

Royal Borough of Windsor and Maidenhead

Planning Enforcement Policy Statement

**AN EXPLANATION OF THE COUNCIL'S
ENFORCEMENT PROCEDURES AND PRACTICE**

ADOPTED NOVEMBER 2005



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Planning Enforcement Policy Statement

1) INTRODUCTION

- 1.1 This document aims to assist you get the best out of the Development Control Enforcement service. It sets out the main service areas and explains how the Royal Borough of Windsor and Maidenhead carries out its enforcement activities.
- 1.2 The Council is here to serve you. In order to give the best possible service, it is vital that the Council gives clear guidance on what we can do and what we cannot do, and how we balance demands on our services against the resources available to us.
- 1.3 From the information provided below, we hope that you will be able to measure our performance and decide if we have met our own demanding standards. Should you not be satisfied with our performance to date, we hope that Council officers can rectify any relevant problem you have experienced, or explain why we cannot meet your expectations.

2) IS PLANNING PERMISSION REQUIRED?

- 2.1 Planning enforcement can normally only be considered where the building work or change of use involved needs planning permission. An initial investigation by the enforcement officer will seek to determine this.
- 2.2 Certain types of building works or changes of use are defined as 'permitted development', meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) Order 1995. Assistance in understanding 'permitted development' is available by means of booklets published by the Office of the Deputy Prime Minister (ODPM); these are available from the Council's Development Control section at York Stream House. Alternatively, you may contact a Planning Officer of the Council for help in understanding what is meant by this term.

3) WHAT IS PLANNING ENFORCEMENT?

- 3.1 Nevertheless, most building/engineering work and changes in the use of land or buildings need planning permission from the Council. Sometimes development is carried out without planning permission or does not properly follow the detailed plans that have been approved by the Council. Cases such as these can cause serious harm (see para. 4.4) to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.
- 3.2 Other situations that can be considered for planning enforcement include:

- Unauthorised display of advertisements
- Unauthorised works to protected trees and hedgerows
- Unauthorised work to buildings listed as being of special architectural or historic interest
- Unauthorised demolition of certain buildings in a Conservation Area
- Unauthorised storage of certain quantities of hazardous materials
- Land that is in such a poor condition that it adversely affects the amenity of the area.

3.3 The term used to describe such cases is ‘breach of planning control’.

4) WHAT IS THE PURPOSE OF PLANNING ENFORCEMENT?

4.1 Planning laws are designed to control the development and use of land and buildings in the public interest. They are not intended to protect the private interests of one person against the activities of another.

4.2 Carrying out work or changing the use of land or buildings without planning permission is not usually a criminal offence. In most cases the Council will give the opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will take firm action quickly.

4.3 The Council must operate its enforcement activities within Government guidelines and in accordance with Council policy. This means that:

- The Council must decide whether the breach of planning control affects unacceptably quality of life in the area
- Action should not be taken simply because development has commenced without planning permission
- The Council does not always have to take action, but the particular circumstances of the case must always be considered
- It is not usual to take formal action against a minor breach of planning control that causes no real harm.

But, when it is necessary to take enforcement action, it will be taken quickly.

4.4 So what is meant by ‘harm?’ Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows, for example. Harm to the visual amenity of an area could occur, for example, through unauthorised work to a listed building, demolition within a Conservation Area or work to a protected tree.

4.5 Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken. However, 'harm' in this context would not, for example, include:

- any loss of monetary value to a neighbouring property

- competition with an existing business
- a loss of an individual's view across land.

4.6 It may be possible to address issues such as these by way of a civil action, although this is a matter for the complainant to pursue and is not an area in which the Council could get involved.

5) WHO MAY COMPLAIN?

5.1 Anyone who believes that a breach of planning control has occurred may make a complaint. Except for urgent cases (see para. 6.6), all complaints should be made in writing. Please be prepared to identify yourself so that your complaint may be investigated fully. In most instances, it is not possible to investigate anonymous complaints through to prosecution, due to a lack of witnesses or evidence.

5.2 In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. One of the Council's Enforcement Officers will be pleased to explain what may be required in these cases.

