



PLANNING ENFORCEMENT PLAN

April 2015

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ENFORCEMENT PLAN 2015

1. Introduction

Planning legislation is designed to control the development and use of land in the public interest. The credibility of the planning system relies on the Council's readiness to take effective enforcement action when needed. The Council is committed to providing a speedy and efficient planning enforcement service to respond to breaches of planning control.

The Council has signed up to the Government's Enforcement Concordat which sets out the principles of good enforcement practice. These are:

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

Helpfulness: to work with all parties to advise on and assist with compliance. To provide contact details for further information.

Consistency: to carry out duties in a fair, equitable and consistent manner.

Proportionality: to take action in proportion to the risks posed and how serious the breach is.

Complaints about the Service: to provide well-publicised, effective and timely complaints procedures.

In Burnley, planning enforcement work is carried out under the Scheme of Delegation. The power to investigate allegations of breaches of planning control is given to the Head of Housing and Development Control and the power to take enforcement action, including court proceedings and serving statutory notices is given to the Head of Governance and Law.

2. Purpose of document

This policy is intended to provide guidance to officers, to businesses and to members of the public, setting out the principles and the standards the service will work to in enforcing breaches of planning control. It sets out what we can and can't do in terms of planning enforcement. It also explains how complaints are investigated, how we prioritise and what tools we have available where enforcement action is considered necessary. It replaces the Burnley Enforcement Policy 2009.

3. About planning enforcement

Government guidance to local planning authorities on enforcement is set out the **National Planning Policy Framework** at paragraph 207. This 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.

The National Planning Policy Framework is supported by Planning Practice Guidance (Ensuring Effective Enforcement) which can be viewed at <http://planningguidance.planningportal.gov.uk/>

There is no duty under the Town and Country Planning Acts to take planning enforcement action - powers given to local authorities are discretionary. In deciding whether to take enforcement action, the Council must decide whether the unauthorised works would unacceptably affect public amenity. The Government expects any action taken to be expedient and proportionate to the harm caused. For example, it would not be appropriate to take action in the case of a small extension to a dwelling which, although technically needing planning permission, does not cause any harm to the amenity of the area or nearby residents.

In deciding whether to take enforcement action the Authority is also required to have regard to the **Development Plan** and to any other material considerations including the National Planning Policy Framework. The development plan for Burnley is the Burnley Local Plan, adopted in 2006. The emerging local plan is under development and will eventually supersede the adopted one. Information about both of these can be found at the following link:

<http://www.burnley.gov.uk/residents/planning/planning-policies>

It is important to remember that, in general, it is not a criminal offence to carry out development before first obtaining planning permission and it only becomes an offence when there is failure to comply with a formal enforcement notice.

However, there are exceptions to this in that unauthorised works to listed buildings, carrying out works to protected trees and the display of advertisements without the necessary consent all do constitute offences which are liable to prosecution. (See further information at 10, 11 and 12 below)

It is also important to understand that planning enforcement does take time, particularly where evidence needs to be collected or where formal notices are

served and the right to appeal is exercised. A satisfactory outcome can take many months to achieve.

There are **time limits** after which enforcement action cannot be taken. Generally speaking, if a building has been completed for more than 4 years, or a use has been carried on, or a planning condition breached, for more than 10 years, the Council will not be able to take any enforcement action. (This does not apply in the case of listed buildings)

4. What we deal with

- Unauthorised building works
- Unauthorised change of use
- Works to listed buildings
- Demolition in Conservation Areas
- Works to trees covered by a Tree Preservation Order or within a Conservation Area
- Works not being carried out in accordance with the approved plans
- Breaches of planning conditions
- Unauthorised advertisements

5. What we don't deal with

- Works that do not require planning permission
- Works that are anticipated but have not yet started (except in exceptional circumstances where a serious breach can be prevented)
- Boundary disputes
- Obstruction of a highway or public footpath (this is dealt with by Lancashire County Council)
- Advertisements on the highway or on street furniture (this is dealt with by Lancashire County Council)
- Enforcement of deeds or covenants (these are enforced by the landowner)
- Untidy land/fly-tipping (these are dealt with by the Council's Streetscene service)
- Fly-posting (dealt with by Streetscene)
- Noise complaints (dealt with by the Council's Environmental Protection Team, unless there is a condition attached to a planning permission restricting noise levels that is being breached).

