



**London Borough  
of Hounslow**

# Enforcement Policy

Regeneration, Economic Development and  
Environment

## Contents

1. Introduction
2. Aims and Objectives
3. Enforcement Options
4. Principles of Good Enforcement
5. Administration
6. Conflict of Interest and Undue Influence
7. Appendices:
  - Environmental Health and Trading Standards
  - Planning
  - Building Control

Appendix A  
Appendix B  
Appendix C

## **1. Introduction**

- 1.1 The Regeneration, Economic Development and Environment Directorate is responsible for enforcing a wide range of legislation within the London Borough of Hounslow. This document sets out our Enforcement Policy and outlines what residents, businesses, consumers and workers can expect from enforcement officers. It is supplemented by further policies and procedures in specialist areas, namely Food Safety, Health and Safety, Pollution Control, Private Sector Housing, Trading Standards and Licensing.
- 1.2 The council is committed to ensuring that all its policies are applied in a non-discriminatory manner and to enhancing good community relations. This policy will be applied in accordance with those principles.
- 1.3 As each area of enforcement has its own detailed legislation, this policy is not intended to prescribe the action that will be taken in every situation.
- 1.4 This policy is available to interested parties on the council's website.

## **2. Aims and Objectives**

- 2.1 The policy reflects the council's corporate aims and objectives. In particular the council aims to:
- Make Hounslow a better place to live through the enforcement of legislation so as to protect the health, safety, welfare, consumer and business interests of those who live, work, or are affected by activities taking place within the borough.
  - Ensure that there are opportunities for all people and businesses to prosper by carrying out enforcement in a fair, practical and consistent manner.
  - Where appropriate, to meet our enforcement objectives through the provision of advice and information.
  - Apply the principles of Good Enforcement as set out in the Enforcement Concordat and other guidance issued by Government departments.
  - Apply the principles of the Regulators' Compliance Code to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on businesses.

## **3. Enforcement Options**

- 3.1 The method of enforcement selected will be calculated to produce the highest reasonable standards of compliance within the least time. A variety of methods are set out in this policy, they are not necessarily sequential. In taking action to ensure compliance, officers will consider the following when deciding on the most appropriate enforcement method:
- The seriousness of the breach
  - The different options for remedying the breach

- ❑ The degree of risk
- ❑ The circumstances of each case and the likelihood of recurrence
- ❑ Previous history of the offender
- ❑ Age and circumstances of the offender
- ❑ Date of the offence
- ❑ Likelihood of achieving a satisfactory outcome
- ❑ Precedent effect
- ❑ General attitude of the offender
- ❑ Legal imperatives, e.g. statutory requirement to serve a notice
- ❑ Relevant guidance
- ❑ Sufficiency of admissible evidence
- ❑ Public Interest
- ❑ Prevalence of the offence locally or nationally

A variety of enforcement options are set out below which could be used at any stage, they are not sequential.

### 3.2 **Advice**

In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given it will normally be put in writing unless the breach is very minor or the matter is rectified on the spot.

### 3.3 **Statutory Notices**

Subject to the specific rules governing the use of different statutory notices, they would generally be used where there is a clear breach of the law, where the degree of risk or environmental impact or harm from the situation is significant and where a remedy needs to be secured within a set period of time. In some instances service of a notice will be compulsory, for example abatement notices under the Environmental Protection Act 1990.

Subject to consideration of the evidence it is likely that the negligent or willful non-compliance with a statutory notice will result in prosecution.

### 3.4 **Seizure of Property, Documents and Equipment**

Officers will on occasion require evidence for their investigation and will use their statutory powers to seize property, documents or equipment.

### 3.5 **Warning Letter**

In certain circumstances, it may be appropriate to issue a warning letter bringing alleged offences to the attention of the person responsible for the alleged breach indicating ways to avoid commission of similar offences in the future.

A warning letter should be given when the requirements for a simple caution are not met or the need to formally record the caution is not applicable. In either case it is essential that sufficient admissible evidence is available to substantiate the offence.

