

Policy for Planning Enforcement in Havering

1. Introduction

This enforcement policy is prepared in response to the enforcement concordat promoted by the Better Regulation Unit of the Government's Cabinet Office.

It sets out principles and standards for how our Service operates. We have separately produced a code for planning enforcement which explains how we handle planning enforcement matters. This policy statement explains in more detail how we operate in terms of the powers available and where our resources will be targeted.

2. Scope of Enforcement Action

The Planning Service receives some 600 complaints a year from the public about alleged breaches of planning control. Investigations are also generated by information from Councillors and the Council's own staff. Action may be taken against an unacceptable breach of planning control even where there is no public complaint.

Some of the complaints we receive are of a very minor nature or do not involve a breach of planning control. It does not automatically follow that the Council will take enforcement action where a breach of planning control is identified. In accordance with Government advice, we aim to resolve matters in the first instance through negotiation but will take formal action where this is clearly necessary, proportionate and expedient to the circumstances of the case. Some matters can take a long time to bring to a conclusion because of the need to establish to the satisfaction of the courts whether or not a breach of planning control has taken place.

The need to respond effectively to a wide range of enforcement complaints involves assessing priorities and considering which of the following options may be appropriate.

- a) **Immunity from enforcement action** Although a breach may have occurred, it may be immune from enforcement action if it happened more than 4 years ago in the case of operational development or has continued for ten years in the case of most uses. Whether or not action could be taken would depend on the individual circumstances of each case.
- b) **Not expedient to enforce.** Although a breach has occurred it may not warrant action being taken. 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.

- c) **Allow time for remedy.** Time may be given to remedy the breach or justify its retention, if necessary by inviting a planning application. Such cases may include situations where the harm is easily remedied for example through use of planning conditions or is not so serious as to warrant immediate action or where it may be otherwise justifiable. However, any informal opportunity to resolve the breach will not be allowed to delay effective action unnecessarily where this is clearly required.
- d) **Negotiate.** Look practically at the nature and effect of the breach and seek to resolve any harm caused through a negotiated solution without resorting to formal action.
- e) **Planning Contravention Notice.** This enables the Council to formally require further information to better understand an alleged breach, where there is a clear indication that such a breach may be occurring.
- f) **Enforcement Notice.** This is the normal means of remedying unacceptable development where informal resolution is either unsuccessful or inappropriate. There is a right of appeal to the Secretary of State against an Enforcement Notice which can be quashed or amended. In the majority of cases, Enforcement Notices are authorised by the Council's Regulatory Services Committee. Decisions on whether or not to take enforcement action are based upon the planning policies contained within the Havering Unitary Development Plan together with any other material considerations. Failure to comply with a valid Enforcement Notice is a criminal offence which may be prosecuted through the Courts.
- f) **Breach of Condition Notice.** This can be used in addition to or as an alternative to an Enforcement Notice where the unauthorised activity clearly breaches a condition attached to a planning permission. There is no right of appeal against a Breach of Condition Notice and non compliance is prosecutable through the Courts.
- g) **Stop Notice.** This can be issued where a breach of planning control is causing serious or irreparable harm and more immediate action is justified. Such notices are usually only used where very significant harm is arising from the breach. Currently a Enforcement Notice must first be served but the Government is consulting on proposed new measures involving a Temporary Stop Notice.
- h) **Court Injunction.** This may be sought in the most serious cases where irreparable harm is happening 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. This means that the Courts will consider matters very carefully when deciding whether or not to support the Council's case.

- i) **Default Powers.** Councils are entitled to enter land to take necessary steps to secure compliance when an Enforcement Notice is in effect. In some cases this may be more effective than drawn out legal Court action. It does have resource and safety implications however which, in practise, may limit its appropriateness.

3. Principles of Planning Enforcement

We aim to follow these principles when carrying out our work.

- **Proportionality and expediency:** any action should be proportionate to the level of harm involved and should take into account relevant circumstances where it is expedient and necessary to do so.
- **Consistency:** having a similar approach to similar circumstances to achieve similar outcomes.
- **Transparency:** being open when dealing with business and the public.
- **Being helpful, courteous and efficient.**
- **Performing against agreed standards** and targeting resources.
- When we carry out our functions we aim to follow the principles of the enforcement concordat and Government advice on enforcing planning control by:
 - Giving clear advice including what action needs to be taken, why and by when.
 - Providing an opportunity to discuss or respond to issues raised before formal action is taken. However, enforcement action will not be delayed where there is evidence of non co-operation or the ongoing harm is serious.
 - Explaining the consequences of failing to take appropriate remedial action when formal enforcement action is considered.
 - Once the Council has decided enforcement action should be taken writing to the transgressor before notices are served.
 - Working with other services to seek to ensure the most effective remedy to problems.
 - Maintaining information in accordance with legislation.

