

HERTSMERE BOROUGH COUNCIL



PLANNING ENFORCEMENT

A GUIDE TO DIRECT ACTION 2017

Introduction:

This Direct Action Guide supplements the information published in the Hertsmere Borough Council's 'Planning Enforcement Policy'. It has been prepared having regard to the Council's corporate policies and plans, and relevant planning policy and guidance. The National Planning Policy Framework (NPPF) 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”.

The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement, including the power to take Direct Action (also known as default action).

Direct Action empowers the Council to take action in default to secure compliance with outstanding requirements of a planning enforcement notice. Where an owner or occupier of land has failed to comply with the requirements of a planning enforcement notice within the period for compliance specified in the notice, the Council may do the following:

- enter the land and take the steps to satisfy the requirements of the notice; and;
- recover from the person who is the owner of the land any expenses reasonably incurred by them doing so.

Aims:

The primary aims of this Guide are to:

- Acknowledge the principles of consistency, transparency and proportionality in the decision-making process and overall approach to the use of Direct Action.
- Promote awareness of the relevant policies and procedures, including those relating to the recovery of expenses incurred by the Council.
- Ensure compliance with the Council's corporate procedures.
- Maximise the recovery of the expenses incurred by the Council.

Appropriateness and Viability:

Before deciding whether Direct Action should be taken an assessment will be undertaken as to the appropriateness and viability of taking Direct Action.

Each case will be considered on its merits, having regard to the facts and circumstances of the case. Direct Action will be taken in circumstances where the Council considers it to be necessary and proportionate response to the harm caused by the breach of planning control and where the Council is satisfied that taking Direct Action will not have a disproportionate impact upon affected individuals or communities. The main considerations in these assessments include the following:

- The level of harm caused by the breach of planning control and its impact on surrounding occupiers and communities.
- The personal circumstances of any persons likely to be affected by taking Direct Action.
- Whether Council's homelessness duties to persons affected by taking Direct Action are engaged.
- An assessment of the overall cost of taking Direct Action and the prospects of recovering costs incurred.
- Any risks to the health and safety of Council employees, contractors, the owner or occupier(s) of the property and/or any other party that may be affected by undertaking Direct Action.
- Any other considerations including the Council's reputation, or its current priorities with regards to its authority to take Direct Action.
- The decision whether to take Direct Action is usually taken by reporting the case to the Planning Committee.

Action:

The Council will endeavour to notify interested parties of its intention to take Direct Action prior to the commencement of works.

Where Direct Action is likely to affect an individual's home, business or livelihood notification will be given at least one month before the works are due to take place. In exceptional circumstances it may not be appropriate for the Council to give advanced notification of its intention to take Direct Action.

During the course of taking Direct Action, only those works necessary to fulfil the requirements of the Enforcement Notice will be undertaken.

Recovering Expenses:

The expenses recoverable by the Council are, until recovered, a charge that is binding on successive owners of the land to which the enforcement notice relates. The charge takes effect on the date upon which the Council completes the Direct Action. The expenses recoverable will include such sums as the Council considers to be reasonable in respect of its establishment charges (Local Government Act 1974, Section 36). An establishment charge is the reasonable charge that a Local Authority incurs for administering the Direct Action procedure.

The Council will take all reasonable steps to recover the expenses incurred and will raise an invoice. If the invoice is not paid in full within a period considered by the Council to be reasonable, the invoice will be pursued as a debt.

As a matter of priority, the Council's Land Charges department will be notified of the recoverable sums that will be entered as a charge against the property in the Register of Local Land Charges. If the debt remains unpaid, the Council will consider taking steps to register the charge with HM Land Registry.

