

Woking Borough Council

Local Enforcement Plan

1. Introduction

- 1.1 The Woking Borough Council Local Enforcement Plan identifies local priorities for enforcement action, so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of residents. The enforcement of planning control is essential to maintain community confidence in the planning system. It is essential that the local environment is protected, as are the interests of all residents and businesses from harmful effects of unauthorised development.
- 1.2 This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states:-
 - 1.2.1 *“Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so”.*
- 1.3 The Council as Local Planning Authority has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches. Breaches of planning control are viewed very seriously. It is our policy to exercise powers appropriately to ensure that development takes place in accordance with appropriate legislation or planning conditions imposed by a planning consent.
- 1.4 The planning enforcement system should not be viewed as a way to punish those responsible for breaches of planning control. People who intentionally carry out unauthorised development undermine the planning system. Others however, often carry out works genuinely without any knowledge that planning permission is required. Planning Applications submitted retrospectively are treated no less favourably than other applications. It is an important principle of the planning system that the use of planning enforcement action is a discretionary power of the Local Planning Authority.
- 1.5 The aim of this document is to clarify and set out the Local Planning Authority's procedure for enforcing breaches of planning control. The plan will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement.

2. Breaches of planning control

2.1 Powers to enforce planning controls are given by Parts VII and VIII of The Town and Country Planning Act 1990 (as amended).

2.2 The power to take enforcement action is discretionary.

2.3 Section 55 of the Town and Country Planning Act 1990 defines development as:-

2.3.1 *“....the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land”.*

2.4 Section 171A of the Town and Country Planning Act 1990 defines a breach of planning control as:-

2.4.1 *“the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.*

What is a breach of planning control?

2.5 The most common planning enforcement investigation includes one of the following alleged breaches:-

2.5.1 development that has not been carried out in accordance with an approved planning consent

2.5.2 failure to comply with a condition or legal agreement imposed as part of a planning consent

2.5.3 carrying out building or engineering works or the change of use of a building or land without planning permission

2.6 Examples of other matters that fall within the remit of planning control include:-

2.6.1 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

2.6.2 demolition within a Conservation Area without consent

2.6.3 carrying out works (internal as well as external) to a listed building without listed building consent

2.6.4 failure to comply with a planning notice

2.6.5 the display of a sign or advertisement without advertisement consent

2.7 Despite public perception, it is not an offence to carry out works without planning consent. An offence is only committed when an owner/occupier fails to comply with the requirements of a planning enforcement notice issued by the Local Planning Authority in respect of unauthorised development.

What is not a breach of planning control?

2.8 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

2.8.1 on street parking is a matter for regulation under the Highways Acts

2.8.2 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

2.8.3 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.

2.8.4 land and boundary disputes between neighbours – these are civil matters and the Council cannot get involved. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau.

2.8.5 safety of a structure – this is within the remit of our Building Control Department. They can be contacted on 01483 743659 or buildingcontrol@woking.gov.uk

2.8.6 fly tipping

2.8.7 noise /smell complaints – this is within the remit of the Council's Environmental Health Department. They may be contacted on 01483 743664 or environmentalhealth@woking.gov.uk

3. Investigating an alleged breach of planning control

How to make a complaint

3.1 Complaints must be made in writing or by email. Anonymous complaints will not be pursued.

Complaints can be made in one of the following ways:

By email at planningenforcement@woking.gov.uk

By letter to Planning Enforcement, Woking Borough Council, Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL

3.2 It is important that we have your full details including name, address, telephone number in order that we can contact you to inform you of the progress of the investigation or to seek additional information from you.

3.3 All enforcement complaints will be registered on our database with an enforcement reference number to ensure each complaint is monitored and the complainant updated on progress.

3.4 The complainant's identity will not be disclosed and comments made will be treated confidentially.

Timescales

3.5 Your complaint will be acknowledged within 7 days of receipt.

3.6 A site visit (if required) will be undertaken within 14 days of receipt of notification of the complaint. There will be exceptions to this, for instance in urgent matters such as the demolition of a listed building or works to a protected tree where a site visit will be undertaken within 2 days of receipt of the complaint, or quicker if necessary. The timescales allow officers to carry out the required level of investigation, often before a site inspection is undertaken.