6. How to make a complaint

Complaints can be made in writing to the address at the end of this document, via e-mail to planning@burnley.gov.uk or by completing the on-line enforcement enquiry form. This can be found at www.burnley.gov.uk. Select 'planning' and then 'planning enforcement, where you will find a link to the on-line form.

Alternatively you can call into Contact Burnley at 9 Parker Lane, Burnley, where you can complete an enforcement enquiry form.

You will need to provide:

- The address of the site
- Your own contact details, including your name and address
- Details of the alleged breach, including the start date, if known
- An indication of what harm is being caused, and to whom
- Any details you have about the persons responsible

Complaints can be made by telephone, but will not be dealt with unless the above information is provided. If the information given is found to be false, the enquiry will not be continued unless the breach is seriously harmful to the area.

The identity of a complainant will be treated as confidential. However, if the complaint results in a court case, the success of that case may rely on evidence being given by the complainant. In such a case, the Council will discuss this with any potential witnesses before taking a decision about whether to prosecute an offender.

Anonymous complaints will not be investigated unless they are of a very serious nature and it is in the public interest to do so.

7. How we prioritise complaints

First of all, to make the most effective use of the resources available, cases will be prioritised, taking into account the significance of the breach and the level of harm caused. The priority categories for unauthorised works are as follows:

Priority 1 – High priority (Site visit within one working day):

- Demolition or irreparable alteration of a listed building.
- Demolition of a building within a Conservation Area.
- Works to trees protected by a Tree Preservation Order or within a Conservation Area.
- Development that has a significant impact on the amenity of nearby residents, e.g. through noise or other disturbance.

Priority 2 – Medium priority (Site visit within 5 working days):

- Minor alterations to a listed building
- Development having a moderate impact on the amenity of nearby residents, e.g. through impact on privacy or outlook
- Advertisements causing serious harm to amenity or highway safety
- Development which is contrary to policies in the Burnley Local Plan

Priority 3 – Low priority (Site visit within 10 working days):

- Advertisements not included in Priority 2 list
- Minor works including fences, walls, small extensions
- Condition monitoring

These categories will be used not only to determine how quickly a site visit will be carried out, but also to decide what priority is given to each case when officers are managing their workload.

8. How we investigate a complaint

We will aim to acknowledge all complaints within 3 working days and to visit the site in the timescales set out in 7 above.

In most cases it will be quite clear from a site visit and the planning history whether a breach has taken place. However, there are some cases, particularly involving changes of use, where a number of site visits will be needed or more information will be required.

Authorised officers have statutory powers to enter land and buildings to investigate breaches of planning control. If the property is a dwelling 24 hours advance notice is normally required. Where these formal powers are used, officers will produce evidence of their authority, identity and the purpose of their visit when requested. It is an offence to obstruct an authorised person exercising their right of entry.

In some cases we might need to ask complainants to help by keeping a log of activities to help provide evidence of a breach. If the complainants are unwilling to do this, the Council may not be able to pursue the case due to insufficient evidence being available. A successful prosecution may rely on those collecting such details being prepared to give evidence in court.

The Council will not normally undertake covert surveillance for planning enforcement purposes. Should it be considered necessary to do so, surveillance will only be undertaken with prior authorisation and in accordance with the provisions of The Regulation of Investigatory Powers Act 2000.

A **Planning Contravention Notice** can be used where further information is required about ownership of land or the activities being carried out there. It can be served on the owner or occupier of land, or a person who is carrying out operations on the land or is using it for any purpose. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly or recklessly provide false or misleading information on a PCN can result in a fine of up to £5,000.

A **Requisition notice**, under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 can be used to establish information about

the ownership of land. It is an offence to fail to respond to the notice or to knowingly or recklessly provide false or misleading information. The maximum fine on conviction is £5,000

9. What action we might take:

- **No action** – if it is found that planning permission is not required, or the breach is very minor and causes no harm to the environment or nearby residents, then no further action will be taken.
- **Negotiate solution** – we will try to negotiate a satisfactory solution to a planning breach wherever possible. In past years, the Council has been very successful in resolving enforcement matters without the need to resort to formal enforcement action. This can be frustrating for a complainant who is waiting for the matter to be resolved, but in the long term it saves the time and cost of serving notices, fighting appeals and possibly taking the offenders to court.

