

# PLANNING ENFORCEMENT POLICY



ROYAL BOROUGH OF  

---

WINDSOR &  
MAIDENHEAD  

---

WWW.RBWM.GOV.UK

**DECEMBER 2018**

## Contents

1.0	The purpose of planning enforcement	Pg 3
2.0	What is, and is not a breach of planning control?	Pg 4
3.0	How the Council decides whether to take enforcement action and possible outcomes	Pg 7
4.0	How the service is delivered	Pg 10
5.0	How the Council prioritises reports	Pg 11
6.0	Reporting an alleged breach of planning control?	Pg 13
7.0	What happens if you are in breach of planning control?	Pg 15
8.0	Customer care	Pg 16
9.0	Contacts and further information	Pg 17

## 1.0 The purpose of planning enforcement

1.1 The integrity of the planning service depends on the Council taking effective enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unauthorised unacceptable development is allowed to proceed, or remain, without any apparent attempt by the Council to intervene.

1.2 Planning Enforcement is limited to managing development under the terms set out in the Town and Country Planning Act 1990 (as amended). Specifically the service can only deal with breaches of planning control as defined in section 171 A of the Act i.e:

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

1.3 The Council realises that it is not always clear when planning permission is required and therefore members of the public are encouraged to make use of the planning portal (<http://www.planningportal.gov.uk>) and the pages titled ‘Do you need planning permission?’. If a definitive answer is needed from the Local Planning Authority (LPA) an applicant can submit a certificate of proposed lawful development to gain a legal decision from the Council. The Council also offers a paid for pre application advice service to improve the quality of an application for planning permission.

## 2.0 What is, and is not a breach of planning control?

2.1 Breaches of planning control that the team are able to investigate include the following:

- Internal and external work to a listed building
- The demolition of buildings within a conservation area
- Works to trees protected by a Tree Preservation Order or trees located within a conservation area.
- The stationing of a caravan or mobile home for use as a primary place of residence
- Breach of conditions related to an extant planning consent
- Development not being built in accordance with the approved plans of a planning permission
- Failure to properly maintain land so that it adversely affects the amenity of an area
- Unauthorised engineering work i.e. a change in ground levels
- The unauthorised display of advertisements

2.2 The team receive a large number of reports that fall beyond the scope of planning control. The table below provides a useful guide to illustrate some of the issues that are commonly reported that are not planning matters.

Permitted Development	<p>Householders and developers have a degree of entitlement for a limited amount of development, without the need for planning permission. This is termed 'permitted development' and is defined in the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) as amended.</p> <p>The GPDO is a Statutory Instrument drawn up by Central Government and providing a development falls within permitted development tolerances it is lawful and beyond the control of the Local Planning Authority.</p>
-----------------------	---

	Further information about permitted development tolerances can be found on the planning portal: <a href="http://www.planningportal.gov.uk/permission/">http://www.planningportal.gov.uk/permission/</a>
Boundary disputes	Disputes regarding land ownership are a private matter and cannot be controlled under planning legislation.
Obstructions to the highway or a public right of way  The parking of commercial or other vehicles on the highway in residential areas or on grass verges	These matters are either controlled by the Police or the Council's Streetcare team who can be contacted using the following webpage <a href="https://www3.rbwm.gov.uk/info/200218/street_care_and_cleaning">https://www3.rbwm.gov.uk/info/200218/street_care_and_cleaning</a>
Trespass on land	This is a private matter and cannot be controlled under planning legislation.
Operating a business from home where the residential use of the dwelling remains the primary use	You do not necessarily need planning permission to operate a business from a home address. The key test is whether the overall character of the dwelling will change as a result of the business i.e is the property still mainly a home or has it become business premises?
Internal work to a non listed building	Internal work to a non listed building does not normally require planning permission. The exception to this rule is internal work that is being carried out to facilitate a change of use i.e converting a single dwelling into separate residential units.
Issues relating to deeds and covenants	Compliance with covenants and other issues relating to deeds are a private matter between the signatories of the documents.
Clearing land of hedges, bushes or undergrowth	The clearing of land of hedges, bushes or undergrowth does not normally require planning permission unless the hedgerow is subject to the Ancient Hedgerows Regulations 1997.  This covers hedgerows which are more than 20 metres long and are on, or adjoining land used for agriculture, or forestry, the breeding or keeping of horses, ponies or donkeys; common land, village greens; Sites of Special Scientific Interest or Local Nature Reserves.

