



# PLANNING ENFORCEMENT POLICY AND PROCEDURES

(adopted by the Planning and Regulatory Committee June 2024)



**BOROUGH OF  
BROXBOURNE**  
[www.broxbourne.gov.uk](http://www.broxbourne.gov.uk)

# PLANNING ENFORCEMENT AIM

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## **The Council's Corporate Plan 2020-2024 sets out three corporate priorities:**

- a thriving economy offering business growth and jobs;
- sustainable living in an attractive environment; and
- an effective Council efficient and responsive to the needs of residents.

1. To ensure that all alleged breaches of planning control are investigated.
2. To resolve matters wherever possible by negotiation.
3. To take formal enforcement action where it is proportionate and in the public interest to do so.

## **The broad aim of planning enforcement in Broxbourne is:**

To ensure that all alleged breaches of planning control are investigated, to seek to resolve matters wherever possible by negotiation and to take formal enforcement action where it is proportionate and in the public interest to do so.

This aim will be achieved through application of the Planning Enforcement Policy and Procedures below.

## **Planning Enforcement Policy**

Where it is expedient to do so, Broxbourne Borough Council will take all necessary action under the Town and Country Planning Act 1990 and other associated. This is to ensure compliance with planning legislation and the planning decisions of the Council. Where there is a material and harmful breach of planning control or development is not carried out in accordance with the planning decisions of the Council, and this is not resolved expeditiously through negotiation, the Council will instigate formal enforcement action in accordance with its Planning Enforcement Procedures (below). Such action will be applied in a manner that is proportionate to the breach.

The Planning Service of the Council will work with other enforcement agencies to deliver the Council's Planning Enforcement Policy.

The proposed Planning Enforcement Procedures are set out below. These are intended to be a guide only as each case will be assessed on its merits, therefore variations in the approach taken are to be expected.

## **Planning Enforcement Procedures**

### **The Council's Planning Enforcement Procedures cover the following matters:**

- reporting breaches of planning control;
- investigating alleged breaches of planning control;
- establishing any breach of planning control;
- informal resolution of breaches of planning control;
- taking formal action; and
- compliance with conditions.

## Reporting breaches of planning control

The Council receives reports about alleged breaches of planning control from a wide variety of sources, including members of the public, Councillors, other departments within the Council and external agencies.

Reports should be made in writing, to ensure the enforcement team has all the relevant information and to ensure there is a record of all complaints made. This can be undertaken in one of the following ways:

1. completing the online form “**Report a planning breach**” which is available on the Council’s website: [www.broxbourne.gov.uk/planning/report-planning-issue/1](http://www.broxbourne.gov.uk/planning/report-planning-issue/1)
2. e-mail: [planning.enforcement@broxbourne.gov.uk](mailto:planning.enforcement@broxbourne.gov.uk)
3. letters can also be sent to the Planning Enforcement Team at the Council’s offices (Bishops’ College, Churchgate, Cheshunt, Herts EN8 9XQ).

If a report cannot be made online, it is possible to telephone the planning team (01992 785577) and the online report form can be completed by a member of the team.

The details of the person making the report will remain confidential unless otherwise agreed in writing by that person. Anonymous reports cannot usually be accepted for investigation, however if a serious or significant breach of planning control is reported, the Council would investigate the matter. Any resident wishing to withhold their information may consider approaching their Ward councillor to make the report on their behalf.

## Investigating Alleged Breaches of Planning Control

1. Reports received via the online form are automatically given a reference number which is emailed back to the complainant (providing that they have given a valid e-mail address). Reports received via e-mail are manually added to the reporting form and they will also receive a reference number. These reference numbers usually begin with the letters ‘BRP’.
2. The reports are then directed to the Principal Planning Enforcement Officer, or another member of the team in their absence, to review the report. The report is either accepted and allocated to a member of the team or may be held, pending receipt of further information. Reports are held if they are anonymous, if they report matters that are not breaches of planning control e.g. boundary disputes, or if they contain insufficient information for the reviewing officer to determine what the alleged breach is and/or where it is taking place. In the case where there is insufficient information, two attempts will be made to contact the complainant, usually via email, to gather the required information. If it is not received following these two attempts, the case will be closed and no further action taken. The computer system automatically generates and sends a case closure notification to the complainant’s email address.
3. Accepted reports are then logged on a secondary system and allocated a reference number that will begin ‘COM’. If multiple ‘BRP’s are generated by different residents on the same alleged breach, these will all be logged under one ‘COM’ number in order to keep all complainants’ details together so that interested parties are kept informed. This also allows the team to generate data and monitor case numbers.
4. Investigation will begin as soon as possible. Due to the number of new cases received, resources do not allow an immediate response and therefore the workload is prioritised as follows:

- Most urgent:
- works to Listed Buildings and preserved (TPO) trees
  - development causing serious nuisance or pollution
  - development that would be clearly contrary to planning policy
  - householder development



Least urgent: • technical breaches causing limited (if any) harm.

