

LONDON BOROUGH OF WALTHAM FOREST

PLANNING ENFORCEMENT POLICY DOCUMENT

Contents

	Page No.
1.0 Introduction	3
2.0 What is Planning Enforcement?	3
3.0 The Council's Approach to Enforcement	4
4.0 What Enforcement action can the Council take	5
5.0 Complaints of Breaches of Planning Control	8
6.0 Registration of Complaints	10
7.0 Investigation	12
8.0 Complaints relating to the Council	14
9.0 Contact Information	14

1.0 Introduction

1.1 The London Borough of Waltham Forest is the responsible Authority for the Planning Enforcement Service within its administrative area. Effective enforcement is important as a means of maintaining public confidence in the planning system.

1.2 In order for the Planning Enforcement Team to give the best possible service to members of the public, it is vital that this document clearly sets out what matters we are able to deal with and how we balance demands on our services against the resources available to us.

2.0 What is Planning Enforcement?

2.1 The Planning Enforcement Team is responsible for investigating breaches of planning control which will ordinarily constitute the following:-

- Development or change of use of land without planning permission
- Not complying with conditions of a planning permission
- Demolition in a Conservation Area without consent
- Works to a Listed Building or protected tree without consent
- Neglecting land or buildings which harms local amenity
- Advertisements which harm amenity or public safety

2.2 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, unauthorised works that affect a tree subject to a Tree Preservation Order, and the display of unauthorised advertisements.

2.3 Certain building works or changes of use are defined as 'Permitted Development' which means that planning permission is not required. Whether or not planning permission is required can depend on quite a number of factors. Permitted Development Rights are set by Central Government and not the Council. For help in understanding permitted development please see the information [here](#)

2.4 The principle planning legislation which governs planning enforcement is:

- **The Town and Country Planning Act 1990 (as amended);**
- **Planning (Listed Building and Conservation Areas) Act 1990;**
- **The Town and Country Planning (Control of Advertisements) Regulations 1992**
- * **Anti social Behaviour Act 2003 (only in relation to High Hedges)**

- 2.5 The principle planning policies that apply to enforcement are:
- **The Council's adopted Local Development Framework;**
 - **The London Plan;**
 - **Supplementary Planning Policy Guidance issued by the Council.**
 - **Waltham Local Forest Plan - Core Strategy**
 - **National Planning Policy Framework ("The Framework")**

2.6 Planning laws are designed to control the development and use of land and buildings in the public interest. Effective enforcement of this legislation, these planning policies and concordats is necessary to protect the integrity of the planning system and to protect the amenity and environment of the London Borough of Waltham Forest.

What is not Planning Enforcement

2.7 The planning enforcement team will not investigate:-

- Boundary disputes/trespass
- Destruction of property during the building process
- Devaluation of property
- Competition to other business
- Squatting
- Unsafe structures
- Fly tipping

3.0 The Council's Approach to Planning Enforcement

3.1 Local Authorities have a general discretion to take enforcement action, when they regard it as expedient. In considering any enforcement action, the decisive issue for the Council will be whether the breach of control would unacceptably affect public amenity or an existing use of land and buildings meriting protection in the public interest

3.2 Planning legislation and policies will be enforced in a fair, equitable and consistent manner, although care will be taken to ensure that the merits of each case are carefully considered. The emphasis of Waltham Forest's enforcement policy is on persuasion, influence and education to secure the aims of the above legislation and planning policies. In most cases the Council will attempt to resolve the breach of planning control by negotiation, this will include giving the opportunity to apply for retrospective planning permission.

