LONDON BOROUGH OF BEXLEY

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Planning Enforcement Policy

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INTRODUCTION

1.1 Bexley Council recognises that development and growth is paramount to the future of the Borough. However, that recognition does not override the need to ensure that development is appropriate and does not cause harm to neighbours or the environment.

1.2 The Council has a duty to investigate alleged breaches of planning control and has statutory powers to remedy such breaches. It is our policy to exercise those powers in a way that ensures that we appropriately control development to ensure **the credibility of the planning system is not undermined**.

1.3 This document outlines the procedures we will follow and the standard of service that can be expected when enquiries are made about alleged unauthorised development within the borough of Bexley.

1.4 Planning enforcement can be a complex process and the main aims of this document are to make sure:

- That adopted procedures are fair and reasonable;
- That all interested parties are kept informed;
- That the outcome of any action taken is commensurate with the breach of control;

  and,
- That the service seeks to continually improve.

1.5 Central Government, at paragraph 207 of the National Planning Policy Framework, sets out its policy on the planning enforcement, which states:

> *"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 This document is the London Borough of Bexley's local enforcement plan.

1.7 Enforcement powers are discretionary, to be used when expedient to do so. In considering appropriate action, the Council has to bear in mind the particular circumstances of businesses and self-employed people. In respect of householders, the degree to which an unauthorised development exceeds the "permitted development" allowance in the General Permitted Development Order 2015 (as amended) will be an important consideration.

1.8 On our website we have information about the planning enforcement service at Bexley and how to report suspected breach of the planning regulations.

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2 ENFORCEMENT TOOLKIT

We have a number of planning enforcement powers available to us to tackle possible breaches of planning control in a proportionate way relevant to the nature of the case. We enforce the Town and Country Planning Act 1990 (as amended), along with other planning legislation, which gives us the power to serve various types of enforcement notices and to enter land at any reasonable time. The most commonly used enforcement powers are:

- **Negotiation**

  Negotiation is encouraged in all but the most serious cases as the best way to resolve a breach.

- **Planning contravention notice (PCN)**

  This is a notice which allows the Council to collect evidence which will help to determine if a breach is taking place and the next steps. The owner and/or person responsible have 21 days to respond, failure to do this may result in prosecution.

- **Enforcement notice**

  An enforcement notice allows the Council to formally require a breach of planning control to be remedied (Listed Building Enforcement Notices are similar in respect of breaches of control in respect of listed buildings). Government guidance states that enforcement notices should only be served when expedient to do so. Failure to comply within the specified timeframe is a criminal offence which can lead to prosecution proceedings. Enforcement notices can be appealed and the Planning Inspectorate can decide to uphold the notice, amend it or have it quashed.

- **Section 215 notices**

  Under Section 215 of The Town and Country Planning Act 1990 (as amended) the Local Planning Authority can deal with untidy land. This section of the Act allows a Local Planning Authority to take enforcement action via an 'untidy land' notice where the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land.

- **Breach of condition notice (BCN)**

  A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the Local Planning Authority in the notice (Section 187A of the Town and Country Planning Act 1990). Any recipient of a breach of condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased. Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with the conditions and any specified steps, will be in breach of the notice and guilty of an offence Section 187A(8) and (9) of the Town and Country Planning Act 1990. Summary prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice.

- **Tree replacement notice**

  Section 207 of The Town and Country Planning Act 1990 (as amended) allows the Council to enforce the replacement of Tree Preservation Order trees on parties who have failed to comply with their duty to replace under Section 206 of the Act. The notice specifies the date from which the replacement Notice becomes enforceable, not less than 28 days from the date of service.

- **Planning enforcement order**

  Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limit for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) has expired. A Planning Enforcement order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

- **Stop notice**

  A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice (Section 183 of the Town and Country Planning Act 1990). A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence (Section 187(1) of the Town and Country Planning Act 1990). A person guilty of this offence is liable on summary conviction to a fine not exceeding £20,000 – and on conviction on indictment, to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

- **Temporary stop notice**

  A temporary stop notice (Section 171E of the Town and Country Planning Act 1990) requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening this notice will be prosecuted for an offence.

