



HYNDBURN

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PLANNING ENFORCEMENT CODE OF PRACTICE

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The General Approach to Planning Enforcement

Whether to take formal planning enforcement action or not is a matter for the local planning authority to consider. However the Commissioner for Local Administration (the local government ombudsman) has held, in a number of cases, that the failure to take effective enforcement action which was plainly necessary can amount to “maladministration”. It is therefore important that each alleged breach of planning control is properly investigated and a decision made on a case by case basis as to what action is appropriate.

In dealing with all planning enforcement matters the Council will have regard to the provisions of The Human Rights Act 1998 and PPG 18 (Enforcing Planning Control).

Bearing in mind the above the Council’s general approach to planning enforcement is as follows:

- In considering any enforcement action, the decisive issue will be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings and merit action in the public interest.
- Any enforcement action will always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site.
- The Council’s initial aim will be to establish the facts of the case from both the enquirer and the person responsible for the alleged breach of planning control in order to assess whether there is a breach of

planning control. A study of the planning history and a site visit will be undertaken and where deemed to be necessary Planning Contravention Notices will be used to establish whether a breach of planning control has taken place.

- Investigations will be carried out in a fair and equitable manner and where an initial attempt to persuade the person responsible for the breach voluntarily to remedy the harmful effects of unauthorised development fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. The statutory time limits for taking enforcement action will be borne in mind.
- In dealing with those responsible for an alleged breach of planning control the local planning authority will give clear advice on what they are required to do and will set firm deadlines for all actions required.
- When formal enforcement action is taken the persons enforced against will be made aware of their rights of appeal against that formal action. Complaints about the planning enforcement service can be made in accordance with the Council's adopted Complaints Policy.
- The local planning authority will consider all planning enforcement issues in a fair and equitable manner, encouraging the discussion of issues and the negotiation of solutions and allowing all parties an opportunity to explain their case. An agreed and acceptable outcome is preferable to the instigation of formal enforcement action but formal action will be taken expeditiously where it is required.

Examples of planning breaches include:

- Not building in accordance with approved plans (following the grant of planning permission);
- Failing to comply with conditions attached to a planning permission;
- Unauthorised works to a listed building;
- Removing or lopping trees protected by a Tree Preservation Order or in a Conservation area;
- Display of an advertisement without the benefit of advertisement consent;
- Failure to properly maintain land so that it effects the amenity of the area;
- Failure to comply with a S106 legal agreement.

Things that are not a breach of planning control include:

- Internal works to a non-listed building;
- Clearing land of overgrowth, bushes or trees (provided they are not subject of planning protection);
- Operating a business from home, where the residential use remains the primary use and there is no adverse impact;
- Where development is 'permitted development', i.e. where it does not need the permission of the Council;
- Parking or selling vehicles on the highway (this may be a matter for Environmental Health, LCC Highways or the police to investigate) ;
- Boundary disputes – these are a civil matter and cannot be controlled by planning legislation.

Policies and Procedures

The Council will record and investigate all alleged breaches of planning control brought to its attention.

Enforcement action is taken at the discretion of the local planning authority. Before doing so, it must be satisfied that:

- (a) there is clear evidence of a breach of planning control; and
- (b) the breach would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest.

In considering whether to take enforcement action the Council will have regard to the facts of the case and the degree of harm resulting from the breach, the development plan and to any other material considerations, including the consideration of Human Rights issues.

In most case the Local Planning Authority will need to gather its own evidence to demonstrate a breach of control and will not be able to rely on third party information. In some instances the Local Planning Authority will serve a Planning Contravention Notice as part of the investigation process. Such a notice will ask a series of questions. It is an offence to not return a completed Planning Contravention Notice to the Local Planning Authority.

In some cases third party information may need to be relied on in Court. In these cases individuals will be asked whether they would be prepared to provide a witness statement and give evidence in court. If third parties are not able to do this then information sent to the Local Planning Authority will not be admissible in Court.

