

BARNSLEY METROPOLITAN BOROUGH COUNCIL

PLANNING COMPLIANCE POLICY



Barnsley Metropolitan Borough Council

**Community Safety and Enforcement Service
Development Management Service
Legal Services**

1. INTRODUCTION

The purpose of this policy is to set out the council's approach to planning compliance and the delivery of planning enforcement functions.

Planning law is intended to control the development and use of land and buildings in the public interest. The council's assessment of 'harm' cannot include private interests, such as potential loss of value to a property, commercial competition, loss of view, trespass or breach of covenant.

The need to secure planning compliance or to subsequently take enforcement action can only be considered where the 'Building Works' or 'Material Change of Use' being undertaken require planning permission.

The Planning and Compensation Act 1991 introduced time limits within which local planning authorities can take planning enforcement action against breaches of planning control. The time limits are:

- Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially complete.
- Four years for the change of use of a building, or part of a building to use as a single dwelling. Enforcement action cannot be taken once the unauthorised use has continued for four years without any enforcement action being taken.
- Ten years for all other development. The ten year period runs from the date the breach of planning control occurred.

Carrying out works or changing the use of land or buildings without planning permission is not an offence. The council has discretionary powers to take action. In most cases people will be given the opportunity to apply for retrospective planning permission. However, where serious harm is being caused to the way that people live, the council will take robust enforcement action with a view to alleviating the harm.

The council must operate its enforcement activities in accordance with Government guidelines, council policy and procedures, the Enforcement Concordat, and the Regulators' Compliance code.

- The council must consider if the breach of control unacceptably affects public amenity and/or the existing use of land or buildings meriting protection in the public interest.
- Enforcement action is discretionary and so the council is not required to take action in every instance, however the particular circumstances of each case will always be considered.

- The council will not normally take formal action for minor breaches that cause no real harm.

2. COMPLAINTS

Complaints about alleged breaches of planning control will be accepted by letter, email, via the council's web site, or by telephone. In order for officers to effectively investigate complaints, certain information is required. Complainants will therefore be asked to provide specific details of their complaint on a 'planning request service form' (Appendix 1).

If on initial receipt of a complaint it is obvious that the complaint is not a planning matter or there is deemed to be no breach of planning control, the complainant will be notified. If the reported breach relates to a function or activity enforced by another council service the complaint will be forwarded to the relevant department.

Anonymous complaints may not be considered, as it is often not possible to investigate these due to lack of witnesses or evidence and the harm is difficult to determine. However, each complaint will be assessed and depending on the circumstance there may be occasions when anonymous complaints will be investigated.

3. ENFORCEMENT PRIORITIES

The council receives approximately 700 planning enforcement complaints each year.

In light of the often lengthy and complex nature of planning enforcement investigations, and to make the best use of limited resources, it is necessary to give priority to those cases where the greatest harm is being caused. Priorities are directed by the significance and impact of the breach, the level of harm caused and the need to react expediently.

The following sets out the council's priorities for investigating alleged breaches of planning control. The enforcement process is closely regulated by legal procedures, planning legislation and government guidance. This provides the framework for council's enforcement priorities.

As an investigation of a particular case proceeds it may become necessary to change the priority level.

PRIORITY 1

- Unauthorised activity to listed buildings (demolition/alteration/disrepair)
- Unauthorised demolition in a conservation area
- Unauthorised development in the green belt

- Works to trees covered by a Tree Preservation Order or in a Conservation Area
- Development causing immediate/irreparable harm to protected ecology or causing serious danger to the public

PRIORITY 2

- Operational development already in progress
- Development which is potentially immune from enforcement within 6 months
- Development causing serious harm to amenity
- Breaches of condition/non compliance with approved plans causing serious harm

PRIORITY 3

- Other operational development which is complete
- Changes of use resulting in some harm to amenity
- Breaches of condition/non compliance with approved plans causing no serious harm to amenity

PRIORITY 4

- Advertisements
- Changes of use, resulting in little or no harm to amenity
- Untidy land resulting in little or no harm to amenity
- A trivial or technical breach of control, which causes little or no harm to amenity or the environment

4. ENFORCEMENT OPTIONS

Powers to enforce planning controls are contained within the Town and Country Planning Act (as amended), the Planning and Compensation Act 1991 and the Control of Advertisements Act 1969 (as amended).

