



*Hertsmere Planning
Enforcement Plan -
2020*

HERTSMERE PLANNING ENFORCEMENT PLAN - 2020

Paragraph 58 of the National Planning Policy Framework -2019 posits that “Effective enforcement is important to maintain public confidence in the planning system...” and admonishes local planning authorities to “consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area”. This plan sets out how Hertsmere Borough Council carries out its planning enforcement functions.

Planning Enforcement Plan – 2020

1. Introduction

- 1.1 This plan aims to help you get the best out of the Development Management (Planning) Enforcement Service. It sets out the main service areas and explains how Hertsmere Borough Council carries out its planning enforcement activities.
- 1.2 In order to give the best possible service, it is vital that we give clear guidance on what we can do and how we balance demands on our services against the resources available to us.
- 1.3 In order to identify breaches of planning control and to resolve them with a minimum of delay, we may consult with other Council services including but not limited to Conservation, Environmental Health and Housing. We may also consult with outside agencies including but not limited to The Environment Agency, English Heritage Hertfordshire Building Control and the Police. In doing so the service will identify the most appropriate legislation to deal with a breach. It may be the case therefore that action will be taken by another service.
- 1.4 From the information we give below, we hope that you will be able to measure our performance and decide if we have met our own demanding standards. Should you be unhappy with our performance, we hope that Council officers are given the chance to rectify any problems or explain why we cannot meet your expectations.

2. What is Planning Enforcement?

- 2.1 Hertsmere Borough Council is the Local Planning Authority for this area. Therefore most building and engineering works or changes in the use of land or buildings need planning permission from this Council. Sometimes development is carried out without planning permission or does not properly follow the detailed plans or comply with conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.
- 2.2 Other situations that can be considered for planning enforcement include:
 - Unauthorised display of advertisements.
 - Unauthorised works to protected trees.
 - Unauthorised work to buildings listed as being of special architectural or historic interest.
 - Unauthorised demolition of certain buildings within a Conservation Area.
 - Non-compliance with conditions subject to which planning permission has been granted
 - Land that is in such a poor condition that it adversely affects the amenity of the area.

2.3 The term used to describe such cases is a: '*breach of planning control*'.

3. What is the purpose of Planning Enforcement Action?

3.1 Planning laws are designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another. The goal is to remedy the breach of planning control rather than to punish contraveners.

3.2 Carrying out work or changing the use of land or buildings without planning permission is, in most cases, not a criminal offence (notable exceptions which can be criminal are unauthorised works to Listed Buildings or trees covered by Tree Protection Orders). In most cases the Council will attempt to resolve the breach of planning control by negotiation, this may include giving the opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will take firm action and may not enter into any negotiations before doing so.

3.3 The Council will not allow protracted negotiations to prevent the taking of effective formal enforcement action where this is necessary to resolve the breach of planning control.

3.4 Action taken by the Council will be proportionate to the actual breach of planning control and necessary to resolve it.

3.5 The Council must operate its planning enforcement activities in accordance with this plan, and our wider planning policies such as the Local Plan and associated Supplementary Planning Guidance Documents. This means that:

- The Council must decide whether the breach of planning control unacceptably affects the amenity of the area.
- Formal action should not be taken **just** because development has started without planning permission.
- The Council does not have to take action but the particular circumstances of the case **must** always be considered.
- It is important to ensure that any action taken is proportionate to the breach. There may be instances where a technical breach of planning control does not result in sufficient harm as to merit enforcement action.

But:

- Enforcement action will be taken quickly when it is necessary.

4. What is 'harm'?

4.1 Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows for example. Harm to the visual amenity of an area could occur

for example through unauthorised work to a listed building, demolition within a Conservation Area or work to a protected tree.

- 4.2 Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.
- 4.3 This harm would **not**, for example include:
- Loss of value to a neighbouring property,
 - Competition with another business,
 - Loss of an individual's view or trespass onto someone else's land,
 - Encroachment or boundary issues.
- 4.4 It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.
- 4.5 Where a breach involves the commission of a **criminal offence**, such as the illegal display of an advert, the Council will first write to you to require the removal of the advert and you will be given a short period of time to do so. A failure to remove the advert may result in the Council removing and obliterating the advert or prosecuting you for the display of it and you will have to attend the Magistrates Court to answer a summons.