- **Prosecution**

  It is a criminal offence not to comply with the requirements of a statutory notice. The Council can prosecute or formally caution parties who fail to comply with the requirements of an enforcement notice. A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment an unlimited fine.

- **Injunction**

  The Council may apply to a court for an injunction to restrain a breach of planning control that is occurring or is reasonably expected to occur. An injunction will be sought in the most serious of cases where immediate action is urgently required.

- **Direct action**

  In appropriate cases the Council will undertake direct action to ensure compliance with any notice served. The cost of taking such action will be recovered, wherever possible, from the owner(s) or other responsible party(ies).



3 RESOURCES AND EXPEDIENCY

"Not expedient" – National Planning Practice Guide (2014)

It is at the Council's discretion whether to take formal enforcement action. Planning breaches may be considered technical or trivial. In line with government guidance within the National Planning Policy Framework (2012) and planning practice guidance, the Council will take action when it is considered fair and reasonable to do so and is proportionate to any harm caused. In some cases although there is a breach in planning control, the harm caused is minor, meaning action is not justified i.e. it is not expedient to pursue the case.

3.1 The overall enforcement workload can vary greatly depending on the number of complaints received, the complexity of the cases involved and the extent of any proactive enforcement initiatives being under taken by the service. Consequently the response time to complaints may vary but we will continue to provide a high standard of service delivery.

3.2 The resources available for enforcement activities will be reviewed periodically, to ensure that an appropriate level of service delivery (as set out in Priorities below) can be maintained having regard to the number of complaints being received and other priorities.

3.3 Enforcement action must be balanced between protecting the local area and enabling acceptable development to take place. We therefore take a common sense approach, using professional judgement to evaluate the harm in each situation. Given the discretionary nature of enforcement powers, formal action will only be taken when it is justified in planning terms.

3.4 Given the cost of enforcement action against a breach of planning control, which may involve research, site surveillance and legal work lasting several months and in some cases much longer, the council will direct its resources towards cases where the greatest harm is being caused to public amenity or the environment. This means that where the harm is slight or technical, we may decide at an early stage to take no further action.



4 WHAT WE DO NOT DO

4.1 The planning enforcement service can only investigate alleged breaches of planning control. We cannot deal with matters that are outside the controls in the planning acts such as neighbour disputes, issues covered by highway legislation, environmental health or building control matters, breaches of covenants, the Party Wall Act or boundary disputes. Where the matter of concern involved is a potential breach of planning control and a matter that requires investigation from other departments in the Council, we will work closely with those departments to resolve the matter of concern.

4.2 The planning enforcement service will not act as a negotiator or arbitrator in matters that are outside of its planning powers.

5 ANONYMOUS ENQUIRIES

5.1 In order to maintain an audit trail and prevent malicious or hoax complaints which waste valuable resources, if you wish to make a complaint, it is vital that we have your full details, including name, address and telephone number along with any evidence of an alleged breach. Therefore, anonymous complaints or those where false contact information is given will not be accepted or investigated.

6 CONFIDENTIALITY

6.1 The planning enforcement service will maintain the identity of any enquirer or complainant about an enforcement issue as confidential. However, if an appeal is lodged or a case goes to court, any representations received usually become public documents that are available for public inspection. This will include the appellant and their legal representatives.

6.2 Where an investigation is requested about a nearby neighbour, and in particular an adjoining property, the alleged contravener can make assumptions about who has complained which can lead to further neighbourhood disputes. It is worth considering, in the interests of good neighbourliness, whether discussing your concerns with your neighbour before contacting the Council may be better.

6.3 In certain cases, you may be asked to assist us by providing evidence at an appeal or in court. Before this happens, we will ask for your consent. In some cases if you are unable to do so, we may not be able to continue with the case.

Freedom of Information

6.4 In handling the information that it holds, the Council is governed by the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998. Under this legislation, there is a presumption that Councils should disclose information to the public unless its disclosure would adversely affect the interests of the person who provided the information (Regulation 12(5) EI Regulations).

