiries are received which do not concern planning issues. The enquirer will be advised accordingly and, if appropriate, the matter will be referred to a relevant Officer within another Council Department. Where enquiries do not relate to activities of the Council the enquirer will be notified.

SERVICE STANDARDS

In dealing with enforcement enquiries, we will.....

- Protect the confidentiality of anyone reporting unauthorised development.
- Refer enquiries which do not relate to planning issues to the relevant Council Department.
- Notify individuals where enquiries do not relate to activities of the Council.

4. INVESTIGATIONS

Upon receipt of an enquiry it will be allocated to an Enforcement Officer to investigate the alleged breach. The investigation will be carried out within a period of 7 working days. Where the alleged breach appears to represent significant public safety issues or criminal damage to a listed building the investigation will be carried out as a matter of urgency.

The Enforcement Officer will determine, in conjunction with the Development Manager and having regard to relevant planning legislation, whether a breach of planning control has taken place. The complainant will be advised of the outcome of this initial investigation within 28 days.

No further action will be taken where no breach has been established, where a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter.

Where a breach of planning control has been established the matter will be referred to a case officer for resolution. The complainant will be provided with their contact details to be able to monitor the progress of the case and what action has / is to be taken should they wish.

It should be noted that the Council will not issue an enforcement notice in respect of every breach of planning control. Prior to considering enforcement action, the Council will consider whether it is expedient, having regard to all material considerations, whether enforcement action is an appropriate course of action to take.

There are a variety of courses of action available to the Council. The ability to take enforcement action is entirely at the discretion of the Council and the type of action taken will relate to the nature of the breach.

There are three courses of action available to the Council:-

- negotiate a solution;
- submission of a retrospective planning application, or;
- formal action.

Negotiate a Solution : In many cases breaches of control can be rectified through negotiation rather than by more formal action and such an approach will be taken when this is seen to be the most reasonable way of dealing with a breach.

Submission of a Retrospective Planning Application : In some cases, it may be expedient to seek the submission of a retrospective planning application. Pending determination of a retrospective application, more formal action would not be pursued.

Formal Action : Where it appears justified, any relevant evidence will be gathered and a report presented to the Planning Committee seeking a decision on whether or not to take formal action.

Priorities

To make the most efficient and effective use of the resources available to the Council, when a breach is established, it will be assessed with regard to:-

- any associated risks or dangers to the public;
- effect upon individuals;
- effect upon amenity;
- any other relevant factors.

Based upon this assessment, the breach will be allocated a priority rating and will be dealt with by the Case Officer on the basis of this rating:-

Priority 1 : Public danger or significant works involving damage to listed buildings or to protected trees.

Priority 2 : Complaints relating to loss of amenity or other significant public or private impact (including those covered by conditions of consent), e.g. noise and smell nuisance.

Priority 3 : Complaints relating to minor developments or domestic disputes, e.g. fences, sheds, extensions, satellite dishes, vehicular access etc unless they relate to serious amenity issues

Priority 4 : Checking and following up conditions applied to planning permissions granted.

SERVICE STANDARDS

In investigating alleged breaches of planning control, we will.....

- Investigate all enquiries within 7 working days of receipt and notify the enquirer within this period of the outcome of the investigation within 28 days or the need to provide additional information. Where a breach has been established a case officer will be assigned and the enquirer will be notified of their contact details to be able to monitor progress and establish what action has / is to be taken.

5. FORMAL ACTION

When formal action is authorised, a notice is served on the relevant parties (anyone with a legal interest in the site) specifying what action they are required to undertake to correct the breach.

An Enforcement Notice is a legal document. As such, it is necessary for the Council to ensure that all information on the notice is accurate. This often requires details of the owner, occupier or lessee of a site to be clarified prior to the service of a notice.

