



Planning Enforcement

Enforcement Policy

Note: It is beyond the scope of this document to specify whether planning permission is needed or not for any given development. There are national and local sources on line to help with that.

On our website go to

<http://www.bournemouth.gov.uk/PlanningBuilding/DoIneedplanningpermission/DoYouneedplanningpermission.aspx> for local guidance on whether planning permission is needed.

1. Introduction to Planning Enforcement

- 1.1. The work of Planning Enforcement is linked with national planning laws, which are largely realised at a local council level. Some, but not all building work and development that takes place in Bournemouth needs planning permission from Bournemouth Borough Council.
- 1.2. Planning Enforcement helps the Council to monitor these rules and ensure compliance where expedient. For example, looking into a case where a development has been started or completed without first obtaining the needed planning consent. Or looking into a case where consent has been granted, but the development is different to that specified in the consent.
- 1.3. There are other matters that Planning Enforcement has powers to look into, all related to what is termed a “breach of control” under planning law. For example:
 - Unauthorised work to buildings listed as being of special architectural or historic interest.
 - Unauthorised demolition of certain buildings within a Conservation Area.
 - Unauthorised display of advertisements.

The Council’s Customer Centre can provide further advice if required, on request, to explain what powers exist in these areas.

1.4. Meaning of “expedient”.

Throughout this document references are made to “expedient” and “expediency”. This has a specific meaning within planning control. When deciding whether or not to take enforcement action the Council has to decide whether or not it is **expedient** to do so (section 172(1)(b) of the Town and Country Planning Act 1990). Enforcement action should be considered where there is harm, the key test being whether the breach of planning control would unacceptably affect public amenity.

To help decide this, the important consideration is whether planning permission would have been granted had there been a planning application covering the matter under consideration. The starting point is our local planning policy.

Enforcement action should always be commensurate with the breach of planning control to which it relates. It will not normally be “expedient” to take formal enforcement action against a trivial or technical breach of control which causes no significant harm to amenity.

2. Scope of this document

2.1. This document relates entirely to the role of planning enforcement in ensuring compliance with the planning controls for which the Council is responsible. It does not relate to other enforcement activities carried out by the Council, nor to the wider planning processes involved with the obtaining of planning consent. However, the various enforcement functions of the Council do operate in a coordinated manner to ensure that the most appropriate form of enforcement action is used. For further information on these other activities, see our website www.bournemouth.gov.uk, search under ‘planning’ and ‘enforcement’.

3. Linked documents to be read with this policy

3.1. Planning Enforcement is an enforcement activity carried out by Bournemouth Borough Council. It is one of several enforcement activities delegated to the Council by various national laws. Other examples include the work of local Environmental Health and Trading Standards Officers. An overall generic policy covers all enforcement work carried out by the council, and should be read with this document. It can be found on our website at: <http://www.bournemouth.gov.uk/Business/Documents/EnforcementPolicy.pdf>

3.2. The general principles of the above-mentioned policy – for example section 8 of that document, relating to compliance and enforcement actions, including our prosecution policy - are amplified where necessary in this document, by providing information specific to Planning Enforcement.

3.3. Policies and practices relating to the operation of the overall planning service in Bournemouth are linked to the operation of Planning Enforcement. They will be taken into account where appropriate in assigning priorities to any enforcement actions. For example, the priority given to any breach of control with serious adverse impact on key areas, as detailed in our local plan documents. These wider planning policy documents are all referenced on our website at: <http://www.bournemouth.gov.uk/PlanningBuilding/ApplyingforPlanningPermission/PlanningPolicy.aspx>

3.4. There is detailed Government guidance on Planning Enforcement, which further amplifies some of the detail in this local policy, and can be found at <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

4. The need for compliance

4.1. Planning laws are designed to control development, the use of land and the use of buildings. This is in the general public interest, to prevent harm and to protect the environment. These laws are not intended to address the individual interests of one person against the activities of another. There may be civil remedies, outside of the council’s remit, available to private individuals and businesses, where needed to address individual rights.

