

London Borough of Richmond Upon Thames

Planning Enforcement Policy

Adopted October 2016

1. What is planning enforcement? Context

Our borough is an area where there are high demands on the use of land and buildings, resulting in increasing competition between users, developers and residents. We are committed to ensuring that the built environment is high quality and that areas and buildings of architectural and historic interest are preserved and enhanced. The development management service regulates the use and development of land and buildings in accordance with the Planning Acts and related legislation.

Most building works, changes of use, advertisements and works to protected trees require either planning permission or consent. Development that takes place without the appropriate permissions or compliance with approved plans and conditions is said to be a 'breach' of planning control. Such breaches are a matter of concern to the public and may require investigation. However, planning law includes a legal test of 'expediency' that requires our actions to be fair and reasonable.

The National Planning Policy Framework recognises that effective enforcement is important as a means of maintaining public confidence in the planning system. As enforcement action is discretionary, we must act proportionately in responding to suspected breaches. This document sets out how we will deal with alleged breaches of planning control. In doing so we will adhere to the requirements of planning law and the Council's adopted policies and strategies. We will seek to balance the concerns of local people with the rights of owners. Our initial investigations will establish whether or not there is a breach of planning control. We will pursue appropriate action to resolve breaches in line with our agreed priorities, using the powers that are available to us. We will seek to treat all interested parties fairly and in accordance with the standards set out in this document.

2. How do we undertake planning enforcement? Purpose and principles

Unlawful development can cause serious harm to people and the built environment. The main purpose of planning enforcement is to deal with such harmful activities effectively. Our enforcement work is an important part of the Council's overall planning service.

However, with some notable exceptions, such as unauthorised works to listed buildings, illegal advertisements and demolition without consent, breaches are NOT criminal offences. It is for the Council to decide what, if any, action should be taken in response to a breach of planning control. We believe in firm but fair regulation and will therefore treat each case on its individual merits, whilst acting in line with the following principles:

- **Proportionality** – our enforcement action will be in keeping with the scale of the alleged breach and the seriousness of the harm caused.
- **Consistency** – as far as possible similar circumstances will be dealt with by taking a similar approach in order to achieve similar outcomes. We aim to achieve consistency in advice, responses to breaches, use of powers and decisions on whether to prosecute.
- **Transparency** – we will ensure that everyone involved understands our processes and procedures, including what rights of complaint and appeal may be open to them. We will obtain feedback from service users in order to learn and improve.
- **Accountability** – we will publish standards of service that have been subject to consultation so that all interested parties know what to expect of us. We will monitor our performance and report to our respective councils on our activities and the outcomes.

By acting in this way we aim to:

- protect the Borough from the effects of unacceptable development;
- recognise that some breaches may be unintentional;
- remedy the harmful effects of unauthorised development;
- uphold the credibility of the planning system;
- make sure development complies with planning permissions and conditions;
- ensure that local planning policies are implemented.

3. Reactive and pro-active planning enforcement – scope

Complaints and initial investigations

We receive a significant number of complaints every year about alleged breaches of planning control. The service is predominantly driven by these complaints and enquiries.

We will always undertake an initial assessment of a complaint to decide whether a planning enforcement investigation is required. Depending on the nature of the complaint this may require a site visit by a council officer.

Examples of works or changes that will not result in a breach of planning control are those undertaken as ‘permitted development’ and those which are immune from action due to building works having been completed more than four years ago. Further details of activities which are not breaches of planning control are set out in Appendix 1.

Nearly half of all the complaints we receive do not involve a breach of control. These cases will be recorded, but no further action will be taken. Complainants will be informed of our decision.

Positive action

We will use our enforcement powers to achieve wider planning objectives. We want to ensure that developments are built and operated in accordance with approved plans and conditions. Failure to comply with the terms of a planning permission can seriously affect local amenity and we will use our resources to ensure compliance.

We may also use our powers to address a significant number of similar breaches simultaneously where the individual harm is small, but there is a detrimental cumulative effect on an area. We will seek the views of stakeholders in order to identify targets that warrant this approach to pro-active enforcement.

4. Investigations and actions

Only after establishing that there has been a breach of planning control will we undertake further investigations. Whilst some may require formal action, not all will be equally serious. We will carry out investigations thoroughly and accurately in accordance with the following priorities:

A: High Priority - we aim to undertake a site visit within 1 working day

- Unauthorised development that is causing immediate, serious and irreversible harm to neighbourhood facilities or other acknowledged interests, such as:
 - *Works that seriously affect the fabric of a listed building*
 - *Demolition work affecting a building in a conservation area;*
 - *Felling or lopping of a tree protected by a Tree Preservation Order or a tree within a conservation area.*
- Unauthorised development causing severe and irreversible harm to neighbours and local people.

