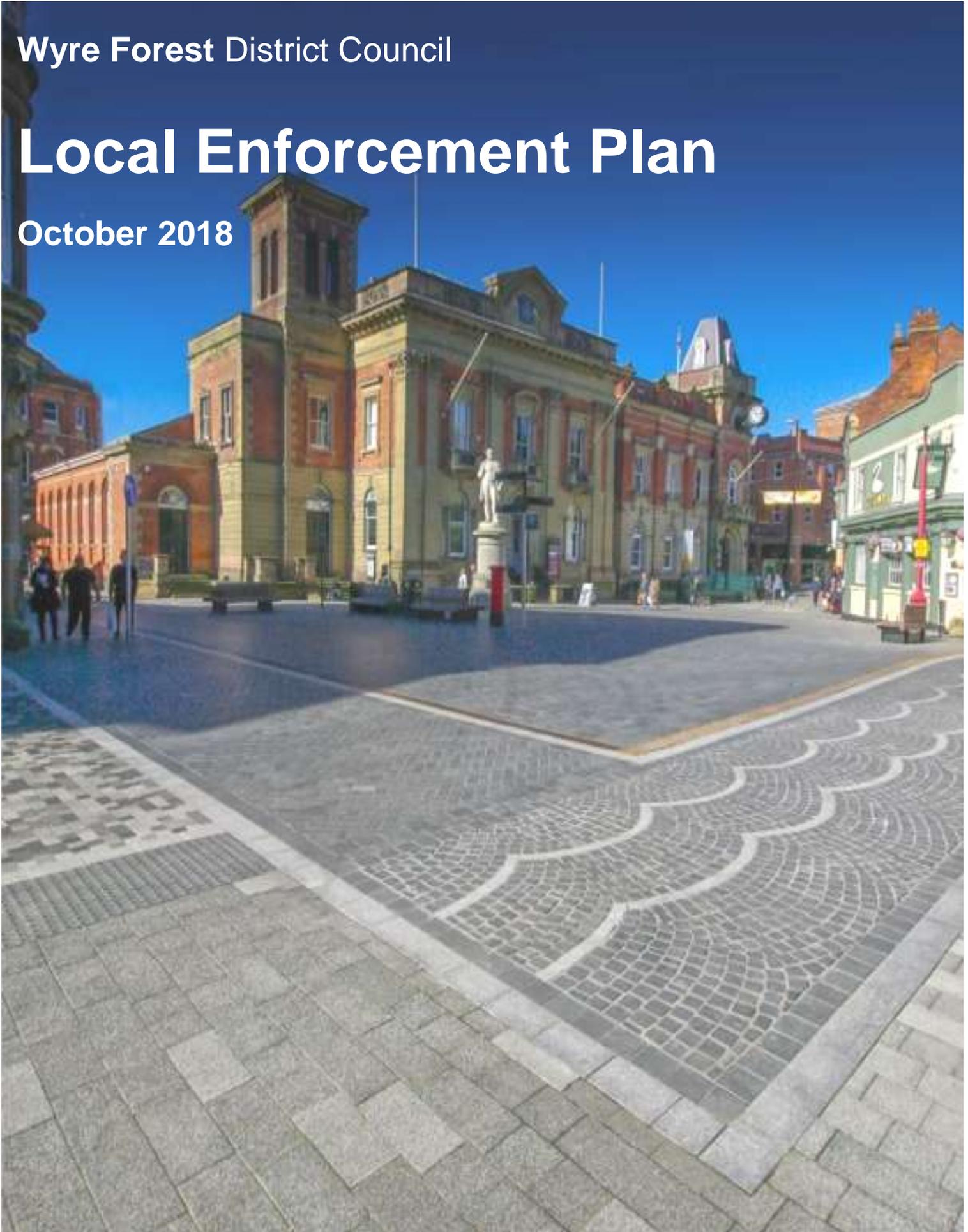


Wyre Forest District Council

Local Enforcement Plan

October 2018



Wyre Forest District Council



Introduction

This policy statement relates to Wyre Forest District Council's (the Council's) Planning Enforcement role and will describe the purpose of planning enforcement and how the Council will deliver the service to the community.

