



# Enforcement Plan

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## 1. Introduction - What is Planning Enforcement?

- 1.1 Planning Enforcement is a discretionary function of local planning authorities that operates within the wider system of development management.
- 1.2 Planning Enforcement plays an important role in monitoring development and investigating potential breaches of planning control in order to maintain the integrity of the development management process.
- 1.3 The Council, as the Local Planning Authority, has powers to investigate unauthorised developments and take appropriate action where necessary. Breaches of planning control can take a number of forms, including unauthorised changes of use of land or buildings, works being carried out without the benefit of planning permission and breaches of conditions attached to planning permissions.
- 1.4 The enforcement process is complicated. Investigations can include multiple site inspections and consultation with other Council departments and external bodies. Investigations will also require consideration of relevant legislation, government advice, local and national planning policies and relevant planning history.
- 1.5 The Council endeavours to deal with enforcement investigations in a comprehensive and efficient manner, taking action where it is expedient to do so.

## 2. Relevant Legislation and Planning Policy

- 2.1 The Town & Country Planning Act 1990 as amended (parts VII and VIII) and the Planning (Listed Building and Conservation Areas) Act 1990, provide the principal legislative basis for planning enforcement.
- 2.2 Additional regulations and policies include:
  - The Town & Country Planning (General Permitted Development) Order 2008 (as amended), which sets out development not requiring planning permission
  - The Town & Country Planning (Control of Advertisements) (England) Regulations 2007, which sets out advertisements not requiring advertisement consent
  - The Town & Country Planning (Use Classes) Order 1987 (as amended)
- 2.3 The National Planning Policy Framework (the Framework) states that effective planning enforcement is important as a means of maintaining public confidence in the planning system. The Framework recommends that local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.

### 3. Planning Enforcement in Three Rivers

- 3.1 The planning enforcement service is reliant on public engagement. The majority of breaches of planning control are brought to the attention of the Council by those who are affected, for example nearby residents. Complaints are also often received from other Council departments and Councillors.
- 3.2 The Council will take a constructive approach to remedying breaches and will provide contraveners with the opportunity to make genuine attempts to regularise or remedy a breach of planning control.

#### Information Disclosure

- 3.3 When handling personal information received in the course of an enforcement investigation, the Council will comply with the Data Protection Act 1998. However, the Council can be required to disclose non-personal information on receipt of a request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

#### Powers of entry

- 3.4 The Council aims to visit sites regularly to monitor and investigate alleged breaches, and its officers will therefore make unscheduled site visits for this purpose. Planning Officers have statutory powers of entry under planning legislation to enter land for the purpose of investigating potential breaches, and to serve Notices. Where access to land is refused, a warrant of entry may be obtained from the courts where it is necessary to effectively investigate and resolve alleged breaches. All planning enforcement officers carry approved identification which can be produced for inspection upon request. Access may be requested to nearby properties where this is necessary to fully investigate an alleged breach.

#### Human Rights Act

- 3.5 The Human Rights Act 1998 has incorporated part of the European Convention on Human Rights into English law. Under the Act, it is unlawful for any public authority to act in a way which is incompatible with any Convention right. The Council take the provisions of the Act into consideration when making a decision to take enforcement action.

### 4. The Investigation Process

- 4.1 The Council has established processes and standards for dealing with enforcement investigations and certain information is required as a minimum in order to investigate an alleged breach of planning control.

### Making a request for service

- 4.2 The Request for Service is the complaint made to the Council, notifying that a potential breach of planning control has occurred.
- 4.3 The Council **will not accept Requests for Service where the complainant wishes to remain anonymous**, except in very special circumstances (i.e. where the complaint relates to alleged works to a Listed Building or a protected tree, for example). In order for the Council to open an investigation, the complainant must provide the address of the alleged breach, the nature of the alleged breach and details of their identity, including name, address, telephone number and email address (where possible). Where a specific address of the breach site cannot be given, a sufficiently detailed description of the location should be provided.
- 4.4 It is important to note that civil disputes between neighbours, such as boundary disputes, cannot be dealt with by the planning enforcement service.
- 4.5 Complaints can be made verbally (either by telephone or in person) or in writing (by letter or email), provided that the complainant provides the necessary details, as outlined in 4.3 above.
- 4.6 Contact details to make a request for service can be found at paragraph 7.1 of this document.