### **3.6 Simple Caution**

The council may issue a caution where there is sufficient evidence to prosecute but where the public interest is not served by issuing proceedings. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

### **3.7 Fixed Penalty Notice**

Fixed Penalty Notices (FPNs) can now be issued for a variety of different offences. They are an effective enforcement tool as they allow officers time to focus on more detailed and complex cases. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted. FPNs may be issued when an officer believes that an offence has been committed. The officer must therefore have adequate evidence to support a prosecution if the FPN is not paid. Normally FPNs would not be issued where the offender has already received a FPN for the same offence in the same year.

### **3.8 Prosecution**

The council will exercise discretion when considering whether to initiate a prosecution. The decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service. In particular, the council will consider whether there is a reasonable prospect of a conviction, bearing in mind any statutory defence available to the defendant, and any other factors which may preclude a successful conviction.

Where the circumstances warrant it, prosecution without prior warning may occur.

### **3.9 Forfeiture**

In some circumstances the legislation permits officers to seize goods and apply to the court for them to be made subject to a forfeiture order. The council will exercise this power in appropriate cases.

### **3.10 Injunction**

An injunction may be sought where the circumstances of any case cause a significant problem or threat to health and the normal process of law (statutory notices, prosecution etc.) is likely to be ineffective.

### **3.11 Anti Social Behaviour Orders (ASBOs)**

The council has the power to apply to the magistrates' court for an ASBO. ASBOs should be considered wherever it is thought that they will be a successful remedy for tackling anti social

behaviour and where other methods may be less effective. This does not necessarily mean that other methods have to be tried first.

### 3.12 **Dispersal Orders**

Section 30 of the Anti-Social Behaviour Act 2003 provides local authorities and the police with a powerful tool to tackle anti-social behaviour by groups of people.

The order is designed to reduce anti-social behaviour problems in defined areas. By empowering Metropolitan Police Service and Police Community Support Officers (PCSOs) to take action to disperse groups of two people or more, if they believe that their presence or behaviour has resulted, or is likely to result, in any member of the community being harassed, intimidated, alarmed or distressed. Individuals can be directed to leave the locality and may be excluded from the area for up to 24 hours. A dispersal order does not prevent people from entering the designated area.

The MPS can also return young people under 16 to their home, if they are out on the streets and not under the control of an adult, after 9pm if they are causing, or at risk of causing, or being the victim of anti-social behaviour.

### 3.13 **Closure Orders**

Premises closure orders are tenure neutral powers that can be used to offer communities immediate respite by temporarily closing premises for three months. Examples of these premises are those that are responsible for:

- significant and persistent disorder or
- persistent serious nuisance to a community.

There are three types of closure orders these are, in order of enactment; “crack house” closure orders, anti-social behaviour closure orders, and brothel closure orders.

## 4. **Principles of Good Enforcement**

4.1 Although the council did not sign up to the Enforcement Concordat, it follows its principles in respect of enforcement as set out below.

### 4.2 **Standards**

Clear standards will be drawn up which set out the level of service and performance people can expect to receive. These standards are set out in our Service Plans which are available to the public. Performance against these standards will be reported and monitored by councillors and senior officers.

### 4.3 **Openness**

The council will be open about how it works, including any charges set. General issues, specific compliance failures or problems will be discussed with anyone experiencing difficulties. A clear distinction between compulsory statutory requirements and advice or guidance about what is

desirable will be applied. Where appropriate, advice will be put in writing. The reasons for any remedial work that may be necessary will be explained and a reasonable time scale for completion will be given.

#### 4.5 **Helpfulness**

The council will provide a courteous, helpful and efficient service and our staff will identify themselves by name, where it is appropriate to do so.

4.6 A contact point and a range of contact options will be provided and people will be encouraged to seek advice and information. Applications for approval of establishments, licences, registrations, etc. will be dealt with efficiently and promptly.