3.7 The Local Planning Authority has achieved these targets in 100 percent of cases for the past 4 years.

3.8 Once a site visit has been undertaken our findings will be assessed and a view taken as to whether a breach of planning control has taken place. If necessary a view will also be taken on how to proceed with the investigation which may include taking advice from the Head of Democratic and Legal Services. The complainant will be updated within 14 working days of carrying out a site inspection as to what action will be taken and the reasons why.

No breach of planning control

3.9 A large number of complaints are closed and no further action taken because a breach of planning control has not occurred. This can transpire for many reasons such as:-

3.9.1 the development benefits from Permitted Development by virtue to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and therefore planning consent is not required

3.9.2 there is no evidence of a breach

3.9.3 planning permission has already been granted

Where there is a breach of planning control

3.10 Planning enforcement follows three guiding principles. These principles are expediency, proportionality and consistency.

Expediency

3.11 In deciding whether it is expedient or appropriate to take enforcement action the degree of harm that the unauthorised development is causing, or is likely to cause will be carefully considered.

3.12 Harm can arise through a range of factors, for example:

3.12.1 Noise nuisance or disturbance from a business operation

3.12.2 Danger and disturbance due to significantly increased traffic flows or of residential amenity, for example through loss of privacy or loss of sunlight or daylight

3.12.3 Loss of privacy or overshadowing and loss of natural light

3.12.4 Adverse impact on visual amenity due to poor design or inappropriate materials

3.12.5 Loss of protected trees or loss or damage to protected buildings

3.12.6 Risk of pollution that affects people or the natural environment

3.12.7 Developments that undermine the purpose and credibility of adopted national and local planning policies

3.12.8 Untidy land and run down or derelict buildings that present a very poor quality urban environment and prejudice community safety

3.13 Harm does not include:-

3.13.1 Competition caused to another business

3.13.2 Loss of an individual's view.

3.13.3 Loss of value to a neighbouring property

Proportionality

- 3.14 Where enforcement action is taken it should be proportionate to the seriousness of the harm being caused. Officers will consider the full range of powers available to them which may include negotiation, inviting a retrospective planning application or taking formal enforcement action.
- 3.15 In considering whether to take enforcement action the Council as Local Planning Authority will not give weight, either way, to the fact that development may have commenced
- 3.16 A planning application is the most appropriate way to consider the merits of a proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore reasonable to apply the same approach to development already carried out, and for the Council to encourage retrospective planning applications, where appropriate.
- 3.17 The exception is where the Council considers there is no real prospect of planning consent being granted. In such cases the Council will proceed to enforcement action as a matter of course. However, the developer still has a right to apply for planning permission and if they do, enforcement action may be suspended pending the determination of a retrospective planning application. In all cases, the Council will consider the development itself and not how it came about.

Consistency

- 3.18 Officers will carry out their duties in a fair, equitable and consistent manner. Whilst each matter will be considered on its individual merits there will be a consistent approach to enforcement action against breaches of similar circumstance.
- 3.19 This means taking a similar approach to similar circumstances to achieve similar outcomes. It does not imply uniformity; rather a full and proper consideration of all the circumstances of a case, guided by the council's adopted policies and priorities, to establish what reasonable and adequate requirements will remedy the breach.
- 3.20 Whilst each case will be judged on its individual merits there may be some cases where it is not considered expedient for the Council to take enforcement action. These may include:
- 3.20.1 development has taken place but a retrospective planning application or certificate of lawfulness has been sought and is likely to be granted. In this event enforcement action will not be taken until the application is determined. If an application is not made formal enforcement action may not be taken and the development will remain unauthorised.
- 3.20.2 where a fence is up to 10cm higher than allowed under Permitted Development and the visual amenity or character of the area is not affected.
- 3.20.3 where the development or use is immune from enforcement action (either 4 or 10 years).
- 3.20.4 no material harm has resulted and action is not in the public interest.