5.3 Where a retrospective application for permission is made to regularise unauthorised development, appropriate publicity and consultation will be carried out, and interested parties given an opportunity to comment before a decision is taken.

5.4 Please note that any information you provide may be subject to the Freedom of Information Act 2000 and therefore may be disclosed to a third party. While the substance of any complaint is unlikely to be confidential, if you do not want your name and contact details to be released, please make this clear in any correspondence with the Council. If you agree to act as a witness at an appeal or in Court, then your details will be released at the appropriate time.

6) WHAT YOU NEED TO DO IF YOU WISH TO MAKE A COMPLAINT

6.1 If you are concerned about building work, a change of use, or the condition of a property, you should contact the Council's Enforcement Team to establish whether there is a problem.

6.2 It is requested that you put your complaint in writing to the Enforcement Team (Development Control Section, Planning and Environment Directorate), York Stream House, St. Ives Road, Maidenhead SL6 1QS. Try to describe the problem in as much detail as possible and provide a sketch plan identifying the location of the site. State

when and where you are available for interview, including a daytime telephone number if possible.

- 6.3 Complainants who may have difficulty in writing down their concerns are advised to seek help from a friend or relative; in addition, a list of useful contacts and sources of information is produced at the end of this statement.
- 6.4 If a breach of planning control has been confirmed, you may be asked to make a note of your observations and keep a log of any relevant activities. It is particularly useful to note dates, times, names, addresses, telephone numbers, and the registration details of any motor vehicles involved.
- 6.5 The names and addresses of any other witnesses who are likely to support your case should also be included.
- 6.6 In cases of extreme urgency, such as the unauthorised felling of a tree protected under a Tree Preservation Order, you should contact the Council's Tree Section. For urgent contact concerning the unauthorised demolition of a listed building you should get in touch with the Enforcement Team. Details of whom to contact and other useful information are listed at the end of this statement. Please ensure that you are in possession of all the relevant facts and relate them logically and calmly. Some complainants are understandably agitated about a breach of planning control, but this concern should not be translated into impatience or anger with the member of staff who is endeavouring to assist with resolving the matter. Do remember that the Council will do all it can to resolve the problems and will be most effective when you are prepared to actively assist officers with their investigations.
- 6.7 If you also raise your complaint with a Councillor, please advise them of any contact you may have had with the Development Control Section and give them the name of the officer who is dealing with your complaint.

7) WHAT ACTION CAN THE COUNCIL TAKE?

- 7.1 The Council will first determine if it is appropriate to take enforcement action by establishing whether or not a breach of planning control has occurred. In cases where the situation is unclear a 'Planning Contravention Notice' will be served on the owner and/or occupier of the property to obtain specific facts.
- 7.2 Where a breach of planning control has taken place the Council will then make an assessment of the harm caused by the breach.
- 7.3 Where an assessment is made that it is likely an unconditional planning permission would be granted, the person responsible for the breach would be invited to make a

planning application for retrospective planning permission. Similarly, where it is probable that planning permission will be granted subject to certain conditions, a retrospective application would be the most appropriate form of action.

- 7.4 Where a retrospective application is requested, but none is received, the Council will normally take enforcement action.
- 7.5 The Council can serve an Enforcement Notice on the owner of the land, or the occupier, or both. The notice explains the nature of the breach of planning control and sets out what steps are necessary to be taken to rectify matters and a date by which this must be completed. If the notice is not complied with, the Council may bring a prosecution in the Magistrates Court. The Council's Prosecution Policy sets out the circumstances when this course of action is likely to be adopted.
- 7.6 Where, in the opinion of the Head of Planning, a breach of planning control is causing serious harm to public amenity in the neighbourhood of a site, the Council can seek immediate remedial action. This may involve the serving of a Stop Notice where an Enforcement Notice has already been issued, or a Temporary Stop Notice where an Enforcement Notice has not been issued. In addition, the Council may apply to the Court for an Injunction to prevent any further harm being caused. These actions require the persons responsible to cease the specified activities at once.
- 7.7 In most cases, the recipient of an Enforcement Notice can appeal to the Secretary of State for the Environment. An appeal has to set out why it is considered that the action required by the Council should not have to be taken. The appeal can be dealt with by means of an exchange of written representations, a hearing before a Planning Inspector or at a Public Inquiry, where both sides will be legally represented.
- 7.8 The Council is also empowered to carry out other forms of enforcement action, including:
 - The service of a 'Breach of Condition Notice' where development is judged to have taken place without compliance with a condition(s) attached to the planning permission
 - Prosecution for non-compliance with an Enforcement Notice that either was not the subject of an appeal, or was upheld by a Planning Inspector following an appeal
 - The service of a notice requiring the proper maintenance of land under Section 215 of the Town and Country Planning Act 1990
 - Prosecution in connection with unauthorised display of an advertisement
 - Prosecution for unauthorised work to a listed building
 - The service of a 'Listed Building Enforcement Notice' where unauthorised work has taken place to a building listed as having special architectural or historic interest
 - The service of a 'Conservation Area Notice' where unauthorised demolition has taken place within a designated Conservation Area
 - The planting, and associated recovery of costs, where there has been a failure by the owner to replace a protected tree or hedgerow
 - Prosecution for unauthorised work to a protected tree