4.2. Planning Enforcement is not specified in law as a statutory function of local councils. However, in order for planning laws to be effective, they must be seen to have some enforcement capability. Enforcement is vital where expedient so that any abuses of the system are addressed, and that the system does not fall into disrepute. The council needs

to fulfil its wider statutory role as a planning authority and prevent unbridled development, with harmful consequences for local people and the environment.

5. Planning enforcement action – legal scope

- 5.1. Legislation, principally the Town and Country Planning Act 1990, provides scope for councils to take action where expedient against breaches of planning legislation. The legislation provides powers to serve certain formal notices (such as planning enforcement notices) on those found to be breaching planning controls. These notices may specify timescales and requirements for remedy, with the possibility of criminal offences being committed should the notice be ignored and the breach remain.
- 5.2. As is usual with any legislation introducing formal notices having legal effect, there is also a mechanism for appeal of such notices, the full details of which are beyond the scope of this document. However, it is both required and standard practice for information on any right of appeal to be provided at the time when a formal notice is served.
- 5.3. Ultimately, the council may prosecute a person or company breaching planning controls, and may also have powers to intervene and rectify the matter, if the offender won't themselves comply with a notice. But the majority of matters, investigated because the Council considers it expedient to do so, are usually resolved before they reach this stage (see further details below).
- 5.4. The legal framework of planning controls is detailed in various national policy guidance documents – refer to <http://planningguidance.planningportal.gov.uk/>

6. Bournemouth's service priorities

- 6.1. The council has limited resources at its disposal which are used in the most efficient way in relation to planning enforcement. Broadly, our priorities may be summarised as:
- 6.2. **High Priority:** Significant harm - for example, an unauthorised development which is causing immediate or irreparable harm, such as the erection of a main building without permission.

Example, High Priority: Mrs. C contacted the council with concerns about apparent demolition work in and around a "listed" church building. The church was unused and in a poor state of repair but was a key feature in the local conservation area. Officers were able to visit the site and establish that the workmen had been instructed to clear the ground but had already damaged some parts of the church building with their equipment. Although work was halted after the intervention of Planning Enforcement, we were not confident that our concerns had been fully understood. After discussion with the council's Legal team, we issued a Temporary Stop Notice which had immediate effect and safeguarded the building.

- 6.3. **Medium Priority:** Some harm - for example, unauthorised development which causes some harm to the locality in terms of loss of amenity or unauthorised uses of existing buildings.

Example, Medium Priority: Mr. L reported that his new ground-floor neighbour Mr. M had started to build an extension to the building they shared, but which was divided into flats. No planning application had been made as far as Mr L could determine. We found that there had been no planning approval, and that Mr. M couldn't benefit from "permitted development" rights applicable to some detached houses. We contacted Mr. M and got work to cease, as well as issuing a notice to secure the situation. No-one else locally was affected. Mr. M subsequently scaled-down his build ideas and addressed Mr L's concerns before formally requesting planning approval.

- 6.4. **Low Priority:** Little to no harm - for example minor breaches such as fences or outbuildings marginally in excess of approved tolerances, having no significant impact on the amenities of local residents.

Example, Low Priority: Mrs. X contacted Planning Enforcement to complain that her neighbour was watching her garden from his bedroom window and that he had replaced the old garden fence with something she felt was too high. We ascertained that the fence was appropriate and that no change had been made to the house. However, we were able to direct Mrs. X to agencies that could address her concerns about her neighbour.

- 6.5. A flow chart, showing the typical flow of processes in the determination, and where expedient, the investigation of planning enforcement offences, is reproduced in **Appendix 1** of this document. Note that this represents the typical flow of actions but it is not possible to encompass every possible scenario in a document of this kind. Where exceptions are necessary, they will be agreed with the service manager.