Once the details for the serving of any formal notices have been obtained, the relevant notices will be served by the Development Manager. The notice will specify the period during which the steps required by the Enforcement Notice must be carried out. There is no statutory minimum period but the period must be reasonable having regard to the actions required to be undertaken.

Compliance With An Enforcement Notice

Once a Notice is served it is the legal duty of the recipient to comply with the Notice. Where a Notice is complied with, to the satisfaction of the Council, the matter will be closed.

The recipient of the Notice has a right to contest the Notice by means of an appeal to the Secretary of State. If an appeal is made, (either by written submissions or a Public Inquiry) the terms of any Notice are held in abeyance until such time as a decision is reached.

Where a Notice has been served and has not been complied with by the relevant date and the recipient has not lodged an appeal, the matter may be referred to the Magistrate's Court for a possible prosecution. However, in some cases, it may be possible to resolve the matter by direct action carried out by the Council. In such circumstances, the cost of any work undertaken by the Council is recoverable from those with a legal interest in the site.

6. THE COUNCIL'S POWERS

As noted previously, enforcement action can involve the issue of a Notice. There are a number of different types of Notice available to the Council. The specific types of Notice issued will depend upon each individual case and any legal advice obtained. However, it should be emphasised that taking enforcement action is a discretionary power under the Town and Country Planning Act 1990.

Time Limits to Enforcement Action

The ability of the Council to take enforcement action is also related to when an unauthorised development or change of use was carried out. Generally, the Council would be prevented from taking action against any development that is more than 4 years old or a change of use which took place more than 10 years previously. Where it can be demonstrated that the breach took place before these timescales then the development has to be considered as lawful and immune from any enforcement action.

Types of Notice

The various Notices that can be used in relation to breaches of planning control are:-

Planning Contravention Notice : Normally used at the start of an investigation and requires the person on whom it is served to provide details of any operations or works which have been carried out and details of anyone with a legal interest in the site. A response must be made within 21 days otherwise a legal offence has been committed which could result in prosecution.

Breach of Condition Notice : Deals with breaches of any conditions attached to a permission which has already been granted. There is no right of appeal against this notice.

Enforcement Notice : The notice most generally used to deal with unauthorised development. There are similar notices and powers to deal with listed buildings, advertisements and wasteland. An Enforcement Notice will specify a time to take effect, usually a minimum of 28 days, and will specify what steps must be taken to remedy the breach and also a reasonable period by which these must be complete. There is a right of appeal against an Enforcement Notice and the terms of the Notice are suspended until a decision is reached on the appeal by the Secretary of State or the High Court where a subsequent appeal has been lodged.

Stop Notice : Only used in particularly urgent or serious cases requiring the cessation of unauthorised activity that has implications for public safety or related issues. This Notice would normally be served with an Enforcement Notice but would be able to require the immediate cessation of an activity. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is sustained, the Council may be open to claims for compensation for any loss of damage directly attributable to the Stop Notice.

All of the above Notices clearly set out what breach of control has taken place, what steps should be taken to remedy this and the consequences of failure to do so. They also set out the offender's rights of appeal where appropriate.

Appeals and Penalties

Recipients of Enforcement Notices have, in most cases, a right of appeal. Appeals are made to the Secretary of State and, once the matter is before him, it is outside the control of the Council.

The Secretary of State appoints an Inspector to consider the matter and most cases are dealt with by written submissions. In some cases there may be a Public Inquiry. Inspectors have a number of different options at their disposal when deciding an appeal. They may uphold, vary or quash an Enforcement Notice.

SERVICE STANDARDS

In exercising our enforcement powers, we will.....

- Serve a Notice commensurate with the type of breach.
- Advise anyone who has been served with a formal notice of their rights to challenge the Notice, including how to appeal to the Secretary of State.

7. TIMESCALES

It is not always possible to anticipate how a particular case will develop and the timescale for resolving a complaint can be difficult to predict. It can be a source of concern to complainants that unauthorised development can persist for some time.

