

Planning Enforcement in Reigate & Banstead Borough



Planning Enforcement:

This leaflet explains the planning enforcement system in general terms. Although it is primarily written with the complainant in mind i.e. an individual who wishes to report a matter that they feel is a breach of planning control, the advice holds true for all that have an interest.

This guide contains general advice and is not intended to take the place of professional advice.

1. Introduction

Enforcing planning control is often complex and controversial. The aim of this leaflet is to explain the general procedures involved in making a formal complaint and how that complaint will be registered, investigated and reported back.

2. What is a breach of Planning Control?

A breach of planning control will comprise 'development' which requires planning permission, and other matters which require the formal consent of the local planning authority. "Development" is defined by section 55 of the Town and Country Planning Act 1990 and clarified by decisions of the courts. Breaches of control can include:

- Carrying out building or engineering works or the change of use of a building or land without planning permission.
- Carrying out development not in accordance with a planning permission. This can be either failure to follow the approved plans or failure to comply with conditions attached to the permission.
- Carrying out works (internal as well as external) to a listed building without listed building consent.
- The display of a sign or advertisement without advertisement consent.
- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area.
- The unauthorised demolition of a building within a Conservation Area.

In addition the local planning authority has power to act where land has become so untidy that it harms the amenity of the surrounding area.

Breaches of planning control are not offences, with the exception of unauthorised works to listed buildings, displaying unauthorised advertisements and carrying out unauthorised works to protected trees which are criminal offences.

The following are examples of activities, which are not normally breaches of planning control, and, therefore it is unlikely that enforcement action can be taken under planning legislation:

- on street parking of commercial vehicles in residential areas.
- operating a business from home where the residential use remains the primary use and there are no staff employed there and visitors are kept to a minimum.
- stationing a caravan within the grounds of a dwelling provided that it is used ancillary to the dwelling i.e. it is stored or used as an extra bedroom.
- clearing land of undergrowth, bushes and trees provided they are not subject to a Tree Preservation Order and are not within a Conservation Area, or protected by a planning condition.

Breaches of planning control often occur in respect of:

- changes of use, such as shops to offices or takeaways
- building works
- unauthorised advertisements
- erection of fencing
- alterations to listed buildings including the installation of UPVC windows

Immunity from enforcement action arises when a building or structure has been substantially completed for more than four years, and a change of use occurred more than ten years ago.

3. How to complain about an alleged breach of Planning Control

Except in the case of urgent matters such as the felling of trees or works to a listed building, all complaints must be made in writing with your name, address and contact telephone number. We need as much information as possible in order to start investigating your complaint. **An anonymous complaint will not be investigated.**

When you report a breach of planning control, details of your complaint may become public, however your name and address will **NOT** be reported to the person or organisation involved in the alleged breach. Furthermore we do not grant access to our investigation files, so anything you send us will remain confidential. However if formal action such as the service of an enforcement notice or subsequent appeal or court action is taken it may not be possible to keep your complaint confidential. We will acknowledge your complaint within 3 working days of its receipt, and advise you of the complaint priority, reference number and the investigation case officer. The case officer will act as your point of contact and will endeavour to keep you informed of the progress and outcome of the case, although you may wish to telephone and enquire about progress of the case.



4. How quickly will my complaint be investigated

The Borough Council considers that effective enforcement is vital to ensure that the character and amenity of the borough are protected. All reports of possible breaches of planning are taken seriously and investigated as quickly and thoroughly as possible. More serious breaches will be investigated immediately, e.g. unauthorised work to listed buildings and the felling of protected trees. In other cases we will undertake an initial site investigation within 10 working days, subject to the availability of officers, and the priority given to the case.

What matters are considered before deciding whether to take formal action?

The Council's decision whether to take enforcement action **will always** be well founded and will be achieved through a thorough assessment of the relevant facts in each case. The Council's approach will **not** be stricter than it would have been when considering the merits of an application for planning permission before the development started, i.e. if something would have been granted planning permission, we will not enforce against it. **The Council's formal enforcement powers will not be used against a trivial or technical breach of planning control which causes no harm to public amenity in the locality of the site.**

The Council must observe the government's policy on enforcing planning control. This is set out in Planning Policy Guidance Note 18 "Enforcing Planning Control", available from Her Majesty's Stationery Office (The Stationery Office Ltd - telephone order line 0870 600 5522 or fax order line 0870 600 5533) or the web site: <http://www.planning.odpm.gov.uk/policy.htm>.

www.planning.odpm.gov.uk/policy.htm. The following principles follow the guidance set out in PPG18.

The Council has to consider a number of matters before it is in a position to decide on the appropriate course of action. These include:

■ *Has development requiring planning permission taken place?*

As indicated in section 2 above, some things that are complained about turn out not to involve development.

Many minor building works, including extensions to residential properties, are development but do not require the formal permission of the Council. Such works are called 'permitted development', as they benefit from a blanket planning permission granted by government. Similar exemptions apply to some non-illuminated signs and certain changes of use of buildings. In such instances no action can be taken.

In some cases the Council may have removed permitted development rights, usually through a condition of a previous planning permission, and this possibility will require detailed investigation.

■ *Is the unauthorised development broadly acceptable in planning terms?*

It may be that the Council's assessment of the situation is that planning permission would probably have been granted. In such an instance the correct approach will be to suggest to the person responsible that they should submit a retrospective planning application. If the person does not make an application, but it is likely that planning permission would have been granted without conditions, then no further action may be taken over this matter, other than to advise that problems might arise should the property be sold.