- Service of a notice relating to a dilapidated building under the provisions of section 79 of the Building Act.

7.9 In considering whether enforcement action is appropriate, particular regard needs to be paid to the specific time limits that are imposed by the Town and Country Planning Act 1990, which permits a breach of planning control to become lawful for planning purposes. These limits are:

A) Four years for 1) unauthorised built development, and 2) change of use of a building to a residential use, and

B) Ten years for 1) a material change of use of land and buildings (other than residential), and 2) a breach of a condition imposed on a planning permission.

8) WHAT YOU CAN EXPECT FROM THE COUNCIL

8.1 Written complaints will normally be acknowledged within 48 hours of receipt and each case will be individually assessed on its own merits.

8.2 You will be informed of the name of the Enforcement Officer who will be dealing with your complaint. The officer will then check the Council's records, inspect the site, and interview witnesses in order to establish whether a breach of planning control has in fact occurred.

8.3 If a breach has occurred, the person responsible may be asked to put it right, either by the making of a planning application, or by stopping the unauthorised work, or carrying out adequate remedial works.

8.4 If this approach fails, the Council will then consider serving an Enforcement Notice. The Council may prosecute offenders who do not comply with an Enforcement Notice.

8.5 Where the Council decides that no breach of planning control has taken place, or that despite a breach of planning control, formal enforcement action is not appropriate, the complainant will be notified in writing of the reason for the Council's decision. Updates on the progress of enforcement proceedings will be given to those persons who request the information.

8.6 A question often asked is 'How long will the investigation take to complete?'. Dealing with enforcement cases can be a lengthy and very complicated process. The different types of enforcement cases vary considerably in complexity, as does the time taken for their resolution. If a person decides to appeal against formal enforcement action, this will add to the time taken to resolve the case. In consequence, it is simply not possible to provide any useful indication of the time needed for dealing with enforcement cases.

- 8.7 Where the investigations indicate that a breach of planning control has occurred that justifies enforcement action and an Enforcement Notice is served, the Notice takes at least 28 days to come into effect, during which time the person involved can appeal against its imposition to the Secretary of State for the Environment. An Enforcement Notice may be quashed or revised by the Planning Inspector appointed by the Secretary of State to consider the case.
- 8.8 Where an appeal is lodged with the Secretary of State, the Council is then not empowered to take any further action until the appeal has been determined. It is usual for the appeal process to take several months.
- 8.9 An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a practical and reasonable period for their completion. Where the person on whom the Notice was served does not comply with its provisions, they may be prosecuted, with the possibility of being fined by the Courts.
- 8.10 Where a case is progressing, and you discover some additional information that you consider to be relevant, it would be helpful if you would contact the Development Control Section with the details of that information.
- 8.11 The Enforcement officer will keep you updated of any significant progress made with the case as and when appropriate.

9) WHAT ARE THE COUNCIL'S PRIORITIES?

- 9.1 Since planning investigations are often lengthy and complex, and staff resources are limited, it is necessary for the Council to prioritise its workload. The initial prioritisation of a complaint is based on the perceived effect of the breach of planning control, i.e. the highest priority is accorded to those cases that represent the greatest degree of harm to the environment/heritage/amenity. This approach is consistent with Government good practice advice.