All alleged breaches will be recorded and investigated including a site visit. The local planning authority's decision will be recorded. All investigations will be undertaken in confidence and no details relating to any enquiries will be revealed.

Anonymous enquiries and complaints based solely on business competition will not normally be investigated.

Anonymous complaints are often the result of private grievance or competitor based and in many instances there is no basis in planning terms in the enquiry.

Investigations into anonymous complaints are hindered if further information about an alleged breach of control cannot be obtained from an enquirer. For these reasons anonymous complaints will not normally be investigated.

Complainants are expected to provide a full name, address and contact telephone number in order for cases to be pursued.

There may be occasions, however, when, due to fear of reprisals, that a genuine enquirer will not divulge their identity. The decision whether to investigate such cases would be treated on their merits. Private disputes between neighbours, boundary disputes, etc where there has been no breach of planning control will not be pursued.

The Local Planning Authority will not disclose information relating to complainants. Enforcement notices are, however, in the public domain and will be available for members of the public to view at any time.

How will we respond to the information we are given?

We will handle the case in the following way:

- Acknowledge the complaint in writing (or by email) and provide a case reference, the name of the investigating officer and level of priority normally within 7 working days of receipt (telephone complaints will be acceptable subject to the name and address of the complainant being given);
- Check the site planning history;
- Endeavour to visit the site within 21 days of receipt of the original complaint
- Establish whether or not we believe there is a breach of planning control;
- Find out the details of the landowner;
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner);
- Issue a Planning Contravention Notice (a formal request for information) if necessary;
- Where necessary update the complainant at key stages in the investigation;

- In certain cases ask that the complainant(s) provide a witness statement(s) to form part of the enforcement case to be considered by the Court.

After investigation we may decide that there has not been a breach of planning control. If that is what we decide then we will close the case at that point. We will not re-open the case unless there is a significant new piece of information or change on site. We may also decide that although there has been a breach, it is not causing enough harm to justify taking further action. Indeed PPG 18 (Enforcing Planning Control) states *“in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest....Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site”*.

We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

Not every complaint about a breach of planning control justifies further action.

We must use our judgement based on experience, case law and the likelihood of success.

Where there is a breach of planning control that needs resolving

If we decide that there has been a breach of planning control that we are going to pursue further then in the first instance we will:

- Ask for things to be put back the way they should be; or
- Without prejudice, invite an application for the unauthorised development if it is considered possible that planning permission might be granted, normally giving 28 days for its submission (but ask for clarification in respect of intentions within a 7 day period); or
- Try to resolve the situation through negotiation without allowing the matter to become protracted. This may mean agreeing a compromise or partial change that we are happy with. It is at the Local Planning Authorities discretion to decide whether this would be sufficient.

Where a retrospective planning application has been asked for, we will normally wait a reasonable period for it to be submitted (subject to the owner/tenant confirming intentions within the 7 day period) and for its determination before taking further enforcement action. However, where it appears that the progress of the application is being deliberately held up by the applicant or there is no prospect of planning permission being granted, enforcement action may be initiated without delay.

Under the planning legislation, breaches of planning control that have been in existence for many years can be immune from enforcement action, i.e. are lawful. If, through discussions with the landowner and other interested parties, it appears that the alleged breach might be lawful, then we will normally invite the submission of an application for a Certificate of Lawfulness. Such applications are based on fact and the relevant test is 'the balance of probabilities'. Applications can be delayed due to difficulties in obtaining evidence, although the Council will not allow the matter to become protracted.

Until the Council is satisfied, usually by the granting of a Certificate of Lawfulness, that the development is lawful, the alleged breach of planning control remains open to the possibility of enforcement action being taken.

If a breach of planning control is not resolved through negotiation, is refused permission or the invitation to submit an application is declined, our steps will be:

- To consider the expediency of taking further enforcement action (this may involve seeking the views of other organisations to see if they have any concerns about the development);
- Take into account the advice given by the Government in Planning Policy Guidance Note 18.

Sometimes we will decide at this point not to try to remove or change everything about an unauthorised development. There may be certain elements of the development that can be brought under control, such as hours of use or the position of a window, without further delay. If these are the things that are really important we may agree to this and not pursue other less important matters.