Further investigation necessary

- 3.21 It may be the case that the initial site visit does not provide sufficient evidence to demonstrate a breach of planning control has taken place.
- 3.22 In such cases further investigation may involve additional site inspections, research, seeking advice from other agencies or seeking information from the complainant or owner of the property.
- 3.23 A complainant may be asked to complete detailed log sheets for a period of one month recording activity witnessed. This will establish a pattern of activity to enable a Council Officer to witness the same. If the complainant is unwilling to assist or fails to return completed log sheets the Council may not be able to pursue the investigation due to lack of evidence.
- 3.24 The Council may consider the issue of a Planning Contravention Notice to obtain information from the owner about the alleged breach of planning control. It can take several weeks until the notice has been drafted, issued and time taken for the owner to respond to such a notice (normally 21 days).

4. Tools available to enforce breaches of planning control

- 4.1 In addition to the investigative powers outlined below, Officers also have power to enter land, specifically for enforcement purposes. This right is limited to what is regarded as necessary, in the particular circumstances, for
 - 4.1.1 effective enforcement of planning control. A notice period of 24 hours, however, is required before entry can be demanded to a dwellinghouse. Prior notice is not required for access to domestic outbuildings or garden land.
- 4.2 The following section refers to types of formal enforcement action which may be taken by the Local Planning Authority in order to require a particular use or development to cease or for works to be removed or modified.

Planning Contravention Notice

- 4.3 A Planning Contravention Notice may be issued by virtue to section 171C of the Town and Country Planning Act 1990 (as amended). The notice may be served on the owner or occupier of land where there is a suspected breach of planning control.
- 4.4 There is no right of appeal against a Planning Contravention Notice.
- 4.5 The notice requires the receiver to provide the information requested within the notice within 21 days. It is an offence to fail to comply with a Planning Contravention Notice for which the receiver may be prosecuted on conviction with a maximum fine of £1000 or to knowingly provide false information on a Planning Contravention Notice which can result in a fine up to £5000 on conviction.

Enforcement Notice

- 4.6 An Enforcement Notice may be issued by virtue of section 172 of the Town and Country Planning Act 1990 (as amended) where unauthorised operational development or a change of use has taken place and it is considered expedient to do so. Officers do not have delegated authority to issue an Enforcement Notice. Some delay may therefore be acquired whilst a report is prepared and presented to the Planning Committee seeking authority to issue an Enforcement Notice. The Planning Committee may resolve not to follow the officer's recommendation and resolve not to take formal enforcement action.
- 4.7 The Enforcement Notice will specify the steps required or activities to cease in order to remedy the breach of planning control and the period of time by which this must be done
- 4.8 The notice comes into effect after a minimum period of 28 days following service. There is a statutory right of appeal against the notice to the Planning Inspectorate during this period. If a valid appeal is made, the enforcement notice no longer takes effect until the appeal has been determined.
- 4.9 There are 7 grounds of appeal against an Enforcement Notice:-
 - 4.9.1 planning permission should be granted for what is alleged in the notice
 - 4.9.2 a breach has not occurred as a matter of fact
 - 4.9.3 that there has not been a breach of planning control
 - 4.9.4 at the time the enforcement notice was issued it was too late to take action
 - 4.9.5 the notice was not served properly

4.9.6 the steps required in the notice as excessive

4.9.7 the time given in the notice is too short.

4.10 Failure to comply with an Enforcement Notice is a criminal offence. A person shall be liable on summary conviction to a fine not exceeding £20,000 and on conviction on indictment, to a fine (not limited). The notice is registered as a Local Land Charge entry and will show up on any local authority search. These searches are usually undertaken during conveyancing in the business of buying, selling and re-mortgaging property.