Those factors which can delay progress include:-

- the collection of relevant and satisfactory evidence;
- ongoing negotiation to try and resolve a case without resorting to formal action;
- the submission of a retrospective planning application;
- an appeal against a formal notice.

SERVICE STANDARDS

Where a breach of planning control has been established, we will.....

- Provide the enquirer with the contact details of the officer assigned the case to be able to monitor progress and what action has / is to be taken.

8. COMPLAINTS AND PERFORMANCE

The District Council hopes that you will be satisfied with the Enforcement Service which we provide. If you have any suggestions, concerns or difficulties we want to hear from you. We are committed to improving our service and dealing promptly with any failures. If you are not satisfied about the way in which a case has been dealt with then it is open to you to submit a complaint.

Stage 1 – Informal Complaint

We will consider all complaints made about the way in which a case has been dealt with and initial contact should be made with the investigating Officer who dealt with the case.

Written complaints will be acknowledged and will be fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action which the District Council proposes to take. If no action is proposed the reasons will be explained.

Stage 2 – Formal Complaint

This process is used if you are either not satisfied with the results of your informal complaint or you wish to make your complaint formal from the beginning. If so, you should make it clear that you want your complaint to be referred to the Complaints Officer. They will ensure that your complaint is investigated and responded to by the Head of Service or the relevant Senior Manager for the service area you have been dealing with.

The Complaints Officer will acknowledge your formal complaint within 5 working days of its receipt and will provide you with the name and contact details of the person dealing with your complaint. We aim to send you a full response within a further 10 working days but if we are unable to provide a full response within 10 working days then we'll contact you to explain why.

Submitting a formal complaint online:-

<http://www.derbyshiredales.gov.uk/your-council/have-your-say/compliments-and-complaints/complaints-procedure> -

If you would like a paper copy of the Complaints Form:-

Write to:- The Complaints Officer
Derbyshire Dales District Council
Town Hall
Bank Road
Matlock
Derbyshire
DE4 3NN

Telephone:- 01629 761281

email:- complaints@derbyshiredales.gov.uk).

Stage 3 – Review of Formal Complaint

If you remain dissatisfied with the results of your complaint then you can then refer it to the Chief Executive who will undertake an independent review. The Chief Executive will send you a full response within 20 working days.

Stage 4 – Local Government Ombudsman

Our complaints procedure ends at Step 3. However, if you are not satisfied then you can take matters further by contacting the Local Government Ombudsman. The Ombudsman is totally independent of the District Council and has a legal duty to investigate complaints about Local Councils.

Contact Details

Online:- <http://www.lgo.org.uk/make-a-complaint>

Telephone:- 0300 061 0614

The Council will publish an annual review of its performance on enforcement activities. This will comprise a combination of any statutory indicators required by the Government and our own local performance indicators. Monitoring processes will assess all complaints and suggestions made and discuss any relevant issues with customer Focus Groups. The Focus Groups are made up of customers of the planning service.

Any comments received will be used to consider appropriate service improvements. If performance has fallen below established levels and targets, it will identify and detail the reasons for doing so and describe the measures it proposes to adopt to improve its performance. If justified by special circumstances, it will revise its targets. Complaints and the action taken upon them will also be identified.

9. PLANNING SERVICES CONTACTS

The Development Management Team is located at the Town Hall, Bank Road, Matlock, DE4 3NN and the Offices are open Monday to Friday 9.00 a.m. - 5.00 p.m. For customers wishing to report a breach of planning control to a member of the Development Control Team in person, Officers are available Monday, Tuesday, Thursday and Friday 9.00 a.m. – 12 noon and Wednesday 9.30 a.m. - 12 noon.

The Main Reception is able to deal with general enquiries but detailed enquiries and appointments should be made by contacting Officers within the Development Control Team

Overall Service Management

Jon Bradbury
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Contact email address:-

planning@derbyshiredales.gov.uk