



Planning & Regeneration

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**Planning**  
**Enforcement**  
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## **Introduction and Principles of Enforcement**

1. This Planning Enforcement Policy Statement sets out the way Brent Council will deal with planning enforcement issues. It replaces the council's previous 'Planning Enforcement Policy' which was adopted in December 2008.
2. The National Planning Policy Framework (NPPF) requires local planning authorities to act proportionately in responding to suspected breaches of planning control. This policy functions as the council's 'local enforcement plan' for the purposes of the NPPF.
3. National planning policy guidance states that there is a clear public interest in enforcing planning law in a proportionate way. Effective enforcement is important to:
  - tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
  - maintain the integrity of the decision-making process;
  - help ensure that public acceptance of the decision-making process is maintained.
4. In 2000, Brent Council signed up to the principles of the *Enforcement Concordat*. Principles for the administration of regulatory services at Brent Council generally, in line with the Concordat, were set out in the common Regulatory Services Enforcement Policy, adopted in November 2005. The management and implementation of the planning enforcement function will continue to be based on the guiding principles set out in that document, as follows:
  - **Standards:** We will publish and monitor clear standards of the level of service and performance we expect to provide in consultation with partners.
  - **Openness:** We will act so that everyone involved understands the way enforcement is carried out and what rights of complaint and appeal may be open to them
  - **Helpfulness:** We will provide a courteous and efficient service which, where possible, co-ordinates effectively between different services and agencies.
  - **Feedback about our Service:** We will obtain the views of service users about service improvements and handle complaints in accordance with the Council's complaints procedure.
  - **Proportionality and expediency:** This means that any action taken should be appropriate or in proportion to the seriousness of the harm being caused.
  - **Consistency:** This means having a similar approach to similar circumstances to achieve similar outcomes.

## **What is a breach of planning control?**

3. Planning law includes a requirement to apply for planning permission to carry out works or to change the use of land or buildings. It is one of a number of regulatory functions carried out by the Council. A breach of planning control occurs when works or a change of use has taken place without the appropriate consent having been obtained. Other examples of planning breaches include:
  - Unauthorised works to a listed building
  - Removing or lopping trees protected by a Tree Preservation Order
  - Unauthorised stationing of a caravan or mobile home
  - Breach of conditions attached to a planning permission
  - Unauthorised demolition in a Conservation Area
  - Not building in accordance with approved plans or planning permission
  - Failure to properly maintain land so that it affects the amenity of the area
  - Unauthorised engineering works, such as changes to ground levels
  
4. Not all development needs planning permission. Planning law allows certain works and changes of use to take place without planning permission. This is known as 'permitted development' and may allow quite significant alterations and extensions to be made to buildings as well as outbuildings under certain conditions. Other things which are not normally breaches of planning control (unless expressly prohibited by an enforcement notice) include:
  - Internal works to a non-listed building
  - Obstruction of a highway or public right of way.  
*These are covered under other legislation which may be enforced by the police or the highway authority.*
  - Parking commercial vehicles on the highway in residential areas or on grass verges
  - Parking a caravan within the residential boundary of a property, provided that it is not lived in or used as part of the home.
  - Clearing land of vegetation, unless it is subject to planning protection.
  - Operating a business from home where the residential use remains the main use and there is no serious harmful impact on neighbours.
  - Boundary disputes.  
*These are a private matter and are not controlled under planning legislation*
  - High hedge disputes.  
*These are covered by separate legislation and are not administered by the Planning Enforcement service.*
  - Deeds and covenants.  
*These are a private matter and are not controlled under planning legislation.*
  - Trespassing on land
  - Health and safety issues
  - Structural issues with buildings.