- 3.3 However, where the Council's initial attempts to persuade the owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fails, negotiations will not be allowed to hamper or delay whatever enforcement action is required to make the development acceptable on planning grounds. Where serious harm is being caused by the breach of planning control, the Council will take firm action and may not enter into any negotiations before doing so.
- 3.4 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, enforcement action will not normally be taken solely to "regularise" development which is acceptable on its planning merits. Enforcement action should always, be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site. The Council will also not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the General Permitted Development Order 1995 (as amended).
- 3.5 Section 70c of the Town & Country Planning Act 1990 (as amended) provides that a local planning authority may decline to determine an application where any part of that application relates in whole or part to the matters specified in an enforcement notice as constituting a breach of planning control. The purpose of the provision is to stop time being taken with repeat applications for slightly amended schemes, each subsequently being taken to appeal which delays full compliance with an existing enforcement notice. The Council will use this power where any proposed application fails to sufficiently address the breaches of planning control set out within the existing enforcement notice on the land.

4.0 What action can the Council take?

- 4.1 In every case it investigates, the Council must first establish whether or not a breach of planning control has in fact taken place. In some cases this will not always be clear and in such circumstances the Council may serve a 'Planning Contravention Notice' on the owner/occupier of land or property which will require answers to specific questions relating to any alleged breach of planning control.
- 4.2 If a breach of planning control is established and it is considered expedient to take formal enforcement action the Council may serve an Enforcement Notice on the owner and/or the occupier of the land. An Enforcement notice will clearly set out the alleged breach of planning control and the steps required to remedy the breach. The Enforcement Notice will set a specific time limit within which the works to remedy the breach are to be carried out. Failure to comply with an Enforcement

Notice is a criminal offence which carries fines of up to £20,000 in the Magistrates Court or an unlimited fine in the Crown Court.

- 4.3 Anyone served with an Enforcement Notice has the right to appeal it within 28 days of it being served. All appeals are dealt with by the Planning Inspectorate who are an independent Government body. Appeals are usually dealt with by exchange of written statements, however more serious and/or complex cases may be dealt with by way of an Informal Hearing or Public Inquiry.
- 4.4 Where in the opinion of the Council someone has acted unreasonably in making use of the appeal process and/or in bringing the appeal has no reasonable prospect of success, the Council will likely make an application for costs against the appellant.
- 4.5 If a notice is appealed then the process of enforcement can be extended by many months whilst the appeal is considered by the Planning Inspectorate. During this time the Council is ordinarily unable to take any further action to resolve the breach of planning control.
- 4.6 In cases where a very serious breach of planning control is taking place which is having a significantly detrimental impact upon public amenity or an existing use of land and buildings meriting protection in the public interest the Council will consider serving a Stop Notice or Temporary Stop Notice. Taking such action will require the people/persons responsible for the breach to immediately cease the specific activities.
- 4.7 In exceptional circumstances where a very serious breach of planning control is taking place or where evidence suggests a very serious breach of planning control is about to take place, which could have a significant detrimental impact upon public amenity or an existing use of land and buildings meriting protection in the public interest, the Council may also apply to the Courts for an Injunction to restrain the breach. Injunctions may also be sought when a fine or other penalty is inadequate or ineffective in preventing repeated or continuing breaches or in order to prevent very serious breaches.
- 4.8 The Council also has the following powers in taking formal enforcement action:-
 - Service of a 'Breach of Condition Notice' where development has taken place without compliance with a condition (s) of a planning permission.
 - Service of a 'S215 Notice' requiring steps to be taken to clear up land and/or buildings when its condition adversely affects the amenity of the area.
 - Service of a 'Listed Building Enforcement Notice' where unauthorised work has taken place to a building listed as having special architectural or historic interest.

- Service of a 'Conservation Area Enforcement Notice' where unauthorised demolition work has taken place within a designated Conservation Area.
- Service of a Section 207 Notice requiring the replacement of a protected tree which has been felled without permission.