### The Investigation

- 4.7 As soon as a complaint is received, the Enforcement Officer must assess whether the alleged breach needs to be investigated as a priority. The Enforcement Officer may contact the complainant for further details about the alleged breach as necessary.

<b>Priority (unusual)</b>	Investigation opened immediately and site visit conducted within <b>1 working day</b> of receipt of complaint	E.g. Works to a Listed Building or protected trees.
<b>Non-urgent (Regular) cases</b>	Investigation should be commenced within <b>20 working days</b> of receipt of the complaint	

- 4.8 Investigations will almost always involve a site visit and the photographic recording of evidence to support the progress of the investigation.

### What contraveners can expect

In most cases, where an investigation is opened, first contact with the alleged contravener will likely occur when the site visit is made when the officer initially assesses the alleged breach of planning control. In some circumstances, it may be possible for the officer to contact the alleged contravener when the Request for Service is first received (i.e. where there is recent planning history or where it is clear

that a site visit needs to be pre-arranged). However, in general, the site visit will be the first point of contact.

4.9 In the event that a breach of planning control is identified, the Council will write a notification letter to the landowners, bringing the matter to their attention. This letter will explain why there is a breach of planning control and what action is required to remedy the identified breach. The person(s) responsible will be advised:

- Of the nature of the alleged breach
- Of the steps required to remedy or regularise the situation
- That he/she has a right to make a retrospective application (where relevant)
- Of the prospects of any such planning application being approved

4.10 Where the Council considers that an unauthorised development may be acceptable, a full retrospective application will be invited. Section 73A of the Town and Country Planning Act 1990 allows planning permission to be obtained for development that has already been carried out.

4.11 Where retrospective applications are submitted and invalidated (i.e. where there is a failure to comply with the Validation Checklist, for example), the Council will not consider this sufficient reason to delay further enforcement action. The onus is upon the contravener to submit a valid application within the specified timescales.

4.12 In some situations, where a contravener asserts that a breach has become lawful because it has been in effect for more than 4 or 10 years (whichever is relevant), there is an expectation that the contravener will provide sufficient evidence to the Council to substantiate their claims. This will normally need to be in the form of an application for a Certificate of Existing Lawful Use or Development. A failure to submit an application supported by the necessary evidence establishing that lawful use may result in the issue of an Enforcement Notice.

4.13 It is recognised that some breaches of planning control are unintentional. However, where a breach is identified, it is expected that the person(s) responsible will engage positively with the Council to resolve the problem, and show genuine commitment to regularising or remedying the breach. The onus is on the contravener to regularise or remedy breaches of planning control and, where the opportunity to do so is not taken up, then formal enforcement action will be considered.

#### Updating the complainant

4.14 Upon receipt of the notification of the alleged breach of planning control, an acknowledgement letter will be sent to the complainant outlining how the Council intends to proceed with the case. The complainant will be kept informed as key decisions are made by the Council.

4.15 The Council make it clear to a complainant that an enforcement investigation can be a lengthy process due to the complexities associated with planning enforcement. The complainant will be invited, in the acknowledgement letter, to contact the Projects & Compliance Team should they require information during the course of the investigation.

4.16 The complainant will be notified when the case is closed, either in writing or by telephone.

## 5. Taking Enforcement Action

5.1 Planning enforcement is key to maintaining the integrity of the planning system and it is therefore crucial that the most appropriate action is taken against unauthorised development.

5.2 There is a range of powers available to the Council and a number of possible Notices can be served where it is considered expedient to do so. These include:

- Enforcement Notices - The Enforcement Notice (EN) is the principal tool available to the Council to remove, correct or ameliorate unauthorised development. The Council has considerable discretion as to whether and how it should be used. In many cases the threat of an Enforcement Notice is an effective tool, rather than its actual use in the resolution of a case.
- Stop Notices - Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an Enforcement Notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a Stop Notice prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
- Temporary Stop Notices - A Temporary Stop Notice can be issued when the Council considers that there has been a breach of planning control and that it is necessary to stop the unauthorised activity immediately in order to safeguard amenity.
- Breach of Condition Notices – This is relevant where planning permission for carrying out any development of land has been granted subject to conditions. The Council may, if any of the conditions are not complied with, serve a Breach of Condition Notice on any person who is carrying out or has carried out the development or any person having control of the land, requiring them to secure compliance with the conditions as are specified in the notice. The Notice will remain in perpetuity, and the details are consequently entered onto the local land charges register.
- Planning Contravention Notices – Where it appears to the Council that there may have been a breach of planning control in respect of any land, the Council may serve a Planning Contravention Notice on any person who;
  - (a) is the owner or occupier of the land or has any other interest in it; or
  - (b) is carrying out operations on the land or is using it for any purpose.

