



# Planning Enforcement Policy

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## Introduction and principles

1. The Brent Borough Plan 2019-2023 sets out a vision for the Borough under five strategic themes:
  - A Borough where we can all feel safe, secure, happy and healthy
  - Strong foundations
  - Every opportunity to succeed
  - A future built for everyone, an economy fit for all, and
  - A cleaner, more considerate Brent.
2. The planning process contributes to ensuring that these objectives are delivered, and it is vital that we have an effective, and proportionate, planning enforcement process as part of this. This Planning Enforcement Policy sets out the way the London Borough of Brent will deal with planning enforcement issues to help meet the above objectives.
3. It replaces the 2008 'Planning Enforcement Policy' and compliments the Council's Regulatory Services Enforcement Policy (January 2019). If there is a conflict between policies the Planning Enforcement Policy takes priority as this is written to be in line with the requirements of the Town and Country Planning Act 1990 and the National Planning Policy Framework (NPPF) – the statutory framework that planning enforcement operates under.
4. The NPPF requires local planning authorities to act proportionately in responding to suspected breaches of planning control. This policy functions as the council's 'local enforcement plan' for the purposes of the NPPF.
5. Planning Practice Guidance (PPG) states that there is a clear public interest in enforcing planning law in a proportionate way. Effective enforcement is important to:
  - tackle breaches of planning control which have an unacceptable impact on the amenity of the area or are otherwise seriously contrary to planning policy;
  - maintain the integrity of the decision-making process;
  - help ensure that public acceptance of the decision-making process is maintained.
6. The planning enforcement service is concerned with resolving serious breaches of planning control. There must be harm to public amenity, safety or the environment for enforcement action to be justified. The Council cannot take enforcement action, simply to remedy a breach of planning control, if that breach is considered acceptable in planning terms.

7. Before resorting to any formal action, there may be other approaches that the enforcement service will explore, such as agreeing changes to a development or activity, and encouraging the submission of a planning application.
8. Brent is a high performing authority, issuing over 100 enforcement notices every year, well above the national average for the last 20 years. It can also demonstrate a high level of success on prosecution and enforcement appeals.

## **What is a breach of planning control?**

9. A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:
  - the carrying out of development without the required planning permission or
  - failing to comply with any condition or limitation subject to which planning permission has been granted.
10. In other words, permission is often required before a change of use or works can be undertaken to land or buildings. A breach of planning control occurs when a change of use, or works to land or buildings, has taken place without the appropriate consent.

Other examples of planning breaches include:

  - Unauthorised works to a listed building
  - Removing or lopping trees protected by a Tree Preservation Order
  - Breach of conditions attached to a planning permission
  - Unauthorised demolition in a Conservation Area
  - Not building in accordance with approved plans or planning permission
  - Failure to properly maintain land so that it affects the amenity of the area
  - Unauthorised engineering works, such as changes to ground levels
11. Not all development needs planning permission. 'Permitted development' regulations allow quite significant alterations and extensions to be made to buildings and outbuildings under certain conditions, along with certain changes of use.
12. Unauthorised works and activities can become immune from enforcement action if the development is by reason of the passage of time considered lawful ie if development or residential use has been in place/use for 4 years, or if a change of use/breach of condition in place for 10 years.

13. Other things which are not normally breaches of planning control (unless expressly prohibited by an enforcement notice) and not dealt with by the planning enforcement team include:
- Internal works to a non-listed building
  - Obstruction of a highway or public right of way (*covered under other legislation which may be enforced by the police or the highway authority*).
  - Parking commercial vehicles on the highway in residential areas or on grass verges
  - Parking a caravan within the residential boundary of a property, provided that it is not lived in or used as part of the home.
  - Clearing land of vegetation, unless it is subject to planning protection.
  - Operating a business from home where the residential use remains the main use and there is no serious impact on neighbours.
  - Boundary disputes and party wall matters (*these are a private matter and are not controlled under planning legislation*)
  - High hedge disputes (*these are covered by separate legislation and are not administered by the Planning Enforcement service*).
  - Deeds and covenants (*these are a private matter and are not controlled under planning legislation*).
  - Health and safety issues, including on construction sites
  - Structural issues with buildings (*these may be dealt with by the council's Building Control service under separate legislation, and should be reported to that team*).
14. The council relies on our residents and groups, local businesses, councillors and staff to report suspected breaches of planning control to the team, and we do receive over 1,000 of such complaints each year. Action may also be taken if appropriate even where there is no public complaint.
15. It may often be difficult to judge whether or not a breach of planning has occurred when construction is still on-going. The Council can only act on clear evidence and justification for that action.
16. It is at the Council's discretion whether enforcement action will be taken. The planning enforcement service is concerned with resolving serious breaches of planning control where there is harm to public amenity, safety or the environment. It does not deal with neighbour or business disputes, or a change to the environment that an individual or group of residents may not like. Where harm cannot be demonstrated it would not be justified for the Council will to enforcement action to remedy a breach of planning control. It does not therefore follow that because there has been a breach of planning control that enforcement action will be taken.