	<p>Garden hedges are not affected.</p> <p>Details can be found at: <a href="https://www.gov.uk/countryside-hedgerows-regulations-and-management">https://www.gov.uk/countryside-hedgerows-regulations-and-management</a></p>
The insertion of windows in houses or bungalows	<p>Once a dwelling has been occupied windows may be inserted into existing walls provided there is not a planning condition to prevent the insertion of additional windows or a restriction set by permitted development rights.</p> <p>N.B Restrictions do not normally relate to ground floor windows.</p>
Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling house.	<p>In most cases caravans are not classified as development and therefore it is only their use that is subject to planning control. Provided the use of a caravan is ancillary to the dwelling house it is lawful.</p>
Noise arising from construction work	<p>Noise arising from construction work would normally be dealt with by the Environmental Protection Team.</p>
The Party Wall Act	<p>The Party Wall Act provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations near neighbouring buildings.</p> <p>The Act is separate from obtaining planning permission or building regulations approval and therefore is beyond the scope of planning control.</p>

### 3.0 How the Council decides whether to take enforcement action and possible outcomes

- 3.1 It is important to understand that the planning enforcement service is discretionary as set out in paragraph 58 of the National Planning Policy Framework (NPPF). The focus of our service is to remedy planning harm and not punish the perpetrator. It is therefore right that people who have breached planning law are given the opportunity to remedy the breach of planning control. This may be through a retrospective planning application or negotiating an acceptable solution in line with national guidance, best practice and planning policies in the development plan.
- 3.2 The LPA has discretion as to whether to take enforcement action or not, it is not a mandatory duty to do so. If a development is in breach of planning control this is not, in itself, sufficient justification for enforcement action. Even when it is possible to take action the Council is required to decide if formal action would be '**expedient**' and in the public interest. As such there needs to be demonstrable harm caused by the breach that is of sufficient detriment to warrant formal action being taken.
- 3.3 Expediency can be defined as a decision making process to establish the appropriateness of formal enforcement action using legislation, government advice, the Local Development Plan, previous planning and appeal decisions and advice from other professionals.
- 3.4 The assessment of expediency is undertaken by the case officer and is reviewed by the Enforcement Team Manager, Head of Planning or Deputy Head of Planning. Council officers have full delegation to make these decisions. Therefore when the Local Planning Authority exercises its discretion and decides not to enforce against a breach of planning control this is entirely in accordance with how the NPPF intends this form of regulation to operate.
- 3.5 The Council starts from a position of trying to resolve all breaches of planning control through dialogue and negotiation, formal action is always a last resort. However, when the breach is causing unacceptable serious harm or nuisance to public amenity, formal action will be taken to remedy any injury to amenity. Enforcement action will therefore always be commensurate with the seriousness of the breach.
- 3.6 When a report of a breach of planning control is received there are a number of potential outcomes. Some of the possible outcomes are detailed below.

#### **No breach of planning control established**

After attending a site the case officer may establish that there has not been a breach of planning control. This could be the case if the development has been built within permitted development tolerances, in accordance with an extant planning permission or if the matter does not fall within the scope of planning control. In these cases no further action will be taken and all interested parties will be notified.

#### **A breach of planning control has been established but it is not expedient to pursue**

In considering expediency the Local Planning Authority (LPA) should consider whether the breach of planning control would unacceptably affect public amenity or the public interest. As a result it is inappropriate to take action against a technical breach of planning control that causes no harm to amenity, for example a boundary wall being erected marginally higher than permitted development tolerances.