5. Is Planning Permission Required?

- 5.1 Planning enforcement can only be considered where the building work or the change of use being undertaken requires planning permission. An initial investigation by an Enforcement Officer will determine this.
- 5.2 You can often perform certain types of work without needing to apply for planning permission. These works are often covered by "permitted development rights". These come from a general blanket planning permission granted not by the Council but by Parliament. However, these permitted development rights do not apply in the same way to all properties. Commercial properties have different permitted development rights to dwellings. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Help in understanding 'permitted development' can be found on the Planning Portal: <https://www.planningportal.co.uk/>
- 5.3 Similarly, the Town and Country Planning (Use Classes) Order 1987 (as amended) details uses of land. The order is permissive not restrictive in that it details what is not a material change of use e.g. planning permission is not required to change from a hot food takeaway to a shop. In all other cases planning permission is only required if a change in the use of land is a material change of use. It is a matter for the Council as Local Planning Authority to determine if planning permission is required having regard to all material planning considerations.

6. Who can complain?

- 6.1 Anyone who believes that a breach of planning control has occurred can make a complaint.
- 6.2 Please be prepared to identify yourself so that your complaint may be investigated. We will not investigate anonymous complaints. If you are concerned about confidentiality, you can make your complaint via your local councillor.
- 6.3 Where a retrospective application for planning permission is made to regularise unauthorised development, publicity and consultation will be carried out, and people given the opportunity to comment before a decision is taken.

PLEASE NOTE

All initial complaints are dealt with in confidence and details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. The Council's Enforcement Officer will explain what may be required in these cases.

7. What we need you to do if you wish to make a complaint.

- 7.1 If you are concerned about building work, a change of use, or the condition of a property, you may first wish to use our online planning application search tool to establish whether approval for the development has already been obtained or that it benefits from permitted development privileges. A link to the Council planning database is provided here:
<https://www6.hertsmere.gov.uk/online-applications/>.
- 7.2 To make a complaint, please submit your concerns using the form provided on the Council's website: <https://bit.ly/33sP6Z3>. Please try to describe the problem in as much detail as possible as these details can really help with our investigation.
- 7.3 Complainants who have difficulty using the on-line reporting tool can get support from our Customer Service Team. For those whose first language may not be English the Council also offer a translation service:
<http://www.hertsmere.gov.uk/Translation.aspx>.
- 7.4 Once a complaint has been registered, you will receive an acknowledgement e-mail or letter detailing the relevant reference number for the investigation. Please quote this reference number in your future contacts with the Council.

8. What are the priorities?

- 8.1 The Council receives approximately 600 reports of alleged breaches of planning control every year. Because of the often lengthy and complex nature of planning investigations, it is necessary to give priority to those cases where the greatest harm is being caused. The following guidance provides examples how cases are prioritised.

Priority One

- 8.2 Breaches of planning control that need to be addressed urgently because they have the potential to cause irreparable harm to the environment, or serious impacts to residents. Examples would be:
- Unauthorised works to especially sensitive sites such as Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty and Wildlife Sites.
 - Activities resulting in immediate and serious negative impact on the amenity of neighbours.
 - Ongoing unauthorised works to a listed building.
 - Ongoing unauthorised works to protected trees.

Priority Two

- 8.3 Breaches of planning control that would not result in irreparable adverse impact on environment, or activities that either are, or have the potential, to represent some adverse impacts upon residents. Examples would be:
- Changes of use that create harm due to their visual impact, adverse traffic implications or through noise and pollution.
 - Unauthorised developments that presents wider adverse impacts by virtue of their visual impact, adverse traffic implications or through noise and pollution.
 - Unauthorised works to protected or sensitive sites, such as listed buildings or protected trees, but where those works have ceased.