17. Planning permission can be granted retrospectively (i.e. after the development has taken place). Enforcement action will not be taken where the development is considered to be acceptable in planning terms, and owners will be encouraged to apply for permission in these circumstances.
18. All complaints are looked at and screened. Approximately half of all complaints received are not pursued either because they are of a very minor nature or because they do not involve a breach of planning control.
19. It is not an offence to carry out development without first obtaining planning permission, except for unauthorised works to listed buildings, trees, illegal advertisements and demolition without permission. A criminal offence only arises when an Enforcement Notice has been served and has not been complied with.

## **Reporting a breach of planning control**

20. All breaches must be reported in writing, preferably via our website, except where complainants are unable to do so.
21. The following information is required when reporting a breach:
  - Your name, postal address and contact details (either an email address or telephone number)
  - The site address or location of the alleged breach.  
Note: Where an incorrect address is supplied this results in abortive research and investigation work at public expense and unnecessary disturbance to occupants of that address. In those circumstances the file will be closed and the complainant advised. The onus is on the complainant to provide correct address details. If the correct address is subsequently provided and properly verified it will be registered and treated as a new complaint.
  - What the alleged breach is
  - When the alleged breach started
  - Any information about who is considered responsible for it.
  - Details of how the alleged breach is having a harmful impact.
  - Photographs, if possible.
22. The identity of a person making a complaint is kept confidential unless the council is required to release the information; for example, if a case proceeds to the appeal stage, and if a complainant's evidence is part of the council's case, anonymity cannot be guaranteed. However we will ask for the complainant's agreement if we need to do this. In some cases, the council's case may be weakened by a complainant not agreeing to forego anonymity, and in such cases it may not be expedient to proceed with formal enforcement action.

## How the council will deal with a complaint

### Screening

23. All complaints received will be logged and investigated unless they are:

- anonymous
- not motivated by planning harm e.g. motivated by business competition and a neighbour dispute
- otherwise inappropriate

### Investigation and Action

24. We will:

- acknowledge complaints within seven days of receipt.
- treat information received in confidence, unless otherwise agreed with the complainant or required by law.
- carry out a desk top assessment of the complaint to ascertain extent of any breach
- carry out a site visit on all complaints considered to require further investigation within one month of receipt
- make a preliminary assessment as to whether a breach of planning control has occurred within two months of receipt
- update the complainant at the following stages of the investigation:
  - when a breach is established/not established and a decision made to pursue/not to pursue enforcement action.
  - when an enforcement notice has been issued.
  - when an appeal against an enforcement notice has been formally started by the Planning Inspectorate.
  - when an appeal decision is received from the Planning Inspectorate.

Complainants may contact the case officer, who will be identified on all correspondence, for an update on progress at other times.

25. Site visits are normally undertaken without prior notice, unless access is required to be arranged. This is because of the need to obtain accurate, representative and timely evidence of how a site is being used, or in terms of building works, because difficulties in contacting site managers can sometimes significantly delay an investigation.

26. An assessment of the extent of any breach, the degree of harm, and of the appropriate next steps will then be made. Formal action will only be taken where the breach causes unacceptable planning harm. This usually means that it would have a harmful effect on local residents or the character of an area. This judgement will be made by reference to the Town and Country Planning Act 1990 (as amended) and all its subordinate and associated legislation, relevant national, regional and local planning

policies and other material considerations, including the European Convention on Human Rights.