Level 1 - High Priority: a breach of planning control causing, or likely to cause, in the opinion of the Head of Planning, serious harm to the natural or historic environment or to public safety unless an immediate response is made, e.g.:

1. an unauthorised use of land or buildings that presents an immediate and serious danger to the public
2. threats of/actual unauthorised works that will be seriously detrimental to the character of a Listed Building or a Conservation Area
3. threats of, or actual works to, protected tree(s)/hedgerow(s).

Allocation: Principal Enforcement Officer (deputy in their absence)

Response time: first site visit immediate/one working day by Principal Enforcement Officer (or deputy) together with the Enforcement Officer and/or a specialist officer (Arboriculture or Conservation, as appropriate) and a Police Officer if there is concern for staff safety.

Level 2 - Medium Priority: All cases that are not a high or low priority, e.g.:

1. unauthorised developments causing disturbance to residents or damage to the environment e.g. operation of a business from home, development in the Green Belt
2. non-compliance with condition(s)
3. variations from approved plans taking place
4. threat/work to a Listed Building which is not considered seriously detrimental to its character (advertisements)
5. unauthorised poster hoardings and advertisements in Green Belt or prominent locations causing serious harm to amenity or public safety
6. unauthorised development on Crown Land e.g. mobile café in trunk road lay-by
7. where time limit for enforcement might expire within the next 6 months.

Allocation: Enforcement Officer

Response time: first site visit within three working days of registration of the complaint by Area Enforcement Officer, unless support/witness is considered necessary having regard to the history of the site or the alleged contravener.

Level 3 - Low priority: Breaches of planning control that cause limited or no harm to the environment or residential amenity, e.g.:

1. apparent neighbour disputes
2. technical breaches: residential and other developments marginally above PD limits
3. aerials and antennae on dwelling houses
4. minor variations from approved plans not causing amenity problems
5. unauthorised advertisements in less sensitive locations.

Allocation: Enforcement Officer

Response time: first site visit within five working days of registration.

- 9.2 The Enforcement service seeks to manage its resources to ensure that the highest priority complaints can be addressed without undue delay and to ensure this the

response to lower priority complaints will be adjusted accordingly. To ensure that an adequate overall service is provided, the allocation of resources will be periodically reviewed. The quality of evidence and support provided by complainants can also have a significant bearing on the outcome of an investigation and where such support is likely to increase the chances of a successful outcome, the matter will be prioritised.

- 9.3 Sometimes things do not proceed as planned. If you feel that there is unreasonable delay with an enforcement investigation, or you believe there is an error in the way an investigation is being carried out, you should contact the Principal Enforcement Officer (contact details are given below). He will investigate the matter, review the circumstances and advise you within ten days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time.
- 9.4 If you are still dissatisfied with the service, then it is open to you to make a formal complaint, details of the procedure for which will be sent to you at the time. Please remember that the complaints procedure does not apply to matters that are directly related to a Council or Panel decision. You can, of course, contact your local Councillor at any time.
- 9.5 If you remain dissatisfied with the outcome of any investigation, you may write to the Ombudsman and information on how to do this will be given to you by the Chief Executive's department. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and will deal only with matters relating to the conduct of the investigation.
- 9.6 We always welcome constructive criticism and ideas on how Council services might be improved upon. Please contact us if you have a suggestion as to how the Enforcement service might be improved.

10) WHAT IF SOMEONE COMPLAINS ABOUT YOU?

- 10.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case.
- 10.2 If you are not involved, no action will be taken against you. If you are involved, the Development Control Section will advise you of the details of the breach and how it can be put right.
- 10.3 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.
- 10.4 In some circumstances you may be invited to submit a retrospective planning application if it is considered that planning permission may be granted.