6.5 If the Council receives a request to disclose information, it is under a duty to consider why the information cannot be disclosed at that time. If the enquirer indicated that they wish us to treat anything as confidential, we will contact them before we make a decision about disclosure to see if the circumstances have changed and whether they still wish the material to be treated as confidential. The council retains absolute discretion on the disclosure of any information it holds.

7 ENFORCEMENT POLICY

Priority criteria

7.1 To make the best use of limited resources, planning enforcement enquiries are prioritised by the level of harm arising from an alleged breach of planning control. For instance, we will give greater priority to a case where specific harm to the immediate neighbours arises, rather than more general amenity impacts on the wider neighbourhood.

7.2 If you ask us to investigate an alleged breach, you will need to provide your name, address and a contact telephone number, along with as much information as possible to identify the exact location. You should be able to tell us what is happening and when it took place. You should try to identify who you believe is responsible and note any names that might prove useful, for example, from advert boards or vehicles on site. Where possible, provide dated photographs of work in progress. Complaints lacking in detail may be treated with less priority.

7.3 When a breach is established it will be assessed with regard to the level of harm the unauthorised development is causing. Our priority approach for commencing the investigation is as follows:

Priority	Type of breach of planning control	Deadline for 1st site visit
1	• Imminent or ongoing unauthorised works to a Listed Building or Scheduled Ancient Monument. • Imminent or ongoing unauthorised works to trees protected by a Tree Preservation Order or Conservation Area rules. • Imminent or ongoing demolition of a building in a conservation area.	ASAP
2	• Activities that are likely to result in significant dangers to users of the public highway. • Unauthorised development which provides inappropriate quality of living accommodation, including unauthorised flat conversions, HMOs and "beds in sheds". • Activities where immunity from enforcement action is imminent (usually this will mean within 3 months of the unauthorised development gaining immunity due to the passage of time).	Within 5 working days
3	• All other breaches of planning control, except where no clear evidence of a breach of planning control has been provided and a desktop analysis concludes that one does not appear likely.	Within 10 working days

Standard of service

7.7 The planning enforcement service standards are:

- We will acknowledge all enforcement enquiries within 3 working days of receipt where sufficient detail of the breach and contact details have been provided.
- If on receipt of an enquiry it is apparent that it is not a planning matter, not a breach of planning control, benefits from planning permission, is permitted development, or is a non-material or technical breach, we will not open an enforcement investigation and we will notify the complainant accordingly.
- If on receipt of a complaint or, upon further investigation, it is apparent that the issue falls within the remit of another service within the Council the details will automatically be forwarded to the relevant department and we will notify the complainant accordingly.
- Where an enforcement investigation is opened, a case officer and file reference will be allocated to the investigation and the name and contact details of the investigating officer will be provided to the complainant.
- Cases will be prioritised as per section 7.3.
- The complainant will be informed of the necessary action required to resolve a breach as soon as practicable but in any event within 28 days of a case being opened, if this is not possible, they will be given an explanation and a new timescale.
- For complex enforcement investigations, we will provide updates on the 13 week and 26 week stage to the application setting out progress and likely timescales for resolution.
- Where the unlawful activity raises other non-planning concerns we will liaise, as appropriate, with other enforcement bodies both within and outside the Council.

7.8 The achievement of these service standards will be monitored and kept under review.



8 TYPE OF ACTION

8.1 Once an enquiry has been investigated the planning enforcement service will identify the course of action to be pursued with due consideration of the Human Rights Act 1998 and the Equalities Act 2010.

Where no further action is proposed

8.2 The reasons for taking a decision to take no further action can include:

- No breach of planning legislation has been established
- A desktop analysis concludes that a breach is unlikely to have occurred
- A minor technical breach has been established, but is not expedient to pursue
- A breach of planning legislation has occurred, but it is now immune from action
- There is insufficient evidence to pursue the matter

8.3 The enquirer will be informed of the position and the case will be closed.

Where a breach is established

8.4 It is not an offence to start building works or make a change of use without first obtaining planning permission. Therefore just because something has not got planning permission, does not necessarily mean that we should take action to stop it. Developers or owners will be advised that if the breach continues, that is at their own risk and we may take enforcement action at a later date.