4.7 The council will ensure that our enforcement services are co-ordinated both internally and with outside bodies to minimise unnecessary overlaps and time delays.

#### 4.8 **Proportionality**

When making a decision on the type of enforcement action to take, officers will consider the circumstances of the case and the attitude and history of the parties involved. The council will ensure that any remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance and that it reflects any advice issued by central government or other co-ordinating bodies. Where a simple caution or prosecution is being considered, officers will consider the Home Office guidance and The Code for Crown Prosecutors.

#### 4.9 **Consistency**

Enforcement officers will be expected to exercise judgment in individual cases, in doing so the council will ensure that their duties are carried out in a fair and equitable manner and will promote arrangements that ensure consistency.

The council will liaise with other authorities and enforcement bodies to ensure consistency and to explore and develop best practice.

#### 4.10 **Conflicts of Interest and Undue Influence**

The council has a procedure to deal with conflicts of interest and allegations of undue influence being brought to bear on enforcement decisions. Complaints made in connection with these matters will be investigated in accordance with that procedure which is set out in section 6.

4.11 When regulating businesses, the council will comply with the principles outlined in the Regulators' Compliance Code to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on businesses. These principles are:

- regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection
- regulators should use comprehensive risk assessment to concentrate resources on the areas

that need them most

- regulators should provide authoritative advice easily and cheaply. No inspection should take place without a reason
- businesses should not have to give unnecessary information
- businesses that persistently break regulations should face meaningful sanctions
- regulators should be accountable for the effectiveness of their activities

## **5. Administration**

### **5.1 Confidentiality**

The council will ensure that the identity of persons contacting us, and any information supplied by them, is not revealed to a third party except:-

- where the law requires or
- where the case goes to court or tribunal or
- with the prior written agreement of the person supplying the information.

Persons wishing to remain anonymous may do so and information supplied in connection with breaches of legislation will be investigated where possible and feasible to do so.

### **5.2 Complaints**

The council will respond to complaints about the service it provides in accordance with the Corporate Complaints Procedure which is available at: [www.hounslow.gov.uk/complain](http://www.hounslow.gov.uk/complain)

### **5.3 Implementation and Review**

Responsibility for implementation of this policy rests with the enforcement officers in the relevant departments. When the officer takes the view that enforcement action is required this will be discussed with the relevant service head or line manager who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the relevant service head.

## **6 Conflicts of Interest and Undue Influence**

6.1 The enforcement role of the council is an impartial one. However, the possibility of a real or perceived conflict of interest or undue influence arising remains.

### **6.2 Conflict of Interest**

There may be circumstances short of a criminal offence which could give rise to a conflict of interest between a council officer and a member of the public, for example:-

- Where the member of the public is socially acquainted with or related to the officer. Under these circumstances it would be difficult for the officer to act in an impartial manner and unreasonable to expect this.



- Where an employee receives a request for advice or assistance which falls outside the normal remit for the service from a councillor, council employee or an agency that they have close working contact with.

### 6.3 **Undue Influence**

Undue influence arises where a party exercises a dominant influence over the mind of another so that person is unable to exercise a free and independent will in the matter. For example, when an employee knows that a client is a councillor or a more senior council employee, they should ask him/herself whether, if this were publicly known, it might be perceived as affecting the judgement or actions of the advisor.

Where an employee believes there is potential for a conflict of interest or undue influence to arise then the matter should be referred to their line manager for appropriate action/advice.

**This policy will be reviewed and updated as required by legislation, guidance or other circumstances which may impact on the principles set out in this document.**

## APPENDIX A

### ENVIRONMENTAL HEALTH AND TRADING STANDARDS POLICY REQUIREMENTS

#### General

1. Environmental Health and Trading Standards (EHTS) staff have a range of enforcement powers. Officers must not be prevented from carrying out their duties and must be given reasonable assistance and correct information. Obstruction is a criminal offence.
2. Officers will not exceed their powers and will keep within the legal framework governing their activity. They will comply with the requirements of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000.

