

PLANNING ENFORCEMENT POLICY



Barnsley - the place



Barnsley - the place
of possibilities.



BARNŚLEY
Metropolitan Borough Council

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 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.

A breach of planning control is defined in S171A 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.

Carrying out works or changing the use of land or buildings without planning permission is not an offence. It should be noted, the council has discretionary powers to take enforcement action but is not mandated to do so. In most cases people will be given the opportunity to apply for retrospective planning permission or be asked to take corrective action informally in the first instance to resolve the issue. Early engagement with those undertaking the development which is subject of complaints can often assist in resolving matters in the first instance, often without recourse to formal action. However, where serious harm is being caused, which may, for example include harm to visual and residential amenity impacting 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 National Planning Policy Guidance (NPPG) this includes guidance relating to 'Enforcement and Post Permission Matters'. The council will also have regard to the guidance contained within the National Planning Policy Framework, particularly paragraph 59 which states:

Enforcement (NPPG)

59. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

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

2. REPORTING A BREACH OF PLANNING CONTROL

Reports about alleged breaches of planning control will be accepted by letter, email, via the council's web site, or by telephone. The service has a dedicated web page which contains further information about the planning service and the ability to submit a request online and can be found via this link:

<https://www.barnsley.gov.uk/services/planning-and-buildings/report-a-breach-of-planning-permission/>

For officers to effectively investigate complaints, certain information is required. Complainants will therefore be asked to provide specific details of their complaint to assist the investigation and substantiate what is taking place. Complaints will remain confidential, and the identity of the complainant will not be disclosed to third parties unless the council is compelled to do so by law.

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 and/or the complainant will be notified of who is the most appropriate contact

Anonymous complaints will not be considered unless there are exceptional circumstances as it is often not possible to investigate these due to lack of witnesses or evidence and the harm is difficult to determine..

3. ENFORCEMENT PRIORITIES

The council receives approximately 700 planning enforcement complaints each year. Considering 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. This is set out below in the Local Enforcement Plan which has categorised compliant types into four priority areas. 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 the enforcement powers available commensurate with the severity of the breach.

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action

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 Planning & Building Control Service will consider whether 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 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 it is expedient to take formal enforcement action.

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 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 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.

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.

Court Injunctions

The council can consider applying 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.

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 a Planning Enforcement Officer for triage, who 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 officers elsewhere in the service or other specialist officers within the council to seek the best solution to the issues raised. In these cases, the relevant officer will direct the enforcement officers as to the most appropriate course of action.

7. SERVICE COMMITMENTS

. Each case will be individually triaged and assessed. Complaints will be dealt with in accordance with their designated 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.

8. PERSISTANT OR VEXATIOUS COMPLAINTS

The service will consider reports of breaches of planning control as outlined above in line with the service priorities specified. In cases where the same report of a breach of planning control is made regularly or persistently and where the council has found no substantive difference to previous investigations and outcomes, these matters will not be investigated any further.

The service has limited resources and these resources must be used efficiently and effectively. Officer time will not be spent on investigations which are the subject of persistent or vexatious matters. Where an outcome has been communicated on a case, this will not be altered unless there are new or substantively different factors to consider or there has been a 'material' change at the site in question which would require future investigation.

The council has a formal complaints process and whilst the service will try and resolve matters wherever possible without rise to formal complaints, matters of a persistent or vexatious nature will be referred to our customer resolution team who can consider any matters raised and our decision making through the formal complaints process, details of which can be found via the following link:

<https://www.barnsley.gov.uk/have-your-say/complaints-and-compliments/>

Ultimately where matters cannot be resolved to the satisfaction of the customer or where the council's complaints process has been exhausted a complaint can be made to the Local Government and Social Care Ombudsman. In most cases the Ombudsman will only investigate matters within 12 months of you becoming aware of the matter subject of complaint or where you have been directly affected by the matter, known as 'personal injustice'. Further details can be found on the Ombudsman's website <https://www.lgo.org.uk/>