The policy aims to provide an efficient planning enforcement service in support of the Council's statutory planning service in a clear, consistent, proportionate and open manner. It is recognised that establishing effective controls over unauthorised development assists in conserving the natural and built environment whilst helping to protect the quality of people's lives and maintaining the Council's integrity.

Government advice and legislation

The revised National Planning Policy Framework ('the framework') was published in July 2018. Paragraph 58 of the Framework states that:-

"Effective enforcement is important to maintain 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. They 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 appropriate".

In addition to the statement made in the 'framework' the Town and Country Planning Act 1990 provides the main legislative background regarding breaches of planning control along with the Planning Practice Guidance section titled "Ensuring effective enforcement".

The purpose of planning enforcement

Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another.

In order to undertake effective investigations it is essential that there is co-operation between the Council and other external agencies, such as the Police, Environment Agency, Worcester Regulatory Services and Parish/Town Councils. The Council will continue to develop these relationships in the future in order to make best use of all our available resources.

The Council will not condone wilful breaches of planning control and will exercise discretion to take enforcement action if it is considered expedient to do so. The Council will investigate alleged breaches of planning control, to determine whether a breach has, as a matter of fact occurred, and if it has, determine the most appropriate course of action.

What is a breach of planning control?

This could involve such matters as the unauthorised erection of a building or extension to a building, a material change of use of land, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:-

- Unauthorised works to Listed Buildings;
- Unauthorised works to trees subject of a tree preservation order (TPO) or in a conservation area;
- Unauthorised demolition within conservation areas;
- Breaches of conditions attached to planning permissions;
- Not building in accordance with the approved plans of planning permissions;
- Untidy land where it affects the amenity of the area;
- Unauthorised engineering operations, such as raising of ground levels or earth bunds;
- Failure to comply with a Section 106 agreement
- Deliberate concealment of unauthorised building works or changes of use

Matters that are not breaches of planning control

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way (PROW)
- Parking of commercial vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property;
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Land ownership disputes or trespass issues;
- Covenants imposed on property Deeds
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 (as amended);
- Advertisements that are excepted from deemed or express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Dangerous structures or other health and safety issues;
- High hedge disputes – these are dealt with by the Development Management team but under Part 8 of the Anti-Social Behaviour Act 2003

Enforcement action is discretionary

It is important to note that just because there may be a breach of planning control this in itself, is not sufficient reason to take enforcement action. The Council must firstly decide, having given regard to policies contained within the Development Plan, guidance contained in the National Planning Policy Framework (NPPF) and all other material planning considerations, whether or not it is '**expedient**' to take formal action. Expediency is a test of whether the unauthorised activities are causing harm to the environment or amenity of the area. Therefore enforcement action is **discretionary** and each case must be assessed on its own merits.

Guidance from Central Government is that enforcement action should be a last resort and that Councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to serving a formal notice. Any such service of a formal notice must be proportionate and commensurate with the breach of planning control.

This means that the Council may not take formal enforcement action in all cases where there has been a breach of planning control identified.

What can you expect if you report an alleged breach of planning control?

We will:-

- Investigate all alleged breaches of planning control reported to the Council in writing;
- Keep your personal details confidential at all times, unless required to disclose as part of court proceedings;
- Register your complaint and provide you with an acknowledgement and reference number with a named officer as the point of contact;
- Keep you informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved;
- Actively pursue your complaint to a satisfactory conclusion;
- In cases where there may be a technical breach of planning control but the harm caused is insufficient to warrant formal action, notify you of the reason for not taking formal action and close the case;
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

Your complaint will be:-

- Given a priority based on the Council's published priority table which is contained in this policy document;
- Investigated and a site inspection undertaken in line with the published timescales, where possible, contained in this policy document;
- Pursued until such a time that the matter is satisfactorily resolved by either reparation or the breach is regularised or found to be lawful or the decision is taken that it is not expedient to pursue any further

In the event that a formal notice is served and not complied with, your case will be pursued through to the Magistrates Court or higher court where necessary.

