

# BOURNEMOUTH, CHRISTCHURCH & POOLE COUNCIL

## Planning Enforcement Plan

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## **1.0 INTRODUCTION**

- 1.1 This plan sets out the Local Planning Authority's (LPA) procedures for enforcing planning control using enforcement powers contained within The Town & Country Planning Act 1990 and associated relevant legislation and regulations. It is a guide for those who are concerned planning rules have been broken i.e. a breach of planning control may have taken place and wish to know what steps the LPA can take and the timescales involved in resolving any proven such breach.
- 1.2 The Government and LPA recognise the importance of an effective planning enforcement function and, therefore, the LPA has a planning enforcement team responsible for investigating alleged breaches of planning control.
- 1.3 Government Guidance relating to planning matters can be found in the National Planning Policy Framework (NPPF) the relevant section of which states:

*“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”.*

### **1.4 Common examples of breaches of planning control**

- Unauthorised development - construction of a building on land without the benefit of planning permission
- Unauthorised change of use of a building or land
- Conditions of a planning permission are not being met
- A building is not being constructed in accordance with the details of the planning permission
- A piece of land or building has become an unacceptable eyesore
- Adverts displayed without consent
- Damage or destruction of a listed building
- Damage or destruction of a tree(s) subject to a Tree Preservation Order
- A tree in a Conservation Area is being felled/pruned without approval.

### **1.5 Examples of matters which are not a breach of planning control**

- Boundary disputes
- Breaches of covenants
- Neighbour disputes
- Construction Noise (Environmental Health - unless covered by a planning condition)
- Parking problems (unless covered by a planning condition)

In the first four examples, the LPA have no legal jurisdiction and parties are advised to seek advice from a solicitor or Citizens Advice.

- 1.6 Further guidance can be found in the national Planning Practice Guidance (PPG) (available online only) within the section entitled “Ensuring Effective Enforcement”. This guidance is regularly updated to reflect changes in legislation and the outcome of appeals and court cases. It amplifies some of the detail within this Enforcement Plan. (<https://www.gov.uk/guidance/ensuring-effective-enforcement> )

## 2.0 RELEVANT LEGISLATION

- 2.1 The Town & Country Planning Act 1990 (as amended) (The “Act”) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) underpin the planning process and provide almost all of the enforcement powers at an LPA’s disposal. With regard to formal action, Section 172 of the Act specifies that:

*“The local planning authority may issue a notice..... where it appears to them:*

*(a) that there has been a breach of planning control; and*

*(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations”.*

- 2.2 When deciding whether it is **expedient** to take formal action, the LPA should clearly identify the breach of planning control and consider whether there is material harm caused or any significant adverse impact on the amenity of the site or the surrounding area **in planning terms**.
- 2.3 It should be noted it is not reasonable to take action if the breach of planning control is acceptable on its planning merits or solely as a mechanism to regularise the development.
- 2.4 The carrying out of works or making a change of use without planning permission is not generally a criminal offence. The Act enables people who have carried out unauthorised development to apply for ‘retrospective planning permission’ in an attempt to regularise matters. In dealing with such applications, the LPA must consider them in exactly the same way as any other application, i.e. the fact the development has already been carried out is not something that can be taken into account in the determination of such an application.

## 3. GUIDING PRINCIPLES OF PLANNING ENFORCEMENT

### Expediency

- 3.1 Planning Enforcement is a discretionary power. It is, therefore, a matter for the LPA to decide whether it is expedient and in the public interest to consider enforcement action to regularise or rectify a breach of planning control. In all cases there is a

need to carefully evaluate the potential harm of the unauthorised development taking account of the relevant development management policies and national planning policy guidance. In many instances, breaches of planning control can be resolved by informal negotiation or the submission and approval of a planning application, negating the need to issue formal notices.

### **Proportionality**

- 3.2 Enforcement action should always be commensurate with the breach of planning control to which it relates and should not be taken solely to regularise development which is otherwise acceptable on its planning merits. In many instances, following LPA intervention land owners recognise the benefit of regularising / rectifying breaches to avoid future difficulties with their insurers, building control, property sales and associated legal enquiries.

### **Negotiation**

- 3.3 Some breaches of planning control where harm exists can be resolved through negotiation in the first instance.

Negotiations aim to achieve one or more of the following:

- Secure compliance with the approved planning permission or planning conditions
- Secure a retrospective planning permission for the unauthorised development or use
- Modify the unauthorised development to make it compliant
- Remove the unauthorised structure or building or cease the unauthorised use.

## **4.0 ENFORCING PLANNING CONTROL**

- 4.1 LPAs receive a significant number of allegations concerning breaches of planning control. To maximise resources, reports of suspected breaches are screened and prioritised according to the degree of seriousness. Some reported breaches do not fall under planning controls and are better dealt with by other Council departments such as Environmental Health, Transportation, Housing and other community based services.

