



## **PLANNING ENFORCEMENT PLAN**

### **1.0 BACKGROUND**

- 1.1 If planning permission, listed building consent, conservation area consent or advertisement consent is not required from the Council, then unfortunately the Council cannot take any action under national planning legislation. However, another Council section or department may be able to take action under other statutory legislation.
- 1.2 The Planning Enforcement Team can only enforce the national planning legislation, and therefore cannot get involved in private disputes, for example breaches of restrictive deeds or covenants, or boundary disputes. Individuals with such concerns should contact a private solicitor who may be able to bring a civil action.
- 1.3 The national legislation is supplemented by a number of documents providing clarification and guidance on planning enforcement. These documents include National Planning Policy Framework, Department of the Environment Circular 10/97, entitled 'Enforcing Planning Control' (July 1997), and the accompanying 'Good Practice Guide' for Local Authorities.
- 1.4 It is often incorrectly assumed that breaches of planning control are a criminal offence, but this is not the case. Furthermore, if it is established that a breach of planning control has taken place, it is not mandatory for the Council to take enforcement action. The decisive issue for the Council to consider in deciding whether to pursue enforcement action is whether it is expedient to take enforcement action. When considering expediency, the Council will consider the facts, for example: whether the breach of planning control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest; whether planning permission would be granted if an application were to be submitted and if so, whether conditions would be imposed; and whether the breach has become lawful through passage of time and therefore immune from enforcement action. In making this assessment, the Council will have regard to the relevant Unitary Development Plan / Local Plan policies, associated Supplementary Planning Documents and all other material planning considerations.
- 1.5 Whilst not condoning development or activity carried out without the benefit of planning permission, it is usually inappropriate to take enforcement action against a minor breach of planning control which causes no harm to the amenity of adjoining occupiers or the surrounding area.

- 1.6 However, the integrity of the development control process depends on the Councils' readiness to take enforcement action when it is necessary to do so, in order to remedy the undesirable effects of unauthorized activity. Failure to take enforcement action when it is clearly required can result in the Council being investigated by the Local Government Ombudsman for possible 'maladministration', or being challenged by way of an application for judicial review or in other legal proceedings.

## **2.0 HOW WE DEAL WITH COMPLAINTS**

- 2.1 Most breaches of planning control are reported to the Council directly by members of the public. The procedure outlined below is a guide to how we will respond to these complaints:

### **2.2 Complaint received and logged.**

To make a complaint about a suspected breach of planning control, we will need as much information as possible. An e-form can be found on the council website following the link [https://eforms.hounslow.gov.uk/ufs/ufsmain?formid=A105\\_PLANNING\\_ENFORCEMENT](https://eforms.hounslow.gov.uk/ufs/ufsmain?formid=A105_PLANNING_ENFORCEMENT) or choosing planning enforcement from the report it section on the front page of the website.

- The address or detailed location of the site.
  - Precise details of the alleged breach.
  - When the alleged breach started/took place.
  - The nature of any building work/uses of the property.
  - The previous and current uses of the property.
  - Names, addresses, telephone numbers of persons responsible, if known
  - Photographs, if possible
  - Name, address and contact details of the Complainant
- Anonymous complaints will not, in general, be investigated unless they relate to works to a listed building, tree works or dangerous structures. It is in our experience that such complaints can be frivolous or motivated by neighbour disputes. Members of the public who are reluctant to give their details, because they fear repercussions, are advised that their details are treated with the strictest confidence, but if they are still reluctant we would advise them to use their local Councillor to act on their behalf.

*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*

- 2.3 The complaint is logged in the I-Plan database. Planning and Building Control records are also logged in this system to give a more complete property record.

**Planning history check of the site carried out.**

- 2.4 Where we are notified that building works have commenced at a property, these will, in the first instance, not be registered as potential enforcement cases, until research has been undertaken to establish whether there is planning permission or it is permitted development. Aerial photographs will be checked to see if there is any indication of when building work started, and what was on the site previously.
- 2.5 Other checks will be made with council departments, such as Building Control, Pollution, Licensing, Food, Trading Standards, Streetscene, Highways, Environmental Health Housing, Council Tax. This desk top study helps establish any background to the case, if building works have started, when they started, have complaints been received by other sections, has Council Tax been paid, are there tenants of the property being paid Housing Benefit?
- 2.6 From this research, a desktop case can be made up. In some instances, this will indicate that planning permission has been given for the building work / activity that is the subject of the complaint. If this is the case, an officer will visit to make sure that it is being carried out in accordance with the approved plans.

