



Waverley Borough Council
Local Planning Enforcement Plan

(June 2013)

1. Introduction

Waverley Borough Council has responsibility for investigating breaches of planning control. This Waverley Borough Council Local Enforcement Plan identifies local priorities for enforcement action in order that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of the local environment or the amenities of Borough residents.

This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which 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.”

This Plan will therefore provide clarity on the following:

- The definition of a 'proportionate response' when investigating an alleged breach of planning control.
- How we will manage enforcement proactively in a way that is appropriate to the Borough.
- How we investigate alleged breaches of planning control.
- How we will monitor implementation of planning permissions.
- Set out the powers available to us where it is considered appropriate to take action.

The Waverley Borough Council Corporate Plan 2012-2015 sets out the corporate priorities of the Council over the three-year period. One of the priorities is to protect and enhance the area's unique mix of rural and urban communities throughout our towns, villages and hamlets.

The primary function of enforcement action is to protect the environment in the public interest. To do this we must be consistent and act proportionately.

2. A proportionate response

Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, and the Localism Act 2011.

This Plan defines the appropriate form of response to various breaches of planning control. This is determined by the guiding principle that the response to a breach of planning control should be proportionate to the harm it causes. It is never considered a wise use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of conditions. In all cases, enforcement action should not be viewed as punishment, but what is necessary in order to protect the built environment.

A planning application is the most appropriate way to consider the merits of proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore logical to apply the same approach to development already carried out and for the Council to encourage the submission of retrospective planning applications where they are considered likely to be acceptable.

The exception is where the Council considers there is no real prospect of planning permission being granted. In these cases we will proceed to enforcement action as a matter of course, where negotiations to remedy the harm being caused are not successful.

However, any developer still has the right to apply for planning permission and if they do, the Council must deal with the application fairly before proceeding with any necessary enforcement action. In all cases, the Council will judge the Planning merits of the development, and not how that development came about.

There are three priority levels of enforcement cases:

- **Priority One – Major – First contact or site visit within 1 working day from receipt of complaint**

Works that are irreversible or irreplaceable or constitute a serious breach;
Unauthorised works to a Listed Building;
Breaches of Article 4 Directions;
Unauthorised works to trees protected by a TPO or within a Conservation Area;
Non-compliance with Enforcement Notices.

- **Priority Two – Medium – First contact or site visit within 5 working days from receipt of complaint**

Unauthorised activities that cause harm to residential amenity e.g. car businesses;
Unauthorised change of use and development;
Unauthorised breach of conditions and not built in accordance with approved plans;
Unauthorised adverts including fly posting and 'A boards'.

- **Priority Three – Low – First contact or site visit within 10 working days from receipt of complaint**

Unauthorised sheds;
Unauthorised means of enclosure;
Unauthorised accesses;
Unauthorised satellite dishes;
Unauthorised minor operations;
Any low impact on residential amenity.

The case officer will then make an assessment, in relation to planning legislation, of whether a breach of planning control has taken place. At this stage, we will notify the enquirer of the proposed action to be taken.

3. Investigating an alleged breach of planning control

The power to take enforcement action is entirely discretionary and comes from section 172 of the Town and Country Planning Act 1990.

We will follow the relevant legislation and consider the harm created when undertaking enforcement action and when deciding whether it is appropriate to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code for Practice for Crown Prosecutors, the general principles of which are a two-stage test: the evidential and public interest tests.

In considering whether or not it is appropriate to take enforcement action, we will have regard to the guidance within Government Circular 10/97, the policies in the Development Plan (the South East Plan 2009 and the Waverley Borough Council Local Plan) and any relevant material considerations. The key consideration will 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.

The Council will work within the legal framework, having full regard to legislation, relevant case law and planning appeal decisions. It will also take into account other legislation that impact on enforcement work, such as:

- The Human Rights Act 1998;
- The Criminal Procedure and Investigations Act 1996 (CPIA);
- The Police and Criminal Evidence Act 1984 (PACE); and
- The Regulation of Investigatory Powers Act 2000 (RIPA)

These require that a thorough investigation of the full facts and circumstances surrounding a breach is carried out prior to taking formal action.

More than half of complaints made are found not to be in breach of planning control. These are a significant drain on resources, as a site inspection and investigation are required, as well as having to advise the interested parties. The majority of complaints made relate to minor or trivial breaches and often arise from a lack of awareness of planning controls or misunderstandings over what is taking place, and may be exacerbated by neighbour disputes.

Whilst the Council is committed to investigating complaints, its resources must be used appropriately to (a) allow us to concentrate on serious breaches; and (b) avoid the Council coming into disrepute through abuse of its enforcement powers. Initiating enforcement action when a matter can be resolved through a retrospective application and the imposition of necessary conditions would be seen as unreasonable behaviour by appeal inspectors and the courts, and could lead to an award of costs against the Council. In order to maintain focus on agreed priorities, the Council may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or that are motivated by disputes between individuals or businesses.

4. Monitoring the implementation of planning permission

Whilst the Council does not have the resources to monitor all approved development schemes in the Borough, it will proactively monitor major development sites where appropriate.

The vast majority of complaints received are reported by members of the public and need to be investigated reactively. Each valid complaint will result in a complaint file being set up according to its priority level and investigated within the relevant timescales. The complainant will be updated on the progress and outcome of the investigation.