4. Priorities for Action

We are asked to investigate a very large number of cases each year. We prioritise each case according to the nature and scale of the alleged breach together with its degree of impact on local amenity. Although we judge each case on its individual circumstances and resources available at the time, the following summarises the priorities we attach to the various types of enforcement matters we deal with.

1. Ongoing Court or appeal matters.
2. New complaints of serious irreparable harm such as demolition of a Listed Building, felling protected trees or a wholly incompatible large scale use.
3. Ongoing serious breach of a valid Enforcement Notice.
4. Complaints of breaches causing serious harm affecting the amenity of multiple residents.
5. New complaints where the time limit for taking enforcement action expires imminently or which may set precedents causing more widespread harm.
6. Other complaints of planning breaches where serious harm is identified.
7. Ongoing investigations where no material harm has been identified or minor harm can be straightforwardly remedied.
8. All other complaints based on breaches of planning control.
9. Complaints which lie outside the areas of responsibility of the Planning Control service.

We intend to manage our resources to ensure the highest priority complaints can be effectively addressed without undue delay. This means the response to lower priority complaints will be adjusted accordingly. The Service will not expend significant resources in investigating and seeking to resolve cases falling in categories 8 and 9 as this seriously affects our ability to respond to cases involving identified harm. The quality of evidence and support provided by complainants can also affect the outcome of our investigations.

5. Investigations

Complaints will only be acted upon if they are motivated by planning harm. A number of complaints made to us are anonymous and matters that we believe to be wholly malicious or speculative in nature. We will not pursue complaints which are motivated by neighbour or business disputes and other prejudices which have nothing to do with planning as these divert resources away from our priorities.

As far as possible we will treat complaints in confidence subject to all exemptions from obligations to release information under the Freedom of Information Act.

6. Prosecution

The service will use discretion in deciding the expediency or otherwise of seeking prosecution against offenders. Prosecution will only be pursued on legal advice, when it is clearly in the public interest and when the evidential threshold has been reached where it is more likely than not (ie greater than 50% probability) that a conviction will be secured.

7. Service Targets

All properly made written and oral complaints will be:

- Acknowledged within 5 working days unless a full reply can be given within a shorter time.
- Registered on the Council's computer system.
- Reported to the next available quarterly meeting of the Council's Regulatory Services Committee.
- If the Service considers a visit to the complaint site is necessary, this will be carried out by an Enforcement Officer within 10 working days of the receipt of the complaint.
- If a breach of planning control is identified, the person responsible will be advised:
 - Of the steps required to remedy or regularise the situation.
 - That they have a right to make a retrospective planning application.
 - On the prospects of a retrospective planning application being approved.
 - 21 days will be allowed for the submission of such an application but it may be reasonable to allow longer in complex cases.

- Within 15 working days of the complaint, the complainant will be informed either, verbally or in writing, of:
 - The action the Service proposes to take, if any.
 - The likely timescales involved.
- If a retrospective planning application is received:
 - It will be processed by the Planning Service in accordance with its normal policies and procedures.
 - The complainant will be notified unless the circumstances of the case warrant otherwise. Unless required in the case of an emergency and in accordance with delegated powers request for authority to serve Enforcement Notices will be sought from the Regulatory Services Committee.
- Once a final decision has been made on whether or not it is expedient to take enforcement action against an identified breach, the complainant will be notified accordingly.
- Our aim is to achieve closure of 80% of complaints within 3 months of their receipt date.

8. Resources

The Planning Control Manager is responsible for allocating resources to individual cases depending upon overall workload and service priorities.

9. Monitoring

We regularly monitor the operation of the Enforcement Service publishing figures for case closures on a monthly basis. We report quarterly to monitoring meetings of the Regulatory Services Committee on progress of enforcement and complaints received.

10. Complaints

If you feel that the Council has failed to properly investigate a complaint you have made you should, in the first instance, contact Simon Thelwell, Planning Control Manager. You can e-mail him at simon.thelwell@havering.gov.uk or you can write to him at 7th Floor, Mercury House, Mercury Gardens, Romford, RM1 3SL. You are entitled to pursue any complaint regarding the service under the Council's Corporate Complaint procedure. Separate details of this are available on the Council's website or on request.

11. How do you use our Services?

If you need to report a possible breach of planning regulations or if you need information or advice you can e-mail us at planning@havering.gov.uk or you can phone 01708 432652.

If you would like to write to us our address is:

Planning Control
7th Floor
Mercury House
Mercury Gardens
Romford
RM1 3SL