27. The Council will work co-ordinate action between different council services to ensure the most effective remedy is used, for example action by Environmental Protection colleagues on a noise nuisance may be a better option than lengthy planning enforcement.

28. Policies regarding the acceptability of development and also what needs planning permission change over time. Decisions on cases will be assessed on their individual circumstances. There will be cases where decisions on two similar developments in the same street or in the same area could be different, if, for example, their impact on the surroundings differs, or the policy context has changed.

29. Only a small proportion (about 10%) of complaints received result in formal action. Many of the rest are resolved without the need to take formal action, or cannot be pursued within the resources available.

30. Planning enforcement can be a lengthy process. The initial investigation to establish whether a breach has occurred can take weeks or sometimes longer and there are also rights of appeal which may be pursued before an enforcement notice can come into effect. More complicated cases can take several years to resolve, especially where it is necessary to take action in the courts.

31. Depending on the nature of a confirmed breach of planning control, there are a range of measures the council can take.

(a) **Take no action / Ongoing Review:** Take no action or 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 before formal enforcement action is likely to become effective (such as temporary uses).

(b) **Allow Time to Remedy:** Time may be given to remedy the breach or justify its retention. Such cases may include situations where the harm is easily repairable and is not so serious as to warrant immediate action or where it may be otherwise justifiable. However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay effective action unnecessarily.

(c) **Planning Contravention Notice:** This is a formal questionnaire that allows the council to seek information about an alleged breach before deciding on a response.



(d) **Enforcement Notices:** This is the most common formal means of remedying unacceptable development. There is a right of appeal against a notice, which may be quashed or amended if the appeal is successful.

(e) **Breach of Condition Notices:** These can be used in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission.

(f) **Stop Notice:** The council can issue a Stop Notice or Temporary Stop Notice where a breach is causing very serious or irreparable harm, and immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period.

(g) **Other statutory notices:** Other statutory enforcement options available to the council include s.215 'Untidy Land' notices, Advertisement Removal Notices, Planning Enforcement Orders and Listed Building Enforcement Notices. These will be used where appropriate.

(h) **Court Injunction:** Injunctions will only be sought in the most serious cases, where irreparable harm is being done or where other actions have failed. Significant costs are involved in bringing such actions and can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order

(i) **"Default" Powers or Direct Action:** The council may enter land to take the necessary steps to secure compliance when eg. an Enforcement or advertisement removal notice comes into effect.

32. Where enforcement action is pursued, we will:

- give advice on what action needs to be taken, why and by when.
- give an opportunity to discuss or respond to issues raised before formal action is taken (except in the most urgent cases), however the council will not delay enforcement action where there is evidence of a lack of co-operation or the ongoing harm is serious. Where an application is refused for the same or similar development, further discussion will often not be appropriate;
- give advice on the consequences of failing to take appropriate remedial action leading to formal action and advice on rights of appeal

## **Priorities for Action**

33. Cases will be prioritised according to the seriousness of the alleged breach and the harm that is being caused. It will not be possible for the council to pursue all cases.

34. Once a commitment is made to formal action it is essential to meet timescale and procedural requirements of the legal process, such as appeal deadlines. Ongoing cases will therefore be given priority over new complaints.
35. The current level of resources available to planning enforcement only permit approximately a maximum of 150 notices and 30 Direct Actions and/or Prosecutions per year.
36. The following indicates how the various types of enforcement cases will be prioritised and how resources will be allocated (the highest priority is first and lowest priority is last):

<b>Types of enforcement cases</b>
1. Ongoing court or appeal proceedings.
2. New complaints of serious irreparable harm.
3. Ongoing breach of an enforcement notice which has come into effect and is causing serious planning harm.
4. Identified breach causing serious harm.
5. New complaints of serious harm to the amenities of an area.
6. New complaints where the time limit for taking action expires imminently
7. Systematic breaches of planning control which may set a precedent giving rise to more widespread harm.
8. Ongoing Investigations where no harm has been identified or minor harm is reparable.
9. All other new complaints.
10. Ongoing investigations where a breach has not been identified.

37. The enforcement service will manage its resources to ensure that the highest priority complaints can be addressed without undue delay, with the response to lower priority complaints being adjusted accordingly. To ensure that an adequate overall service is provided the allocation of resources will be periodically reviewed. The quality of evidence and support provided by complainants can also have a significant bearing on the outcome of an investigation and where such support is likely to increase the chances of a successful outcome the matter may be given a higher priority.

