WYRE BOROUGH COUNCIL
PLANNING AND REGENERATION

Planning Enforcement Charter

Introduction

The Development Control service’s objective for the enforcement of planning control is to carry out the Council's responsibilities in relation to the enforcement of planning control by investigating and acting upon breaches of control and complaints regarding the condition of land and buildings in a professional, efficient, consistent, timely and equitable manner.

The purpose of this Charter is to set out the level of service that you can expect from the Development Control service regarding the enforcement of planning control whether you have made a complaint or a complaint has been made against you.

General

Government Guidelines advise that enforcement action should only be taken when it is expedient to do so in the public interest and where a breach is unacceptable on planning grounds. There is, therefore, no statutory duty to enforce against breaches of planning control. The Council does, however, investigate complaints and formal powers are available to require those who breach planning control to remove or remediate unauthorised development or to cease unauthorised uses.

The Council has signed up to the Government’s Enforcement Concordat, which sets out good practice guidance for enforcement. In the first instance, the Council will endeavour to resolve any breaches of planning control by negotiation. Where enforcement action is necessary, that action will be applied in a fair and consistent manner, taking into account the Council’s adopted planning policies, the guidance for taking enforcement action contained in Planning Policy Guidance Note 18, and Circular 10/97, and in accordance with professional codes of conduct.

How the enforcement objectives will be achieved.

The council’s planning enforcement team is committed to ensure that:

- enforcement is carried out in a professional, efficient, consistent, timely and equitable manner.
- advice and information regarding legislation will be given in plain language
- we provide a courteous and efficient service with staff identifying themselves by name.
• advice is confirmed in writing together with an explanation of why remedial works are required.
• whenever possible, discussions take place with a view to resolving the issue without the need for formal proceedings.
• firm action is taken, where appropriate, against those who flout the law or act irresponsibly.
• the service will be operated to be effective and responsive in the prevention and control of unauthorised development.
• effective monitoring procedures will be implemented where resources allow, to ensure development is carried out in accordance with planning approvals.
• service delivery will be fair, responsive, helpful and consistent in its approach.

As well as investigating complaints into possible breaches of planning control, the council’s enforcement team will be proactive in;

• Ensuring compliance when formal enforcement action has been taken;
• Where time and resources allow, monitoring planning conditions and planning obligations to ensure that they are being carried out as required.

How is a complaint made?

Anybody may make a complaint about an alleged unauthorised development or use. Complaints can be made in writing, by telephone, by e-mail to planning@wyrebc.gov.uk, through the council’s contact centre ‘Connectwyre’, or via the ‘contact us’ link on our website. The council cannot, however, act on anonymous complaints except where, on the basis of the information provided, it clearly falls within priority 1 (see below).

When making a complaint, the council will ask for the following information to be provided (as far as possible):

• the precise location of the site or property to which the complaint relates;
• the exact nature of concern i.e. the alleged breach of planning control;
• the name, address and contact telephone number of the person making the complaint; and, if possible -
  • the identity of the person / organisation responsible for the breach
  • the date and / or time the breach began.
  • an indication of any harm arising from the alleged breach.

Where appropriate, the Development Control service will liaise with other Council Services and external agencies in order to ensure the most appropriate form of action is taken in order to resolve any complaints. If investigations determine that a complaint relates to activities outside the scope of planning control, the complainant will be so notified and advised whether another agency may be able to resolve the issues. Where the nature of the breach overlaps with responsibilities of another agency, the Council will work in partnership with that body to resolve the matter.

Breaches of planning control concerning minerals, waste developments or other “County Matters” will be referred to Lancashire County Council for their action.
Prioritising the complaint

Some complaints will be more urgent than others and these will need to be given higher priority:

Priority 1

- Listed building control where demolition or alterations are taking place.
- Protected hedgerows or trees where loss or damage is likely.
- Conservation area controls where immediate, irreparable damage would be caused.
- Planning controls or conditions that result in serious threat to health and / or safety.
- Development taking place within sensitive archaeological or ecological sites including County Heritage Sites and SSSI’s particularly where it affects the natural and remote character of the area or harms the features of the SSSI.

Priority 2:

- Building works being carried out in an Area of Outstanding Natural Beauty or Green Belt.
- Other building works which are ongoing at the time of the submission of the complaint.
- Uses of land and/or buildings that are causing harm to amenity or public safety and/or are seriously damaging to the valued characteristics of the area (e.g. noisy activities close to residential properties).
- Planning control or conditions that cause demonstrable nuisance and loss of amenity to the residential enjoyment of neighbouring properties.
- Advertisement control in conservation areas.
- Advertisement control involving widespread fly-posting campaigns.