In these cases a developer may be invited to submit a retrospective planning application in an attempt to regularise the breach but if an application is not received the case may be closed and the complainant advised.

**A breach of planning control has been identified and only part of it is expedient to pursue**

In these cases officers will attempt to negotiate an acceptable solution in line with national guidance. Alternatively it may 'under enforce' by serving a notice that addresses the most harmful aspects of the development.

**A breach of planning control has been established and it is expedient to enforce**

If negotiation has been unsuccessful, the LPA may take formal enforcement action where it is proportionate to do so. The nature of the breach will inform the method of action taken. Some of the powers available to the LPA are detailed below.

**3.7 Types of formal action**

Breach of condition notice- this notice is issued to require compliance with conditions imposed on a planning application.

Enforcement Notice- An enforcement notice sets out the breach of planning control and the steps that are required to regularise the breach or remedy any injury to amenity resulting from the breach. There is a right of appeal against the notice, which can lengthen the process as the notice does not take effect until the appeal has been determined. On average enforcement appeals take between 40 and 63 weeks to be determined from the receipt of a valid appeal. Following an appeal decision, the period set for compliance within the notice commences from the date of the appeal decision.

Listed Building Enforcement Notice- this notice would be issued to alleviate the effects of any illegal work to a listed property.

Temporary stop notice/ Stop Notice- these notices require unauthorised activities to cease either at three days notice or immediately. They will only be used in circumstances where a breach of planning control is causing serious harm to public amenity.

Section 215 Notice- A S215 notice can be issued to require the proper maintenance of land and buildings where there is an adverse effect on the amenity of the area.

Injunction- An injunction can be obtained from the court if the LPA consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained. The harm must be considerable to warrant an application.

Prosecution- The LPA may prosecute responsible parties for carrying out illegal work to a listed building, displaying unauthorised adverts and any unauthorised work to a protected tree.

Additionally if any of the above notices are not complied with by the required date for compliance, the first step in seeking compliance is to formally write to the relevant parties to



remind them of their responsibility to comply with the notice. Failure to act on this correspondence could lead to prosecution.

Direct Action- in extreme circumstances the Council can enter the land and carry out the work required by an enforcement notice and subsequently place a charge on the land for the repayment of the costs incurred.

## 4.0 How the planning enforcement team will deliver the service

- 4.1 The planning enforcement team will only investigate alleged breaches of planning control which are reported in writing and where sufficient information is given to identify the site and the alleged breach.
- 4.2 The team **will not** investigate anonymous complaints. A complainant must provide their full name and address and their preferred contact details before a case will be allocated to an investigating officer. This is because the success of a case often relies on the complainant working with the council to provide details of the breach, evidence where possible and potentially act as a witness.
- 4.3 Complainants details are treated confidentially and officers will seek to protect the identity of those reporting the alleged breach.
- 4.4 Written reports will be acknowledged provided sufficient information is given to identify the site and the alleged breach. Complainants will be provided with the name of the enforcement officer dealing with a report so that they can contact the case officer directly. Following receipt of a valid report, the enforcement officer will review the planning history of the site and carry out a site visit if necessary.
- 4.5 The enforcement officer will keep complainants updated of any significant progress made with the case as and when appropriate. Updates may not be at regular intervals for example if an enforcement notice is appealed, enforcement action is very likely to be held in abeyance until the appeal is determined, which may take a significant period of time. As a result there will be no updates within this period.

## 5.0 Clarification on how the Council prioritises enforcement investigations

- 5.1 The Council receives a very significant number of Enforcement investigation requests. Since planning investigations are often lengthy and complex and staff resources are finite, it is necessary for the Council to prioritise the investigation requests it receives. The initial prioritisation of a complaint is based on the impact of the alleged breach, i.e. the highest priority is accorded to those cases that represent the greatest degree of harm. This priority is decided by officers and is subsequently reviewed following the initial visit. The priority system adopted is detailed below.