Failure to comply with any of the above notices is also a criminal offence

- 4.9 A copy of any Enforcement Notice served will be kept on a publicly available Enforcement Register, a copy of the Notice will also be placed on the Land Charges Register. The Notice will remain on public record and will be revealed on any property searches. This could affect the future sale of the land or buildings involved.
- 4.10 Where the requirements of any of the above stated Enforcement Notices are not complied with within the specified time set out within the Notice, or following any appeal, the specified time set by the Planning Inspectorate, this will constitute a criminal offence. The Council will seek to commence prosecution proceedings against Enforcement Notices that are not complied with.
- 4.11 In certain instances, where the requirements of any of the Notices set out in above have not been complied with in the time specified by that a Notice, the Council is authorised by the relevant legislation to take 'Direct Action'. These Direct Action powers authorise the Council, on the expiration of the deadline for compliance set out in the relevant Notice, to enter the land which is in breach of the Notice and carry out any of the steps required to bring the land into compliance with that Notice.
- 4.12 When carrying out Direct Action, the Council will ensure that the manner in which the remedial action is carried out will be 'proportionate', as directed by the Council's Enforcement Concordat, and will go no further than necessary to bring the property into compliance with the Notice. Prior to Direct Action being taken the Council will notify the owner and/or occupier of the land where the action is to take place, in writing of their intention to carry out the works.
- 4.13 In every case where the Council carries out Direct Action, the Council will endeavour to recover the costs of that action from the responsible person or party. The Council will secure the costs of those works by registering a legal charge against the affected property on the Land Charges Register. Such a charge will prevent the sale or transfer of the affected property, and could result in the forced sale of that property to allow the Council to recover its costs.
- 4.14 Any powers of Direct Action run parallel to the powers of the Council to bring a prosecution for breach of the relevant Notice, and the Council

may decide to pursue both Direct Action and a prosecution in respect of a failure to comply with the relevant Notice.

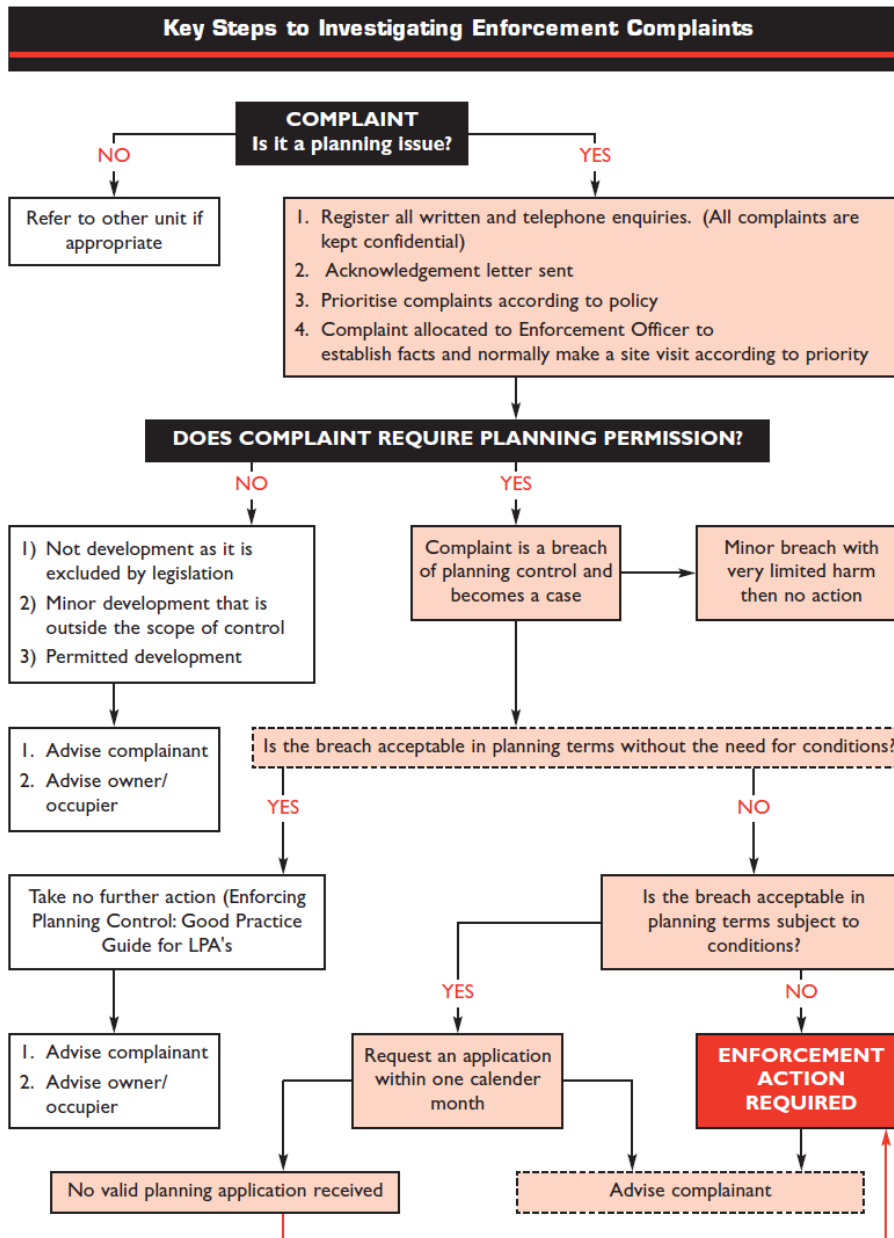
- 4.15 In cases where it appears that there has been significant financial benefit in failing to comply with any enforcement notice, the Council will use the Proceeds of Crime Act 2002 to seek to recover any monies or assets gained during the time the enforcement notice has been breached.
- 4.16 Prior to taking any formal enforcement action or instigating any prosecution proceedings in relation to planning enforcement, the Council will give careful consideration to the provisions of the Human Rights Act 1988 and will have due regard to Public Sector Quality Duty as set out within s.149, Equality Act 2010.