- Injunctions - An Injunction is an order of the Court requiring a person to do, or refrain from carrying out an act. An Injunction may also be sought to prevent an apprehended breach i.e. one which has not yet occurred but is threatened.
- Section 215 Notices for untidy land - Section 215 of the Town and Country Planning Act 1990 provides power to the Council to control land or buildings which are adversely affecting the amenity of the area, requiring them to remedy the harm caused. Section 215 Notices are essentially a tool for improving the condition of land or buildings which cause harm to public amenity and where informal requests to remedy the situation have not produced a satisfactory resolution.
- Advertisement Discontinuance Notices - The LPA has a *discretionary* power to take discontinuance action to stop the display of advertisements with deemed consent under the Control of Advertisements Regulations 2007. This includes action against a current advertisement display like flank wall hoarding, or stopping the use of the whole, or part, of a site for the purpose of displaying advertisements. In order to justify discontinuance action the LPA must be satisfied that it is necessary, for example, to remedy either a substantial injury to the amenity of the locality, or a danger to members of the public.

- 5.3 The Director of Community and Environmental Services has delegated powers to exercise the majority of the Council's enforcement duties. Where it is considered expedient to take formal action, the Case Officer should (in conjunction with the Projects and Compliance Team Leader and the Legal Department) determine the appropriate course of action (i.e. the type of Notice).
- 5.4 A breach of planning control is not a criminal offence, except in some cases such as unauthorised works to a Listed Building, unauthorised works to protected trees and unlawful advertisements.
- 5.5 Enforcement is a discretionary power of the local planning authority. In considering any enforcement action, the decisive issue for the Council is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
- 5.6 Enforcement action should always be commensurate with the particular breach of planning control, and should only be taken where the development is contrary to both local and national planning policies.
- 5.7 The enforcement service is underpinned by negotiation, and the Council will take a constructive approach to remedying breaches by offering assistance to those who are in breach of planning control who seek to regularise unauthorised works through remedial works or the submission of retrospective applications, for example. However, where the Council's attempts to negotiate a voluntary remedy to the breach of planning control fail, negotiations will not be allowed to hamper or delay whatever formal enforcement action may reasonably be required.
- 5.8 Where negotiations have failed to remedy or regularise an identified breach of planning control, there are a wide range of powers available to the Council to facilitate



further formal action. This action may include direct action, prosecution and applying for court injunctions, for example.

### Concealment

- 5.9 The Localism Act 2011 afforded local planning authorities new powers to take enforcement action against concealed breaches of planning control even after the expiry of statutory time limits. The reforms allow local planning authorities to take enforcement action against breaches of planning control which have been deliberately concealed even after the relevant statutory time limit for enforcement action has expired.
- 5.10 In order to pursue enforcement action under these circumstances, LPAs will be allowed to apply to a magistrates' court for a planning enforcement order (PEO). The application can be made at any time within six months of the date on which there was sufficient evidence to justify the application. A prescribed procedure will have to be followed by LPAs in applying for a PEO.

### Expediency

- 5.11 In determining whether further action (as set out above) is expedient, regard will be had to the documents of the Local Plan, national guidance and case law. The principles of expediency are set out in Planning Policy Guidance 18 which, although now revoked, is established through case law and will continue to inform the decision making process on determining expediency.

## 6. Recovery of Costs

- 6.1 The Council may, in some circumstances, be able to reclaim some costs connected with enforcement action. Commonly, the Council will apply to recover costs at appeals where an appellant is considered to have behaved unreasonably, as such incurring unnecessary expense.

## 7. Contact Details

- 7.1 Should you wish to advise the Council on an enforcement matter, please contact the Projects and Compliance Team with the details required as set out in paragraph 4.3 of this document.

Telephone: **01923 776611** , or  
Email to [planning.enforcement@threerivers.gov.uk](mailto:planning.enforcement@threerivers.gov.uk)