Breach of Condition Notice

4.11 Generally there are two 'types' of planning condition, those that require details to be submitted and agreed in advance of development beginning or a building being occupied and those that will apply for the lifetime of the development. For new residential development it can result in complications upon sale if it is not possible to show that the Local Planning Authority has formally received and agreed details pursuant to conditions and that the development has been carried out only in compliance with the agreed details. The Local Planning Authority has an expectation that development will be carried out in line with the planning consent that has been granted.

4.12 A Breach of Condition Notice may be issued by virtue to section 187A of the Town and Country Planning Act 1990 (as amended) if it is considered appropriate to do so. The Head of Democratic and Legal Services has delegated powers to issue a Breach of Condition Notice.

4.13 The notice can be used to secure compliance with planning conditions and take effect not less than 28 days after service. It must specify the steps to be taken to secure compliance with the specified condition and the period allowed for compliance. This could include the submission of further details for the Local Planning Authority to consider and determine whether they are acceptable or otherwise.

4.14 There is no right of appeal to the Secretary of State against a Breach of Condition Notice. If you wish to contest the validity of the Notice, you may only do so by way of application to the High Court for Judicial Review. Failure to comply with the notice is a summary offence in the Magistrates Court carrying a maximum fine of £2500 for each offence which may be considered on a daily basis.

Temporary Stop Notice

4.15 A Temporary Stop Notice may be issued by virtue of section 171E of the Town and Country Planning Act 1990 (as amended).

4.16 This is used where there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area that the activity that amounts to a breach should stop immediately. This notice differs from the normal stop notice powers because it does not have to wait for an Enforcement Notice to be issued. The effect of the Temporary Stop Notice is immediate and prohibits the activity that is in breach and can be served on any person carrying out the activity and must be displayed on the site. The notice is only in effect for 28 days during which time the Local Planning Authority have to decide whether it is appropriate to issue an Enforcement Notice.

4.17 A Temporary Stop Notice is typically issued when there is irreversible damage being caused such as the demolition of a listed building or removal of a protected tree.

Stop Notice

- 4.18 A Stop Notice may be issued by virtue of section 183 of the Town and Country Planning Act 1990 (as amended). A Stop Notice can only be served on land where an Enforcement Notice has been issued. The notice prohibits activity taking place on the land, but cannot be used to stop the use of any building as a dwelling. There is a risk to the Council being liable to pay compensation if the Enforcement Notice is quashed on appeal or has to be withdrawn.

Section 215 Notice

- 4.19 This notice commonly referred to as an untidy land notice may be issued by virtue of section 215 of the Town and Country Planning Act 1990 (as amended). The notice requires land (which may include buildings) to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The notice must specify the steps that the landowner must take in order to make the land tidy such as clearing rubbish or overgrown vegetation.
- 4.20 The notice takes effect after 28 days after service during which time an appeal can be made to the Magistrates Court. In the event the notice is not complied with the Council can enter the land and carry out the steps in default.

5. Formal action – failure to comply with notices

- 5.1 Where one of the above notices has been served and not complied with there are three main options available to the Council. These include:-

Prosecution

- 5.2 Prior to instigating prosecution proceedings the Council needs to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Direct action

- 5.3 In the event of non compliance with an enforcement notice or section 215 notice the Council has powers by virtue of section 178 or section 219 of the Town and Country Planning Act 1990 (as amended) to exercise its powers to enter land and take steps to remedy the harm. The Council is also entitled to recover from the landowner any expenses incurred as a result of carrying out the direct action and will seek to do so.
- 5.4 In almost all cases the Council will seek to prosecute the owner for failing to comply with a notice before taking direct action.

Injunction

- 5.5 The Council may apply to the Court for an injunction by virtue of section 187B of the Town and Country Planning Act 1990 (as amended). The injunction may for example require the landowner to cease an unauthorised activity/use or remove unauthorised development.

6. Time limits

- 6.1 Time limits for taking formal action are set out at section 171B of the Town and Country Planning Act 1990 (as amended).
- 6.2 Serving a Breach of Condition or Enforcement Notice stops the clock in relation to these time limits. If the Council is of the view that a breach may be close to the relevant time limit it may seek urgent enforcement action to prevent the development becoming immune from action.