7. Bournemouth's service standards

- 7.1. See section 10 of our general Enforcement Policy - Service Standards. <http://www.bournemouth.gov.uk/Business/Documents/EnforcementPolicy.pdf> which is written as relating to businesses but to be interpreted (ref paragraph 2.3 of that document) as applying to private individuals wherever the context is appropriate.
- 7.2. In some cases, it is appropriate to advise the person or business in breach of planning control to apply for retrospective planning permission. While any such application is being submitted within an agreed timescale and/or considered by the planning authority, Planning Enforcement will not take further action. However, if consent is refused, the case will return to Planning Enforcement for action if the infringement is not in the meantime rectified. For the avoidance of doubt legislation allows for the submission of retrospective applications, and where permission is granted it can enable the Council to exercise control over the development by the imposition of planning conditions.
- 7.3. When an appeal has been received against a planning enforcement notice, we will not normally take any further enforcement action until the appeal has been determined.
- 7.4. Where a planning enforcement notice is properly served and not appealed, the council will not entertain any subsequent complaint relating to the existence or contents of the notice, or disputing the circumstances that caused service of the notice. This is because the appropriate recourse for complaint, when a notice is served, is through the statutory appeal mechanism, not through making a complaint to the council. A notice that hasn't been appealed is deemed in law to have effect, and no later complaint or appeal is possible.
- 7.5. Planning enforcement will prioritise cases in accordance with section 6 above. This means that we do not investigate every case, but those with high or medium priority are usually identified for further action if it is considered expedient.
- 7.6. Apart from the considerations detailed in paragraph 7.4 above, we will receive and address promptly any complaint about the service or our officers, in accordance with the Council's complaints policy <http://www.bournemouth.gov.uk/ContactUs/CommentsandComplaints/CommentsandComplaints.aspx>

8. Monitoring for planning compliance

- 8.1. Monitoring for planning compliance will be carried out on a selective basis. It is the responsibility of the developer to comply with the terms of a planning permission, and where development does not conform this will cause a developer potentially serious consequences when it comes to trying to sell an unauthorised development.
- 8.2. Planning Enforcement does not have the resources to check every planning permission for compliance during and after construction.
- 8.3. In cases, for example where past experience indicates that a breach of planning control could happen or is likely, or when planning officers have some concerns about the practical realisation of plans, then officers will, monitor a development as appropriate.
- 8.4. Planning Enforcement will undertake selective monitoring from time to time where it is evident that a cumulative impact is occurring.

9. Complaints about alleged planning breaches

- 9.1. The main activity of Planning Enforcement involves looking into complaints about alleged planning breaches.
- 9.2. We aim to determine and to advise the complainant, within 21 days of being in receipt of a detailed complaint form (see para. 9.5 below) whether it is expedient to pursue an investigation into any alleged breach.
- 9.3. Planning Enforcement investigations can be very complex or relatively simple. As such, there is no standard time for an investigation to be completed, but statutory timescales (on appeal periods etc.) must be observed. We will not only provide an update by day 21 but will endeavour to keep involved parties informed where appropriate. Please note that resources do not allow for regular and ongoing updates.
- 9.4. Anyone may make a complaint but not all are investigated, for reasons explained in paragraph 7.4.
- 9.5. A complaints form is available on request or via our website. We require the details outlined on the form to be supplied. Unless urgent e.g. a high priority case, we ask that a complaint is made using the form, and in writing – email is acceptable.
- 9.6. We will not pass on the complainant's details without consent during our investigation. However, if the complainant has already made themselves known to the person or business against whom the complaint is made, it is quite likely that they will accurately guess the identity – for example they might be a neighbour. In that situation we will not confirm the complainant's identity, unless the complainant gives their permission.
- 9.7. Generally, we do not accept complaints made on an anonymous basis, since without details of the complainant we cannot demonstrate how the alleged breach affects local residents. Consequently, they will only be considered at our discretion, for example if the information corroborates other information already received.
- 9.8. We may need to ask the complainant for a witness statement to document the dates and times of the alleged infringements. In more serious infringements, we may also ask the complainant to make themselves available as a witness in a court or other hearing. In this situation, anonymity from the alleged offender clearly cannot be guaranteed. So before making a complaint, it is important that complainants consider their willingness to provide

evidence in this way. Cases cannot proceed without the necessary evidence, and there are times when the support of a complaint witness is vital.

9.9. Complaints are prioritised for investigation as described in section 6 above. The overriding factors are potential harm to public amenity, and environmental. Please also note paragraph 4.1 above. Planning Enforcement does not act on behalf of any individual or company, rather the activity is for the general public good. Naturally, sometimes the outcome will coincide with the wishes of a complaint, but this is not to be confused with the original cause of action.

