

## **Planning Committee**

<b>DATE</b>	<b>07/10/2020</b>
<b>REPORT OF</b>	Clive Tritton, Director for Economy and Growth
<b>SUBJECT</b>	Reviewed and updated Planning Enforcement Plan
<b>STATUS</b>	Open

### **CONTRIBUTION TO OUR AIM**

The reviewed and updated Planning Enforcement Plan demonstrates a continuing commitment to open and transparent decision making and to improved efficiency and effectiveness.

### **EXECUTIVE SUMMARY**

The adoption of the reviewed and updated Planning Enforcement Plan is recommended. It follows advice given in Paragraph 58 of the National Planning Policy Framework that councils should publish a Local Enforcement Plan to manage enforcement proactively in a way appropriate to their area.

The Planning Enforcement Plan sets out service standards for users of the planning enforcement service and explains the steps followed once a breach of planning control is reported. It also includes a heritage Enforcement Plan addendum to highlight and address heritage enforcement

### **RECOMMENDATIONS**

Adoption and implementation of the reviewed and updated Planning Enforcement Plan.

### **REASONS FOR DECISION**

To ensure that complainants about a breach of planning control, as well as alleged offenders, fully understand what they can expect from the council's planning enforcement service.

### **BACKGROUND AND ISSUES**

- 1.1 The Council's service standards for planning enforcement, in terms of how quickly it aims to respond to a complaint about a breach of planning control, are set out on its web site in the current Planning Enforcement Plan. This requires updating and revision.
- 1.2 The National Planning Policy Framework (NPPF) encourages councils to adopt a 'Local Enforcement Plan' to 'manage enforcement proactively in a way that is appropriate to their area.'
- 1.3 The attached Planning Enforcement Plan for North East Lincolnshire continues the response to the recommendation in the NPPF. It sets-out:
  - That the Council's primary aim is to achieve a negotiated settlement where possible without having to resort to its formal enforcement powers – but that in

some situations this will be unavoidable because of the need to protect amenity or public safety.

- That all investigations will be guided by the principles of Consistency, Fairness, Transparency and Proportionality.
- How complaints can be made and that they will be kept confidential.
- How cases will be prioritised according to the seriousness of the breach and its impact. Four categories of priority are defined, namely: Urgent Priority; High Priority; Medium Priority, and Low Priority.
- The speed within which site visits will be undertaken and a response given to interested parties; and
- The range of enforcement options available to the Council.
- Includes a heritage Enforcement Plan Addendum to highlight and address heritage enforcement

## **1. RISKS AND OPPORTUNITIES**

- **Crime and Disorder** –The aim of the Enforcement Plan is to ensure that breaches of planning control are seen to be dealt with in a consistent, fair transparent and proportionate manner. The number of planning enforcement cases which result in a criminal prosecution is very low and a negotiated solution is sought where possible to avoid the necessity to follow through with formal enforcement action.
- **Human Rights** –The Enforcement Plan explicitly sets-out the even handed and fair approach taken to enforcement cases, based on the merits of the case and not the gender, race, ethnicity, religion, political views or other beliefs of any person involved. Planning enforcement is about balancing the rights of those carrying-out development with those affected by it.
- **Equality and Diversity** – The Enforcement Plan explicitly sets-out the even handed and fair approach taken to enforcement cases, based on the merits of the case and not the gender, race, ethnicity, religion, political views or other beliefs of any person involved.
- **Value for Money** – The proposed Planning Enforcement Plan is not anticipated to have any additional cost implications to the Council. Indeed, it is anticipated that an effective and transparent enforcement service will save money by avoiding unnecessary actions and subsequent appeal costs.
- **The impact on the social, economic and environmental well-being of the Borough** – Effective enforcement is important as a means of maintaining public confidence in the planning system. The Planning Enforcement Plan and measurement of performance against its service standards is a further step

towards demonstrating effectiveness and efficiency.