Operational development

- 6.3 The Council cannot issue a notice after 4 years from the commencement of the breach where the breach of planning control relates to operational development such as extensions, new buildings, hardstandings and change of use of a building to a single residential dwellinghouse.
- 6.4 After this period the Council cannot take action and the development becomes lawful. The landowner can apply for a Certificate of Existing Lawful Development after this period if they have clear evidence to regularise the matter.

Change of Use

- 6.5 The Council cannot issue a notice after 10 years from the commencement of the breach where the breach of planning control relates to a change of use of a building. However, if the building relates to a change of use to a single residential dwellinghouse the period is 4 years and not 10. A property used as a house in multiple occupation has to demonstrate 10 years continuous use and not 4 years as with a single residential dwellinghouse.
- 6.6 After this period the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Existing Lawful Use after this period if they have clear evidence to regularise the matter.

Breach of Condition

- 6.7 The Council cannot issue a notice after 10 years from the commencement of the breach of condition.

Deliberately concealed breaches

- 6.8 The Localism Act 2011 has now introduced a new enforcement power relating to time limits. The Local Planning Authority can now take action against concealed breaches of planning control even after the usual time limit for enforcement action has expired.
- 6.9 Within 6 months of a breach coming to the attention of the Council it may apply to the Magistrates Court for a Planning Enforcement Order. If granted, the order allows the Council an Enforcement Year to take enforcement action. The court must be satisfied that on the balance of probabilities, the apparent breach or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person and that it is just to make the Order having regard to all the circumstances

7. Advertisements

- 7.1 The primary legislation for advertisement is set out in the Town and Country Planning (Control of Advertisement) Regulations 2007.
- 7.2 The display of an advert without the benefit of deemed or express consent is an offence. The Local Planning Authority therefore has the power to instigate prosecution proceedings without the need to issue a notice.
- 7.3 Where an unlawful advertisement has been identified the offender will normally be given an opportunity to remove the advertisement voluntarily. In the event they fail to do so direct action will be taken to remove the offending advertisement and the offender invoiced for the costs incurred in removing the same. Repeat offenders will be prosecuted without further notice.
- 7.4 Any person displaying an advertisement in contravention of the Regulations is currently liable upon summary conviction to a maximum fine of £2,500 and, in the case of a continuing offence, £250 for each day thereafter.
- 7.5 The Localism Act 2011 has now introduced a new enforcement power relating to the removal of unlawful advertisements. These include:-

Removal Notice

- 7.6 The Council has the power to seek removal of any structure (including vehicles, trailers etc) used to display an advertisement. There is a right of appeal against the notice to the Magistrates Court. In the event the notice is not complied with the Council may undertake the works in default and recover the expenses for doing so.

Action Notice

- 7.7 The Council has the power to serve an action notice on the owner or occupier where they believe there is a persistent problem with the display of unlawful advertisements on the surface of a structure (such as a wall/ building or fence). There is a right of appeal against the notice to the Magistrates Court. In the event the notice is not complied with the Council may undertake the works in default and recover the expenses for doing so.

Power to remedy defacement of surfaces

- 7.8 Where there is an advertisement readily visible from somewhere the public have access, which the Council considers to be offensive or detrimental to the amenity of the area, the Council has the power to serve a notice giving the occupier a timescale for its removal. In the event the notice is not complied with the Council may undertake the works in default and recover the expenses for doing so.

8. Conclusion

- 8.1 This plan provides a clear statement of what can be expected from the Council's planning enforcement service. In accordance with Government advice the taking of enforcement action should always be commensurate with the breach of planning control to which it relates. It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site or if a retrospective planning application is likely to be granted.
- 8.2 If the Council decides to exercise their discretion not to take formal enforcement action following a complaint then it will be prepared to explain its reasons to any person or organisation.
- 8.3 If the Council is not the responsible authority for dealing with the matter then it will endeavour to either direct the complainant to the appropriate agency or liaise with the relevant bodies for further advice.