#### Targeting

3. The Council's enforcement resources are limited and where appropriate they should be focused on those persons, premises or companies whose activities give rise to the risks which are most serious or least well controlled. Officers therefore carry out a programme of inspections on a risk rating basis, premises or activities with the highest hazards, greatest risks, poorest compliance and worst management being inspected more frequently than low risk premises. Low risk premises may not form part of the inspection programme and will generally be given literature or guidance to help them run their business safely and with the least impact on their local environment.
4. Enforcement is informed through intelligence arising from investigation of complaints and planned projects, special surveys and enforcement initiatives, some may result in departures from the programme of inspections.
5. The enforcement work carried out in exercise of the powers contained in the Environmental Protection Act 1990 (permitting of installations) is carried out as required by DEFRA, which sets timescales for the determination of applications, variations and revocations of permits to operate.

#### Referrals

6. In some circumstances breaches found at the retailer at the end of the supply chain may best be dealt with by the manufacture/importer, for example, labelling infringements. Technical breaches may be referred to the authority where the product originated, subject to their agreement, for them to deal with as they see fit. For those companies with a "Home Authority" arrangement, such referrals would normally follow.
7. Environmental Health and Trading Standards regularly consult and work with other agencies, including:

- London Fire Brigade before serving a statutory notice requiring the provision of fire precautions in a HMO under section 10 of the Housing Act 2004;
  - Thames Water as statutory sewerage undertakers;
  - Police on issues concerning travellers;
  - Environment Agency concerning fly tipping;
  - Health and Safety Executive on gas safety;
  - Food Standards Agency of Food Safety issues;
  - Liaison with other agencies such as the police and/or Hounslow Homes will be carried out whenever necessary, particularly on such matters as entering premises to seize equipment and dealing with anti-social behaviour orders;
  - Other council departments such as Chief Executive's, Children's and Adults and Corporate Services.
8. Allegations concerning enforcement matters which are outside the remit of this service may be referred to the appropriate enforcement authority, if the complainant provides consent, to enable the appropriate agency to investigate the allegation.

### **Advice**

9. To achieve compliance with "EHTS" legislation, we will work with businesses and adhere to the Home Authority Principle, wherever possible. The Home Authority Principle has been developed by food and trading standards authorities as an aid to good enforcement practice. Consideration will be given through advice, either verbally, by letter or notice to bring breaches or potential breaches to the attention of the relevant persons, and propose remedial action.
10. Advice given by an officer will normally be put into writing unless the non compliance is very minor or the matter is rectified on the spot. The advice may be provided in a notice outlining the non compliance(s) giving a specified period to put the matter right, or in a letter or both. An appeal mechanism is in place in the event there is no agreement. In the first instance, the relevant service heads should be contacted to see if the problem can be resolved informally. If there is still disagreement, then the issue may be pursued through the complaints procedure.
11. Even the best business occasionally make mistakes. When a potentially unsafe product is discovered many companies find it difficult to know where to start on recalling products from consumers.

## **Voluntary Surrender of Goods**

12. On some occasions it may be appropriate to obtain the voluntary surrender of goods to Trading Standards or Food Safety when not complying with legislation. This would be appropriate where perhaps only a few items are involved and legal proceedings would not be consistent with the prosecution policy for example, an itinerant seller of counterfeit clothing at a market with just a few garments. With the trader's agreement, the goods are removed from the market place and without the expense of going to court. The Service can then concentrate resources on the primary supplier.

## **Prohibition**

13. This power will be used where there are statutory grounds (i.e. that there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement but there will be other occasions where it may be appropriate, for example prohibiting the sale of unsafe goods.

## **Licensing Review**

14. The 2003 Licensing Act provides a range of powers for a licensing authority to determine a review. This is initiated where a responsible body (such as the police or the fire authority), or an interested party, such as a resident living in the vicinity at the premises, requests the licensing authority to review the licence because of a matter arising in connection with any of the four licensing objectives. Through the review procedures and the extended closure powers, a local authority is equipped with another tool designed to deter behaviour that produces disorder or generates public nuisance or threatens public safety or the well being of our children.