- 10.5 If you are operating a business that is threatened by enforcement action, you may be provided with some assistance to identify alternative premises so as to reduce the possible adverse impact on the business. However, this does not mean that the enforcement action will be stopped, or even delayed.
- 10.6 If you are issued with an Enforcement Notice you will be given the details of the breach, the reasons for the action, the steps required to overcome the problem, and the time period for compliance.
- 10.7 Alternatively, you may be served with a 'Planning Contravention Notice' that requires information concerning the development currently being carried out. This Notice is used to establish the facts of what has occurred to date so that the Council can determine whether a breach of control has in fact taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you at the time.
- 10.8 There are several types of enforcement action (see 'What Action can the Council Take?' above) and further information and guidance on planning enforcement can be obtained from ODPM. Details are given below.

11) WHERE TO GET MORE INFORMATION

- 11.1 If you require further information, please contact your Enforcement Officer, or in their absence, the Principal Enforcement Officer. If you wish to complain about, or otherwise comment on, the Enforcement Service, please contact the Enforcement Group Manager.

USEFUL INFORMATION

DOCUMENTATION

Planning Policy Guidance Note 18 'Enforcing Planning Control'
DoE Circular 10/97 'Enforcing Planning Control'
ODPM Circular 02/2005 'Temporary Stop Notices'
'Enforcing Planning Control: Good Practice Guide for Local Planning Authorities',
Department of the Environment Transport and the Regions, 1997
'Planning - A Guide for Householders' (ODPM 2003)
'Planning Permission - A Guide for Business' (DETR 1998)
'Outdoor Advertisements and Signs: A Guide for Advertisers' (DTLR)
'Installation of satellite television dishes: householder's planning guide' (DTLR)
'Tree Preservation Orders: A Guide to the Law and Good Practice' DETR, 2000
'The Hedgerow Regulations 1997: A Guide to the Law and Good Practice', DoE, 1997
Code for Crown Prosecutors, Crown Prosecution Service
The RBWM Local Plan 1999
The Berkshire Structure Plan 1995
The RBWM Prosecution Policy

CONTACT DETAILS: ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

Whom to contact on Planning Enforcement matters:-

Richard Melvin, Principal Enforcement Officer - tel 01628 796047 e-mail
Richard.Melvin@rbwm.gov.uk

Rob Charlton, Enforcement Officer - tel. 01628 796064, e-mail
Robert.Charlton@rbwm.gov.uk

Eric Nicol, Enforcement Officer - tel. 01628 796062, e-mail Eric.Nicol@rbwm.gov.uk

Natalie Pizzardi, Enforcement Officer - tel. 01628 796049 e-mail
Natalie.Pizzardi@rbwm.gov.uk

Richard Ford, Enforcement Manager - tel. 01628 796106, e-mail Richard.Ford@rbwm.gov.uk

Address:- York Stream House, St. Ives Road, MAIDENHEAD Berkshire SL6 1QS

e-mail:- development.control@RBWM.gov.uk

Fax:- 01628 796438

Out of hours tel. 01753 853517

For enforcement matters relating to trees and hedgerows, you should contact:

Tree Section - tel. 01628 796134, e-mail trees@rbwm.gov.uk

Address:- York Stream House, St. Ives Road, MAIDENHEAD Berkshire SL6 1QS

CONTACT DETAILS: OTHER ORGANISATIONS

Office of the Deputy Prime Minister

Eland House, Bressenden Place, LONDON SW1E 5DU

Tel. 020-7944 4400

Website: www.odpm.gov.uk

The Government Office for the South East

Bridge House, 1 Walnut Tree Close, GUILDFORD Surrey GU1 4GA

Tel. 01483-882255

Website: www.gose.gov.uk

The Planning Inspectorate

Customer Support Unit, Room 3/15, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, BRISTOL BS1 6PN

Tel. 0117-372 6372

Website: www.planning-inspectorate.gov.uk

Local Government Ombudsman

10th Floor, Millbank Tower, Millbank, LONDON SW1P 4QP

Tel. 020-7217 4620

Website: www.lgo.org.uk

National Planning Aid Unit (Royal Town Planning Institute)

Unit 419, The Custard Factory, Gibb Street, BIRMINGHAM B9 4AA

Tel. 0121-693 1201

Website: www.planningaid.rtpi.org.uk

Author: R Ford. Date: 6 December 2005. Version: 5.

File: **U/RFord/ENFORC0612.doc**