## **Retrospective applications**

38. The Council can decline to determine retrospective planning applications if any part of the development described in the retrospective application is already the subject of an enforcement notice (whether appeal rights against the enforcement notice have been exhausted or not). In

considering whether an application is accepted the council will consider the following:

- The application appears to be part of a sincere effort to engage with the council to amend a proposal and remedy the breach of planning control;
- The application addresses unacceptable elements of the development (as identified in the reasons for issuing the enforcement notice), and is generally in accordance with planning policies;
- The application would not have the effect of delaying compliance with the notice by frustrating prosecution or direct action proceedings, whether these have already begun or not.
- The application is not submitted just before the compliance period expires or after it has expired.

## **Project Work**

39. At times the enforcement service may undertake special projects to tackle specific enforcement problems such as 'beds in sheds', the use of land for unlawful event-day commercial parking or the high street improvements.

## **Variations to compliance periods**

40. The council will occasionally extend the compliance period of an enforcement notice. Requests for extensions will only be entertained where the person responsible for complying with the notice has been genuinely unable to do so for reasons beyond their control, and has made the request in good time. Evidence may be requested to support any such requests.

## **Prosecution**

41. The council will use discretion in deciding whether to prosecute planning offences. Prosecution will only be pursued when it is in the public interest and in accordance with the Code for Crown Prosecutors. Once summons have been served, prosecution proceedings will not normally be withdrawn even if a breach is subsequently complied with.

42. Whilst the collection of the necessary evidence to prosecute will be collected by the Planning Enforcement Team (and other departments where necessary), the decision to prosecute will be made by the appropriate senior legal officer in the legal department in accordance with the constitution.

43. Given the nature of planning enforcement the council will not normally carry out interviews under caution with potential defendants unless there is a specific need to do so.

44. It is only possible to undertake a limited number of planning enforcement prosecutions per year. Prioritisation will be given to cases that are causing the most significant ongoing planning harm, and to long running cases where compliance has not been achieved long after it was due.
45. In support of prosecution or appeal processes costs will be sought from defendants to minimise costs to the council. Measures under the Proceeds of Crime Act (POCA) will be utilised where appropriate to retrieve monies gained unlawfully, both to help cover the costs of enforcement, improve the service and to ensure an effective disincentive to ongoing breaches of planning control.
46. Potential proceeds from POCA will not play any part in making a decision on whether to put a case forward to legal for prosecution.

## **Direct Action**

47. As an alternative to, or in addition to prosecution as detailed above, the council may decide to take direct action to carry out the steps provided in the notice in default. This may happen any time after the compliance period expires, and the council will not enter into protracted correspondence. The decision to take direct action will be at the council's discretion and will take into account the complexity of the works required and the likely upfront costs to the council. Owners/occupiers will be warned that the council may take direct action at least one week ahead, but the date on which the works will take place will not be revealed in advance. The costs of direct action will be recovered directly from the landowner in accordance with the planning legislation.

## **Final resolution of cases**

48. Compliance with an enforcement notice does not discharge the notice, and it remains as a charge on the land to prevent the breach reoccurring as it can be enforced against subsequent owners or occupiers. If an assurance is sought by an owner or prospective occupier the council will confirm in writing that an enforcement notice has been complied with on a particular date, subject to the production of sufficient evidence required from the applicant and/or the payment of a fee to cover council's costs of inspection, research and administration.
49. This will not apply where the council's appeal costs have been awarded but not paid. There is no statutory requirement for the council to confirm compliance with an enforcement notice except by way of a certificate of lawfulness application, for which there is a statutory fee and timescales.

50. Enforcement notices will only be withdrawn in exceptional circumstances, for example where they have been issued in error.

### **Monitoring planning permissions**

51. Monitoring of consented development will be largely carried out on a reactive basis when divergences from approved plans are brought to the council's attention.

### **Complaints against the planning enforcement service**

52. If someone is concerned that procedures have not been followed they should contact the relevant member of staff's line manager in the first instance. Formal complaints will be handled in accordance with the council's Complaints Procedure.

### **Review**

53. We will regularly monitor the operation of the enforcement service to ensure its effectiveness and compliance with relevant legislation and policies.