## **Housing Conditions – Housing Health and Safety Rating System (the HHSRS)**

15. Part 1 of the Housing Act 2004 (“the Act”) prescribed a system for assessing housing conditions and enforcing housing standards. The system is a means of identifying faults in dwellings (hazards) and evaluating the effects of any fault on the health and safety of the occupants or visitors. The system operates by the reference to the existence of category 1 or category 2 hazards on residential premises.

The council will have regard to the Housing Health and Safety Rating System Enforcement Guidance when deciding on the most appropriate course of enforcement action to take in respect of a category 1 hazard under Section 5 and how we should exercise our discretionary powers in respect of a category 2 hazard under Section 7.

## **Improvement Notices**

16. Sections 11 and 12 of the Act give the council the power to serve an improvement notice requiring any necessary works or remedial action to be taken to remove the hazard. The council also has the power to suspend, vary or revoke an improvement notice either on application made by the person on whom the notice was served or on our own initiative.

## **Consultation with fire and rescue authorities**

17. Under Section 10 of the Act the Council is required to consult the local fire and rescue authority before taking enforcement action in respect of a fire hazard in an HMO. Where emergency measures are to be taken as described below the Council must consult before taking such action as far as is practicable. When taking enforcement action in respect of a fire hazard the Council will have regard to the Protocol between London Fire and emergency Planning Authority and Local Housing Authorities.

## **Works in default and action by authorities with or without owners agreement**

18. Under Section 31 and Schedule 3 of the Act the Council can carry out works in default and take the action required by the improvement notice itself with or without the agreement of the person on whom the notice was served.

## **Prohibition Orders**

19. Under the provisions of Sections 20 and 21 of the Act the Council can serve a prohibition order which may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people. This may be appropriate where remedial action is considered unreasonable or impracticable for cost or other reasons. We also have powers to suspend, vary or revoke a prohibition order either on application made by the person on whom the notice was served or on our own initiative.

## **Emergency measures**

20. The Council has discretion to take emergency enforcement action against hazards, which present an imminent risk of serious harm to occupiers. In such circumstances we will take the remedial action ourselves under Section 40(1) to remove the hazard and recover reasonable expenses, or we will prohibit the use of all or part of a property under Section 43(1).

## **Hazard awareness notices**

21. The Council can serve a hazard awareness notice advising of the existence of category 1 or 2 hazards under Section 29 of the Act. There is no time scale or right of appeal and the person served does not have to do anything. This could be served in respect of a less serious hazard or there may be circumstances where works of improvement or prohibition of the use of the whole or part of the premises are not practicable or reasonable.

## **Demolition Orders**

22. Where the Council is satisfied of the existence of a category 1 or 2 hazard in a residential premises it can make a demolition order under Part 9 of the Housing Act 1985 (as amended).

## **Clearance Areas**

23. The Council can declare an area a clearance area if it is satisfied that each of the residential

buildings contains one or more category 1 or 2 hazards (or that these buildings are dangerous or harmful to the health or safety of the inhabitants as a result of their bad arrangement or the narrowness or bad arrangement of the streets); and any other building in the area are dangerous or harmful to the health of the inhabitants.

### **Powers to charge for enforcement**

24. The Council is allowed to make a reasonable charge to cover expenses incurred in serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order, or making a demolition order. The expenses are in connection with the inspection of premises, the subsequent consideration of any action to be taken and the service of notices.

### **Licensing of Houses in Multiple Occupation (HMOs)**

25. Part 2 of the Act provides for Licensing of HMOs. The Council must assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property. An assessment under HHSRS is not part of the licence procedure. Under the provisions of Section 67 of the Act the Council can impose licence conditions, as it considers appropriate for regulating the management, use and occupation of the house concerned and its conditions and contents.

