



# Planning Enforcement Policy

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## 1. What is Planning Enforcement?

**1.1** Planning enforcement is the process of investigating whether a breach of planning control has occurred and, if so, assessing whether it is expedient to take formal enforcement action to remedy the breach of planning control.

**1.2** A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

**1.3** Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

**1.4** The National Planning Policy Framework sets out that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

## 2. Enquiring about a potential breach of planning control

**2.1** Before making an enforcement enquiry, you may wish to refer to the Planning Portal website ([https://www.planningportal.co.uk/info/200125/do\\_you\\_need\\_permission](https://www.planningportal.co.uk/info/200125/do_you_need_permission)) to check whether the development is permitted development (development that does not require a planning application). You can also check via the Council's website whether the development benefits from planning permission (<https://www.wirral.gov.uk/planning-and-building/planning-permission>).

**2.2** The simplest way to report an alleged breach of planning control is to complete the online form that can found on our website via the following link: <https://www.wirral.gov.uk/planning-and-building/planning/planning-enforcement>

**2.3** If you do not wish to use the online form, the enquiry must be made in writing. Your correspondence can be sent to the address at the end of this policy and must clearly detail the following information:

- The address of the land or property where the alleged breach of planning control has occurred,
- The nature of the development or activity that has taken place,
- Your name, address and either phone number or email address,
- An indication as to the when the development took place or activity started,
- A brief explanation of the harm caused by the development.

**2.4** If your enquiry relates to an alleged unauthorised change of use, we will require your help to collect evidence of the level and nature of activity involved. In order to help us and to substantiate your complaint you will be required to provide a log of the activities that you witness, including times and dates, over a period of two weeks. We will then be able to progress the case. Without that

assistance it may be difficult to build sufficient evidence to demonstrate whether a breach of planning control has occurred.

**2.5** The resources available to Wirral Council to investigate breaches of planning control are limited. We therefore will not investigate anonymous enquiries and all complainants must provide their name, address and either a phone number or email address.

**2.6** The source of the enquiry will not be disclosed by the Council during the investigation stage. However, you should be aware that in some cases where formal enforcement action is necessary the source of the enquiry may become apparent and where the process leads to Court proceedings, the Council may be obliged to disclose the source of the complaint.

### **3. How we will deal with your enquiry**

**3.1** We prioritise cases in order of their importance and effect into five distinct categories. They are:

#### **Priority 1 (Statutory/Legislative Requirements)**

- Licensing consultations
- Lawfulness of Existing Development Certificates
- Formal High Hedge Complaints
- Matters where an offence may have been committed- for example, unauthorised alterations to Listed Buildings, unauthorised works to protected trees, and non-compliance with existing enforcement notices.

#### **Priority 2 (Controversial Development)**

- Councillors Complaints/Concerns
- MP's Complaints/Concerns
- Committee Approvals (conditions/approved plan monitoring)
- Controversial sites with a wide community interest, such as development of a large scale that results unacceptable harm to amenity.
- Development in sensitive areas i.e. Green Belt, Conservation areas

#### **Priority 3 (Council Objectives)**

- Concerns of other departments - risk to health, traffic hazard etc
- Delegated decisions (Conditions/approved plans monitoring)
- Advertisements
- Changes of use (substantial and/or contrary to policy)
- Major commercial development (changes of use, buildings and extensions)

#### **Priority 4 (development likely to be granted conditional consent)**

- Significant domestic extensions (more than 3 metres in length, two storeys, balconies and dormers)
- Front walls and fences, and other means of enclosures.
- Changes in land levels more than 0.5 metre
- Changes of use (unsubstantiated and/or compliant with policy)
- Substantiated changes of use.
- Minor commercial development

### **Priority 5 (Development likely to be granted unconditional consent)**

- Unsubstantiated complaints about changes of use.
- Minor domestic breaches of planning control, small sheds, radio antenna, small extension, window alterations etc
- Rear walls and fences

**3.2** We will aim to send the complainant a letter (by email if one is provided) acknowledging your enquiry within 5 working days of the date on which the enquiry is made.