## **2. OTHER OPTIONS CONSIDERED**

2.1 A discretionary and proportionate approach, as set out in the Planning Enforcement Plan, is recommended in the National Planning Policy Framework. To adopt a different approach, for example, to commence formal enforcement proceedings more readily, would not only be significantly resource intensive in staff time, it would also result in an increased cost to the Council through lost appeals. The converse of this, to undertake less enforcement of breaches of planning control, would result in development not in accordance with the planning permission granted or with no planning permission at all and harmful to amenity and/or safety. It would also undermine confidence in the planning system.

## **3. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are no such implications arising from this report.

## **4. FINANCIAL CONSIDERATIONS**

There are no additional financial implications arising from this report.

## **5. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

There are no such implications arising from this report.

## **6. FINANCIAL IMPLICATIONS**

There are no direct financial implications of the contents of the report.

## **7. LEGAL IMPLICATIONS**

A Local Enforcement Plan is consistent with best practice. It sets out North East Lincolnshire Council's approach to planning enforcement in a clear and transparent manner and should, as a result, lessen the likelihood of challenges to enforcement action taken.

## **8. HUMAN RESOURCES IMPLICATIONS**

The Enforcement Plan sets-out an approach that relies on efficient utilisation of the existing team of enforcement and monitoring officers, supported by the wider Development Management Team. The impact of any adjustments to enable this will need to be reviewed at an appropriate stage.

## **9. WARD IMPLICATIONS**

The Planning Enforcement Plan is not ward specific; it relates to breaches of planning control borough wide.

## **10. BACKGROUND PAPERS**

Reviewed and updated 'North East Lincolnshire Council Planning Enforcement Plan' with addendum Heritage Enforcement Plan and Heritage Prosecution Policy (Attached).

## **11. CONTACT OFFICER(S)**

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**Clive Tritton**  
**Director for Economy and Growth**



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Working in Partnership

# **North East Lincolnshire Borough Council**

## **Heritage Enforcement Plan**

October 2020

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## **Introduction**

1. Heritage forms an important element of our environment, whether buildings, landscapes or archaeological in nature. These heritage assets are an irreplaceable and finite resource and should be enjoyed for their contribution to the quality of life and of existing future generations. The council fully supports heritage led regeneration and recognises heritage gives places their character and individuality and that creates a focus for community pride, a sense of shared history and a sense of belonging.
2. The Planning Enforcement Section receives numerous complaints regarding heritage enforcement of unauthorised works to Listed Buildings and/ or within Conservation Areas covered by Article 4 Directions or involving archaeological assets. These can be of a more complex nature requiring working with the Heritage Officer and it is considered prudent to have a defined strategy.

## **Heritage Enforcement Options**

3. Any decision on whether formal enforcement action is necessary is determined with reference to the Enforcement Section's Planning (Heritage) Prosecution Plan requiring the usual evidential and public interest tests to be met prior to a decision to issue an Enforcement Notice or commence prosecution proceedings.
4. The majority of offences appear to be committed by well meaning, but ill-advised individuals who have carried out works without realising the issues surrounding heritage buildings and assets.
5. In many cases offenders are initially co-operative entering into negotiations with the intention of resolving the matter to the satisfaction of the Local Planning Authority. However, there is often a substantial cost involved in making good the unauthorised works that have been undertaken. At this stage offenders often try to find more economical solutions which are frequently unacceptable in design, appearance and materials.
6. The service of Enforcement Notices at an earlier stage provides the offender with a clear outline of the required works as described within the notice together with a time period for compliance. This policy supports an established fair and consistent approach to heritage enforcement matters.
7. The Local Planning Authority retains the ability to put formal enforcement action on hold. This allows the necessary works to be carried out after the expiry of the compliance period of the notice and leaves flexibility in the system to be used in exceptional cases.
8. Where unauthorised works affect archaeology the Local Planning Authority should consider the use of Stop Notices to halt the works immediately until an appropriate mitigation strategy for the site can be approved and implemented.