9.10. We will inform the complainant of the conclusion of the investigation in accordance with our service standards above, and we will advise where planning law is not applicable to the specifics of the complaint.

9.11. There may be remedies at civil law. The planning enforcement team will not deal with matters covered by civil law. Complainants should seek independent legal advice where an issue is not actionable by us, or is not deemed to meet our threshold for action, or where our action seems unlikely to produce an outcome coinciding with the complainant's wishes.

10. Enforcement action – what to expect if you are deemed responsible for an alleged planning breach

10.1. The Council reserves the right to take immediate legal and other intervention in respect of serious breaches, or to prevent a prospective serious breach taking place. Occasionally a case occurs which is clearly a deliberate and flagrant disregard for all planning controls, causing serious harm, which must be responded to swiftly and firmly. In such a case it is possible for example that the total demolition of a major new building structure could be required, coupled with restoration of the site to the situation that pertained before the structure existed. In addition, costs could be awarded against the offender, who could also be fined a significant sum as a judicial punishment for causing the breach.

10.2. However, the vast majority of breaches are much less serious. Nor are all breaches deliberate, some may occur simply through ignorance, mistake, misunderstanding or miscommunication. Some may be rectified by obtaining retrospective planning permission. Others may require relatively modest adjustments to structures to bring them within scope of consent.

10.3. Our Planning Enforcement officers' principal aims are firstly to verify the existence of any breaches that have been reported to them. Secondly, to determine whether it is expedient to take any formal action or negotiate. If a breach of planning control is identified, to get those matters corrected as soon as possible, bringing the overall situation within planning control. Unless a serious matter, court action is seen as a last resort. Most cases are typically resolved by the person or company responsible for the breach cooperating with us, following the advice given, and rectifying the matter.

10.4. Officers will always give clear advice, intended to be helpful, on what is needed to remedy a breach of control, and the various options available. They may in addition serve a notice, which will also advise on any right of appeal. (see also 5.2 and 7.3 above)

10.5. Officers, although they may be investigating a complaint, do not do so on behalf of the complainant. They are completely impartial in the matter, not 'taking sides' but determining the facts and acting accordingly on behalf of the Council, independently of any complainant. The assessment will always be made on the basis of whether it is expedient to take enforcement action, irrespective of whether a breach of planning control has occurred.

10.6. Once compliance is achieved, then (providing no court action is outstanding) the officer will advise all relevant parties accordingly and close the case file.

11 Provision of advice and guidance

11.1. Although Planning Enforcement in Bournemouth is a small service with limited resources. We can offer advice via the “Do I need Planning Permission” and the “Pre-application Advice” service offered by the Planning Service, both of which attract a charge.

11.2. In particular, we are keen to provide clear and impartial advice to those reporting an alleged planning breach, and, where it is expedient to do so, to those individuals or businesses that are alleged to have caused a breach.

11.3. We are also able to provide compliance checks and certificates of lawful use, which may be useful if an individual or business wants to document that planning control is complied with, for example as evidence to a prospective property purchaser. There are charges for expedited services which are detailed on the Council’s website.

12. Cost of service

12.1. With the exception of the areas mentioned in 11.3, the Planning Enforcement Service is free to the end user, in that it is a service financed through Council Tax.

12.2. There are fees for providing compliance checks and certificates of lawful use, and if the service mentioned in 11.3, there will be charges for that service. Customers will be advised of the details where any charge is applicable, and the matter will not progress without their prior agreement.

How to contact us

Planning Enforcement
Town Hall Annexe
St Stephens Road
Bournemouth
BH2 6EA

Email: planning@bournemouth.gov.uk

Appendix One – Flow Chart of Planning Enforcement Action

Important Notes:

This flowchart must be interpreted together with paragraph 6.5, and all of sections 7, 9 and 10 of the main document, with particular reference to paragraph 9.3 on the timescale of investigations.

If at any point during review of the case the priority is revised, the process flow should then follow that appropriate for the new priority.

We will endeavour to complete the initial assessment within 21 days but where a case is particularly complex or requires monitoring to establish whether a breach on control is taking place this period may be extended. Apparently urgent issues are given high priority