### **Priority 1- High Priority**

A breach of planning control causing, or likely to cause, serious harm to the natural or historic environment or to public safety unless an immediate response is made, e.g.:

1. Work that will be seriously detrimental to the character of a listed building.
2. The unauthorised demolition of a building within a conservation area.
3. Unauthorised work to protected tree(s)/ hedgerows(s)
4. An unauthorised use of land or buildings that presents an immediate and serious danger to the public.

Officers will conduct a site visit within one working day of the report being made.

### **Priority 2- Medium Priority**

All cases that are not high or low priority, e.g.:

1. Unauthorised developments causing disturbance to residents or damage to the environment e.g. unauthorised changes of use and development in the Green Belt.
2. Development not being built in accordance with approved plans, where the differences are significant and likely to lead to harm to neighbouring amenity.
3. Unauthorised advertisements in the Green Belt or prominent locations causing serious harm to amenity or public safety.
4. Non compliance with conditions resulting in harm to amenity or public safety.

Officers will seek to conduct a site visit within seven working days of the report being made.

### **Priority 3- Low Priority**

Breaches of planning control that cause limited or no harm to the environment or residential amenity. e.g.:

1. Residential and other development marginally above permitted development tolerances.
2. Boundary treatments.
3. Aerials and antennae on dwelling houses.
4. Development not being built in accordance with approved plans, where the differences are less significant and less likely to result in amenity problems
5. Unauthorised advertisements in less sensitive locations.

The team's ability to pursue low priority cases will be dictated by the total number of cases on hand and the number of pending high and medium priority cases.

During periods that the team have a large number of cases or significant number of high/medium priority cases the team will be unable to progress those reports deemed to be low priority.

The team will set out indicative timeframes for progressing low priority investigations in their communications with you.

5.2 The planning enforcement team seeks to manage its finite resources to ensure that the highest priority complaints can be addressed without delay. As a result the response, processing and ability to take on lower priority reports will need to be adjusted accordingly. Enforcement resources are finite and the demand for enforcement investigations is usually very high, when significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where planning harm is the more limited.

5.3 The quality of information and evidence provided by those reporting a breach can have a significant impact on the outcome of an investigation. Where such support is likely to increase the chances of a successful outcome, the matter will be prioritised.

## 6.0 What happens if you wish to report an alleged breach of planning control?

6.1 All reports of an alleged breach of planning control will need to be made in writing. Reports will be accepted in the following formats:

- The online planning enforcement investigation request form available at: [http://www3.rbwm.gov.uk/info/200121/planning\\_and\\_development/660/planning\\_enforcement](http://www3.rbwm.gov.uk/info/200121/planning_and_development/660/planning_enforcement)
- Letters sent and addressed to the Planning Enforcement Team, Town Hall, St Ives Road, Maidenhead, SL6 1RF.
- Emails sent to [Planning.Enforcement@RBWM.gov.uk](mailto:Planning.Enforcement@RBWM.gov.uk)

Individuals who may have difficulty in writing down their concerns are advised to seek help from a friend, relative or local councillor.

6.2 To enable the enforcement team to deal with cases effectively it is important that as much of the following information is provided when a report is initially submitted:

- The exact location of the land. If the site is an unknown address a detailed description or sketch plan should be provided.
- A full description of what has happened or is taking place.
- Details of your concerns i.e what harm do you think has been / is being caused and how is the activity negatively affecting you?
- The names and contact details of any landowners, occupiers or builders involved (if known).
- Photographs of the development or activities.
- Dates and timeframes of when the development took place or the activity commenced.

6.3 All submitted enquiries go through an initial vetting process (undertaken by officers). This allows for the redirection of matters that do not fall within the scope of planning control and allows officers to seek additional information if required before prioritisation and allocation.

6.4 In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider if you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in court. In these circumstances the case officer will be happy to explain what may be required.

6.5 Any information provided may be subject to requests made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 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, your details will be released at the appropriate time.