5.0 Complaints of Breaches of Planning Control

- 5.1 The majority of complaints relating to planning control received by the Council's Planning Enforcement Team are provided by members of the public, although a significant portion of complaints are also received from Council officers and local Councillors.
- 5.2 Any person who believes they have witnessed a breach of planning control should contact the Council's Planning Enforcement Team. In order to properly investigate the alleged breach, the Planning Enforcement team will require as a minimum the following information:
- **The exact address of the property (if the property is not correctly identified Council officers may not be able to inspect the site)**
 - **Details of the alleged breach**
 - **Any other relevant information**
- 5.3 Reports can be forwarded by email, by telephone, in writing or through the Waltham Forest website. Contact details are available at the end of this Policy. Waltham Forest Council has a policy of maintaining the confidentiality of the complainant in all cases. It should be understood that whilst the Council would never reveal the identity of the complainant during the course of inspecting a case, in many cases the identity of the complainant can be logically deduced, i.e., there may be only one property from which a complaint could have logically originated.
- 5.4 In some cases the success or failure of resolving a case may hinge upon the willingness of the complainant to provide evidence in the event of a prosecution or appeal, although it is rare for a complainant to attend court to give such evidence. In any event, complainants will be

contacted to confirm whether they wish their evidence to be used before their identity is revealed.

5.5 If you are concerned about submitting your details, please contact your Local Councillor who can submit a complaint on your behalf. We will then be able to use the Councillor as the point of contact and they in turn can update you on the complaint.