*These are dealt with by the council's Building Control service under separate legislation, and should be referred to that team in the first instance.*

5. The Council receives over 1,000 complaints a year about alleged breaches of planning control from the public. Investigations are also generated by information from Councillors and Council staff. Action can be taken against an unacceptable breach of planning control even where there is no public complaint.
6. Sometimes the Council will have to wait until a development is complete before it can judge whether or not planning permission would be needed which is why it cannot always act even if alerted when construction is still on-going. Enforcement action can be taken after a development is complete, normally within 4 or 10 years depending on the type of breach.

### **Reporting a breach of planning control**

7. The planning enforcement service is concerned with resolving serious breaches of planning control. It does not deal with neighbour or business disputes or a change to the environment that an individual or group of residents may not like. There must be **significant harm** to public amenity, safety or the environment for enforcement action to be justified.
8. We will not normally deal with anonymous complaints, so we will not register or start to deal with a complaint until we have the following information:
  - The complainant's name and contact details (at least a postal address and either an email address or telephone will be required)
  - The site address or location of the alleged breach
  - Details of the development or activity that is causing the harm, when it began and as much information as possible about it and who is considered responsible for it.
  - Details of the way in which the development or activity is having a harmful impact
9. The identity of a person making a complaint is normally kept confidential unless the Council is required to release the information by law. If a case proceeds to formal action, and if a complainant's evidence is part of the Council's case, anonymity cannot be guaranteed, however we will ask for the complainant's agreement if we need to do this. In some cases, the council's case may be weakened by a complainant not agreeing to forego anonymity, and in such cases it may not be expedient to proceed with formal enforcement action.

### **How the Council will Deal with a Complaint**

10. On receipt of a complaint an enforcement officer will visit the site and assess the case to establish whether a breach of planning control has occurred. Approximately half of all complaints received are not pursued either because

they are of a very minor nature or because they do not involve a breach of planning control. All complaints received will be logged and investigated and complainants will be advised of the outcome of the investigation.

11. Councils are not required by law to take planning enforcement action, but will do so where it is justified and where there are sufficient resources available. If a breach of planning control has occurred, the Council will decide whether it considers it appropriate to take any action to resolve the breach. Action will only be taken where the breach is considered to cause planning harm. This means that it would have a harmful effect on the amenity of local residents or the character of an area, as judged by reference to planning policy and other material considerations, including the European Convention on Human Rights. Only a small proportion (about 10%) of complaints received result in formal action. Many of the rest are resolved without the need to take formal action or cannot be pursued within the resources available.
12. It is not an offence to carry out development without first obtaining planning permission, and planning permission can be granted retrospectively, or after the development has taken place. Enforcement action will not be taken where the development is considered to be acceptable in planning terms and owners will be encouraged to apply for planning permission in these circumstances.
13. Planning enforcement is not a quick process. The initial investigation to establish whether a breach has occurred can take weeks or sometimes longer and there are also rights of appeal which may be pursued before an enforcement notice can come into effect. More complicated cases can take several years to resolve, especially where it is necessary to take action in the courts.
14. Some development is immune from enforcement action because the development or activity has been in place for a number of years.

The Council will apply national and local policies consistently but it should be recognised that policies regarding the acceptability of development change over time and decisions on cases will be assessed on their individual circumstances. There will be cases where decisions on two similar developments in the same street or in the same area could be different.

15. Depending on the nature of a confirmed breach of planning control, there are a range of measures the Council can take.

- (a) **Take no action / Ongoing Review:** Take no action or monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord before formal enforcement action is likely to become effective (such as temporary uses).

- (b) **Allow Time to Remedy:** Time may be given to remedy the breach or justify its retention. Such cases may include situations where the harm is easily repairable and is not so serious as to warrant immediate action or where it may be otherwise justifiable. However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay effective action unnecessarily.
- (c) **Planning Contravention Notice:** This is a formal questionnaire that allows the Council to seek information about an alleged breach before deciding on a response..
- (d) **Enforcement Notices:** This is the most common means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice, which can be quashed or amended if the appeal is successful.
- (e) **Breach of Condition Notices:** These can be used in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission.
- (f) **Stop Notice:** The Council can issue a Stop Notice or Temporary Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period.