Under Section 55 of the Act, the Council is required to satisfy itself as soon as practicable and not later than 5 years after an application for a licence has been received that there are no Part 1 functions that ought to be exercised by the Council in relation to premises in respect of which the licensing application is made.

### **Additional Licensing**

26. The Council may designate an area subject to licensing if it considers that a significant proportion of HMOs in the area are managed sufficiently ineffectively as to give rise to problems for their occupiers or the public. The Council has declared five wards in the Borough as an additional licensing area. These are Cranford, Feltham North, Hounslow Central, Hounslow West and Hounslow Heath. The Council is consulting on proposals to extend additional licensing Borough-wide.

### **Interim and final management orders**

27. Under the provision of Part 4 of the Act the Council can make interim or final management orders in respect of a house. Where it finds that a house should be licensed under Part 2 or 3 of the Act and there is no reasonable prospect of the house being licensed it has a legal obligation to make a management order. It also has a duty to make a management order where the health, safety and welfare of the occupants or potential occupants are at risk.

A management order effectively means that we take over the management of the house for a period of up to 5 years.

## **Management regulations in respect of HMOs**

28. Under S.234 of the Act the Secretary of State has made Management Regulations for Houses in Multiple Occupation (HMO) in England (including converted block of flats to which S.257 of the Act applies). These Regulations make provision for satisfactory standards of management to be in place and satisfactory standards of management to be observed. The Council can prosecute landlords for breach of the regulations.

## **Private Sector Housing Enforcement Policy**

29. A copy of the Enforcement Policy which is available at:  
<http://www.hounslow.gov.uk/housingdocuments>

## **APPENDIX B**

### **PLANNING ENFORCEMENT**

#### **1.0 BACKGROUND**

- 1.1 The Planning Enforcement Team is only able to enforce the national planning legislation, and therefore cannot get involved in private disputes, for example breaches of restrictive deeds or covenants, or boundary disputes.
- 1.2 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.
- 1.3 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 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 do so.
- 1.5 When considering expediency, the Council will consider all the facts, including 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. The Planning Enforcement Sub Committee agreed a Planning Enforcement Policy in July 2012, and this can be found under the Planning Enforcement pages of the website [http://www.hounslow.gov.uk/planning\\_enforcement](http://www.hounslow.gov.uk/planning_enforcement)
- 1.6 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.
- 1.7 However, the integrity of the development management 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 unauthorised activity.



## **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 by visiting: [http://www.hounslow.gov.uk/planning\\_enforcement](http://www.hounslow.gov.uk/planning_enforcement)

- 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, Street scene, Highways, Environmental Health Housing, and 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 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 are 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 undertaken 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. Willful 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 may 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, the intention to serve an enforcement notice has to be reported to members on the weekly Pending List, and letters sent to the owners and complainant advising them of this. If, following the publication of this Pending List for a week. If no member contacts

officers, then officers will write a report seeking member’s authority to serve an enforcement notice, to be submitted to the next meeting of Planning Enforcement Sub Committee. 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 reported to members on the weekly Pending List first, and subsequently being presented to the Sub- Committee.

2.14 Other Notices, such as Breach of Condition Notices, can be agreed at Senior Officer level under the Council’s Officers’ Delegated Powers

### **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
Allow Time to Remedy	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.
Planning Contravention Notice	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.
Enforcement Notice	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.

Breach of Condition Notices	<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.</p> <p>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>
Listed Building and Conservation Area Enforcement notices	<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>
Listed Building and Conservation Area Prosecution	<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>
Temporary Stop Notice	<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>
Stop Notice	<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 is 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>

Court Injunction	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.
“Works in Default” Powers	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
Section 215 Notice	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
Section 225A Notice	Such a Notice requires an unauthorised advertisement to be removed. If it is not removed by the owner, the local authority then have the power to remove the advertisement
Prosecution	It is an offence to display and advertisement without consent, so a prosecution in the Magistrates Court can take place, with the penalty of a daily fine of up to £2,500 It is also an offence to not comply with an Enforcement Notice. The person who does not comply can be prosecuted and be fined up to £20,000 At the time of prosecution, the Proceeds of Crime Act can also come into force as a severe financial penalty for the person who does not comply with the enforcement notice. This is only an effective tool if there is suspicion of illegal or criminal activity which has resulted in financial gain
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 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.

