



Planning Enforcement Plan 2015

Watford Borough Council

1.0 Introduction

- 1.1 Most types of building works, changes of use, works to listed buildings, works to protected trees and advertisement signs require planning permission or some other form of consent. Some of these permissions are granted by Central Government (known as 'permitted development' or 'deemed consent') but most require an application to be made to the Local Planning Authority. Watford Borough Council is the Local Planning Authority for most types of development in Watford although in some specific cases this will be Hertfordshire County Council.
- 1.2 Applying for the correct approval before works are carried out allows the Council, other organisations (such as the Highway Authority, Environment Agency, etc.) and interested parties to assess the potential impacts of a scheme on neighbouring properties, the local area and the wider public interest. An application for approval can then either be granted (with or without amendments and subject to conditions) or refused. The requirement for approval by the Council before works are carried out is enshrined within the planning legislation.
- 1.3 If the correct approvals have not been obtained in advance of works being carried out or uses implemented, a 'breach' of planning control is said to have occurred. A breach also occurs when works have been carried out that do not accord with approved plans or when conditions attached to a planning permission or other consent have not been complied with.
- 1.4 The Council is committed to ensuring that the requirements of the planning process are followed by all. Effective and proportionate enforcement underpins the planning service in Watford and it is central to maintaining public confidence in the planning system and the quality of life for our residents and businesses.
- 1.5 The Government's policy on planning enforcement is set out in the National Planning Policy Framework at paragraph 207:

Effective enforcement is important as a means of maintaining 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. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

- 1.6 The purpose of this Planning Enforcement Plan is to set out how the Council will deal with alleged breaches of planning control and how it will make decisions regarding taking enforcement action to rectify

proven breaches. The Council will investigate all breaches reported to it (but not breaches reported anonymously) from local residents, Council members, other Council officers and arising from site inspections.

2.0 Principles of enforcement

- 2.1 It is important to know that many breaches of planning control are not a criminal offence, such as building works and changes of use. In these cases, only if there is a failure to comply with formal enforcement action to rectify the breach is a criminal offence committed. Some works are, however, a criminal offence and these include unauthorised works to listed buildings and protected trees and the display of advertisements. The nature of the breach and whether this constitutes a criminal offence will help determine the type of enforcement action the Council may take.
- 2.2 In all cases, enforcement action is discretionary and the Council must apply the following principles in dealing with all breaches of planning control:

Proportionality: Any action taken must be proportional to the breach that has occurred and the level of harm arising from the breach. This means it must be at a level that is necessary to remedy the breach. The purpose of enforcement action is to remedy the breach of planning control, not to punish the offender.

Expediency: Not all breaches of planning control will cause harm. Having regard to the circumstances of each case, the Council must consider whether it is expedient and necessary in the public interest to take formal enforcement action. The expediency of taking enforcement action will be determined having regard to the policies of the Council's development plan and all other relevant planning considerations, in the same way as applications for planning permission are determined.

Consistency: Whilst each case will be different in respect of its individual circumstances, the Council must seek to be consistent in its response to breaches of a similar nature.

Transparency: It is important that the way in which the Council deals with each case and the decisions it makes are clear and easily understood.

Equality: To ensure the way in which the Council deals with each case is not influenced by a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marital status or any other factor. All cases will be dealt with in an objective manner, which focuses on the breach of planning control.

- 2.3 Unlike the procedures for applying for planning permission or other consents, the enforcement process is confidential. This means that the Council will not reveal details of a complainant to any person, including the person the subject of a complaint, other local residents or Councillors. This is an important part of the process to ensure that every individual feels able to make a complaint regarding suspected breaches of planning control in confidence.
- 2.4 It is also important to understand that the Council will not normally investigate anonymous complaints unless it is evident that significant harm is being caused. This is to ensure that officers can seek further information from the complainant, where necessary, as part of their investigation. It is also important to know who the complainant is and where they live in order to assess the level of harm resulting from the breach and the appropriate course of action to take. It also allows the Council to advise the complainant of the outcome of the investigation. Any complaints that are considered to be of a malicious or vexatious nature will not be investigated.