**Other statutory notices:** There are a range of other statutory enforcement options available to the council under the planning legislation, such as s.215 'Untidy Land' notices, Advertisement Removal Notices, Planning Enforcement Orders and Listed Building Enforcement Notices. These will be used where appropriate.

- (g) **Court Injunction:** This may be done in the most serious cases where irreparable harm is being done or where other actions have failed. Significant costs are involved in bringing such actions and can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.
- (h) **"Default" Powers or Direct Action:** The Council may enter land to take the necessary steps to secure compliance when eg. an Enforcement or advertisement removal notice comes into effect.

16. Where enforcement action is pursued we will follow the principles set out in the introduction. We will:

- Give clear advice on what action needs to be taken, the reasons why and by when.

- Give an opportunity to discuss or respond to issues raised before formal action is taken (except in the most serious cases). The Council will not delay enforcement action where there is evidence of a lack of co-operation or the ongoing harm is serious.
- Give clear advice on the consequences of failing to take appropriate remedial action leading to formal action and advice on rights of appeal.
- Co-ordinate action between different Council services to ensure the most effective remedy is used.

17. In responding to a complaint of an alleged breach of planning control, the Council will:

- Require complaints to be made in writing and will not accept anonymous complaints or those which are not motivated by planning harm. Complaints motivated by business competition or neighbour disputes will not be pursued.
- Treat information received in confidence, unless otherwise agreed with the complainant or required by law.
- Acknowledge all complaints within 3 working days of receipt.
- Carry out a site visit on all complaints within 10 working days of receipt
- Make a preliminary assessment as to whether a breach of planning control has occurred within 20 working days of receipt.
- Update the complainant on progress at the following stages of the Council's investigation:
  - Where a breach is established/not established and a decision made to pursue/not to pursue enforcement action
  - Notification of service of an enforcement notice
  - Notification of receipt of an appeal against an enforcement notice
  - Notification of receipt of an enforcement appeal decision
  - Notification of intention to prosecute/carry out direct action.

The Council will not normally notify complainants on progress other than at these specific stages. Complainants may contact the case officer, who will be identified on all correspondence, for an update on progress.

### **Priorities for Action**

18. Cases will be prioritised according to the seriousness of the alleged breach and the harm that is being caused. The Council will prioritise the cases which it considers cause the most serious planning harm but it will not be possible for the Council to pursue all cases which involve a breach of planning control due to resource constraints. The Council will address the most harmful breaches and follow through the action until an acceptable resolution to the breach of planning control has been achieved.

19. Brent is a pro-active and high performing authority in respect of planning enforcement and serves over 100 enforcement notices every year. It can demonstrate a high level of success on prosecution and enforcement appeals. Once a commitment is made to this level of formal action however,

it is essential to meet timescale and procedural requirements of the legal process, such as appeal deadlines. On-going cases will therefore be given priority.

20. The Council has adopted the following targets for different types of action as set out below:
- 120 Enforcement Notices (all types)
  - 120 Planning Contravention Notices
  - 60 Appeals
  - 30 Direct Actions
  - 10 Prosecutions

21. The following indicates how the various types of enforcement cases will be ranked and how resources will be allocated:

1. Ongoing court or appeal proceedings.	Highest priority
2. New complaints of serious irreparable harm.	
3. Ongoing breach of an enforcement notice which has come into effect.	
4. Identified breach causing serious harm.	
5. New complaints of serious harm to the amenities of an area.	
6. New complaints where the time limit for taking action expires imminently	
7. Systematic breaches of planning control which may set a precedent giving rise to more widespread harm.	
8. Ongoing Investigations where no harm has been identified or minor harm is reparable.	
9. All other new complaints.	
10. Ongoing investigations where a breach has not been identified.	Lowest Priority

22. The service will manage its resources to ensure that the highest priority complaints can be addressed without undue delay and to ensure that the response to lower priority complaints will be adjusted accordingly. To ensure that an adequate overall service is provided, the allocation of resources will be periodically reviewed. The quality of evidence and support provided by complainants can also have a significant bearing on the outcome of an investigation and where such support is likely to increase the chances of a successful outcome the matter may be given a higher priority.