9. The early service of notices would show the Local Planning Authority is taking the offences seriously and prompt the offender to take the required action at an earlier stage. This is particularly important in terms of archaeology where continued unauthorised work on sites can lead to significant destruction of archaeology, which cannot be reinstated. Whilst the principle of negotiation remains a good one, it can delay the implementation of the necessary remedial works.
10. A key benefit of commencing formal enforcement action at an early stage is that the Land Charges register would show ongoing enforcement action as soon as the Notice is served. This stays with the property until compliance with the notice has been achieved, affecting any attempts to sell the property until the matter has been resolved. This means potential buyers are fully aware of the outstanding requirements of the Enforcement Notice and can negotiate with the vendor accordingly.

### **The approach to Heritage Enforcement**

- Interview Under Caution as soon as an offence has been established.
- Consider the use of Stop Notices where serious breaches have occurred.
- Advise the offender it is policy to take formal enforcement action, including the service of relevant notices to ensure compliance as soon as practical.
- Serve the relevant Enforcement Notice(s) within 21 days of the initial site visit/Interview Under Caution.
- Consider immediate prosecution proceedings in the most serious offences or where the offence has been committed primarily for financial gain

### **Conclusion**

11. This policy is designed to ensure there is clarity, proportionality, consistency, and fairness in the principles applied to the investigation of unauthorised works to heritage assets some of which may ultimately require prosecution. It is intended to ensure that the necessary remedial works to the heritage assets are undertaken expediently and that defendants who commit such offences are treated fairly but prosecuted or dealt with in other ways effectively should compliance not be forthcoming.

### **Further Information**

12. Further government information about the enforcement of Listed Building offences can be found here:  
<http://planningguidance.communities.gov.uk/>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7705/321530.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7705/321530.pdf)

National Planning Policy Framework 2019:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

### **Contact Details**

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# **North East Lincolnshire Council**

## **Planning Enforcement Plan**

Reviewed and updated – October 2020

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## **Introduction**

1. This Plan outlines the procedures used by North East Lincolnshire Council when responding to complaints about possible breaches of planning control. The Plan sets out a proactive approach for the Council's use of its enforcement powers.
2. The principal activity of the Planning Enforcement function is directed to the avoidance of infringements of planning law. It is inevitable that breaches of planning law will occur but essential that they should be resolved in a consistent, balanced and transparent manner. The integrity of the planning system is reliant on enforcement ensuring that planning permissions are properly implemented as well as taking appropriate action when unauthorised development occurs.
3. The Planning Enforcement section investigates:
  - Building work undertaken without planning permission
  - The unauthorised change of use of buildings and land
  - Non compliance with Planning Conditions
  - Illegal advertisements
  - Unauthorised works to Listed Buildings within Conservation Areas and other heritage assets
  - Unauthorised works to protected trees

## **Our Aims**

4. Our emphasis is on achieving a negotiated settlement wherever possible without the need to rely on formal enforcement action. Related to this, clear timescales are also needed as to how quickly we will act and this detail is set out below.
5. Nevertheless, there will be some situations where negotiations are not appropriate and, in the interests of amenity or public safety, the Council will move directly to use its formal planning enforcement powers.
6. In all cases our investigations will be guided by 4 key principles:
  - **Consistency** – to ensure that issues are dealt with in a similar way.
  - **Fairness** – to ensure an even handed approach and that decisions are based on the merits of the case and not the gender, race, ethnic origin or religion, political views or other beliefs of any person involved.
  - **Transparency** – to ensure that enforcement action taken is easily understood by residents, businesses and the public. This also means that both alleged offenders and those reporting alleged offences will be told about the progress of the investigation.

- **Proportionality** – to ensure that enforcement action is in proportion to the actual or potential harm caused by any breach of planning control. This means that in some cases, it may not be considered proportionate for the Council to take enforcement action.

### **Recording and Acknowledging Complaints**

7. Reports of potential breaches of planning control can be made either in writing, by telephone, by email, online or in person.