■ *Is the development only acceptable with the imposition of conditions?*

In some instances the Council may consider that the development could be made acceptable with the imposition of conditions (for example to control hours of use or to carry out landscaping). If the person responsible for the breach declines the Council's request to submit a planning application, then the Council will consider issuing an enforcement notice to impose controls. However, the action would not be aimed at removing the development, but gaining control of it.

■ ***If the development is unacceptable and cannot be made acceptable by planning conditions, what powers will the Council use?***

The Council has a wide range of enforcement powers and the one(s) chosen will depend upon the particular nature of the case.

The range of powers includes:



Planning Contravention Notices (PCNs): These are used to seek information and help the Council decide what has happened and what to do about it. There are penalties for failing to provide the information requested.

Breach of Condition Notices (BCNs): These are used where a condition of a planning permission is not being observed. There is no right of appeal against the notice, because there was a right of appeal against the condition.

Enforcement Notices: These can require unauthorised uses to cease, or unauthorised building works to be altered or removed. They may also require land or buildings to be reinstated to their former condition. The notice only takes effect six weeks after being served and must give a reasonable period for compliance. The recipient of the notice has a right of appeal against it to the Planning Inspectorate, a government agency.

Stop Notices: If the unauthorised development is causing a very severe problem that cannot wait for the Enforcement Notice to be complied with, the Council can serve this notice requiring an immediate stop. If an appeal against the Enforcement Notice is successful, the Council may have to pay compensation for any loss of earnings arising from the Stop Notice.

Injunctions: These are court orders preventing unauthorised development taking place. If they are not complied with the courts will impose severe penalties.

5. How long does enforcement action take?

Government advice clearly states that the decision whether to take formal action is within the Council's sole discretion, but must not be based on irrational factors or taken without proper consideration of the relevant facts and planning issues. Enforcement action should only be used as the last resort.

Accordingly, the person(s) responsible for the breach will normally be advised of what needs to be done in order to remedy the breach, and what powers are available to the Council should they fail to do so. Following the initial investigation, if you have made a complaint, the Council will advise you of its initial findings and of the course of action it has suggested to the persons concerned. This will be done within 5 working days of our deciding on a course of action.

If it is found that there is a breach of planning control then you will be advised of this. If a retrospective planning application is submitted the Council will write to you advising of the application reference number and where you can inspect the plans, and giving you an opportunity to comment on the application. If the breach is not resolved by negotiation, or if it is considered that immediate action must be taken over a serious breach, then the Head of Building and Development Services will use his delegated powers to authorise enforcement action. If it is decided that the breach does not result in serious harm, then you will be advised that it was not considered expedient to take formal action and officers will explain the reasoning why. This will be done within 5 working days of the decision.

If an enforcement notice or any other form of notice is issued, you will be informed within 5 working days. An Enforcement Notice must allow a period of at least 6 weeks before it comes into effect in order to allow for the statutory right of appeal. If no appeal is made, then the notice comes into effect and there will then be a period for compliance which can vary from one month for minor works to 6 months for certain changes of use or land restoration. Only in exceptional circumstances will a period in excess of 6 months be allowed.

There is a right of appeal to the Planning Inspectorate at Bristol against an enforcement notice issued by the Council. Such an appeal suspends the requirements of the notice until the appeal is determined. Appeals against notices can take up to a year to be heard, if a public inquiry is required.

Prosecution proceedings can only take place **after** the notice has come into effect and there is a continued failure to comply with its requirements.

In rare cases the Council may decide that direct action should be taken to remedy a breach of planning control. In these cases a detailed report would normally go to the Planning Committee, and time will be needed for appropriate arrangements to be made, such as engaging contractors to demolish buildings or remove materials from the site. Because it involves entering and removing private property against the owners will this power is subject to legal constraints and is rarely appropriate.

6. What can the public do to help the enforcement of Planning Control?

In many cases the assistance of the general public can be crucial to the success of enforcement action. Firstly Council officers cannot continually monitor sites. Accordingly, the Council relies upon the general public, residents associations and amenity societies to report breaches of planning control.

Through all stages of the enforcement process, the public's knowledge of a site can usefully supplement that held on Council records. When alerting the Council to a possible breach, it is important to have as much information as possible in writing, together with photographs where appropriate. This information should include:

- the date on which the activity/building work commenced;
- the exact address of the site complained about as well as the location of the activity/building upon the land (a sketch plan is often helpful);
- details of the alleged contravenor;
- details of the nature of the activity including number of vehicular movements/ vehicle registration numbers; and
- details of the effect that the alleged breach is having upon your amenities e.g. noise, traffic, smells, overshadowing, out of character with the area.

If you wish to make a complaint then it is vital that we have your full details in order that we can contact you to inform you of the progress of the investigation or to seek additional information from you. **Remember, our enforcement files are confidential. However if formal action is taken it may not be possible to keep your complaint confidential.**

If an appeal is lodged against an enforcement notice or other notice or if a planning application is submitted, we will notify anyone who informed us of the matter and ask if they wish to submit additional information or appear at an inquiry/hearing to support the Council's case. Please remember that the strength of local support can be crucial to the Council's case. However you should remember that at this point any representations you make will become available for public inspection, including inspection by the site owner, appellant and any legal representatives.

7. What if things go wrong?

We endeavour to provide a good service but there may be occasions when things go wrong. Please tell us if we have not provided the service to your satisfaction or have failed to keep our promises to you. These complaints or comments represent an opportunity for us to review what we are doing and make improvements to the service we offer.

Full details of our formal complaint procedure are available at the Helpshops and the Town Hall or can be sent on request.

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