If building works or an unauthorised use are considered to be unacceptable, the developer will be given a realistic deadline by which to remove the building/cease the use. If this deadline is not met, then formal enforcement action will be taken.

- **Retrospective application** – where a development is in line with policies in the Burnley Local Plan and the development is causing no harm, or where planning conditions can be used to make a development acceptable, the Council will invite the developer to submit a retrospective planning application.

This would only be appropriate in cases where formal enforcement action had not been taken as the Localism Act 2011 gave local planning authorities the power to decline to consider a retrospective application where an enforcement notice is in place.

- **Application for Lawful Development Certificate** – if it appears to the Council that a use or development might have become lawful because the four or ten-year times limits have passed, the developer will be invited to submit an application for a Lawful Development Certificate. If the application is approved, no further action will be taken. If it is refused, and no appeal is lodged, then the Council will decide whether formal enforcement action is necessary.
- **Breach of Condition Notice** – where a planning condition has not been complied with, a Breach of Condition Notice can be served. The notice sets out what steps are needed to comply with the condition and by what date this action must be taken. There is no right of appeal against a Breach of Condition Notice and failure to comply can result in a prosecution in court. The maximum fine on conviction is £2500.

- **Enforcement Notice** – if a development is causing harm to the surrounding area, or is contrary to local plan policies, and attempts to negotiate a solution have failed, then a formal Enforcement Notice will be served. An Enforcement Notice will set out what harm is being caused by the development, what steps are needed to remedy the harm and the timescale in which these steps must be taken. There is a statutory minimum period of 28 days before the notice comes into effect and a reasonable period of compliance must be given once it has come into effect. There is a right of appeal to the Planning Inspectorate against an Enforcement Notice. If an appeal is lodged, the notice is suspended pending the outcome of the appeal. If no appeal is lodged, or if an appeal is dismissed, and the notice is not complied with, the offender is liable to prosecution in court. The maximum fine on conviction is unlimited.
- **Stop Notice** – in cases where urgent action is needed to remedy harm being caused, a Stop Notice can be served in addition to the Enforcement Notice. The purpose of a Stop Notice is to require activities to cease before the date for compliance set out in the Enforcement Notice. These are only used in exceptional circumstances where serious harm is being caused to public amenity. There is no right of appeal and failure to comply with the notice is an offence, the maximum fine on conviction is unlimited.
- **Temporary Stop Notice** - These take effect immediately and do not have to be accompanied by an Enforcement Notice. They last for a period of 28 days during which the local authority must decide whether any further action is needed. They cannot be used in certain situations, e.g. the use of a building as a dwelling, or in some cases involving use of a caravan where it is the occupant's main residence (although there are exceptions to this). Failure to comply is an offence and the maximum fine on conviction is unlimited.
- **Injunction** - in very serious cases, where irreparable harm is being caused, or where all other methods of enforcement have failed, the Council can seek an injunction in the County Court or High Court to restrain or prevent a breach of planning control. Failure to comply with an injunction is a contempt of court and can lead to a fine, imprisonment or assets being seized. This is only used in exceptional circumstances.
- **Prosecutions** - although normally a last resort, are an important part of the enforcement function. In deciding whether to prosecute, the Council will take into account whether it is in the public interest and whether there is sufficient evidence to prove the case beyond reasonable doubt. As referred to in 8 above, this may be dependent upon complainants being willing to assist with the provision of evidence and by appearing in court.
- **Direct action** - Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether to exercise its power to enter the land and take the steps to remedy the harm; and to recover from the person who is then the owner of the land any expenses reasonably

incurred by them in doing so. If the costs cannot be recovered, a charge will be registered on the property with the Land Registry.

- **Planning Enforcement Order** - This was introduced under The Localism Act on 6th April 2012. A local planning authority can seek a Planning Enforcement Order through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the "4 year rule" or the "10 year rule" which normally provide immunity from enforcement action. Its use will depend on whether or not there are other remedies available but also on whether or not any "concealment" was deliberate.
- **The Proceeds of Crime Act 2002** provides for the confiscation or civil recovery of the proceeds from crime in the UK. The Council may be able to seek an award under the Act if relevant criteria are satisfied and the breach of planning has resulted in monetary or other gains being made by the individual concerned. With the respect to the Act and Planning Law, the provisions will likely apply if an individual has failed to comply with a formal notice whilst, for example, running an unauthorised business. Any monetary or other benefits made during that period will be liable to confiscation under the Act.