However, complainants will be kept informed regularly about progress with the case.

5. The initial investigation could include any of the following actions:
  - (a) site visit(s) (which may include taking photographs or recording activity). The team may visit the site themselves or ask other teams, such as Mobile Locality Officers or Environmental Health Officers, to assist, depending on the nature of the allegation;
  - (b) verification of Council records;
  - (c) liaison with other departments or public bodies;
  - (d) assessment of the impact of the alleged breach;
  - (e) initial correspondence to the owner/occupier/developer or other relevant party;
  - (f) interviewing person(s) who may be responsible for the breach i.e. owner, occupier, contractor;
  - (g) conducting interviews under caution as required by the Police and Criminal Evidence Act; and
  - (h) issuing a Planning Contravention Notice or other written request for information.
6. If the breach is not immediately apparent, the person(s) reporting the breach may be asked to keep a log of the alleged activity in order to assist Officers to carry out targeted inspections.
7. At this stage, it is often concluded that there is no breach of planning control. This may be because the matter is not covered by planning legislation (e.g boundary disputes) or because the alleged breach is subject to “permitted development” allowances or other legislation or it is immune from enforcement action due to the passage of time.

If there is no breach of planning control, the Council will advise the complainant of this fact and that no further action will be taken. If the matter is to be referred to another department or agency, the complainant will also be given this information.

The initial investigation stages can often be a lengthy process, depending on the alleged breach, the number of interested parties, and the willingness of said parties to co-operate. It is important to note that the purpose of planning enforcement is resolution rather than punishment and emphasis is therefore made on negotiation.

The workload of the assigned Officer, and the wider team, is also relevant to the time it can take to complete this initial stage; another case could become urgent or involve a public inquiry or court hearing which will take up a significant proportion of Officer time. There may not be capacity within the wider team to re-allocate other cases and where there is, priority will be given as outlined above.

## Establishing any breach of planning control

Where it is determined, on the evidence, that a breach of planning control has occurred, the next stage is to determine whether it is expedient to take formal enforcement action.

This is an important consideration and this determination has to be made with regard to adopted national and local planning policy and to all other relevant material planning considerations. The action could include any of the following:

- (a) invite a planning application or certificate of lawful use/development (see below);
- (b) negotiation, for example, alterations to a building so that it meets the criteria of permitted development;
- (c) service of formal notices (see 'Taking Formal Action' below); or
- (d) other formal actions.

There are circumstances where a planning application or an application for a certificate of lawful use/development may be invited; these are:

- where the breach of planning control is or could be made, acceptable in planning terms i.e. through the use of conditions attached to a planning permission; or
- if the breach could be considered "permitted development" or authorised without the need for formal planning permission, an application for a certificate of lawfulness will be invited.

Both of these options provide the Council with details to enable a full assessment of the matter. If the breach is likely to be acceptable in planning terms, an application will be invited but if it is not forthcoming, further action will not be taken as it is acceptable unreasonable for the local planning authority to use enforcement powers to regularise development. In this circumstance, the owner/occupier or other relevant party will be notified of the breach of planning control and their right to submit an application for planning permission. The investigation would then usually be closed, unless material planning considerations determine otherwise.

The Council will allow a period of time for the submission of an application, the amount of time will depend on the nature of the case. Although applications may be invited retrospectively, this does not imply that planning permission will be granted; any application invited will be judged on its own merit just as any other application submitted, and permission may be refused. Applications will not be invited where it is clear that planning permission will not be granted, but the Council cannot prevent such applications being submitted and must deal with them as any other application.

## Informal resolution of breaches of planning control

In many cases, particularly those involving householder development, there may be opportunities to resolve the matter without the need for either planning permission or formal enforcement action. Examples where this occurs include reducing the height of an outbuilding or extension so that it fits within the allowances for permitted development, altering or removing signs so that formal advertisement consent is not required or relocating development to a more suitable location. This is the approach the Council will adopt wherever feasible. The Council will set time limits for such action; the time limits depend on the type and scale of the breach.