In deciding whether to take enforcement action the council will have regard to the development plan and any other material considerations including national policies on planning and enforcement as expressed through the National Planning Policy Framework and National Planning Practice Guidance.

The council will only take enforcement action when it is considered expedient to do so (having regard to the provisions of the development plan and any other material considerations) and where such action is considered necessary in the public interest. In taking enforcement action the council will act in a proportionate way and be prepared to use all of the enforcement powers available commensurate with the severity of the breach.

The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the council to act in a way that is incompatible with a Convention right.

Option 1 - No further action

The council may, following initial investigation decide that there has been no breach of planning control, or that the breach is minor or insignificant in nature, or that there is insufficient evidence, or that it is not in the public interest or expedient to pursue the matter.

The council would refrain from initiating enforcement action where the development is considered acceptable on its own planning merits and where formal action would solely regularise the development.

Option 2 - Further investigation required

It may be necessary to carry out further investigations from the initial site inspection to determine whether a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or further information from the complainant, site owner or other parties.

In certain cases, the council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may result in the council not being able to pursue the investigation due to insufficient evidence being available.

Option 3- Negotiate a solution

In situations where it has been established that a breach of planning control has occurred but that the harm can potentially be mitigated, the council will normally attempt to negotiate an acceptable solution to regularise the breach of planning control without recourse to formal enforcement action.

Such negotiations may involve the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the council is unable to negotiate an acceptable solution within a reasonable timescale, the council's Development Management Service will consider whether or not it is expedient to take formal enforcement action.

Option 4 - Retrospective application for planning permission

Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such cases, the application is made without prejudice to any final decision the council may take in the matter. If such an application is not submitted, the council will consider whether or not it is expedient to take formal enforcement action.

In accordance with the letter to Chief Planning Officers, dated 31st August 2015, which sets out changes to national planning policy, where a retrospective application is submitted for what is considered to be intentional unauthorised development, the intentional unauthorised development will be treated as a material consideration that would be weighed in the determination of the retrospective application. This will be particularly so for intentional inappropriate development in the Green Belt where there is no opportunity to appropriately limit or mitigate the harm that has already taken place.

Option 5- Formal enforcement action

Where it has been established that a breach of planning control has occurred and it does not appear the harm can be mitigated by negotiations with the landowner and/or a retrospective planning application, the council will consider using its statutory powers to take action to remedy the breach. The use of these powers (listed below) is discretionary and will be used when it is considered expedient to do so, having regard to the development plan and any other material considerations. Any action taken must be proportionate to the breach of planning control.

5. FORMAL ENFORCEMENT ACTION

Planning Contravention Notice

This is a legal notice which brings any breach to the attention of the owner or occupier, and will require the alleged offender to provide such information as to:

- (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and
- (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted, as may be specified in the notice.

The planning contravention notice will require that the information is provided within 21 days from the date that the notice is served.

Enforcement Notice

Enforcement Notices should only be served where it is expedient to do so, and all reasonable efforts to resolve the breach through negotiation have failed.

Enforcement Notices are formal legal documents served by local planning authorities that require the owner/s and/or occupier/s to undertake specific steps to remediate breaches of planning control by a set date. Enforcement Notices will generally require the removal/demolition of unauthorised operational development on land and/or the cessation of the unauthorised use of land. If the notice is not complied with by the date the requirements of the notice take effect, the breach will become a criminal offence and the landowner and/or occupier can be prosecuted in the criminal courts.

The notice may be appealed to an independent government planning inspector, who can decide to uphold, amend or quash the notice.