Write to:	Development Management Services - Planning Enforcement, New Oxford House, 2 George Street, Grimsby, North East Lincolnshire, DN31 1HB
Telephone:	01472 326289 - Option 1
Email:	<a href="mailto:planning@nelincs.gov.uk">planning@nelincs.gov.uk</a>
Visit:	New Oxford House, 2 George Street, Grimsby, North East Lincolnshire, DN31 1HB (9am to 5pm Monday to Thursday, 9am to 4pm Friday)

8. Reports of potential breaches of planning control will be logged and acknowledged within 2 working days and details provided of the investigating officer, along with details of the online enforcement pages, so that the progress of the investigation can be tracked by the reporting person.
9. To avoid unnecessary use of resources, anonymous allegations of breaches of planning control are not normally investigated. You should, however, be aware that if you give your name, address, or any other details, they will be treated in the strictest confidence so far as legislation permits.
10. Anonymous complaints may be accepted at the discretion of the Planning Enforcement service if the matters raised constitute a criminal offence such as works to protected trees and listed buildings, or where there is irreparable and immediate harm to public safety or the natural or built environment.

### **Confidentiality**

11. The identity of a person reporting a complaint will be kept confidential. Nor will they usually be required to give evidence at a public hearing, inquiry or court case.
12. Under Parts 1 and 2 of Schedule 12A of The Local Government Act 1972 (as amended), enforcement files are not public documents and complainant details are confidential.

13. However, it must be understood that despite a person's identity remaining confidential, on occasions this may become apparent to the alleged offender despite the best efforts of the Council.

### **Prioritising new cases and how we will respond**

14. Upon receipt, each report of a breach of planning control will be categorised, according to the seriousness of the breach, into one of five priorities of response. The more serious a breach and the more harmful its potential impact the higher the priority it will be given. The priority given to a complaint will be based solely on the nature of the complaint and will not be prioritized due to the complaints origin.

15. The priority levels are assigned in accordance with the details in table 1.

16. We aim to undertake an initial visit and respond in writing within the timescales detailed in table 2.

**Table 1 – Priority Levels**

<p><b>Urgent Priority</b></p> <ul style="list-style-type: none"><li>➤ Breaches involving Listed Buildings where demolition or substantial harm to the fabric of the building is reported as taking place.</li><li>➤ Unauthorised development, including the display of advertisements, which represents a serious public danger.</li><li>➤ Works on protected trees where they are under threat and likely to be removed or damaged beyond recovery.</li></ul>
<p><b>High Priority</b></p> <ul style="list-style-type: none"><li>➤ Breaches of planning control, including breach of conditions, which result in serious visual harm or serious loss of residential amenity.</li><li>➤ Unauthorised development which, without intervention, would be nearing immunity from enforcement action.</li><li>➤ Breaches involving Listed Buildings or in Conservation areas not considered to fall within the urgent priority.</li><li>➤ Breaches of the requirement of an Enforcement Notice or Breach of Condition Notice.</li><li>➤ Works carried out on protected trees not considered to fall within the urgent priority.</li><li>➤ Illegal advertisements where there is potential danger to highway users.</li></ul>
<p><b>Medium Priority</b></p> <ul style="list-style-type: none"><li>➤ Breaches of planning control, including breach of conditions, not resulting in serious harm or loss of residential amenity.</li><li>➤ Illegal advertisements in the open countryside or on business premises in central shopping areas and other areas excluded from the Area of Special control for advertisements where there is no potential danger to</li></ul>

<p>highway users.</p> <ul style="list-style-type: none"> <li>➤ Breaches of planning control on and adjacent to strategic routes into and out of the Borough.</li> </ul>
<p><b>Low priority</b></p> <ul style="list-style-type: none"> <li>➤ Anonymous complaints not resulting in serious visual harm or causing serious loss of residential amenity</li> <li>➤ Unauthorised development that would be likely, following an initial assessment, to gain retrospective planning permission should an application be submitted</li> </ul>

**Table 2 – Response Times**

<b>Priority</b>	<b>Site Visit</b>	<b>Response time in writing to interested parties</b>
<b>Urgent</b>	1 working day	5 working days
<b>High</b>	3 working days	5 working days
<b>Medium</b>	10 working days	10 working days
<b>Low</b>	15 working days	15 working days

**Identifying if there has been a breach**

17. It may not be apparent, during an initial visit, as to whether there has been a breach of planning control. In these circumstances the officer will carry out further research and visits as appropriate to gather sufficient information to decide if a breach has taken place. Only once this has been undertaken will a course of action be decided. The collection of evidence by a person reporting a complaint can also sometimes assist with an investigation.