Priority 3:

- All other complaints, including those relating to developments that are already complete or uses of land which already exist at the time the complaint is made.

What happens next? – Our commitment to the complainant

- We will acknowledge receipt of the complaint in writing within 5 working days. This will provide you with a case reference number and the name and telephone number of the officer who will be the case officer responsible for investigating your complaint.

- The complaint will be given a priority classification, and an investigation will be carried out in accordance with the relevant timescale for that complaint.
  - Priority 1: Investigation commenced within 1 day of complaint
  - Priority 2: Investigation commenced within 5 working days of complaint
  - Priority 3: Investigation commenced within 10 working days of complaint

- All investigations will be carried out on a strictly confidential basis and your details will not be revealed by the investigating officers. However, if a matter proceeds to
appeal or to court, your evidence and details may be required to secure a successful outcome. You will be contacted to confirm whether you wish your evidence to be used before your identity is revealed.

• The investigation will involve the case officer making a visit to the site to determine whether a breach of planning control has occurred, and the nature of any breach. The case officer may also contact you to discuss the complaint or to seek further information about the complaint.

• You will be notified of our findings and what action, if any, we propose to take as soon as possible but normally not later than 28 days from the receipt of the complaint. We will also notify you of our decision in relation to the complaint, i.e. whether it is expedient to take any action (if a breach of planning control has been identified), and if action is to be taken, what form that action will take.

• If we have been unable to complete our investigations at the end of the 28 day period and need further time, we will inform you accordingly. Some developments involving the use of land may require monitoring over a period of time to determine whether or not a breach of planning control has occurred. We may also need to seek additional information from you relating to the breach of planning control.

• Where a breach of planning control is found to have occurred, the person responsible for the breach may be invited to submit a planning application and if so, will be given a period of 21 days in which to do so. If an application is submitted, you will be advised, and given the opportunity to make representations on the application.

• Where the council issues an enforcement notice requiring compliance within a certain timescale we will visit the site to check such compliance within 5 working days of the expiry of the deadline and will inform you of our findings and any further action that may be considered.

• A person upon whom an Enforcement Notice is served has the right to appeal to the Secretary of State. The Planning Inspectorate determines enforcement appeals on behalf of the Secretary of State. If an appeal is lodged against the enforcement notice, you will be advised of this. We will provide you with details of how to make representations and subsequently notify you of the appeal decision.

• If there is a failure to comply with the Notice within the specified period, you will be advised of this and of any subsequent prosecution action.

What happens next? – Our commitment to persons or companies whose activities are the subject of a complaint

Where somebody has complained that you are carrying out an activity without planning permission, or where it is considered that there may be a breach of planning control, your site will be visited by an officer of the Council to assess whether or not there has been a breach. In most cases this will involve looking around the site and/or buildings and may involve asking you questions. Council officers have powers under Section 196A
of the Town and Country Planning Act 1990 to enter land for the purposes of investigating breaches of planning control. To ensure that you are treated fairly, that you understand your rights and are kept advised of the progress of the investigation, you can expect the following:

**Site Visit**
- An officer or officers from the Council’s Planning Services will visit the site, normally without prior appointment, and, if entry to the site or premises is necessary, will introduce themselves to you or your representative, give their name and explain to you the purpose of their visit. If you do not allow the officer(s) to enter the site or premises at that time a new date and time when entry will be arranged by mutual agreement, or otherwise if necessary. An officer can, in this respect, require access to the site at 24 hours notice. Further confirmation of the rights of the officer to enter land will be produced on request.

- You will be advised of the nature of the alleged breach of control.

- Officers will treat you politely and with respect (and it is hoped that this will be reciprocated by you). Where no one is available on site, the Council reserves its right to carry out an unaccompanied inspection in accordance with the law.

- Occasionally, it may be necessary to conduct more long term monitoring or surveillance to establish whether there has been a breach of planning control. Under such circumstances we will ensure that such surveillance is authorised under the Regulation of Investigatory Powers Act 2000.

**Written Notification**
- You will be given written notification of the council's findings as quickly as possible and normally within 28 days of the visit. Often it is necessary for further information to be gathered or assessed to determine whether the activity complained of constitutes a breach of planning control, and this may take some time. In order to acquire this information the council may send you a formal notice that you are required by law to complete and return to the council within a specified timescale. It is an offence not to comply with the requirements of this notice. The notice may in one of two forms:

  - **Planning Contravention Notice**: This sets out a number of questions about the alleged use or development which you required to answer to enable the council to determine whether a breach of planning control has occurred.