**Initial Site Visit**

- 2.7 After the relevant planning history has been researched, the first step of the enforcement investigation normally taken by the Case Officer is a site visit to the location where the alleged breach of planning control is taking place. It is standard procedure for the Officer not to visit the complainant immediately after visiting the site of the alleged breach, as this could reveal to anyone present at the site the identity of the complainant. If a complainant wishes for the Case Officer to visit their property, they should contact the Officer in order to make this request.
- 2.8 The Case Officer's initial site visit is of vital importance and the Officer will seek to obtain as much information as possible. In some cases the Case Officer may be accompanied by another colleague or a Council Officer from another department. The Case Officer will not usually notify the owner or occupier of the site where the alleged breach of planning control is taking place, and has the legal right under Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended), to enter any land at any reasonable time to ascertain whether a breach of planning control has occurred.

- 2.9 If no-one is present when the Case Officer first visits the site where the alleged breach of planning control is taking place, the Officer will leave a business card asking the owner or occupier to contact them.
- 2.10 Should the owner or occupier of this land be unwilling for the Officer to enter the land, the Officer will seek to agree a mutually convenient time for a site visit to be undertaken. If the owner or occupier refuses to arrange a suitable time for a site visit to be carried out, the Council will serve a Right of Entry Notice, stating, with at least 7 days advance warning, a time when the Case Officer will expect to be able to enter the land, without being impeded, to ascertain whether a breach of planning control has occurred.
- 2.11 If the Case Officer is still not able to enter the land, the Council will apply to the Magistrates Court for a warrant to be issued authorising officers to enter the land. Wilful obstruction of an authorised Officer(s) at this stage is a criminal offence subject to a maximum fine of £1,000. If considered necessary, the authorised Officer(s) may be accompanied by a Police Officer(s) when exercising this warrant.
- 2.12 Once a site visit has been completed, the Case Officer will write to both the owner/occupier of the site and the complainant to advise of his or her findings and how the investigation will be progressed.
- 2.13 If a breach is established an assessment will be made of the harm caused by the breach. If it is considered that no or limited harm is being caused by the breach, the owner will be asked to submit a planning application to rectify the breach. If it is considered that harm is being caused by the breach, officers will negotiate to try and remedy the breach. If the owner is unwilling or unable to rectify the breach, then officers will write a report seeking members authority to serve an enforcement notice. In circumstances when it is considered that enforcement action should take place promptly and before the next meeting of the Planning Enforcement Sub-Committee and there are grounds of urgency, using Urgency Powers, the Chair of the Planning Enforcement Sub- Committee may agree that the Chief Officer is authorised to take enforcement action without the matter being presented to the Sub- Committee first.
- 2.14 Other Notices, such as Breach of Condition Notices, can be agreed at Senior Officer level under the Council's Adopted Scheme of Delegation

### Enforcement Options

Ongoing Review	Take no action, but monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord
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<p>Allow Time to Remedy</p>	<p>Time may be given to remedy the breach of justify its retention. Such cases may include situations where there is no demonstrable harm and is not so serious as to warrant immediate action or where it may be justifiable by some other benefit. However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay formal action.</p>
<p>Planning Contravention Notice</p>	<p>This can give an opportunity to formally regularize the position or to persuade the Council that further action is inappropriate. Such a Notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. This is often used when there is an allegation that a separate residential use has commenced.</p>
<p>Enforcement Notice</p>	<p>These will be the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice, which can be quashed or amended. The Council may choose to "under-enforce" to remedy a specific problem. In such circumstances the remaining building or use will be deemed to have planning permission when the Enforcement Notice has been complied with.</p>
<p>Breach of Condition Notices</p>	<p>These can be used in addition or as an alternative to an enforcement notice where the unauthorized activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can only be used to secure complete compliance with a planning condition, "under-enforcement" is not an option. Also, as there are no powers for the Council to enter the land and carry out works, prosecution is the only means of enforcement. Therefore the use of a BCN may not always be appropriate</p>
<p>Listed Building and Conservation Area Enforcement notices</p>	<p>A Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is no four or ten year rule limiting time in which such an enforcement notice can be served. A Conservation Area Enforcement Notice can be served against unauthorised demolition in a Conservation Area</p>
<p>Listed Building and Conservation Area Prosecution</p>	<p>A person who is found to carry out unauthorised works that affect the character of the listed building or demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.</p>