3.0 Scope of enforcement powers

3.1 The planning legislation sets out the powers available to the Council to address breaches of planning control. The Council as the Local Planning Authority cannot operate outside of the powers it is given. It is common for the Council to receive complaints regarding a range of matters that it does not have the power to deal with as the Local Planning Authority. This is because they are not planning matters and are covered by other legislation. In some cases another department of the Council may be able to deal with these, in other cases the powers will be vested in another authority. Other issues will be purely civil matters. Some common examples of complaints which the Council as Local Planning Authority can and cannot deal with are given below:

3.2 Examples of matters Planning Enforcement can investigate

- Extensions to houses, including loft conversions.
- Erection of new buildings, including within garden areas.
- Change of use of buildings, including conversion of houses to flats or bedsits, and the use of residential property for commercial uses.
- Change of use of land, including for storage.
- Development not in accordance with planning permission, such as size, windows, materials.
- Advertisements (including signs, banners and fly-posting).
- Works to listed buildings.
- Felling and other works to protected trees.
- Failure to comply with a condition attached to a planning permission.

3.3 Examples of matters Planning Enforcement **cannot** investigate

- Boundary disputes and covenants on property. These are a civil matters and advice should be sought from a solicitor or the Citizens Advice Bureau.
- Noise, odours, bonfires. These are dealt with by Environmental Health at the Council.
- Damage to the highway, pavements or verges, broken street lights, and the siting of signs on the highway. These are matters dealt with by the Highways Department at Hertfordshire County Council.
- Vehicles, including service and delivery vehicles, obstructing the highway. Where related to a construction site, the site manager should be contacted.
- Parking issues and illegal parking. These are dealt with by the Parking Service at the Council.
- Dangerous structures. These are dealt with by Building Control at the Council.
- Internal works to buildings that are not listed buildings. These may be dealt with by Building Control at the Council but not in all cases.
- Felling and works to trees that are not within a conservation area and are not protected. The Council has no control over this.

3.4 Where complaints are received that relate to matters that Planning Enforcement cannot deal with, the complainant will be advised who to contact. This is important as other Council departments and other organisations will have their own procedures for logging and dealing with complaints.

4.0 **Enforcement procedure**

4.1 In all cases of an alleged breach of planning control, the case will be prioritised as set out in the table below. A site visit will be undertaken by one of the Council's enforcement officers to investigate the alleged breach and ascertain whether a breach has occurred.

Priority	Nature of alleged breach	Site visit
A	Works to a listed building, works to a tree in a conservation area and works to a protected tree. Any works causing significant and immediate harm.	As soon as reasonably practicable on the day the breach is reported and within 2 working days

B	All building and operational works, changes of use, development not in accordance with a planning permission or other consent.	Within 5 working days
C	Display of advertisements.	Within 10 working days

- 4.2 In most cases further research will also be required, such as investigating the planning history of the site and obtaining information from other Council departments. The Council also has the power to seek information from the developer by serving a Planning Contravention Notice. Failure to respond to a Planning Contravention Notice is a criminal offence.
- 4.3 In every case, both the complainant and the person the subject of the investigation will be advised of the officer's findings and whether or not a breach of planning control has occurred. Where a breach has occurred, the offending party will be advised of the exact nature of the breach identified and, where appropriate, be invited to remedy the breach voluntarily. Every case will be dealt with on its own merits; however, initially, in most cases, the Council will seek to resolve any breach through negotiation unless significant harm is being caused. The enforcement officer will seek either agreement with the offending party for remedial works to be undertaken together with a timescale for these works, or the submission of an application for planning permission or other consent to regularise the situation. The officer will confirm this in writing to the offending party and the complainant. In the majority of cases, this approach is successful in remedying breaches without the need for formal enforcement action.
- 4.4 Remedial works can take many forms and can include anything from the simple removal of a sign to the cessation of a use, the reduction in the size of an extension, building or structure or even the complete removal of an extension, building or structure.
- 4.5 Where an application is invited to regularise the situation, this may take the form of a retrospective application for planning permission or advertisement consent, as appropriate, to the Council or an application for a Certificate of Lawfulness, to establish the lawfulness of the use or works undertaken. Where such an application is invited, it should not be assumed that consent will automatically be forthcoming. Where consent is refused, the Council will take formal enforcement action to regularise the situation, whether or not any appeal is made against the refusal of consent.
- 4.6 In all cases where remedial works have been agreed, the case will be reviewed and a further site visit undertaken at the end of the agreed time period.