18. Where no breach has occurred the complainant and owner/developer will be informed within the timescales set-out above and the reasons for this will be explained.

**Determining the action to be taken**

19. Once it has been established that a breach of planning control has taken place, a decision will be taken as to whether enforcement action is to be taken. The decision to use formal planning enforcement powers is at the discretion of the Council. Enforcement action will only be taken when it is considered expedient to do so. National government guidance advises

that the enforcement action North East Lincolnshire Council takes must be proportionate to the breach of planning control.

20. A decision on whether or not to pursue formal enforcement action is usually made by Officers under a system known as 'delegated powers'. However, in certain cases, for example where there is significant public interest in the outcome, a report will be presented to the Planning Committee who will determine the direction of the investigation under guidance from Senior Officers and the Legal Officer.
21. Planning Enforcement matters decided by the Planning Committee are held in a closed session to protect the confidentiality of those who may have reported the alleged breach of planning legislation and in order to avoid prejudicing any future legal action which may be deemed necessary.
22. There are normally five options available depending on the nature of the breach as shown in table 3.

**Table 3 – Enforcement Options**

<p><b>Not expedient to take further action</b></p> <ul style="list-style-type: none"> <li>➤ If a breach of planning control is considered acceptable in planning terms, without the need for the imposition of conditions, no further action will be taken; even if an application for retrospective planning permission has been requested and is not forthcoming. In such cases the decision not to take any action against a breach of planning control will be taken by Planning Committee if requested by a Ward Councillor.</li> <li>➤ On occasions the circumstances relating to a breach can alter and should circumstances change, so that enforcement action may be necessary, the case will be reopened and further investigations undertaken.</li> </ul>
<p><b>Negotiation</b></p> <ul style="list-style-type: none"> <li>➤ Enforcement Officers will seek to negotiate a resolution in all cases where possible. However, this will not delay formal enforcement action where it is considered to be of an urgent or high priority or where there is harm to the wider amenity and residential amenity.</li> </ul>
<p><b>Retrospective Planning Application</b></p> <ul style="list-style-type: none"> <li>➤ A retrospective planning application is sought, to be submitted within a set time scale. This option will only be followed when there is a senior planning officer's opinion that the application is likely to be approved.</li> <li>➤ A letter is sent to the alleged offender requesting that they remedy the alleged breach.</li> </ul>
<p><b>Formal Enforcement Action</b></p> <ul style="list-style-type: none"> <li>➤ With the exception of unauthorised works to a listed building (which is a criminal offence), the Council has the discretion to use these powers to remedy the breach where it considers it expedient to do so. Notwithstanding this, formal enforcement in itself cannot remedy a</li> </ul>

breach of planning control. It is designed to coerce the alleged offender into doing so. Only once there has been non-compliance with an Enforcement Notice, or Breach of Condition Notice, has an offence been committed that could lead to prosecution, injunction or direct action

### **Formal Enforcement Action**

23. Where it is established that a breach of planning control has occurred the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers, listed in table 4 below, is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control.