  - **Requisition for Information Notice (S330 Notice)**: This sets out a number of questions relating to the ownership of the land and your legal interest in it. It is normally used when the council are considering taking enforcement action and need to be sure that such action is taken against the relevant person(s).

- If a breach has occurred you will be informed in writing of the nature of the breach and normally, you will be invited to carry out the necessary works or actions to remedy the breach. You will also be invited to discuss the matter further with the
case officer and/or another planning officer with the aim of satisfactorily resolving the breach of planning control without formal enforcement action being required.

- If it is considered that there is a reasonable prospect of Planning Permission being granted for the development or use, you will be invited to submit a retrospective planning application. In such cases, and without prejudice to the Council’s decision, you will be sent the relevant planning application forms. In such cases a period of **21 days** will be given for you to submit the application. Until the submission and subsequent determination of the application by the Council, no action against the breach of control will normally be taken.

- Where it is considered that Planning Permission is not likely to be granted for the development or use, you will be advised of your right to make a retrospective planning application, but the council will reserve its right to pursue enforcement action forthwith, including in some cases the service of a Stop Notice requiring the activity to cease immediately. In such cases you will be notified of your right of appeal. If you decide to make a planning application, and it is approved, no further action will be taken provided any conditions attached to the planning permission are complied with.

- Where it is considered that a breach of planning control has taken place and the council decides that it is expedient to take enforcement action, you will be advised in writing **within 5 working days** of this decision and the reasons why the action is considered necessary. The relevant Enforcement Notice will subsequently be sent to you. You will also be advised of your right to appeal.

- Where the council issues an enforcement notice requiring compliance within a certain timescale we will visit the site to check such compliance **within 5 working days** of the expiry of the deadline and will inform you of our findings and any further action that may be considered. You should note that failure to comply with an enforcement notice within the time scale set out in the notice constitutes an offence in law and that the council could then proceed to prosecute in the Magistrates Court.

**Notes**

- In relation to breaches of planning control involving listed buildings, tree preservation orders and advertisements, these are criminal offences and the council has the power to prosecute directly in the Magistrates Court, and in the case of advertisements, the Council has powers, in some circumstances, to remove or obliterate them. In such cases, you will be advised of the necessary procedures and of your rights and obligations.

- The Council treats very seriously any threats made against its employees. Any person making such threats will be reported to the Police who will be requested to attend any future site visit. The Council has the full support of the Police in this regard. Nothing set out in the above shall be construed as limiting either your legal rights or obligations or the Council’s rights to take any action as set out in relevant legislation.
Human Rights issues

The European Convention on Human Rights (ECHR) was brought into English law via the Human Rights Act 1998 (HRA) with effect from October 2000. The HRA introduces an obligation on the Council to act consistently with the ECHR. There are 3 Convention Rights likely to be most relevant to planning decisions:

- Article 1 of the First Protocol - Protection of Property
- Article 6 - Right to a Fair Hearing
- Article 8 - Right to respect for Private and Family Life

It is important to note that these types of right are not unlimited. Although in accordance with the concept of 'proportionality' any interference with these rights must be sanctioned by law, (e.g. The Town and Country Planning Act 1990) and must go no further than necessary.

Essentially, private interests must be balanced against the wider public interest and against competing private interests. However, human rights issues must be taken into account when reaching decisions on all planning applications and enforcement action.

Monitoring performance

In order to ensure an effective service, the following indicators of performance will be monitored by the Council:

- Acknowledgement of enforcement complaints within 5 working days of receipt by the Council.
- The percentage of site visits carried out within the requisite timescale from the date of receipt of the complaint.
- The percentage of site visits carried out within 5 days of the requisite Enforcement Notice compliance date.
- The percentage of cases where a breach of control has been identified which are closed following cessation of the use or remediation of the harm without the need for formal enforcement action.
- The percentage of appeals against enforcement notices later allowed by the Planning Inspectorate.

What happens if you are not happy with our service?

The Council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use its services. If you feel we are not succeeding in this in carrying out our enforcement function then you are invited to let us have your views. You can do this in person at the council’s offices, via the council’s web site (www.wyrebc.gov.uk), in writing by letter, e-mail (mailroom@wyrebc.gov.uk), or fax,
or by telephone (01253 891000). You can also let us know what you think of our service by contacting a Councillor or your M.P. We will acknowledge your feedback as soon as it is received and we will respond within 10 working days where possible.

If you would like this information in another language or format, please contact ConnectWyre on 01253 89100.