6.0 Registration of Complaints

- 6.1 The Planning Enforcement Team will decide upon the priority of the case upon receipt and we aim to respond to the complainant within 10 working days to inform the complainant of the reference and priority. This reference number can be used in all future contact with the Council relating to this case. The letter or email will also specify who the assigned case officer is and provide their direct contact details. Complainants should contact the assigned case officer for any updates or to provide any further information.
- 6.2 The Planning Enforcement Team receives approximately 800 planning enforcement complaints every year which must be investigated. In addition to this the Team serves on average 50 enforcement notices per year and deals with any resulting appeals, prosecution cases and compliance checks. Because of the often lengthy and complex nature of planning investigations and limited staff resources, it is necessary to prioritise cases. The Council will give the highest priority to those breaches causing unacceptable harm to public amenity or buildings and trees meriting protection in the public interest. Each case will accordingly be assigned with a priority rating. The ratings are as follows;

Level A - Highest priority case

- 6.3 Alleged breaches of planning control on property falling within this case level will be assigned to a Planning Enforcement Officer immediately and we aim to carry out a site visit and formulate a plan of action within **2 working days**.

Cases in this level will typically include but are not limited to:

- Unauthorised works to a Listed Building without the benefit of consent
- Unauthorised works that potentially involve a serious risk to public health (e.g. traffic hazard or storage of hazardous substances)
- Unauthorised work to a tree the subject of a Tree Preservation Order

We aim to complete the investigation and serve relevant notices, where appropriate, of 70% of level A cases within 4 months of the initial report.

Level B – Secondary Priority

- 6.4 Alleged breaches of planning control on property falling within this level of case will be investigated, this may include a site visit, and we aim to formulate a course of action within **7 working days**.

Cases in this level will typically include but are not limited to:

- Unauthorised development within an identified Conservation Area, including works to any tree within that area
- Breach of condition attached to a planning permission that has the potential to seriously affect the amenity of an area
- Unlawful advertising in prominent positions
- Works that are seriously and obviously contrary to Council policy and to the proper planning of an area, e.g. if planning permission has already been refused for a new commercial unit due to its impact upon the character of the area, the impact of neighbouring properties amenity levels and impact upon car parking and traffic levels and the development is nevertheless commencing then this will likely constitute a Level B priority case

We aim to complete the investigation and serve relevant notices, where appropriate, of 70% of level B cases within 6 months of the initial report.

Level C – Low Priority

- 6.5 Alleged breaches of planning control on property falling within this level of case will be investigated, which may include a site visit, and we aim to formulate a course of action within **15 working days**.

Cases in this level will typically include but are not limited to:

- Works to a building that adversely affects the amenity of adjacent Properties
- Conversion of a property to flats or HMO's within a restricted conversions ward,
- A breach which may be resolved by limited modification (e.g. restrictions on hours of use)
- High Hedges Complaints
- Any other breach of condition of a planning permission that does not

fall into Level A or B

We aim to complete the investigation and serve relevant notices, where appropriate, of 70% of level C cases within 9 months of the initial report.

Level D – Not Expedient

- 6.6 This level of case is determined to be of a low priority and in the majority of cases the property involved will receive an initial inspection and then closed without further action. Details of the matter will be retained on Council's files in the event that the situation changes in anyway and requires further attention.
- 6.7 An example of this may be that a householder extension may have been built at a depth of 3.3 metres when the approved plans show that it should be 3 metres. In such instances an increase of 0.3 metres is unlikely to cause any harm to a neighbouring property.
- 6.8 Cases that do not constitute a breach of planning control will be closed. The Council aims to respond to 90% of complainants within 7 days of the date of the complaint being closed and to give an explanation as to why the case has been closed.

Communication and Complainant Updates

- 6.9 In all cases the Council endeavours to maintain an open dialogue with all interested parties, including complainants. The Council's Planning Enforcement Officers will contact you only when they require further information from you, or if they have significant news from their investigation to pass on.
- 6.10 Complainants are also encouraged to telephone or email officers for updates, citing the unique reference number provided. As both a paper saving and efficiency exercise, complainants are encouraged to provide email addresses as the first point of contact. This will ensure more rapid updating as well as benefiting the environment through the reduction in paper use.