B: Medium Priority – we aim to undertake a site visit within 5 working days

- Unauthorised development that causes significant harm to an area and/or the living conditions of neighbours, such as:
 - *Residential extensions resulting in unacceptable harm to residential amenity;*
 - *Alterations that fail to preserve or enhance the character or appearance of a conservation area;*
 - *Unauthorised commercial use of a building or land;*
 - *Breach of a planning condition resulting in significant noise, disturbance or loss of privacy for adjoining occupiers.*
- Unauthorised development that is contrary to significant policies in the development plan, such as:
 - *Loss of residential accommodation;*
 - *Creation of sub-standard accommodation.*
- Situations where collective breaches are likely to cause significant harm to the character and appearance of a neighbourhood, contrary to development plan policy, such as:
 - *Advertisement displays*
 - *Alterations contrary to an Article 4 Direction.*

C: Low Priority – we aim to carry out a site visit within 10 working days.

- Breaches of planning control, such as:
 - *Non-compliance with conditions not covered by priorities A or B;*
 - *Unauthorised development where minimal harm is anticipated;*
 - *Unauthorised development which is likely to comply with adopted policies, subject to a retrospective planning application;*
 - *Development that has been built without complying with the approved plans, but where planning permission is likely to be granted with minor amendments, subject to a retrospective planning application.*

Whilst investigations arising from complaints that fall into category C may be low priority in relation to receipt of complaints, they will be pursued as part of our pro-active enforcement activities.

We recognise that investigations of possible breaches can be worrying for everyone involved. We will seek to ensure that all parties are kept informed throughout the process.

5. Decisions and actions

Following the investigations and any appropriate site visit we will assess what further action may be needed. If it is decided that further action is required our aim will be to use the tools available to us to remedy the harm caused by the breach of planning control. These are set out in Appendix 2.

Where a high priority case involving a serious breach is taking place we will require immediate cessation of unauthorised works. In other cases our aim will be to negotiate a means of addressing the breach in order to rectify the situation and minimise permanent harm.

There will be occasions where harm that has been identified may be more appropriately addressed by another council service, such as environmental health, housing or trading standards. We will pass cases to other services and work in partnership with them to resolve problems using the most effective and appropriate processes. Where criminal activity is occurring we may refer matters to the Police.

Where a breach has occurred we will:

- Communicate clearly to the responsible person (or their agent) within 5 days of a site visit advising them of the problem and what they are required to do in order to remedy the breach. This will be formally confirmed in writing.
- Give the responsible person a reasonable time in which to submit a retrospective planning application to regularise the breach where we consider that harmful effects can be addressed through mitigation measures.
- Not delay or postpone formal enforcement action that may be required to make the development acceptable in the event that attempts to negotiate a remedy appear to fail.
- Explain any rights of appeal to the contravener, if urgent and immediate formal enforcement action is required to deal with a breach, such as any of those set out in A above.
- Initiate formal enforcement powers when we consider there is a clear breach of planning control that would be unacceptably harmful to the built environment or local people.
- Issue a warning to contraveners at site inspections in the form of a 'red card' where unlawful works or uses are being carried out. This is an informal notice setting out in clear language that planning law appears to be contravened and warning those on

site that if they proceed they do so at their own risk of subsequent formal enforcement action.

- Inform the contravener in writing and within 5 working days of a decision to take, or not take, formal enforcement action.
- Deal with persistent offenders and those who abuse the planning process at the expense of others using appropriate enforcement processes.

6. Service Standards

Breaches of planning control always involve the party who has identified the problem (the complainant) and the party who has carried out the alleged breach (the contravener). This section sets out our approach to both parties in terms of what they can expect of us and what we can expect of both complainants and contraveners. All our written communications are undertaken electronically.

Complainants

If you make a complaint we need you to:

- Put the issue in writing using the standard form on the web site;
- Provide your name and address;
- Provide a description of the problem and the harm it is causing;
- Describe how this harm affects you personally, if it does so;
- Support your complaint with photographs if possible;
- Submit the complaint electronically;
- Be willing to help us if the case needs to go to court.