If further enforcement action is necessary:

- The Enforcement Team will draft instructions to the Council's solicitors;
- Aim to issue an Enforcement Notice or other relevant notice within 28 days of sending those instructions.

The recipient of an Enforcement Notice has the right to lodge an appeal within 28 days following receipt of the notice. The appeal is heard by an independent Planning Inspector and will take several months.

If no appeal is lodged, the Notice takes effect of 28 days following its date of issue.

The Enforcement Notice includes requirements for remedying the breach of planning control and a period for compliance.

Failure to comply with the requirements of an Enforcement Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrates Court (subject to a maximum fine of £20,000).

The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as 'Direct Action'). The Council will seek to recover the costs of undertaking the works from the landowner or a charge is placed on the land. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and so in most cases the preferred method to secure compliance is to prosecute the landowner.

In cases of severe harm the Council can apply for an Injunction in the County or High Court.

Information from the enquirer and from the person alleged to be responsible for the breach of planning control, together with any other information, will be taken into account in assessing whether there has been a breach of planning control. All sites will be visited. The Enforcement Officer will have prime responsibility for the assembly of information and evidence but he will liaise with other departments within the council and with other outside bodies. In some cases the enquirer may be requested to provide a log of evidence of activities at a particular site to assist in the investigation. In all cases where the collection of evidence requires surveillance this will be carried out entirely in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA).

Where planning is not the relevant legislation enquiries will be passed on to a more appropriate discipline. In some cases planning action may not be appropriate and in such cases the enquiries will be passed on to others e.g. Environmental Services, Engineering Services, The Environment Agency, LCC Highways and the enquirer will be advised accordingly. In certain cases a joint approach with colleagues from other departments or agencies will be the most appropriate.

Untidy Land and Buildings

Where the condition of any land or buildings harms the amenity of an area, the Council will consider taking action under Section 215 of the Town and Country Planning Act 1990 to remedy the effects.

Such action will be especially appropriate in those areas of the Borough identified as being of a sensitive nature, such as:

- (a) rural areas outside the urban boundary, including the Green Belt;
- (b) Conservation Areas and where the land in question may affect the setting of a Listed Building;
- (c) residential areas;
- (d) town centres

The owner or occupier of the site will be given the opportunity to improve the appearance of a site or building before formal action is commenced.

The Local Planning Authority does not deal with matters relating to untidy land and buildings. This is a matter that is controlled by Hyndburn Environmental Health, Cannon Street, Accrington.

Trees and Hedgerows

The Council will use its powers to protect trees and woodland the subject of Tree Preservation Orders and hedgerows subject to Hedgerow Regulations. Many trees of high amenity value in the Borough are protected by Tree Preservation Orders (TPO's). Trees in Conservation Areas are protected irrespective of whether or not they are the subject of a TPO. The Council's Trees and Woodlands Officer will investigate any unauthorised works to protected trees.

Any topping, pruning, thinning or felling work to a protected tree must be approved in advance by the Council. Intended work to trees in Conservation Areas must also be authorised in advance by the Council. Carrying out work to a protected tree without consent constitutes a criminal offence. In such cases the Council will gather evidence, where necessary under caution, and will consider whether to mount a prosecution in the Magistrates Court.

Certain hedgerows also enjoy statutory protection. When works to a protected hedgerow are carried out without consent, the Council will again take the required evidence and consider whether prosecution is warranted.

Listed Buildings

The Council will use its powers to protect Listed Buildings with particular emphasis on those identified as 'At Risk'. There are over 100 buildings in the Borough which have been listed for their architectural or historic interest. Any works to a listed building which affect its character or appearance, whether internal or external, need Listed Building consent.

Carrying out work without consent constitutes an offence. Where this occurs, the Council will investigate and take evidence. A decision will be made whether to mount a prosecution in the Magistrates Court.