Priority Three

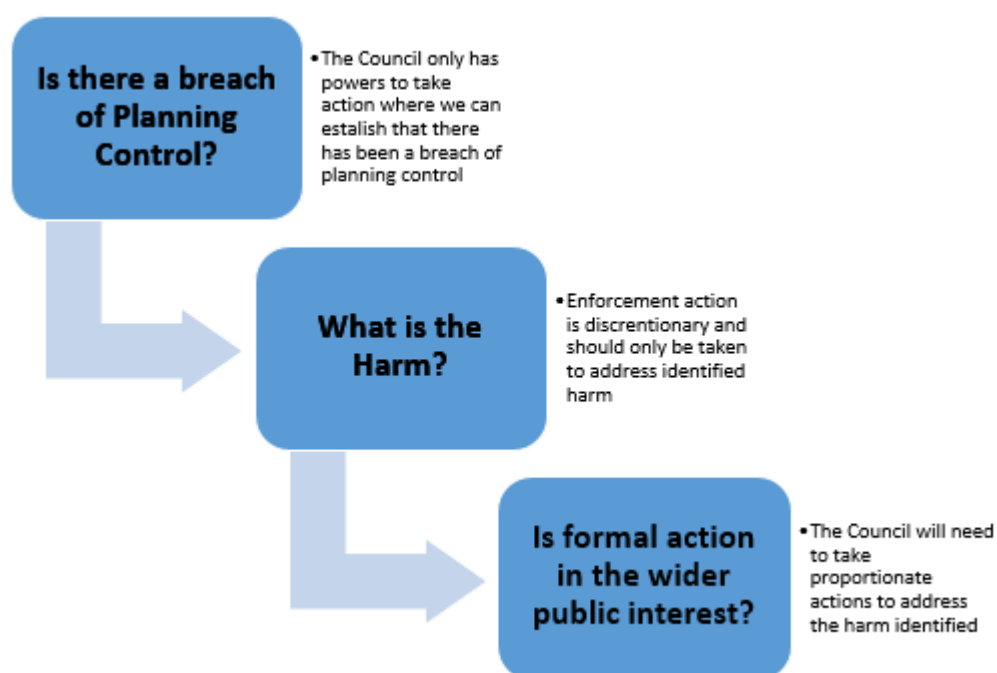
- 8.4 Breaches of planning control which are minor in nature due to their having limited or reversible impact and that represent a less than significant impact on amenity. Examples would be:
- A breach causing problems, which may be resolved by, limited modification (E.g. insertion of opaque glazing in an unauthorised window to overcome privacy problems; restrictions on hours of use etc.)
 - Property whose condition adversely affects the amenity of the surrounding neighbourhood.
 - Unauthorised changes of use, for example small businesses working from home
 - Advertisements with limited adverse visual impact
 - Householder extensions not complying with planning permission
 - Extensions that could be granted planning permission
 - Minor operations such as unauthorized fencing and satellite dishes

- 8.5 The acknowledgement notification you receive from Council will highlight the priority level assigned to the complaint made. If you think that the assigned priority level is incorrect, you can ask for this to be reviewed. Details on how to do this are set out in your acknowledgement.

9. The steps the Council will take

Has there been a breach of planning control?

- 9.1 The Council will first determine whether it is expedient to take enforcement action by establishing whether a breach of control has occurred and whether the breach causes an unacceptable degree of planning harm. In cases where the situation is unclear a 'Planning Contravention Notice' may be served on the owner and/or occupier of the property to obtain the facts.
- 9.2 Where a breach of control has taken place the Council will then make an assessment of the harm caused by the breach of control. The following flow chart demonstrates the assessment made:



Is formal action necessary and in the public interest?

- 9.3 Once a breach of planning control has been established, the purpose of the Planning Enforcement function is to facilitate compliance with planning requirements and to address any harm caused. It is not the case that wherever a breach of control is established and harm identified that formal action must follow:
- 9.4 Where an assessment is made that it is likely a planning permission could reasonably be granted to regularise the breach, the person responsible would be invited to make an application for retrospective planning permission. Any retrospective application submitted will go through the normal procedure. An

invitation from the Council to submit such an application should not be taken as any form of pre-determination.

- 9.5 If no retrospective application is received after being requested, the Council will commence proportionate enforcement action where the breach of control is causing sufficient harm to justify it.
- 9.6 The Council can, if warranted, serve an Enforcement Notice on the owner and/or occupier of the land. The notice explains the nature of the breach of control and sets out what steps are required to put things right and a date by which this must be done. If the notice is not complied with, the Council may bring a prosecution in the Magistrates Court.
- 9.7 In the most serious of cases, the Council may also consider serving a Stop Notice or may apply to Court for an Injunction to prevent further harm being caused. This action requires the people responsible to stop specified activities.
- 9.8 In most cases, people who receive an Enforcement Notice can appeal to the Planning Inspectorate. An appeal has to set out why it is felt that the action should not be taken. An appeal is normally dealt with by an exchange of letters known as written representations. More serious or complex cases can be dealt with by an informal hearing in front of an Inspector or at a Public Inquiry.
- 9.9 Further guidance on these processes, and the other enforcement mechanisms available to the Council, are set out in the Government's National Planning Practice Guidance:
<https://www.gov.uk/guidance/ensuring-effective-enforcement>

10. Negotiation

- 10.1 Government guidance makes it clear that we should first try to remedy planning breaches through negotiation in all but the most serious cases. The person carrying out the breach is sent a letter confirming that the breach should be remedied within a specific timeframe, or information should be provided to justify to us that no further action should be taken.
- 10.2 In Priority 1 cases, we will require that unauthorised work should stop immediately, and other immediate remedies may be sought.