**Retrospective applications**

The Localism Act 2011 introduced the power for the Council to decline to determine retrospective planning applications if any part of the development described in the retrospective application is already the subject of a pre-existing enforcement notice (whether appeal rights against the enforcement notice have been exhausted or not). The Planning Service will decline to determine such applications unless all three of the following criteria are met:

1. the application appears to be part of a sincere effort to engage with the Council to amend a proposal and remedy the breach of planning control;
2. the application explicitly addresses unacceptable elements of the development (as identified in the reasons for issuing the enforcement notice), and is generally in accordance with other planning policies;
3. the application would not have the effect of delaying compliance with the notice by frustrating prosecution or direct action proceedings, whether these have already begun or not.

### **Project Work**

Where resources are available, the enforcement service may undertake special projects to tackle enforcement specific problems. These may include proactive projects such as the 'Beds in Sheds' project undertaken in recent years to actively seek out unlawful dwellings in rear gardens.

### **Prosecution**

23. The Planning Service as an enforcing Authority will use discretion in deciding whether to prosecute offences. Prosecution will only be pursued when it is in the public interest and in accordance with the Code for Crown Prosecutors. Once summons have been served, prosecution proceedings will not normally be withdrawn even if a breach is subsequently complied with.
24. In support of prosecution or appeal processes, costs will be sought from defendants wherever possible in order to minimise costs to the council. Measures under the Proceeds of Crime Act will be utilised where appropriate to retrieve monies gained unlawfully, both to help cover the costs of enforcement and to ensure an effective disincentive to ongoing breaches of planning control. Publicity may also be given to prosecution and enforcement outcomes in order to advise the general public and deter similar breaches.
25. Compliance with an Enforcement Notice does not discharge the notice, and it remains as a charge on the land to prevent the breach reoccurring as it can be enforced against subsequent owners or occupiers. If an assurance is sought by an owner or prospective occupier, the council will confirm in writing that an Enforcement Notice has been complied with on a particular date, subject to the production of sufficient evidence required from the applicant and/or the payment of a fee to cover council's costs of inspection, research and administration.
26. If a more formal assurance is required then the enquirer should apply for a Lawful Development Certificate for which there is a statutory fee. Enforcement Notices will only be withdrawn in exceptional circumstances, for example where they have been issued in error.

### **Direct Action**

27. As an alternative to, or in addition to prosecution as detailed above, the Council may decide to take direct action to carry out the steps provided in the notice in default. This will be at the council's discretion and decisions will take

into account the complexity of the works required and the likely upfront costs to the council. Owners/occupiers will be warned of the council's intention to take direct action, but the exact date on which the works will take place will not be revealed in advance. The costs of direct action will ultimately be recovered directly from the landowner in accordance with the planning legislation.

### **Monitoring planning permissions**

Monitoring of consented development will be largely carried out on a reactive basis when divergences from approved plans are brought to the enforcement service's attention. On particularly contentious schemes, there may be opportunities to carry out routine monitoring. If resources permit, in future it may be possible to do more proactive monitoring.

### **Complaints**

28. In cases where someone is concerned that relevant procedures have not been followed, they will be encouraged to contact the relevant member of staff's Line Manager in the first instance. Formal complaints will be handled in accordance with the Council's Complaints Procedure.

### **Review**

29. We will regularly monitor the operation of the Enforcement Service to ensure its effectiveness and compliance with relevant legislation and policies. These reviews will be reported to the Planning Committee and where appropriate published in conjunction with those covering the policy and performance of the Enforcement Service.