The Council will, so far as it is able, assist owners of listed buildings to keep them in active use and sound condition. However, there is an implied duty on the Council to pursue the repair of listed buildings which have been neglected by their owners. Before using its powers to serve notices to secure urgent works or full repairs, the Council will negotiate with owners to explore all viable options for the building.

Prioritising Enforcement Complaints

The Local Planning Authority has many demands on its resources and must allocate them where they are most needed. It is clear that the Government, through the indicators it sets and measures us by, that our priority is determining planning applications. Therefore, the resources allocated to dealing with breaches of planning control are limited.

We must therefore prioritise the cases in order of their importance and effect. We prioritise the cases into five distinct categories. They are:-

Priority 1 (Statutory/Legislative Requirements)

- Unauthorised works to Listed Buildings, and Development within Conservation Areas that may have an irreversible effect on its character and appearance
- Works to protected trees where work is ongoing and there is a probability that an immediate response will stop any further damage being caused
- Licensing consultation
- A situation where the alleged breach could lead to irreversible damage being caused to land and/or buildings
- Planning breaches which may cause serious danger to the general public, neighbours or highway users
- Lawfulness of Existing Development Certificates

Priority 2 (Controversial Development)

- Councillor/MP Complaints & Concerns
- Committee Approvals (pro-active monitoring of conditions/approved plan monitoring)
- Controversial sites with a wide community interest, such as development of a large scale that results in serious harm to amenity

Priority 3 (Local Planning Authority Objectives)

- Breaches which are significant in planning terms but no harm will be caused by a delay in investigating
- Delegated decisions (Conditions/approved plans monitoring)
- Changes of use (substantial and/or contrary to policy)
- Development in sensitive areas i.e. Green Belt, Conservation Areas
- Major commercial development (changes of use, buildings and extensions)

Priority 4

- Significant domestic extensions (more than 3 metres in length, two storey, 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.
- Advertisements
- Shutters (if not in a conservation area and not impacting on a listed building)
- Minor commercial development

Priority 5

- Unsubstantiated complaints about changes of use
- Minor domestic breaches of planning control, small sheds, radio antenna, small extension, window alterations, rear/side walls and fences not facing a highway, etc

Depending on the capacity of the Planning Enforcement Service, which is reviewed by the DC Manager on a continuous basis, cases with the lowest priority will not be dealt with unless there is capacity in the service.

Depending on the complexity and nature of the issue, planning enforcement cases can take a considerable time. We will always notify complainants of the outcome of the investigation. However, if you would like to know the progress of a case, then you can call the case officers, whose details you will have been given when you received an acknowledgement of your complaint/concerns.

How Cases are Determined

The power to determine breaches of planning control is delegated to the Development Control Manager.

We aim to determine minor cases within eight weeks and major cases within thirteen weeks. This will not always be possible due to resources or the complexity of the case. A case is determined when it has satisfied one of five criteria shown below.

The relevant issues to be considered when determining cases are the policies contained within the Hyndburn Borough Local Plan and/or Hyndburn Local Development Framework, Government Guidance, and the impact on adjacent properties such as overlooking, loss of light, over dominance, effect on the character or area, harm to people's amenities etc.

1. 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 1995.

Therefore, they do not require planning consent and we have no control.

2. The breach of planning control stops or is removed.

3. A planning application is submitted

4. There is no expediency to take action

This occurs in cases where development does not impact on existing land uses, or if it does, the impact is so minimal as to not prejudice neighbouring land uses beyond what they should reasonably expect.

5. A formal Notice is served.

The formal action taken will depend on the circumstances of each case.

In the case of a planning application being refused or a formal notice being served, action does not stop there. The matter will be pursued until the breach of planning control is resolved.

6. Legal Action

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. We have the power to offer a caution or to prosecute offenders in the Courts. Should a person fail to comply with the requirements of a Notice served on them they will be open to prosecution.

In order to be at this position, a person will 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.

Formal Caution

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

We will prosecute those who do not comply with an Enforcement Notice or commit a criminal offence in the courts.

Direct Action

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.

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 with the land. In some circumstances, we could force sale of the property to recoup the council's costs.