**3.3** Where the enquiry relates to unauthorised works to a listed building or protected tree that are actively being carried out at the time of the enquiry, we will aim to visit the site that same day to speak with the people carrying out the works.

**3.4** For all other forms of development, we will seek to conduct an initial site visit within 15 working days of the date on which the enquiry is made.

**3.5** We will always notify complainants of the final outcome of the investigation. However, if you would like to know the progress of a case, then you can contact the case officer via the contact details set out in the acknowledgement letter. We would however respectfully request that you wait at least 20 working days before contacting the case officer to allow sufficient time to gather the initial information relevant to the enquiry. The case officer will contact you if we require any further information to progress the investigation.

**3.6** Depending on the complexity and nature of the issue, planning enforcement cases can take a considerable time to resolve.

**3.7** Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

## **4. What if the enquiry is about me?**

**4.1** We recognise that most breaches of planning control are not intentional. However, the planning system seeks to ensure that unacceptable forms of development do not go unchecked, and we must therefore assess whether the development that has taken place complies with local and national planning policy (the expediency test).

**4.2** Where a complaint is to be investigated, the case officer will normally visit the land or property where the alleged breach of planning control has taken place, usually unannounced. Visits are conducted unannounced both for time management reasons and to ensure that we obtain a true reflection of the facts on the ground when we visit.

**4.3** Section 196A of the Town and Country Planning Act 1990 (as amended) affords the Local Planning Authority a right to enter any land without a warrant to gather any information necessary to establish whether there has been a breach of planning control. However, the Council would always wish to enter land without the need to exercise those powers and seeks the cooperation of the persons concerned in investigating the matters that have been brought to our attention.

**4.4** Where a breach of planning control is identified, we will always seek to negotiate a resolution without the need for formal enforcement action. Where appropriate, opportunities will be given for a retrospective planning application to be submitted. However, applications must be submitted in a timely manner to avoid formal action being taken.

**4.5** Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

## **5. How cases are determined**

**5.1** The power to determine whether there has been a breach of planning control is delegated to the Development Control Manager and the Principal Enforcement Officer.

**5.2** We aim to ensure that 80% of our enforcement investigations reach one of the following 6 milestones within 13 weeks of receiving the enquiry.

### **1. Establish that the development does not require planning permission.**

Some changes of use and building works are not classed as development or are permitted by the Town & Country Planning (General Permitted Development) Order 2015. Therefore, they do not require planning consent and the Council has no control over the development.

### **2. Achieve a resolution to an identified breach of planning control by negotiation without the need for formal enforcement action.**

### **3. Secure the submission of a retrospective planning application aimed at resolving the breach of planning control.**

Where a retrospective planning application is submitted, the case officer will monitor the outcome of the application. Where a retrospective application is approved, normally there will be no further action necessary and the case will be closed. Where a retrospective planning application is refused, the case officer will continue to seek to resolve the breach of planning control, either through further negotiation or formal action.

### **4. Establish that the time limit has passed for the Local planning Authority to take action against the breach of planning control.**

Section 171B of the Town and Country Planning Act sets out that a breach of planning control becomes immune from enforcement action:

- 4 years after the substantial completion of building works or engineering operations (referred to as operational development);
- 4 years after the unauthorised change of use of a building to a single dwelling house (this includes flats);
- After 10 years for any other breach of planning control (essentially other changes of use or failure to comply with the requirements of a condition attached to a planning permission).

After these periods of time, the development becomes lawful. However, where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.

#### **5. Determine that it is not expedient to take action**

The Town and Country Planning Act sets out that it is not an offence to develop land without planning permission. National guidance also sets out that a Local Planning Authority should not take formal action against unauthorised development solely to remedy the absence of a planning application. Enforcement action should only be taken when it is expedient to do so and should be proportionate to the breach.

There will therefore be instances where acceptable forms of development that cause no harm to its surroundings (taking into consideration local and national planning policy and all other material planning considerations) are carried out without the benefit of planning permission. In these circumstances, it is not likely to be expedient to take enforcement action, even if the persons responsible fail to take steps to remedy the breach of planning control.