## Taking formal enforcement action

It should be noted that a person carrying out development without planning permission does not commit a criminal offence, unless it relates to certain works to a listed building, to preserved trees or the unauthorised display of an advertisement. The power to take enforcement action is entirely discretionary. Therefore, where it seems that unauthorised development could be acceptable, the Council will not normally resort to formal enforcement action.

## Considerations:

Prior to taking formal enforcement action the local planning authority must consider a number of factors. Below is a non-exhaustive list of such factors:

- expediency (harm caused, likelihood of positive outcome of any planning application);
- planning history;
- time limits;
- Human Rights;
- equality duty;
- other legislation e.g. Natural Environment and Rural Communities Act 2006.

## Time Limits:

As of 25 April 2024, any breach of planning control can become immune from enforcement action if no action is taken within a 10-year period of the breach commencing. For breaches of planning control that occurred prior to this date, the four year period remains relevant insofar as it relates to a building operation or a change of use to use as a single dwellinghouse.

## Service of formal notices:

There are a number of formal notices which the Council may use depending on the nature and scale of the planning breach and the harm caused. All formal notices must be served on any person with an interest in the land, so information must be gathered prior to the service of a notice. This could include Land Registry searches and service of a Planning Contravention Notice. The incorrect service of a formal notice invalidates the notice, resulting in further delays in the enforcement process or results in costs awards against the Council.

Formal enforcement action will not be taken if any potential appeal against the action cannot, due to lack of evidence or other matter(s), be robustly defended.

Formal notices cannot be served without first obtaining authorisation; the Council's constitution states the following in terms of responsibility for authorisation:

TITLE/POST	Authority to:
<p><b>Planning Enforcement Officers</b> (all grades)</p>	<ul style="list-style-type: none"> <li>• issue s16 (Local Government Miscellaneous Provisions) Act 1976 notices (power to obtain particulars of persons interested in land)</li> <li>• issue s330 (Town and Country Planning Act 1990 - TCPA) notices (power to require information as to interests in land); and</li> <li>• issue Planning Contravention Notices (s171C of the TCPA)</li> </ul>
<p><b>Planning Manager</b> (Development Management)</p>	<p>As above, plus authorisation to serve:</p> <ul style="list-style-type: none"> <li>• Breach of condition notices (s187A TCPA);</li> <li>• High hedge remedial notices (s69 Anti-social Behaviour Act 2003);</li> <li>• Tree replacement notices (s207 TCPA);</li> <li>• Untidy land notices (s215 TCPA);</li> <li>• Discontinuance notices (s102 TCPA);</li> <li>• Enforcement warning notices (s172ZA TCPA); and</li> <li>• Authorise rights of entry visits (s196a and 196b TCPA)</li> </ul>
<p><b>Planning Manager</b> (Development Management) in consultation with the Chairman of the Planning and Regulatory Committee (or Vice Chair in the absence of the Chair) (NB: In cases where it is not possible to consult with the Chair or Vice Chair for example, due to urgency, the failure to consult will not invalidate the Notice. In this case the Chair and or Vice Chair will be notified as soon as practicable following service of the Notice.)</p>	<p>As above plus authorise service of:</p> <ul style="list-style-type: none"> <li>• Enforcement Notices (s172 TCPA) including Listed Building Enforcement Notices (s38 Planning (Listed Buildings and Conservation Areas) Act 1990);</li> <li>• Stop Notices (s183 TCPA) including Temporary (s171E TCPA) and Listed Building Stop Notices (s44AA Planning (Listed Buildings and Conservation Areas) Act 1990);</li> <li>• Planning Enforcement Order (s171BB TCPA); and</li> <li>• Completion Notices (s93H TCPA)</li> </ul>

Enforcement matters can also be brought to the Council's Planning and Regulatory Committee should there be particular resource, legal, or financial implication which needs consideration.