10. Trees

Trees are protected when they are covered by a Tree Preservation Order or if they are within a Conservation Area.

- It is an offence to cut down or otherwise destroy a tree covered by a Tree Preservation Order unless the local planning authority has given consent. The maximum fine on conviction is unlimited where the tree is destroyed or the works are likely to destroy it. For unauthorised works which do not destroy the tree, the maximum fine is £2,500 in the Magistrates Court but the fine is unlimited in the Crown Court.
- In a Conservation Area, a person wishing to cut down or carry out works to trees is required to give 6 weeks notice to the local planning authority. This is to give the LPA the opportunity to make a Tree Preservation Order if they consider the tree contributes to the amenity of the area. Anyone who carries out such work without serving a notice on the LPA is guilty of an offence, the maximum fines on conviction being the same as those for trees covered by a TPO, i.e. unlimited where the tree is destroyed or likely to be, £2,500 where the works are not likely to destroy the tree.

If we receive information to suggest that a protected tree is being felled, we will treat this as a high priority and visit the site as soon as possible. When questioning the owner of the land, or the person carrying out the work, it will in most cases be necessary to caution those concerned in accordance with the Police and Criminal Evidence Act 1984. This is because an offence is suspected and the information may be needed as evidence.

The Council will then consider whether it is in the public interest to prosecute those concerned. The planting of replacement trees will normally be required irrespective of whether or not any prosecution has taken place.

If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance. There is a right of appeal against a Tree Replacement Notice.

The Council does not have the powers to insist on work being carried out to protected trees on privately owned land.

11. High hedges

The Council can deal with complaints about high hedges under Part 8 of the Anti-social Behaviour Act 2003. This should be seen as a last resort after all efforts to resolve the dispute have been exhausted. The complainant should first of all speak to their neighbour and, if this is unsuccessful, put their request to reduce the height of the hedge in writing. If the neighbour does not respond, the Council can intervene in the dispute. There is a fee of £500 for the service – this is to cover the Council's costs.

The Government has published explanatory leaflets for the public:

- [‘Over the garden hedge’](#)
- [‘High Hedge: complaining to the Council’](#)
- [‘High Hedge Complaints: Prevention and Cure’](#),
-

Complaints can be made in writing to the address at the end of this document, or via e-mail to planning@burnley.gov.uk. The following information should be included:

- Complainant's name, address and other contact details;
- confirmation that the address relates to a domestic property;
- the name and address of the occupier of the land where the hedge is situated, together with similar details for the owner of the land in question (if different and if known);
- a location plan showing the hedge, the garden and the property that is affected;
- photos of the hedge, preferably with a figure for scale;
- confirmation that the hedge is more than 2 metres above ground level and comprises predominantly evergreen or semi-evergreen species;
- outline of the steps taken to settle the dispute by negotiation, with copies of relevant correspondence or other papers;
- details of how the height of the hedge is adversely affecting the reasonable enjoyment of the affected property.

The Council will then write to the owners of the hedge inviting them to put forward their own case. A site inspection will be carried out and the Council will then assess whether the hedge adversely affects the amenities of the complainant. If they decide that action is needed, a 'remedial notice' will be served on the owners of the hedge setting out what action they must take and a deadline for the work to be completed.

The recipient of a remedial notice has a right of appeal to the Planning Inspectorate. If an appeal is lodged, the recipient does not need to carry out the required work to the hedge until the appeal has been decided.

A complainant also has a right of appeal should the Council decide not to issue a remedial notice.

For further information, the Government has produced the following explanatory leaflet:

- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9410/highhedgesappeal.pdf

12. Advertisements

It is an offence under the Town and Country Planning Act to display an advertisement without express consent. If officers consider that an application for the advertisement would probably be granted, then a retrospective application will be requested. Where the advertisement causes serious harm to amenity or public safety, a request will be made for its removal within a specific period. If the advertisement continues to be displayed after this period of time, then the offender will be prosecuted. The maximum fine on conviction is £2,500. In the case of a continuing offence, the maximum fine is £250 for each day the offence continues after conviction.