How to report an alleged breach of planning control

The Council consider in the region of 200 complaints a year concerning breaches of planning control. In order that your complaint can be dealt with as soon as possible it is important to provide us with as much information as you can. **You must provide your name, email address or postal address.** Below is a list of the type of additional information that would assist us in dealing with your complaint:-

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place that are cause for concern;
- If you know any details of names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners;
- The date and times when the alleged breach took place;
- Any other information or evidence that may be able to assist;

Complaints about alleged breaches of planning control will only be accepted in writing using the Council's Enforcement Complaint Form, which may be found at the following webpage www.wyreforestdc.gov.uk/planning-and-buildings/planning-and-building-control-enforcement.aspx. The form can be provided to the Council by:-

- submission of an online form
- e-mailing the form to dev.management@wyreforestdc.gov.uk; or
- posting the form to the Development Management Section.

Anonymous complaints will not usually be investigated unless relating to a matter of public safety. The Council determines whether the alleged breach merits investigation. Complainants who do not give their personal details will be advised to contact either their Local Ward Member or their Parish Council who may then raise their concerns on their behalf. Personal details provided by a complainant will be kept confidential and will not be disclosed unless required to do so as a result of any formal Court proceedings.

Vexatious or malicious complaints that do not have any substantive planning reasons for the complaint will not be investigated.

How will we prioritise your complaint?

In order to make the best use of resources available it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the Council following receipt of the complaint, but may be subject to change following a site inspection or when further information comes to light.

Priority Categories

RED - Severe irreversible harm

- Breaches of Listed Building control (which include damage to or demolition of Listed Buildings)
- Works to trees which are protected by Tree Preservation Orders/within Conservation Areas,
- Damaging works to SSSIs,
- Demolition of building in a conservation area.

**Investigations will commence and a site visit will take place, wherever possible, on the same day or failing that the day after receipt.
(This may include 'out of hours' if judged to be necessary)**

AMBER - Harm to amenity or risk to public safety

- Serious harm from development
- Public Risk from breaches of condition
- Unauthorised encampments on private land
- On-going building works, including extensions where there is continuous harm or danger

**Investigations will commence within 5 working days of receipt;
a site visit will take place within 10 working days of receipt**

GREEN - No significant harm

- Adverts
- Domestic structures such as extensions, sheds, and fences
- Breaches of planning conditions that have little or no harm

**Investigations will commence within 10 working days of receipt;
a site visit will take place within 15 working days**

What are the possible outcomes of an investigation?

No breach established – Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased or the development is permitted development.

There is a breach of planning control but it is not considered expedient to pursue – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be considered to be very minor.

The development is lawful and immune from enforcement action – This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the Council. There are time limits involved in relation to operational development (4 years) and changes of use (10 years). For additional advice please contact the Development Management Team who will be happy to advise you if you think this may apply to you.

Negotiations take place to find a solution – In accordance with Government guidance the first priority is to try and resolve any breaches of planning control through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not however allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective application – Please see below

Retrospective planning applications

In accordance with Government advice the Council will firstly seek to negotiate an amicable solution to any confirmed breach of planning control. By entering into negotiations with the parties involved, a solution may be found which could involve the cessation of any unauthorised change of use or building operations, the removal of any unauthorised building works or items constituting a material change of use of land, or the remedy of any breach by the submission of a retrospective planning application.

A retrospective application will be invited where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions.

Minor or technical breaches of planning control may not be pursued in the event that a retrospective application has been requested and not submitted or where it is not considered expedient to do so.

Under Enforcement

Where development has been carried out without planning permission and where the development could be made acceptable by imposing conditions, a retrospective application will be invited. If after a reasonable period of time the owner or occupier of the land is unwilling to submit a retrospective planning application, consideration will be given to the possible service of an Enforcement Notice. In these circumstances the Enforcement Notice will have the effect of granting planning permission subject to the terms of the Enforcement Notice being complied with in full. This will only be used where it is considered that the harm caused by the unauthorised development is such that a suitable remedy must be sought to protect any harm caused by the development.

In such circumstances the Council will notify the owner or occupiers of the land, the complainants and where appropriate the Local Ward Member and Parish Council of the intended course of action.