7.0 Investigation

- 7.1 In deciding whether to take enforcement action the Council is required to determine both that a breach of planning control has occurred and that enforcement action is 'expedient'. Whether enforcement is 'expedient' will depend on the circumstances of the breach, the effect on the local amenity, and whether the breach would be contrary to the Council's adopted planning policies and guidance. Consideration must

also be given to the current Central Government Guidance which can be found [here](#)

- 7.2 The Council's initial investigation will include a site inspection of the subject property in order to determine whether a breach of planning control has occurred, and if so, the nature of that breach, together with a review of existing Council records for the subject property. Photographs of any site investigated may be taken during a site visit. Where it appears, on the basis of the initial site visit and review that a breach may have occurred, and that action is expedient, the person responsible for the land will be notified of that fact in writing. Depending on the nature of the breach, this letter may require the person responsible for the land to follow a particular course of action.
- 7.3 One of the main challenges facing planning enforcement officers is gaining access to buildings and this will generally cause delays in investigating any complaint, especially when the owners/occupiers are un-cooperative. Initial site visits will be made unannounced and a calling card left if access is not gained, this will be followed up with a letter requesting access.
- 7.4 Council officers have powers of entry to property in connection with enforcement investigations. Section 196A of the Town and Country Planning Act 1990 enables authorised officers to enter land or buildings at any reasonable hour in pursuance of their enforcement duties without a warrant. Twenty-four hours notice must be given, however, where entrance is sought to a residential building. It is an offence to obstruct Council officers when they are carrying out this right of entry.
- 7.5 In the event of a s196 Notice having been served and not complied with or in cases where it is considered appropriate, Council officers can apply for a warrant of entry from the Magistrates Court which will permit officers to use force, if necessary, to enter the specified property. This will normally consist of enlisting a locksmith to force any locks on the property, and if necessary, replace those locks. A specialist may also be enlisted to deactivate any alarms on the property. The Metropolitan Police will be informed of any such entry by warrant, and the Police may be in attendance.
- 7.6 The ability of the Council to take enforcement action is limited by statute to a timeframe within which the unauthorised development has been significantly completed. For operational development, i.e. building works, engineering works and conversions of buildings to residential or sub-division of a house to flats, the time limit is four years from the date on which the operations were substantially completed. For changes of use relating to land and buildings to anything other than residential and in the case of the breach of condition of any planning permission, the time limit is 10 years. Once this time has passed, and where no formal

action has been initiated by the Council, the development is deemed to be lawful.

- 7.8 However in certain cases, upon discovering a breach of planning control which would appear to have been in place for the requisite 4 or 10 year period and where the Council has evidence to suggest that breach of planning control has been concealed consideration will be given to applying to the Magistrates Court for a Planning Enforcement Order within 6 months of the discovery of the breach. A Planning Enforcement Order, if granted, will give the Council a year and 22 days to take enforcement action, regardless of whether the normal four or ten years' enforcement deadline has passed.

8.0 Complaints relating to the Council

- 8.1 The Council offers a complaint service for any persons unhappy with the way in which a matter has been addressed. You may complain in person, in writing, or on-line complaints form or by using the specifically prepared LBWF complaint form. You can also contact the Planning Enforcement Manager to express your concerns.

The minimum information we need in a written or email complaint is:

- The name of the service your are complaining about
- What have we failed to do.
- When the incident or issue occurred
- What would you like to see done to resolve the complaint
- Your full name
- Your address
- Your telephone number or email address
- Who you have already contacted within the council regarding this complaint

9.0 Contact Information

If you have any further questions relating to the planning enforcement process please do not hesitate to contact us using the following methods:

By Email: planning.enforcement@walthamforest.gov.uk

By Phone: Waltham Forest Direct 020 8496 300 or 4278

By Post: London Borough of Waltham Forest
Planning Enforcement
Town Hall Fellowship Square
Forest Road
London
E17 4JF

In Person: London Borough of Waltham Forest
Planning Enforcement
Town Hall Fellowship Square
Forest Road
London
E17 4JF

Council Opening Hours: Monday to Friday – 9am to 5pm