Breach of Condition Notice

A Breach of Condition Notice can be served where the breach of planning control relates to non-compliance with a condition on a planning permission. Service of a Breach of Condition Notice provides a mechanism for the summary enforcement of a breach of condition or a limitation subject to which a planning permission has been granted.

The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.

Section 215 Notice (Untidy Land Notice)

A Section 215 Notice can be served in cases where the amenity of an area is adversely affected by the condition of land or buildings.

The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect.

Prosecution

In most cases it will not be possible to prosecute unless a legal notice been served in respect of the planning breach and any requirements of the notices are outstanding after the deadline for compliance.

Before commencing any legal proceedings the council must be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Stop Notice

A Stop Notice can be served with an Enforcement Notice or afterwards, where it is considered expedient that the breach of planning control shall cease before the expiry of the period of or compliance specified in the Enforcement Notice. The failure to comply with a Stop Notice is itself a criminal offence.

A landowner or occupier may be entitled to compensation in respect of loss or damage caused by the stop notice procedure in situations where the appropriate enforcement notice is quashed, varied or withdrawn.

Court Injunctions

The council can consider submitting an application for an injunction in situations, where a breach of planning control is causing very serious harm to public amenity and the environment and in cases where urgent action is necessary to bring about the immediate cessation of a relevant activity.

Such action will only normally be considered if the breach is particularly serious and there are strong grounds for take such action.

Temporary Stop Notice

This differs from the normal Stop Notice powers because the Temporary Stop Notice does not have to wait for an Enforcement Notice to be issued. In addition the effect of a temporary stop notice will be immediate and the notice will cease to have effect at the end of the period of 28 days after which the notice is displayed. A Temporary Stop Notice cannot be used to prevent the use of a building as a dwelling that the council thinks is a breach of planning control. It will also set out the council's reasons for issuing the Temporary Stop Notice.

Direct Action

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a Section 215 (Untidy Land) notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Sections 178 and 219 of the Town and Country Planning Act 1990 (as amended) to:

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

6. SERVICE APPROACH

Complaints will initially be referred for investigation to the Community Safety and Enforcement Service where officers will consider the issues raised.

Where planning applications are under consideration with the council, have recently been approved, or are subject to discharge of condition applications, complaints and issues relating to the development at the site will be taken up by the relevant planning officer with the developer or agent responsible for the scheme. This approach is intended to resolve issues with the development at the earliest opportunity. Developers and agents are expected to work with the council to ensure, wherever possible, issues about development are addressed in a timely manner.

Occasionally complaints can relate to more complex matters where it is necessary to obtain specialist input from planning officers and or other officers within the council to seek the best solution to the issues raised. In these cases the appropriate planning officer will direct the enforcement officers as to the most appropriate course of action. These will include:

- unauthorised works to listed buildings
- trees covered by Tree Preservation Orders
- demolition within a Conservation Area
- mineral and waste operations

Officers from the Community Safety and Enforcement Service will undertake an investigation into the complaint to gather any necessary information and evidence. The council's Development Management Service operates in connection with the council's statutory role as the Local Planning Authority. It may therefore be necessary for enforcement officers to consult with qualified planning officers to obtain an expert judgement and decision as to the course of action to follow.

7. SERVICE COMMITMENTS

Complaints will normally be acknowledged within 3 working days of receipt. Each case will be individually assessed. Complaints will be dealt with in accordance to priority, although every effort will be made to deal with complaints as quickly as possible.

It is not possible to give a standard time for dealing with a planning complaint, as investigation and enforcement can be a lengthy and complex process. Complainants will be informed of the status of the case throughout the investigation.

Every effort will be taken to ensure that those being regulated fully understand what action is being taken, the steps that are required to remedy the breach, and the possible implications should they fail to comply with the requirements of that action.

When the council decides not to take formal enforcement action the complainant will be notified of the reason for the council's decision.

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