The types of formal notice are summarised below:

NOTICE TYPE	WHAT IS IT/WHEN IS IT USED?	KEY POINTS
<b>Enforcement Notice</b>	Used for breaches involving operational development or changes of use	Right of appeal to Planning Inspectorate (PINS) - breach can continue until determination of appeal
<b>Planning Enforcement Order</b>	Where a person deliberately conceals a breach of planning control	Allows the time limits usually in place to be overridden due to deception. Evidence of concealment/deliberate acts must be provided to the court. Application for an order must take place within 6 months of the LPA having sufficient evidence of the breach
<b>Breach of Condition Notice</b>	Where conditions attached to planning permission are breached	No right of appeal
<b>Stop Notice</b>	Can be used to stop an activity pending the outcome of an enforcement notice. Used in the most serious cases only	Can only be served with an enforcement notice. Cannot be used to stop use of a building as a dwelling or to stop use of site of a residential caravan. Compensation payable if enforcement notice is quashed or invalid
<b>Temporary Stop Notice</b>	Notice served to stop activity; it lasts for 56 days only. Used in serious cases	Can be served prior to enforcement notice. Compensation payable if restricted activity is authorised or if the notice is withdrawn
<b>Enforcement Warning Notice</b>	Where planning permission is likely to be granted (whether conditional or otherwise) but invitation to apply has not been taken up	No right to appeal. No penalty for non-compliance. Registered against property in perpetuity. Extends period to take enforcement action. Does not prevent further enforcement action but as permission likely caution is necessary
<b>Section 215 Notice</b>	Untidy land such as gardens, vacant sites	Notice can be served if land is deemed to be 'affecting the amenity' of the area. Right of appeal to magistrates
<b>Listed Building Enforcement Notice</b>	Where unauthorised works to a LB have taken place but remedial work can resolve the breach i.e. painting exterior wall	Right of appeal to PINS - breach can continue until determination of appeal
<b>Listed Building Temporary Stop Notice</b>	Notice served to stop activity; it lasts for 56 days only. Used in serious cases	Can be served prior to enforcement notice. Compensation payable if restricted activity is authorised or if the notice is withdrawn
<b>Discontinuance Notice (Section 102)</b>	Where planning permission has been granted to require a use to cease, impose conditions, alter or remove buildings	Right of appeal to PINS. Compensation payable
<b>High Hedge Remedial Notice</b>	Where a high hedge is found to be causing a loss of sunlight or other impact on amenity	Right of appeal to PINS
<b>Tree Replacement Notices</b>	Where a tree the subject of a TPO has been removed and not replaced	Right of appeal to PINS
<b>Completion Notices</b>	Where development is not complete and completion considered unlikely in a reasonable time	Must be confirmed by Secretary of State

## Other Formal Actions:

Below is a non-exhaustive list of other actions the Planning Enforcement Team, and the wider Planning Service, may use depending on the circumstances of the case.

**Advertisements** - any person who displays an advert which is not authorised by the Advertisement Regulations and does not have consent from the local planning authority for the advertisement, is guilty of an offence and may be prosecuted if it is deemed necessary to do so. If a site is being used for the display of advertisements, a discontinuance notice may be issued. There is a right of appeal to PINS.

**Prosecution** - for those matters, such as unauthorised works to Listed Buildings or trees the subject of a TPO, which are criminal offences, the Council can opt to prosecute the person(s) responsible.

**Injunction** - an application to the County or High Court may be made to require person(s) to take action or to prevent activity. They are most often used to require compliance with an enforcement notice, or similar action, which has not resulted in compliance with the notice. It must be explained what other action has been taken, or why other action is not being proposed. Failure to comply with an injunction is a contempt of Court which is a serious offence.

**Revocation of planning permission** - planning permission can be revoked or modified in exceptional circumstances where development has stalled or prior to any change of use taking place. Where the decision to revoke a planning permission is objected to, the revocation will need to be confirmed by the Secretary of State and this can be challenged in the High Court. This is not, therefore, a widely or frequently used power.

**Compulsory purchase** - the Council can purchase land where there is public benefit. Compensation is payable. This is usually a last resort where previous actions have not resulted in any resolution to an ongoing issue e.g. untidy/derelict land.

## Compliance with Planning Conditions:

The Planning Enforcement team includes a Planning Enforcement Officer (Monitoring) who is tasked with proactively monitoring larger development schemes for compliance with plans, conditions, and details submitted to discharge planning conditions. This officer routinely visits larger development schemes to assess any immediate signs of concern and will liaise with developers where in-depth site visits are required. This officer also handles a caseload of complaints that relate to compliance with existing planning permissions and minor breaches relating to householder development.

## Revisions:

Any revision(s) to the above policy and procedures will be carried out in consultation with the Planning Manager (Development Management) and the Chairman of the Planning and Regulatory committee, and any significant changes will be reported to reported to the Committee.