5. Enforcement tools available

Planning Contravention Notice (PCN)

This is used to obtain information about alleged unauthorised development and it can be used to invite discussion on how any suspected breach of control may be

remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. Failure to respond to a PCN, or the provision of false information, are criminal offences carrying a maximum fine of £1,000 and £5,000 respectively.

Enforcement Notice (EN)

The Council may issue an Enforcement Notice where it considers that there has been a breach of planning control and it is appropriate to issue the Notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service,) the steps to be taken and the compliance period. There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN's requirements until the appeal is determined.

Breach of Condition Notice (BCN)

This is used to secure compliance with planning conditions and takes effect no less than 28 days after service. It must specify the steps that the Council considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN and a failure to comply with it is a criminal offence carrying a maximum fine of £2,500 (May 2013).

Stop Notice (SN)

A Stop Notice can only be served on land where an Enforcement Notice has been served and is used as an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the Enforcement Notice is quashed on appeal or the Notices have to be withdrawn.

Temporary Stop Notice (TSN)

This is used where the Council considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This Notice differs from the normal Stop Notice powers because it does not have to wait for an Enforcement Notice to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach, and can be served on any person carrying out the activity, and must be displayed on the site. The TSN is only in effect for 28 days, during which the time the Council must decide whether it is appropriate to serve an Enforcement Notice. TSNs have been used successfully to stop work on development sites when important pre-commencement planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land or tree protection.

Prosecution

Some breaches of planning control are criminal offences, such as the carrying out of unauthorised works to a listed building or a protected tree, or the display of unauthorised advertisements. It is also an offence not to comply with the requirements of a Breach of Condition Notice, an Enforcement Notice, a Stop Notice, a Temporary Stop Notice or a Planning Contravention Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine for most of these offences if found guilty in the Magistrates' Court is £20,000 (May 2013) (unlimited if found guilty in the Crown Court). However, maximum fines are less for illegal advertisements, BCNs and failure to complete and return a PCN.

Injunction

Section 187B(1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Applications for an injunction from the courts may be made when it is necessary or appropriate for any actual or apprehended breach of planning control to be restrained, whether or not the Council has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a court order is a contempt of court and can result in imprisonment.

Section 215 Notice (untidy land)

This Notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The Notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation.

There is a right of appeal against the Notice to the Magistrates' Court. If the Notice is not complied with, the Council can enter the land and carry out the steps in default.

Listed Building Enforcement Notice

This Enforcement Notice applies to listed buildings and is similar to an Enforcement Notice in most respects. It can require the removal of any unauthorised works or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a Notice to the Planning Inspectorate.

Conservation Area Enforcement Notice

This type of Enforcement Notice is used in Conservation Areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990. An example of this would be the unauthorised demolition of a building or a wall in a Conservation Area, and the requirement of the Notice would be to rebuild it. There is a right of appeal against such a Notice to the Planning Inspectorate.

Default Powers ("Direct Action")

Section 178 enables the Council to take direct action where, on expiry of the

Enforcement Notice compliance period, the required steps have not been taken, by carrying out “default” action and recovering its reasonable expenses from the owner. This power relates to Enforcement Notices and untidy land Notices served under section 215 of the 1990 Act (as amended).

Article 4 Directions

These are used to remove “permitted development” rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, when open land is being sold off as speculative building plots. The direction is provisional for six months and has to be confirmed by the Secretary of State in order to become permanent. It means that planning permission would have to be granted by the Council in order to carry out the development.

Section 225 Powers

Section 225 enables the Council to remove or obliterate placards and posters that are being displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). A notice period of no less than two days must be afforded to the advertiser prior to exercising this power in order to allow for voluntary compliance.

Discontinuance Notice

This Notice requires the removal of an advertisement displayed with the benefit of deemed advertisement consent (i.e. an advertisement that would not normally require consent from the Council to be displayed). A Discontinuance Notice is a useful tool in preventing the display of advertisements where they adversely affect the setting or character of listed buildings or Conservation Areas.

Confiscation under the Proceeds of Crime Act 2002

If an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002. Confiscation proceedings can only be brought alongside a related criminal prosecution.

By way of an example, confiscation proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control. The Council can consider whether, on the facts known to it, the perpetrator is likely to have benefited from their criminal conduct. If the perpetrator is and has been making money as a result of their planning breaches, and continues in breach, a confiscation order may well be appropriate.

Localism Act 2011

In April 2012, new enforcement powers were introduced through the Localism Act 2011. These powers include:

Section 70C

The Council may decline to determine a retrospective planning application for development which is subject of an Enforcement Notice served after 6 April 2012

Section 171B – Planning Enforcement Order

The Council may apply to the Magistrates' Court for a Planning Enforcement Order if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from enforcement action where it has been deliberately concealed.

Section 225A – Removal Notices

Section 225A allows the Council to remove and dispose of any display structure within the Borough which, in the Council's opinion, is being used for the display of advertisement in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). This power is exercised once the Council has served a Removal Notice upon the persons who appear to be responsible for the structure. There is a right of appeal against this Notice to the Magistrates' Court.

6. Monitoring Performance.

The Council publishes reports on the performance of the Planning Enforcement Service on a quarterly basis on our website. We also report the same information to the four Area Planning Committees on a quarterly basis to inform councillors of progress on meeting the Council's target and on main enforcement cases and sites.

This Plan will be reviewed in May 2014.