**Table 4 – Formal Enforcement Proceedings**

<p><b>Enforcement Notice</b></p> <ul style="list-style-type: none"> <li>➤ An Enforcement Notice may require a wide range of steps to be taken to make a development comply with the terms of a planning permission or for removing or alleviating any injury to amenity caused by the unauthorised development.</li> <li>➤ The wording of a notice will clearly state the measures to be taken to remedy the breach of planning control so as to enable compliance to be effective and speedy.</li> <li>➤ Failure to comply with an Enforcement Notice may lead to prosecution.</li> <li>➤ There is a right of appeal against a notice.</li> </ul>
<p><b>Stop Notices</b></p> <ul style="list-style-type: none"> <li>➤ Can be served with or after the service of an enforcement notice if it is considered expedient and urgent that an activity should be quickly stopped due to its impact on amenity/ public safety.</li> <li>➤ There is no right of appeal against a Stop Notice.</li> </ul>
<p><b>Temporary Stop Notices</b></p> <ul style="list-style-type: none"> <li>➤ Where the Council considers that there has been a breach of planning control, that should cease immediately in order to safeguard the amenity of the area, it may issue a Temporary Stop Notice.</li> <li>➤ A Temporary Stop Notice can be served without the prior service of an Enforcement Notice and its effect is immediate.</li> <li>➤ National legislation makes it clear that a Temporary Stop Notice may not prohibit the use of a building as a dwelling house.</li> </ul>
<p><b>Injunctions</b></p> <ul style="list-style-type: none"> <li>➤ Legal powers are available for North East Lincolnshire Council to apply</li> </ul>

to the Courts for an injunction to restrain an actual or alleged breach of planning control.

- Injunctions are a discretionary power and an assessment will be made of the likely outcome prior to commencing proceedings.
- A decision to grant an Injunction is at the discretion of the High or County Court.

#### **Breach of Condition Notice**

- Where there has been a failure to comply with the requirements of a condition attached to a planning permission the Council may serve a Breach of Condition Notice. The service of a Breach of Condition Notice may be used as an alternative to an Enforcement Notice so as to ensure compliance with a condition.
- There is no right of appeal (to national government) against a Breach of Condition Notice although there can be defence pleas should the matter result in a court prosecution.

#### **Certificate of Lawful Use or Development**

- Where the investigation of a complaint establishes that it is unlikely that Enforcement Action would be pursued or would be successful, the alleged offender will be invited to apply for a Certificate of Lawful Use or Development.
- Whilst this does not constitute a grant of planning permission, it provides documentation to a person responsible for a breach of Planning Law to establish the lawfulness of an existing situation. It also serves to avoid the possibility of a further investigation being pursued by the Council at a later date.

#### **Non-Compliance with Enforcement**

- Where an offender fails to comply with the requirements of a legal notice an offence has been committed and formal legal action will then usually be pursued.
- Prior to beginning the prosecution process offenders will normally be given warning of the Council's intention to prosecute.

#### **Cautions**

- When resolving simpler and less serious issues it may be expedient to issue a formal caution rather than taking the matter to court as this normally leads to a swifter outcome. If future offences are committed the Council can cite previous cautions in any court hearings.

#### **Prosecutions**

- Notwithstanding that each case is unique and should be dealt with on its own merits an assessment of the case will be made prior to pursuing a prosecution.

### **Keeping you informed**

24. Open Enforcement investigations can be monitored via the Planning Home Page on our web site at:

<http://planning.nelincs.gov.uk/portal/page/portal/NELINCS/enforcement>.

Information is available showing when a case is being investigated and whether formal notices have been served. However, it is not possible to provide full details regarding the status of the investigation as to do so could prejudice any future legal action that may be required.

### **Further Information**

25. Further government information about planning enforcement can be found here:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

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Working in Partnership

# **North East Lincolnshire Borough Council**

## **Listed Building Prosecution Procedure**

**October 2020**

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## **Introduction**

1. Heritage forms an important element of our environment, whether buildings, landscapes or archaeological in nature. These heritage assets are an irreplaceable and finite resource and should be enjoyed for their contribution to the quality of life and of existing future generations. The council fully supports heritage led regeneration and recognises heritage gives places their character and individuality and that creates a focus for community pride, a sense of shared history and a sense of belonging.
2. This document outlines the procedures used by North East Lincolnshire Borough Council when responding to complaints about unauthorised works to Listed Buildings and should be read in conjunction with the Council's Planning Enforcement and Heritage Enforcement Plan.
3. The National Planning Policy Framework (NPPF) states that Local Planning Authorities should have 'a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats.' This procedure sets out a proactive approach for the Council's use of its enforcement powers in relation to Listed Buildings.
4. Policy 39 of the North East Lincolnshire Local Plan 2013-2032 (adopted 2018) states, 'Proposals for development will be permitted where they would sustain the cultural distinctiveness and significance of North East Lincolnshire's historic urban, rural and coastal environment by protecting, preserving and, where appropriate, enhancing the character, appearance, significance and historic value of designated and non-designated heritage assets and their settings.'
5. Listed Buildings are of national, sometimes international, importance and are an irreplaceable asset. North East Lincolnshire Borough Council is committed to protecting the area's historic environment. Where unauthorised works to Listed Buildings take place it is essential that they should be resolved in a consistent, balanced and transparent manner.