<p>Temporary Stop Notice</p>	<p>A temporary stop notice can be issued to seek immediate cessation of the breach of control. Unlike a Stop Notice, it does not require an enforcement notice to be served first. It is only valid for a period of 28 days, by which time the Local Planning Authority can either decide to serve an enforcement notice. There is no right of appeal against a Temporary Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, being up to £20,000. Compensation may be payable if the LPA later issue a lawful development certificate</p>
<p>Stop Notice</p>	<p>The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. It can only be served if an enforcement notice has first been served. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, being up to £20,000. However, the Council are advised that a Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice.</p>
<p>Court Injunction</p>	<p>This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bring such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.</p>
<p>“Works in Default” Powers</p>	<p>The Council may enter land to take the necessary steps to secure compliance when an Enforcement or advert notice is in effect. This is at the councils cost. However, although the cost can be recovered from the landowner, experience has shown that this is not often forthcoming, and is rarely cost effective</p>
<p>Section 215 Notice</p>	<p>Such a Notice requires steps to be taken to remedy the condition of land which is considered to be adversely affecting the amenity of the surrounding area</p>
<p>Section 225A Notice</p>	<p>Such a Notice requires an unauthorised advertisement to be removed</p>

Discontinuance Notice	Such a Notice requires the removal of an advertisement displayed with the benefit of 'deemed advertisement consent', i.e. an advertisement that would not normally require consent from the Council to be displayed
CIL Stop Notice	This is a new kind of stop notice, to be issued to require development works to cease where development has commenced and the required Community Infrastructure has not been paid in accordance with CIL Regulations

- 2.15 The action taken should be proportional to the level of harm involved and that, taking relevant circumstances into account, it is expedient and necessary to do so. Therefore, any action taken by the Authority to achieve compliance will be proportionate to the seriousness of the harm involved in any breach.
- 2.16 Once an enforcement notice is served, there is the right of appeal against this, as long as the appeal is submitted within 28 days. Experience has shown that appeals are submitted against the majority of enforcement notices served, and around 80% of these are informal hearings or public inquiries. Following the appeal, the decision of the Inspector can be to uphold the notice, in which case the owner has a set period of time in which to comply: to vary the notice, or to quash the notice, in which case the owner can continue the works ./ activity.
- 2.17 If there is a failure to comply with, then the appropriate action as shown above will be engaged. In the case of non compliance with an enforcement notice, the next step is to prosecute. The owners can be fined in court for non compliance with an enforcement notice. However, it is possible that the fine be paid, and the breach of planning be continued. In such cases, further prosecutions can be undertaken or where appropriate a court Injunction may be sought.
- 2.18 There is no right of appeal against a Breach of Condition Notice (which may be challenged by an application for judicial review) or a Planning Contravention Notice. An appeal can be made in the Magistrates Court against a Section 215 Notice.

**No Breach, or Immune**

- 2.19 If it is established that no breach of planning control has occurred, or that the activity is immune from enforcement action due to the length of time that the activity has been taking place, the Council will be unable to take any further action. In such circumstances, the Council will write to both the complainant and the owner of the site explaining in full the reasons why no action is to be taken and formally confirming that the matter has been closed.

### **Action to remedy the breach**

- 2.20 If the owner or occupier of the site takes prompt action to remedy the breach of planning control, the Case Officer will subsequently visit the site and then confirm in writing to both the owner/occupier and the complainant that the breach of control has been remedied and that no further action will be taken.