4.7 Where the breach of planning control is significant, or where there is no agreement with the offending party to remedy the breach voluntarily, or where the agreed remedial works have not been undertaken within the agreed timescale, formal enforcement action will be considered. In all cases, any formal enforcement action will need to be proportionate to the harm caused and expedient in the public interest. In cases where the harm arising is not considered to be significant, it may not be expedient for the Council to take formal enforcement action. In such cases, the case will be closed even if the breach has not been remedied.

4.8 All complaints regarding breaches of control will be dealt with in accordance with the following procedure:

- Complaint received in writing, by email or by phone. Details of complainant's name, address and contact details required (preferably email and phone).
- Complaint logged within 2 working days (case 'start date'). Priority level assigned. For Priority A cases this will normally be after an initial site visit which will be carried out as soon as reasonably practicable on the day the breach is reported.
- Acknowledgment to be sent to complainant when complaint logged to confirm timescales for site visit and 8 week review.
- Site visit to be undertaken in accordance with assigned priority level.
- Complainant advised within 5 working days of site visit whether breach of control found and of the next steps to be taken.
- Where no further action to be taken, case to be closed.
- Where a breach of control found, voluntary remediation to be sought with the offending party where appropriate. For minor breaches, remedy to be sought within 8 weeks of the case start date. Confirm works and timescale in writing with offending party.
- Where breach of control is unclear, further investigation to be carried out within 8 weeks of the case start date.
- Review of case after 8 weeks of the case start date if not already closed. Advise complainant of any timescale for remedial works, further investigation for formal action.
- Where formal enforcement action is to be considered, an expediency report to be prepared within 10 working days.

- Where it is found to be expedient to commence formal enforcement action, the Council will aim to serve the formal notice within 4 weeks.
- Further review of case after 16 weeks of the case start date.

4.9 Where an expediency report is to be prepared, this will assess the breach of planning control in the same way as an application for planning permission or other appropriate consent. The breach of control will be assessed against the relevant policies of the Council's development plan and any other relevant material considerations. Due regard will also be given to the context of the site and the impact on adjoining occupiers and the wider locality. This assessment will help to determine the level of harm arising from the breach of control and inform the expediency of taking formal enforcement action in any individual case. Where the level of harm is considered to be low, it is unlikely that it will be expedient to take formal enforcement action. In such cases, no further action will be taken by the Council. In some cases, the harm caused by the breach of control may relate to only one element of the development, in which case, the Council will take action against only this element and not the whole development. This is known as 'under enforcement'.

4.10 In cases where the harm arising from the breach is considered significant and it is considered expedient to take formal enforcement action, the Council will consider which of the following powers it should exercise:

Breach of Condition Notice: This is only appropriate where a condition on a planning permission or other consent has not been complied with. The offending party has no right of appeal against this notice.

Enforcement Notice: This is the normal method of remedying breaches of planning control. The Council may choose to 'under enforce' by specifying only those works required to address the harm caused. In all cases, the offending party has a right of appeal against an enforcement notice.

Listed Building Enforcement Notice: This is the equivalent of an enforcement notice but specifically in relation to breaches of planning control relating to listed buildings. In all cases, the offending party has a right of appeal against a listed building enforcement notice.

Stop Notice: This can be used in conjunction with an enforcement notice to stop any breach of control that is causing serious harm with immediate effect. This will only be used in the most serious cases.

Temporary Stop Notice: A temporary stop notice can be served before an enforcement notice has been served but can only be issued in respect of an activity or use of land and only has effect for a period of 28 days. It will be used only in cases where an activity is causing very significant harm and needs to be stopped with immediate effect.

Injunction: This involves seeking an order from the court preventing an activity or operation from taking place. As with a stop notice, this will only be used in the most serious cases. Failure to comply with a court injunction is a contempt of court.

Direct action: In cases where an enforcement notice has not been complied with, the Council can exercise its powers to enter buildings and land to undertake remedial works itself to secure compliance with the notice.