However, in instances where retrospective planning permission would only be granted for the development subject to conditions, or where planning permission would not be granted, it is likely to be considered to be expedient to take enforcement action.

The Council's Scheme of Delegation sets out the circumstances in which the decision as to whether it is expedient to take enforcement action is delegated to the Development Control Manager and the Principal Enforcement Officer, or alternatively where that decision must be made by Planning Committee.

Where the Council considers that it is not expedient to take enforcement action against a breach of planning control, the development remains unauthorised (until the time limits listed above have lapsed). That decision does not prevent the developer from submitting a retrospective planning application further down the line to regularise the breach of planning control.

Where the Council considers that it is not expedient to take enforcement action, the case officer will communicate the reasons for that decision to the complainant.

#### **6. A formal Notice is issued.**

There are a range of formal enforcement powers available to the local Planning Authority. The formal action taken will depend on the circumstances of each case.

*[Please note that the Council's register of enforcement notices is held at the address listed at the end of this policy. You can contact the Department on (0151) 691 8215 to arrange an appointment to view the register. The electronic copy of enforcement notices held on the Council's website does not constitute the Council's register of enforcement notices.]*

**5.3** Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

## 6. Action where an offence is committed

**6.1** As set out above, the legislation establishes that it is not an offence to develop land without planning permission. However, where an enforcement notice is issued and that notice takes effect, the steps set out in the notice must be carried out within the timescales set out in the notice. Failure to comply with the requirements of an enforcement notice constitutes an offence and the person(s) responsible will be liable to prosecution.

**6.2** Where a valid retrospective planning application is submitted after the Council have issued an enforcement notice, the Council reserves the right to hold any further prosecution proceedings in abeyance until the planning application has been determined. However, where the submission of a retrospective planning application is of no merit and appears to be a delay tactic, the Council may decide to pursue a prosecution in any event.

**6.3** There are also a number of other scenarios whereby a criminal offence may be committed:

- Unauthorised works for the demolition of a **listed building**, or for its alteration or extension in any manner which affects its character as a building of special architectural or historical interest.
- Unauthorised work to a **tree** subject of a Tree Preservation Order or to a tree situated within a conservation area.
- The unauthorised display of **advertisements**.
- Failure to comply with the requirements of other **formal notices** such as a Planning Contravention Notice, a Breach of Condition Notice, or a High Hedge Remedial Notice.

**6.4** As is the case with any offence that is committed, the Council must always consider whether it is in the public interest to pursue a prosecution. We will consider the most appropriate form of legal action depending on the circumstances of each case to ensure it is proportionate to the offence.

**6.5** If a case has reached this stage, the defendant is likely to have disregarded all the warnings and notices served on them, which is a serious matter. These factors will be considered when deciding the most appropriate action.

**6.6** We have the power to offer a caution or to prosecute offenders in the Courts, depending on the nature and severity of the offence.

### Formal Caution

**6.7** We will interview the defendant under caution, by way of a letter or in person. If they admit to the offence, we may offer a caution to those responsible for the offence on the first occasion and they will be asked to pay the costs incurred by the council.

### Courts

**6.8** Where it is considered to be in the public interest, we will prosecute those who commit a criminal offence in the courts.

### Direct Action

**6.9** Section 178 of the Town and Country planning Act 1990 (as amended) grants the Local Planning Authority the power to enter land to carry out the steps required by an enforcement notice.



**6.10** Where somebody fails to comply with an enforcement notice, we will ordinarily pursue a prosecution through the Courts in the first instance.

**6.11** Those that are found guilty of failing to comply with a Notice in the courts are still liable to undertake the works as required by the notice. If they do not comply with the Notice, we will either prosecute them for a second time and/or take direct action.

**6.12** If we take direct action, we will do the works required by the Notice and recover the cost incurred by the council from the defendant or register a charge on the land. In some circumstances, we could force sale of the property to recoup the council's costs.

#### **Proceeds of Crime**

**6.13** The Council will consider whether it is appropriate to seek the confiscation or recovery of any financial gain resulting from an offence through the Proceeds of Crime Act 2002.