Removal Notice

Section 225A of the 1990 Act gives the Local Planning Authority the power to remove and dispose of structures (such as hoardings) which are being used for unauthorised advertisement displays, but not on buildings to which there is no public right of access. The Authority would first serve a 'removal notice' and would then be able to recover the cost of removal if the structure was not removed by the date specified in the notice. The recipient has a right of appeal to a magistrate's court.

The Local Planning Authority would be liable to pay compensation where any damage is caused to land or property, other than damage caused to the display structure itself or damage reasonably caused from removing the structure.

Discontinuance Notice

Where an advert does not require consent the Authority can serve a Discontinuance Notice requiring its removal if it considers that the advert causes a substantial injury to the amenity of the locality or is a danger to members of the public. There is a right of appeal to the Secretary of State against a Discontinuance Notice.

13. Listed Buildings

Listed Building Consent is required for the demolition of a listed building or for alteration or extension to the building in a manner which would affect its character as a building of special architectural or historic interest. It is an offence to carry out such works without the necessary authorisation and the maximum penalty on conviction is 6 month's imprisonment, an unlimited fine, or both, in the Magistrates Court, and up to 2 years imprisonment, an unlimited fine, or both, in the Crown Court.

The Council can either prosecute an offender or serve a Listed Building Enforcement Notice requiring the unauthorised work to be remedied. There are no time limits for taking enforcement action in respect of listed buildings. In deciding whether to serve a listed building Enforcement Notice, or to prosecute an owner, the Council will take into consideration the length of time that has passed since the work took place and who was responsible for carrying out the unauthorised work. However, even where a property has changed hands since work took place, the current owner is still responsible for carrying out remedial works and liable for prosecution if these are not carried out.

However, prosecution will only take place as a last resort, in cases where the law has been deliberately flouted or a Listed Building Enforcement Notice has not been complied with.

The Council's first priority will be to negotiate a satisfactory solution with the owners. A retrospective application for Listed Building Consent may be necessary at this stage. If negotiations fail, then the Council may serve a Listed Building Enforcement Notice. As with a general Enforcement Notice, this will set out the steps required and the timescales in which work must be carried out and there is a right of appeal to the Secretary of State. Failure to comply with a Listed Building Enforcement Notice is an offence and penalties are the same as those for a general Enforcement Notice.

14. Demolition in Conservation Areas

The demolition of an unlisted building in a conservation area requires planning permission. This can either be applied for in conjunction with a planning application for redevelopment of a site, or a separate application for 'relevant demolition' can be made. It is an 'offence for a person to carry out or cause or permit to be carried out the demolition of an unlisted building within a conservation area without the required planning permission. Similarly it is also an offence for a person to fail to comply with any condition or limitation subject

to which planning permission for relevant demolition is granted. The maximum penalty for this offence is an unlimited fine and/or 12 months imprisonment

Please note: All fines referred to in this document are the current levels at 30th April 2015 and are subject to change.

15. What to do if you are not satisfied with our service

We make every effort to provide good customer service and to follow correct procedures at all times. However, if you have a complaint about our service you should initially contact the Development Control Manager, who will first of all try to resolve your enquiry informally. Please telephone 01282 477285 or e-mail us at planning@burnley.gov.uk.

If you are not satisfied and wish to pursue the complaint, it will then be dealt with under the Council's formal complaints procedure. Details of this are set out at the following link:

<http://www.burnley.gov.uk/about-council/other-information/complaining-about-council-service/how-we-deal-complaints>

Under this procedure, If you are not satisfied with the outcome of your complaint, you have a right of appeal to the Head of Housing and Development Control, Paul Gatrell, who can be contacted on 01282 477230 or by email to PGatrell@burnley.gov.uk.

If, having gone through the formal complaints procedure, you remain dissatisfied, you may refer your complaint to the Local Government Ombudsman. Details of how to do this are on the Council's website at the link above, or on the Ombudsman's website www.lgo.org.uk.

For enquiries relating to planning enforcement, please contact:

Planning Enforcement
Development Control Team
Housing & Development Control
Contact Burnley
19 Parker Lane
BURNLEY
BB11 2BY

Tel: 01282 425011
Fax: 01282 450594
Email: planning@burnley.gov.uk