Formal Action

The Council has a range of formal powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. The more common forms of enforcement action are listed below:

- The service of a Planning Contravention Notice (PCN) – Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected
- The service of a Request for Information (RFI) – Section 16(1) enables a notice to be served requesting details to be provided of any owners, occupiers or any other persons with an interest in the land
- The service of an Enforcement Notice – Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy the breach of planning control
- The service of a Breach of Condition Notice (BCN) – Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission
- The service of a Stop Notice or a Temporary Stop Notice Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above
- The service of a Section 215 Notice – this enables the service of a notice requiring the proper maintenance of land and buildings.

In addition to the above further action is available by way of the service of injunctions, the taking of direct action to remedy a breach or to instigate prosecution proceedings for non-compliance where it is deemed necessary to do so.

The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and with the Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

What happens if an allegation is made against you?

If a complaint is received that affects you then the first thing that will happen is either you will be contacted (where your details are known to the Council) or the site in question will be visited by an officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to rectify the breach or regularise the situation. If you have no involvement with the identified breach no action will be taken against you.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through amicable negotiations or the submission of a retrospective planning application formal action may be instigated.

Power of entry onto land

Section 196(a) of the Town and Country Planning Act (as amended), the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Order Act 2003 gives officers of the Council the power to enter land and/ or premises at all reasonable hours in order to undertake their official duties. Wilful obstruction of a person exercising a right of entry is an offence.

The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the legislation unless twenty four hours notice prior notice of the intended entry has been given to the occupier of the building.

Proactive Compliance

In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the Council provides a proactive approach to ensure compliance with planning permissions and other consents. It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements, such as Section 106 agreements. However, failure to comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance.

Proactive action will encourage and enable compliance with conditions to safeguard that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. Carrying out proactive compliance in this way should result in a reduction in the number of retrospective enforcement complaints received.

A) What are our priorities for Proactive Compliance?

In order to be proactive the Council must operate a risk based approach in deciding which cases are to be investigated or monitored. In so doing the resources available must be provided in a targeted and focused way.

Priority will be given to monitor the following developments:

- All developments over 10 dwellings;
- All commercial developments over 1000sq metres floor area;
- All proposals which have trees which are protected by Tree Preservation Orders;
- Where there has been a history of non compliance; or
- Significant works to Listed Buildings.

Any other developments may be inspected on a random basis at any time to ensure compliance

B) What the Development Management Team will do.

The role of proactive compliance will be:

- To proactively monitor planning conditions to ensure that development proceeds in accordance with approved plans and undertake any necessary site inspections to confirm either compliance with the conditions or potential breaches of planning conditions/requirements of legal agreements.
- To liaise with developers and/or agents on major or specifically identified development sites to prevent breaches of planning conditions/legal agreements and to ensure that development proceeds with the least disruption possible.
- Where necessary and expedient, to actively stop sites that are proceeding without compliance with planning agreements or conditions by the use of Temporary Stop Notices (TSN) and where expedient Stop Notices and Enforcement Notices or Breach of Condition Notices.

The Team can obtain monitoring information from other areas of the Council or external organisations such as North Worcestershire Building Control, Worcestershire Regulatory Services (environmental health) and Worcestershire County Council.

C) Benefits of Proactive Compliance

The benefits of proactive compliance can be felt by the Council, community and the development industry. By being proactive, the Council can be aware of identified sites and can try and prevent major problems occurring. For the community this means that the Council can be confident that requirements and conditions within agreements and permissions or consent will be complied with ensuring a high quality of built development while being efficient with our resources and reducing any potential harm caused as a result of the development.

For the development industry, there are benefits in raising the profile and need to comply with requirements and conditions to ensure future conveyance requests and solicitors' queries can be dealt with. A clear process of compliance can only aid these future requests.

Complaints about the service

If you are unhappy about the level of service you have received or how the process has been managed, then you may firstly discuss your concerns with the Development Manager or take it further through the Council's 'Let us know what you think' procedure. If you remain unhappy then you may write to the Local Government Ombudsman who may investigate your concerns in certain circumstances. More information is available on their website:

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

Contact details

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