8.5 Where a breach is established, the enquirer will be advised how the planning enforcement service intends to proceed with the investigation and what course of action is intended.

8.6 There are three principal courses of action available:

- **Informal action:** In many cases breaches of planning control can be rectified more quickly and more effectively through negotiation rather than by more formal action. Such an approach will be taken where this is seen to be the best way of dealing with the matter.

- **Submission of a retrospective planning application**: We will seek the submission of a retrospective planning application where there is a reasonable prospect of the Council granting planning permission for the unauthorised development. Where we follow this route, it should not be taken as an indication that we will grant planning permission. If an application is made, the development will be assessed on its planning merits, following normal procedure.

- **Formal action**: Where the breach does not have a reasonable prospect of being approved or resolved, relevant evidence will be gathered and discussed with expert planning and legal officers to agree the most appropriate course prior to taking any action.

Submission of a retrospective planning application

8.7 In cases where a retrospective planning permission is required for unauthorised works, but it is considered that there is a very low prospect of the application succeeding, we may still take enforcement action even if a planning application has been submitted.

Formal action

8.8 Where formal action is needed, the appropriate course will usually be the service of one of the notices listed under section 2. However, in the cases of unauthorised works to a listed building, damage to a protected tree or the unauthorised display of an advertisement, these are offences under planning law and they can be taken direct to the Magistrate's Court for prosecution. All other breaches only become an offence after an enforcement notice becomes effective and is subsequently not complied with.

8.9 If formal action is proposed, it will be authorised by senior officer(s) within the planning service. When authorised, a notice is generally served on all relevant parties (i.e. anyone with a legal interest in the site, including the owner, the occupier and the mortgage company) specifying what action they are required to take to correct the breach and by when this needs to be done. This means that where a landlord complains about works that a tenant has carried out, if we take formal enforcement action it will be against the landlord as well as the tenant. Therefore in these cases, the landlord is likely to be advised to use property law to deal with the matter and we may take no further action.

Appeals

8.10 Where we serve an enforcement notice there is a right of appeal, however for other types of notices there is no right of appeal. Where appeals are made, they are made to the Planning Inspectorate and more information is available from their website. Whilst an appeal is considered, which can take many months, the enforcement action is suspended.



9 POLICY REVIEW

9.1 We will monitor the operation of this policy to ensure that an appropriate level of service is being provided.

10 REQUEST FOR AN ALLEGED BREACH OF PLANNING TO BE INVESTIGATED

10.1 Should you wish to request an investigation into an alleged breach, the simplest and fastest method is to complete our self-serve form on our website:

https://mybexley.firmstep.com/service/Planning_issues

10.2 Should you not have difficulty accessing the internet you can call our contact centre on 0208 303 7777.



Appendix A

Useful contacts

Building Control

Matters controlled under Building Regulations; works which may be permitted development under planning legislation for example drainage, foundations, structural stability.

Email: Buildingcontrol@bexley.gov.uk

Environmental Protection

Matters controlled under Environmental Protection legislation, noise nuisance, air and light pollution, bonfires, untidy residential sites and licensing.

https://www.bexley.gov.uk/services/environmental-protection

Email: EnvironmentalHealth@bexley.gov.uk

Roads and pavements

This team deal with dropped kerbs, skips, hoarding and scaffolding etc. Problems can be reported online at:

https://www.bexley.gov.uk/services/streets-and-roads

Health and Safety Executive

This is a service external to the Council. They deal with issues such as unsafe work practice or building sites and includes matters such as safe asbestos disposal

Information can be found on their website http://www.hse.gov.uk/

Phone no: 0345 300 9923

Online reporting form: https://webcommunities.hse.gov.uk/connect.ti/concernsform/answerQuestionnaire?qid=594147

Environment Agency

This is a service external to the Council which deals with a range of environmental matters.

https://www.gov.uk/report-an-environmental-incident

Phone number: 0800 80 70 60

APPENDIX B — Enforcement process