2.17 If there is a failure to comply with an enforcement notice the appropriate action as shown above will be engaged.

- 2.18 There is no right of appeal against a Breach of Condition Notice 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. Section 70C was introduced by the Localism Act 2011 whereby a Local Planning Authority has the power to decline to determine an application if there is a valid enforcement notice in place. This will be used to stop delays to enforcement by the submission of applications that propose minor changes to the subject.
- 2.22 Neighboring 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's 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 may prosecute against non-compliance. Non-compliance with an enforcement notice is an offence, liable to a fine of up to £20,000 on summary conviction by magistrates.
- 2.31 The Council will publicise successful prosecutions for non compliance with enforcement notices

## **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 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:

- **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.

- **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.
- **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.

This Planning Enforcement Plan will be reviewed and updated as necessary.



## APPENDIX C

### BUILDING CONTROL ENFORCEMENT POLICY

#### 1.0 Introduction

Experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Failure to do so generally stems from ignorance or carelessness but sometimes from willfulness or malice.

#### 2.0 General Statement of Intent

It is the intention of the Council's Building Control to protect the health, safety and well being of its residents, as well as people working in, or visiting the London Borough of Hounslow.

Building Control will therefore enforce against, or prosecute, those who neglect or willfully fail to comply with their legal obligations, where that failure constitutes a risk to the public.

The use of enforcement will be proportionate to any offence committed, consistent in application, transparent in its operation and appropriate to the circumstances of the particular case in question.

Enforcement action will not be a punitive response to minor technical contraventions of the regulations but will be forceful in situations where the public's health is put at risk, where there is a significant impact due to negligence, incompetence or blatant disregard of the law or where it damages the credibility of the service. The cumulative effect of contraventions, which in themselves could be considered as minor, will be considered when assessing the most appropriate course of action.

Access to Building Control records is subject to the Data Protection Act, Environmental Information Regulations 2004 and the Freedom of Information Act 2000.

#### 3.0 Enforcement Options

##### 3.1 Legislation

- Section 35A Building Act 1984 (Prosecution for an offence of contravening the Building Regulations) – usually taken against person undertaking the building work. It has a statutory time limit of 2 years (amended by the Climate Change and sustainable Energy Act 2006, and the, Housing and Regeneration Act 2008 section 317) from the time the offence was committed. The remedy is a level 5 fine on the standard scale as laid down by the Criminal Justice Act 1982 section 37, (as amended by the Criminal Justice Act 1991 section 17), currently £5000 per offence. There is a further daily penalty if the contravention remains or the default continues after conviction.
- Section 36 Building Act 1984 (Removal or alteration of offending work) – taken against the building owner. This involves serving a 28-day notice on the building owner to pull down or alter offending work. If this is not done the local authority may do the work in default and recover costs. The notice needs to be served within 12 months of completion of the work. The Council cannot use this section where the building work has been carried out in accordance with plans, which were deposited and passed by the Council.

- Section 36(6) of the Building Act 1984 expressly provides that nothing in the section shall affect the right of a local authority to apply for an injunction for the removal or alteration of offending work. This is the option of last resort given the risk to the Council of costs being awarded against it. Where a contravention occurs on site and the building work has been undertaken in accordance with plans, which were deposited and passed by the Council, the court on granting an injunction has power to order the local authority to pay compensation to the owner of the work.
- Powers of entry – Section 95 Building Act 1984. A duly authorized officer has the right to enter premises to ascertain whether or not there is a contravention. The section provides for the Local Authority to obtain a warrant if entry is refused. Legal action could emanate from protracted failure to gain entry.