11. What you can expect (Service standards)

- 11.1 Complaints will be acknowledged in an average of 5 working days from receipt.
- 11.2 Within the acknowledgement letter you will be informed of:
- The name and contact details of the Enforcement Officer who will be dealing with your complaint.
 - The reference number for your complaint.

- The priority level to which your complaint has been assigned.

11.3 The initial action to commence the investigation of your complaint will happen within a set time period:

- 2 working days for Priority One complaints.
- 10 working days for Priority Two complaints.
- 20 working days for Priority Three complaints.

11.4 For Priority 1 cases where there is a need for urgent action to prevent irreparable harm or serious impacts, the initial action is likely to be a site visit. For Priority 2 and Priority 3 cases, the likely initial action will be for the officer to check the Council's records. Where initial checks indicate that there is a potential breach of planning control, an inspection of the site will be undertaken. These first site visits will take place within a set time period:

- 2 working days for Priority One complaints.
- 20 working days for Priority Two complaints.
- 30 working days for Priority Three complaints.

11.5 If a breach has occurred, the person responsible may be asked to put it right, either by the making of a planning application or by stopping the unauthorised work. If this approach fails, the Council can then consider taking formal action, such as serving an Enforcement Notice.

11.6 Where the Council decides not to take formal enforcement action or finds no breach of planning control has taken place, the complainant will be notified in writing of the reason for the Council's decision. Updates on the progress of open enforcement proceedings will be given to complainants 8 weeks from the date of the initial complaint and then every 3 months until the breach is resolved.

12. How long will it take?

12.1 Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. As consequence it is not possible to give a standard time for dealing with enforcement cases.

12.2 If the investigations indicate that a breach of planning control has occurred that justifies enforcement action, typically an Enforcement Notice will be served. In general, a Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Planning Inspectorate. An Enforcement Notice may then subsequently be quashed or revised by the Planning Inspector appointed by the Secretary of State. Where an appeal is lodged the **Council can take no further action until the appeal has been decided.** The appeal process can take several months.

- 12.3 An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a practical and reasonable period for their completion. However, if someone does not comply with a notice they could face prosecution through the Courts.
- 12.4 The Enforcement officer will seek to advise complainants of any significant progress made as and when this occurs. Similarly, it is also helpful if complainants can contact the Enforcement officer if new information comes to light or there is a change in circumstances.

13. What if someone complains about you?

- 13.1 The Council realises that being contacted about an alleged breach of planning control may be stressful. Therefore the Council will deal with you in a sympathetic manner and will advise and negotiate with you to resolve any breach without the need to take formal action. The Council on average resolves 90% of all breaches without the need to take formal action.
- 13.2 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (**but not who made it**), and have the opportunity to explain your side of the case.
- 13.3 If you are not involved, no action will be taken against you. If you are involved, the Planning Enforcement Service will advise you of the details of the breach and how it can be put right.
- 13.4 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work/use. A reasonable period of time will be allowed to take necessary action.
- 13.5 If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.
- 13.6 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning this notice will be explained to you.

14. Satisfaction with Enforcement Service

- 14.1 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Enforcement Team. The Enforcement Team Leader will investigate the matter, review the circumstances and advise you within 10 days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time.

- 14.2 If you are still dissatisfied with the service, then you can make a formal complaint via the Council's formal Complaints Service:
https://www5.hertsmere.gov.uk/ufs321/ufsmain?ebz=1_1573664386545&ebf=1&ebp=40
- 14.3 Please be advised that the complaints procedure does not apply to matters which are directly related to a Council or committee decision or where there is a legal remedy or appeals process.
- 14.4 We always welcome constructive criticism and any ideas on how we can improve Council services. Please contact us if you can suggest ways of improving the service.