We will respond by:

- Always respecting the need for confidentiality, (but not accepting anonymous complaints);
- Treating your complaint sensitively;
- Acknowledging your complaint within 3 days of receiving it;
- Providing you with an initial decision as to whether or not it falls into the category of a breach of planning control;
- Informing you of the priority it has been given and who is to investigate it;
- Contacting you at each stage of the process, e.g. investigation, notices served, appeals;
- Notifying you of the final outcome within 5 working days of the decision that closes or concludes the case.

Contraveners

If you are responsible for an alleged breach of planning control we will:

- Provide identification when we visit the site;
- Communicate clearly our reasons for requiring the investigation;
- Provide the name of the officer who will carry out the investigation;
- Investigate the complaint thoroughly before making a decision on what action to take;
- Notify you within 5 days of the site visit identifying the problem and the measures that are needed to achieve compliance, if the breach is not serious;
- Give you an opportunity to put things right, including explaining how long you have to do this and the consequences of failing to do so;
- Encourage you to resolve any breach as soon as practical;
- Inform you in writing if we decide to proceed to formal enforcement action and what form that will take.

We expect contraveners to:

- Provide accurate information;
- Treat officers with respect;
- Be willing to discuss the breach openly and listen to advice.

7. Contacts and further information

We provide lots of advice and guidance about planning and enforcement matters on the Council's web site. This will be the easiest and quickest way of finding information that will be relevant and we would encourage you to use it as much as possible.

The web site links are:

www.richmond.gov.uk/planning

If you wish to speak to an officer about an enforcement matter in person it will be necessary to book an appointment.

You can email us using the address: planningenforcement@richmond.gov.uk

Appendix 1: What is, and is not, a breach of planning control?

Developments that do NOT breach planning controls	Breaches of planning control that may require action
Works and changes of use that fall within permitted development rights	Unauthorised works to: <ul style="list-style-type: none"> • A listed building • A property in a conservation area; • A property subject to an Article 4 direction.
Advertisements that benefit from 'deemed consent'	Unauthorised extensions to a residential property
Where works have been in place for 4 years	Unauthorised changes of use of land and buildings
Where uses have been established for 10 years	Unauthorised signs and advertisements

Appendix 2: Tools of formal enforcement action

We can proceed using one or more of the following formal actions. Whilst the powers and penalties vary failure to comply with a notice can lead to prosecution.

- **Planning Contravention Notice (PCN):**
Issuing a PCN, which is a legal notice to bring the breach to the attention of the owner/occupier and requires the alleged contravener to provide certain information within 21 days.

Failure to respond could result in prosecution in the Magistrates Court.

- **Enforcement notices:**
Issuing an enforcement notice, which is a legal document requiring the owner/occupier to take specific steps to remedy the planning breach within a specified time. Failure to comply with the notice results in the breach becoming a criminal offence, which can be prosecuted in the courts.

The notice may be appealed to an independent government Planning Inspector who can decide to uphold the notice, amend it or have it quashed. The requirements of the notice are suspended during the appeal process. Interested parties can make representations to the appeal.

- **Section 215 Notices:**
Issuing a Notice under Section 215 of the Town and Country Planning Act 1990, which is a legal document requiring the owner/occupier to remedy the condition of the land or building and provides a minimum of 28 days before it takes effect.

Failure to comply with the Notice is a criminal offence. In such circumstances the council also has powers to enter the land, carry out the work itself and recover the costs of so doing from the owner.

There is no right of appeal, but before the notice takes effect an appeal may be made to a Magistrates Court.

- **Breach of Condition Notice (BCN):**

Issuing a BCN where the unauthorised activity is in breach of a condition attached to a planning permission. It is an alternative to an enforcement notice and requires compliance with the condition.

Failure to comply is a criminal offence and there is no right of appeal.

- **Stop Notices and Temporary Stop Notices**

Issuing a Stop Notice in conjunction with an enforcement notice in order to require the cessation of works that are causing serious harm. Contravention of such a notice gives a liability of immediate prosecution.

Issuing a Temporary Stop Notice, which has similar force to a Stop Notice, but is only valid for 28 days and does not require an associated enforcement notice.

- **Court injunction**

We could apply to the Court for an Order preventing an activity, or operation, taking place.

Failure to comply with such an Order is a criminal offence.

- **Default Powers**

Ultimately we may enter land and take action necessary to secure compliance with enforcement notices. However, this power is only used in the most extreme of circumstances. We will then seek to recover all such associated costs.