## **7. Listed buildings and Conservation Areas**

**7.1** Wirral Council values its listed buildings and conservation areas and acknowledges the significant contribution they make to the character of the Borough.

**7.2** In addition to considering any legal action in relation to any offence that may have been committed (see section 6 above), the Council will issue a Listed Building Enforcement Notice requiring the restoration of the listed building to its former condition where possible.

**7.3** If a person undertakes works to demolish or alter a Listed Building, and it is impossible to restore, then an offence will be considered serious in nature. We will prosecute anyone responsible for works to Listed Buildings of a serious nature (See Section 6 above).

## **8. Monitoring development**

**8.1** Monitoring of development to ensure that it is built in accordance with approved plans and conditions is important to the Council. However, Wirral Council receive approximately 2000 planning applications per year and the resources available for the planning enforcement function do not enable us to systematically monitor every development as it is carried out.

**8.2** Whilst we commit to taking a proactive approach to monitoring development where resources allow, we rely on others to report alleged breaches of planning control to us.

**8.3** We will endeavour to be proactive in monitoring development. Any major planning application that is placed before the planning committee which is subsequently approved will be monitored. We will in those cases monitor compliance with any precedent conditions, which require details and works to be completed or submitted prior to the development commencing.

**8.4** If the development is commenced without compliance with precedent conditions, then the works undertaken may not benefit from planning permission and it will be open to us to take enforcement action.

**8.5** It is the responsibility of the applicant/ owner to ensure that development is carried out in accordance with any planning permissions granted, or in line with the limitations set out in the General Permitted Development Order.

## **9. Trees**

**9.1** If a person undertakes or causes works to a tree, which is protected by a Tree Preservation Order or is in a designated Conservation Area, without consent they will be guilty of an offence (see section 6).

**9.2** Our action in response to any unauthorised work will be proportionate to the nature of the offence and the harm caused by the unauthorised works. Where individuals repeatedly carry out unauthorised works to protected trees, this will be taken into consideration when assessing the appropriate course of action.

**9.3** If a tree has been removed, uprooted, or destroyed as a result of unauthorised works, we will enforce the duty on the owner of the land to plant the appropriate number, size and species of replacement trees, as per the provisions of section 206 (trees subject of a Tree Preservation Order) or section 213 (trees situated within a conservation area) of the Town and Country Planning Act 1990. This can be achieved through negotiation or will be required by a formal Notice.

**9.4** Enquiries relating to the removal of hedgerows will be assessed in the context of the provisions set out in The Hedgerows Regulations 1997.

**9.5** The enforcement team is also responsible for determining formal complaints about High hedges made under Part 8 of the Anti-Social behaviour Act 2003.

## **10. Further information**

### **Review**

**10.1** This policy will be reviewed every 3 years to ensure that it reflects any potential changes in legislation or fluctuations in demand on the service and the resources available to deliver the service.

### **Complaints procedure**

**10.2** If a person considers that we have not followed the procedures and policies contained in this document, and they feel they have been subject of maladministration, information about the Council's complaints procedure can be found on the Council's website via the following link: <https://www.wirral.gov.uk/about-council/complaints-compliments-and-feedback/complain-or-give-compliment-wirral-council>

**10.3** You can contact the enforcement team for further information as follows.

**Email:** [Planningenforcement@wirral.gov.uk](mailto:Planningenforcement@wirral.gov.uk)

**10.4** Please send any postal correspondence to: **Development Management**  
**South Annex**  
**Wallasey Town Hall**  
**Brighton Street**  
**Wallasey**  
**CH44 8ED**

**10.5 Relevant legislation**

Town and Country Planning Act 1990 (as amended)

Town & Country Planning (General Permitted Development) Order 2015 (as amended)

Town & Country Planning (Use Classes) Order 1987.

Town & Country Planning (Control of Advertisements) (England) Regulations 2007.

Planning (Listed Buildings and Conservation Areas) Act 1990

National Planning Policy Framework

Part 8 of the Anti-Social Behaviour Act 2003 (High Hedges)

# Appendix 1

## A.1 Flowchart- Planning Enforcement investigation process