In addition, the following powers, (although not directly related to enforcement of the Building Regulations), should be noted:

- Action under Sections 77 and 78 Building Act 1984 regarding dangerous buildings and structures.
- Action under Section 79 Building Act 1984 in respect of ruinous and dilapidated buildings.
- Following receipt of a notice of intended demolition under Section 80 Building Act 1984, Building Control may serve counter notices under Sections 81 & 82 Building Act 1984.

### **3.2 Available Enforcement Options**

- Informal action – written or oral
- Statutory Notices
- Prosecution
- High Court action
- Execution of work required by a statutory notice where the recipient has not complied
- Imminently Dangerous Structures

### **3.3 Referrals to Other Agencies**

Where there is wider regulatory interest, Building Control will refer to other regulators relevant information received. For example, to the Fire Authority where there are problems with means of escape in case of fire or, to the Health and Safety Executive (HSE) where there are gas safety problems.

### **3.4 Informal Action**

This sort of action will be appropriate where the degree of risk from any given situation is minor. The person responsible would have no recent history of non-compliance and the surveyor would have good reason to expect them to put right the matter in question without further intervention (e.g. requires a completion certificate at end of project).

Informal action will be recorded on the case file and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

A completion certificate will be withheld until the contravention has been removed and the work complies with the Building Regulations. With minor outstanding issues/negligible risk self-certification may be acceptable.

### **3.5 Use of Statutory Notices**

These will be subject to the many specific rules governing the use of different statutory notices. They would generally be used where there is a clear breach of the law, where the degree of risk to public health and safety is significant and where a remedy needs to be specified and secured within a set period of time.

They are appropriate where, in addition to the above, the response of the offender needs to be monitored to ensure a satisfactory outcome.

Subject to consideration of the evidence it is likely that negligent or willful non-compliance with a statutory notice will result in prosecution.

The procedures to be used are set out in the DSA document "Guidance notes for enforcement procedures under the Building Regulations".

### **3.6 Prosecution**

The principles as to prosecution are as set out in the Regeneration, Economic Development and Environment Enforcement Policy.

### **3.7 High Court Action (Civil Liability)**

An injunction may be sought from the High Court where the circumstances of any case cause a significant problem or threat to health and safety and the normal process of law (statutory notices, prosecution, work in default) is likely to be ineffective. This may be because the perpetrator has shown a careless disregard for earlier similar requirements or where the process of law would take an unacceptable period of time having regard to the particular circumstances or where there is no further choice left open.

### **3.8 Work in Default**

Where a notice has been served, and where without adequate excuse or reason, the work has not been done, then work in default would generally follow. The Council will make every effort to recover the full cost of doing the work in default.

### **3.9 Imminently Dangerous Structures**

When in the opinion of the relevant officer, an imminently dangerous structure is apparent; the owner will be requested to take immediate action. If they are unwilling or unable to undertake the necessary actions immediately, the Council has the powers under Section 78 Building Act 1984, to execute the works and recharge the owners.

The works will be kept to a minimum to remove/secure the danger and all reasonable efforts will be made to contact the owner before executing the works.

## **4.0 Complaints**

If anyone wishes to complain about Building Control action they may do so by contacting the relevant case officer or Head of Building Control.

If a complainant is dissatisfied with the result of their complaint to Building Control they may then complain through the Council's formal complaint procedure.

## **5.0 Publicity**

Building Control will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts.

## **6.0 Points of contact**

Each Building Control Surveyor is responsible for a defined area of the borough and responds to reports of unauthorised work in that area.

To report a contravention or unauthorised works members of the public can:

- Complete the Contravention e-form: [www.hounslow.gov.uk/buildingcontrol](http://www.hounslow.gov.uk/buildingcontrol)
- Telephone Building Control directly on 020 8583 5454
- Send an email to [building.control@hounslow.gov.uk](mailto:building.control@hounslow.gov.uk)