- 4.11 Failure to comply with a breach of condition notice, enforcement notice, listed building enforcement notice, stop notice or temporary stop notice served by the Council is a criminal offence for which the offending party will be liable for prosecution. In all cases where the Council decides to prosecute an offender it will also consider seeking a confiscation order under the Proceeds of Crime Act 2002. A confiscation order would allow the Council to recover the benefits arising from the offender's criminal conduct.
- 4.12 Where formal enforcement action is taken by the Council, complainants will be advised that this will often take several months to resolve. The correct legal procedures must be followed in all cases and this may allow the offending party to appeal against any action taken by the Council. In all cases, a reasonable length of time, depending on the remedial works required, must be given for compliance. In exceptional cases, breaches of planning control may take several years to be fully resolved.

5.0 Breaches of planning control that constitute a criminal offence

- 5.1 Most breaches of planning control do not constitute a criminal offence and, where expedient, the Council's powers are limited to serving formal notices to remedy the breach. Only when an offender fails to comply with a formal notice (subject to any appeal), is a criminal offence committed and the offender may then be prosecuted by the Council.
- 5.2 Some breaches of planning control do, however, constitute a criminal offence and these include:
- i) Works to listed buildings.
 - ii) Failure to comply with a condition on a listed building consent.
 - iii) Works to trees protected by a tree preservation order.
 - iv) The display of advertisements.

In each case, the offending party is liable to prosecution by the Council although the Council will still consider whether a prosecution is expedient. In the case of an authorised advertisement, the offending party will be given a limited period of time (usually 48 hours) to remove the advertisement. In the case of a protected tree that has been felled, no remediation is possible and the Council will normally consider it expedient to prosecute the offending party.

6.0 Other powers available to the Council

6.1 In addition to the general powers of enforcement relating to breaches of planning control, the Council does have additional powers that it can use in cases where amenity is affected.

- Discontinuance Notice. This can be used to require the cessation or limitation of uses or the removal or alteration of buildings on land, whether lawful or not.
- Revocation or Modification Order. This can be used to eliminate or alter a planning permission insofar as it has not been carried out.
- Section 215 Notice. This can be used to require land to be cleaned up where a build up of rubbish or materials or unkempt land affects the amenity of an area.
- A High Hedges Remedial Notice. This can be used where a high hedge is affecting the amenity of an adjoining property. This can only be served where a formal application is made by the complainant to the Council for consideration.

7.0 Immunity from enforcement action

7.1 Under the planning legislation, breaches of planning control can become immune from enforcement action, and therefore lawful, if they have been in existence for certain periods of time without any formal enforcement action being taken against them. The relevant time periods are:

- 4 years for buildings and operational development.
- 4 years for the change of use of a building to a single dwelling.
- 10 years for all other breaches of planning control, including other changes of use and breaches of planning conditions.

In such cases, the Council cannot use its enforcement powers no matter whether harm has been caused or not. However, where there is evidence that the breach has been deliberately concealed in order to

become immune from enforcement action, the Council may apply for a planning enforcement order, which overrides these time limits and gives the Council a further year to take enforcement action.

8.0 Monitoring and Review

- 8.1 This plan will be periodically reviewed and updated in response to new legislation, guidance or other relevant information. The operation of the enforcement team will also be kept under review and where necessary changes will be introduced to this plan to reflect new procedures. Any updated plan will be brought to the Development Control Committee for approval.
- 8.2 The performance of the enforcement team against the targets in this plan will be monitored on a quarterly basis.

9.0 Equalities Impact Assessment

- 9.1 This plan has been the subject of an equalities impact assessment. This has concluded that whilst the plan may have some potential impacts on certain protected characteristics, specifically race and disability, these can be mitigated through ensuring all information relating to planning enforcement is clear, easy to understand and accessible.
- 9.2 In order to monitor any potential impacts on people with protected characteristics, equality monitoring forms will be sent out to all complainants and persons the subject of investigation upon the conclusion of each investigation.

10.0 Complaints

- 10.1 If any person, whether a complainant or a person the subject of an investigation, is aggrieved at the way an enforcement case has been dealt with, they can write to the Development Management Section Head setting out their complaint at the address below:

Regeneration and Development
Watford Borough Council
Town Hall
Watford
WD17 3EX

Email: developmentcontrol@watford.gov.uk

The complaint will then be dealt with in accordance with the Council's complaints procedure.

- 10.2 In the event that the person remains aggrieved and is not satisfied with the Council's response, they may make a complaint to the Local Government Ombudsman. Information regarding this will be provided as part of the Council's complaints procedure.

Draft