- 4.2 In managing alleged planning contraventions, a reported case will be categorised and prioritised as detailed below:

	<b>PRIORITY CATEGORIES</b>	<b>DESCRIPTION</b>
<b>A</b>	<b>High Priority</b>	<ul style="list-style-type: none"> <li>• Damage or destruction to listed buildings</li> <li>• Damage or destruction to protected trees</li> <li>• Unauthorised development or changes of use having a significant impact on the well being of residents or the environment</li> </ul>
<b>B</b>	<b>Medium Priority</b>	<ul style="list-style-type: none"> <li>• Breaches of planning conditions</li> <li>• Unauthorised development</li> <li>• Unauthorised change of use</li> </ul>
<b>C</b>	<b>Low Priority</b>	<ul style="list-style-type: none"> <li>• Untidy land</li> <li>• Breaches of the advertisement regulations</li> <li>• Minor non-compliance matters</li> </ul>

4.3 Generally reported cases will start to be investigated within the time limits stipulated below. However, this commitment will be dependent on resources and priorities available at the time of receipt.

<b>A</b>	<b>High Priority</b>	Within 4 hours during office hours or the next working day
<b>B</b>	<b>Medium Priority</b>	Within 5 working days of receipt
<b>C</b>	<b>Low Priority</b>	Within 10 working days receipt

## 5.0 REPORTING A BREACH OF PLANNING CONTROL

5.1 To report a suspected breach of planning control you can:

- Complete the on-line contravention form
- Phone customer services
- Write to us

5.2 When reporting a suspected breach of planning control, it is helpful if you can provide as much information as possible. For example:

- Full postal address of the location of the breach (essential)
- Your contact details including e-mail and mobile telephone number as we may text you (essential)
- Any planning reference numbers such as the application number or planning condition number relevant to your concern
- Provide as many details as possible about the alleged breach; be precise and explain what the harm or issue is (essential)
- Photographs or other evidence for example, adverts, e-bay, Gumtree etc.

Please note we will not normally investigate anonymous reports of a breach of planning control or those which are considered to be malicious

- 5.3 The LPA can only use its enforcement powers effectively if there is sufficient evidence to demonstrate clearly a breach of planning control has occurred. Therefore, in reporting a suspected breach of planning control, it is important to provide as much detail as possible. Whilst rare, there are some cases for which the LPA may require supporting or witness statements to support any formal action which may be taken. In these situations anonymity cannot be guaranteed.

## **6.0 CRIMINAL CASES**

- 6.1 Wilful damage to listed buildings or protected trees is a criminal offence. In the first instance, we ask you to call in to Customer Services on the relevant number above to report any such works being undertaken. If you can, take photographs and registration numbers of any vehicles you think are involved. A description of the suspects is always helpful. But do not put yourself in danger. In these instances, an officer will call you back and discuss the incident you have witnessed and take appropriate action.

## **7.0 ENFORCEMENT INVESTIGATION**

- 7.1 Following the receipt of a completed contravention form (see section 5), the case will be allocated to an appropriate case officer for investigation. The case officer will:
- carry out a desk-top evaluation to establish the relevant planning/enforcement history
  - where appropriate, undertake a site visit
  - establish whether there is a breach of planning control.
- 7.2 Where a breach is confirmed, the case officer will:
- evaluate the issues and establish the degree of harm being caused
  - determine the most appropriate enforcement remedy.
- 7.3 Remedies can range from informal negotiation, the submission and approval of a planning application or formal enforcement action under the Town & Country Planning Act 1990 or related legislation/regulations.

## **8.0 INVESTIGATION TIME CONSTRAINTS**

- 8.1 It is acknowledged it can be frustrating that, despite contacting the LPA, the issue persists for some time after your initial contact.

- 8.2 Some investigations can be simple, others more complicated and time consuming as we have to research the planning history and/or gather evidence through the service of Legal Notices which are subject to statutory time limits for the provision of a response.
- 8.3 A site owner/operator has the right to submit a retrospective application which must be dealt with under the normal planning application process and is subject to the notifications, consultations and statutory time limits associated with the determination process. Determining an application will take a minimum of eight weeks. If an application submitted to regularise a planning breach is refused, the applicant has the right to appeal the planning decision and it is rarely considered appropriate to commence formal action until the outcome of the appeal is known. Appeals can take a year or more to be determined.
- 8.4 We will endeavour to keep involved parties informed and updated on the progress of the investigation.

## **9.0 DATA PROTECTION**

- 9.1 All complaints are treated with the strictest confidence. During the course of an investigation we may seek the assistance of other Council departments or external agencies to corroborate or verify information. Any information we receive or hold is managed in accordance with the Council's published Data Protection policy.