### **Retrospective applications**

- 2.21 The owner/occupier of any site where a breach of planning control has occurred has the legal right to submit a retrospective planning application in an attempt to regularise the breach. Such an application will be considered by the Council in the same way as all other planning applications, i.e. with regard to the provisions of the Unitary Development Plan /Local Plan and associated Supplementary Planning Documents, and all other material planning considerations, and with each application being determined on its own planning merits. Section 70C was introduced by the Localism Act whereby a Local Planning Authority has the power to decline to determine an application if there is a valid enforcement notice in place. This is to be used to stop delays to enforcement by the submission of applications that propose minor changes to the subject.
- 2.22 Neighbouring properties, and any complainants who first raised their concerns with the Planning Enforcement Team, will be formally notified of the application in accordance with the Statement of Community Involvement, and the details of the application will be published on the council website. Representations will be taken into account when the planning application is determined.
- 2.23 Any enforcement action that is proposed or has already been taken by the Council may be put on hold pending the determination of the relevant planning application, but in some circumstances it may be considered appropriate to continue enforcement action, for example where the harm caused by the unauthorised activity is seriously detrimental to the surrounding area or where there is the potential for the development to become immune.
- 2.24 If a retrospective planning application has to be presented to a Committee meeting, and the Officer recommendation is to refuse the application, a recommendation to take enforcement action will normally also be included within the Officer's report for determination by the Elected Members sitting on the Committee. Agreement to refuse a retrospective planning application and to serve an Enforcement Notice at the same time does not remove the right of the owner/occupier to appeal on a number of different grounds. Following legislative changes brought into force under the Localism Act 2011, if an enforcement notice is issued before the time for determination of the retrospective planning application has expired, then while the owner



may appeal against the enforcement notice on a number of grounds, they may not appeal under ground 'A' (a ground A appeal asserts that planning permission ought to be granted or that the condition or limitation should be discharged).

- 2.25 If the application is subsequently approved, the activity will then be lawful and no enforcement action will be taken. The decision will be published so that anyone who made representations on the relevant planning application can see the outcome of the application.
- 2.26 If the application is refused, the Council will then pursue enforcement action to remedy the breach of planning control.

### **Prosecution**

- 2.27 The enforcement notice gives a period for the work to be done to remedy the breach. When this period has expired, enforcement officers will visit the site again to check that the enforcement notice has been complied with. If it has, and the breach of planning has been remedied, then the owner will be written to and told that the enforcement notice has been complied with. This letter will be put on the Statutory Register of Enforcement Notices, held on the Council website.
- 2.28 In some cases, works have been done to make the development fall within the boundaries of permitted development. For instance, the roof of an outbuilding may have been removed to reduce the height to less than 2.5m, so it would be permitted had an application been made. If a works have been undertaken to such an extent that a lawful certificate would have been issued, then generally enforcement officers will no longer pursue further compliance. It would not be expedient for the structure to be demolished, and rebuilt as permitted development, as the part of the structure that caused the most harm (in this example, the roof) has been removed.
- 2.29 In some cases, works have been undertaken to remedy the breach, but not every action required on the enforcement notice has been done. An assessment must be made of the harm caused by the remaining structure / use, and the likelihood of it gaining planning permission. In some cases, if it is considered that the works undertaken overcome the harm caused by the breach, then no further action will be taken. In these cases, however, the enforcement notice is kept on the file, so further action can be taken should the breach recur.
- 2.30 If, following the period to comply with the enforcement notice, no remedial works, or insufficient remedial works have been carried out, then the Council will prosecute against non-compliance with the enforcement notice in the Magistrate Court. Non-compliance with the enforcement notice is an offence, liable to a fine of up to £20,000. The council will also seek to recover its costs arising from non compliance with the enforcement notice. If the financial penalty given by the court

does not achieve compliance with the enforcement notice, then further prosecutions will be undertaken to achieve compliance to overcome the harm of the breach of planning.

- 2.31 The Council will publicise successful prosecutions for non compliance with enforcement notices
- 2.32 The Council will use other legislation in an attempt to remedy a breach of planning that is causing harm to residential amenity or interests of acknowledged importance. This includes Environmental Protection Act, Housing Acts and Proceeds of Crime Act

### **3.0 LEGISLATIVE FRAMEWORK**

3.1 The statutory legislation that the Planning Enforcement Team enforces is based around the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. This piece of legislation forms the fundamental basis of the planning system today in England and Wales.

3.2 Subsequent national planning legislation that is of particular relevance to the Planning Enforcement Team includes the following :

- ⑩ **The Town and Country Planning (General Permitted Development) Order 1995 (as amended)** – this sets out what can be done under 'permitted development rights', i.e. without requiring planning permission from the Council.
- ⑩ **The Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended)** – this sets out which advertisements benefit from 'deemed advertisement consent', i.e. those advertisements which can be displayed without requiring consent from the Council.
- ⑩ **The Town and Country Planning (Use Classes) Order 1987 (as amended)** – this sets out the various categories that different uses of land fall into, and what comprises a 'material change of use' requiring planning permission.