## 7.0 What happens if you are in breach of planning control?

- 7.1 If you are contacted about an alleged breach of planning control, you are entitled to know the nature of the allegation (but not who made it) and have the opportunity to explain your side of the case. Officers are aware that reports can sometimes be unfounded and therefore we will carry out a thorough investigation and communicate with you to understand the facts of the case.
- 7.2 Initially a member of the Planning Enforcement Team will visit the site. Due to time constraints, this is usually without prior warning to the owner, developer, tenants or employees at the site. Officers are authorised to attend a site to investigate and will show identification when they arrive.
- 7.3 With the exception of a building used as a dwelling house it is an offence to obstruct an officer carrying out an unannounced visit entering the land to ascertain if there has been a breach of planning control. Therefore you should always seek to work with the enforcement officer.
- 7.4 Officers are required to provide 24 hours notice to insist on entry in to a residential property. If you are happy to allow access then we will usually take up this offer. If access is refused enforcement officers may obtain a warrant.
- 7.5 If the breach of planning control refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, your cooperation will be sought to regularise the breach by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be given for you to undertake the work.
- 7.6 In some circumstances you may be invited to submit a retrospective planning application in an attempt to regularise the breach or apply for a certificate of lawfulness if it can be demonstrated that the breach is immune from enforcement action.
- 7.7 During the course of an investigation you may be issued with a Planning Contravention Notice (PCN) that requires information concerning the development being carried out. This notice is used to ascertain the facts of a case so that the LPA can determine if a breach of planning control has occurred and if formal enforcement action is appropriate. It is a criminal offence not to complete and return the PCN within the specified timescale.
- 7.8 If the breach of planning control is not regularised, formal enforcement action may be taken. Some of the types of formal action available to the Council are detailed in section 3.0 of this policy.
- 7.9 The ability to take formal enforcement action is delegated to Officers with the exception of a small number of cases which are considered by Area Planning Panels.





## 8.0 Customer Care

- 8.1 The Royal Borough of Windsor and Maidenhead is committed to offering a good enforcement service to the community of the Borough.
- 8.2 In exercising this policy, the Council will offer all of its customers, whether they are complainants or those who may be in breach of planning control, relevant opportunities to fully state their case, to ensure that the correct decisions are taken to safeguard the built and natural environment of the Borough.
- 8.3 If you are aggrieved with the Planning Enforcement Service, concerns should be initially directed to the Planning Service Management team. Should you still feel that your concerns have not been addressed there is a Council complaints procedure available, where complaints can be investigated. The Complaints Service can be used to investigate procedural issues or service faults it cannot deal with dissatisfaction with regards planning decisions or a decision not to take further action.
- 8.4 Details of the Council's complaint process are published on the RBWM website at: [http://www3.rbwm.gov.uk/info/200407/complaints\\_procedure/898/complaints\\_policy\\_and\\_procedure](http://www3.rbwm.gov.uk/info/200407/complaints_procedure/898/complaints_policy_and_procedure)

## 9.0 Contacts and further information

You can contact the planning enforcement team at the following address:

Planning Enforcement

The Royal Borough of Windsor and Maidenhead

Town Hall

St Ives Road

Maidenhead

SL6 1RF

Email: [Planning.Enforcement@RBWM.gov.uk](mailto:Planning.Enforcement@RBWM.gov.uk)

### **Further information can be found at:**

- The Planning Portal- The Government's online planning resource.  
<https://www.planningportal.co.uk>
- The National Planning Policy Framework and Planning Practice Guidance  
<https://www.gov.uk/government/publications/national-planning-policy-framework>

### **Contact details: Other Organisations**

#### The Planning Inspectorate

The Planning Inspectorate is the organisation responsible for processing and determining planning and enforcement appeals.

The Planning Inspectorate

Temple Quay House

2 The Square

Temple Quay

Bristol

BS1 6PN

Planning Aid

Provides free, independent and professional town planning advice to communities and individuals.

The Royal Town Planning Institute

41 Botolph Lane

London

EC3R 8DL

Tel- 020 7929 9494

Email- [contact@rtpi.org.uk](mailto:contact@rtpi.org.uk)

<http://www.rtpi.org.uk/planning-aid/>