## **The Evidential Test**

6. When considering whether a caution, administrative penalty or a prosecution is appropriate it is necessary to determine whether there is enough evidence to prosecute the matter. This is known as the *evidential test*. If the case does not pass the evidential test it must not go ahead no matter how serious or important the case may be.
7. For a case to pass the evidential test there must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. As part of this process the Council must consider what the defence case is and how it is likely to affect the prosecution case.
8. A realistic prospect of conviction is determined by applying an objective test; it means a jury or a bench of magistrates, properly directed in

accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and whether or not it is reliable.

### **The Enforcement Options**

9. Once it is decided if that the evidential test has been satisfied the most appropriate way of dealing with the matter will be assessed. The formal options available to the Council are the caution and prosecution.

#### 10. The Formal Caution

The formal caution allows the Council to deal quickly and simply with less serious offenders whilst also reducing the chance of them reoffending. There is no need for the matter to be taken to court reducing officer time necessary to deal with the matter.

11. For a caution to be issued a number of conditions need to be met. There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction, the offender must admit the offence and the offender must understand the significance of the caution and give informed consent to being cautioned.

#### 12. Prosecution

The Council may decide to instigate criminal proceedings against a claimant. Prosecution will be considered in the most serious cases.

### **The Public Interest Test**

13. When considering which course of action is most appropriate a Public Interest Test should be undertaken. The more serious the offence the more likely a prosecution will be needed in the public interest. The following lists of public interest factors are not exhaustive. The factors that apply will depend on the facts in each case.

#### **Public Interest Factors used to determine whether to commence Prosecution proceedings**

##### **A prosecution is likely to be needed if**

- A conviction is likely to result in a significant sentence.
- The defendant was in a position of responsibility or trust.
- The evidence shows the defendant was an organiser of the offence and the offence was carried out by more than one person.
- The defendant's previous convictions or cautions are relevant to the present offence.
- The evidence shows there was an element of financial gain.
- The offence, though not in itself serious, is widespread in the area where it was committed.
- There is evidence the offence continued following initial contact with the Local Planning Authority.

- The offence continued over a significant length of time.
- The features altered or destroyed significantly affect the buildings character as a building of architectural or historical significance.
- The damaged or destroyed features cannot be repaired or reinstated.
- The defendant is alleged to have committed the offence whilst under an order of the Court.

**A prosecution is less likely to be needed if:**

- The court is likely to impose a very small or nominal penalty.
- The offence was committed due to a genuine mistake or misunderstanding.
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial UNLESS the offence is serious, the delay was caused in part by the defendant, the offence has only recently come to light or the complexity of the offence has meant there has been a long investigation.
- A prosecution is likely to have a significant detrimental effect on the defendant's physical or mental health, always bearing in mind the seriousness of the offence.
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- The defendant has put right the loss or harm to the building that was caused to the satisfaction of the Local Planning Authority. However, the defendant must not avoid prosecution simply because they have repaired the damage.

**Conclusion**

14. This procedure is designed to ensure there is clarity, proportionality, consistency and fairness in the principles applied to the investigation of Listed Building offences which may require prosecution. It is intended to ensure that defendants who commit such offences are treated fairly but prosecuted or dealt with in other ways effectively.

**Further Information**

15. Further government information about the enforcement of Listed Building offences can be found here:

<http://planningguidance.communities.gov.uk/>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7705/321530.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7705/321530.pdf)

National Planning Policy Framework 2019:  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

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