

## **PLANNING ENFORCEMENT - CHARTER AND GUIDANCE NOTES**

### **What is Planning Enforcement?**

When development appears to have taken place without planning permission or without complying with conditions attached to planning permission or works appear to have been carried out to a listed building without consent, in these and other similar cases, the Council will investigate to establish whether there has been a "breach" of planning control. Planning enforcement is a very complex area; the legislation itself has to be interpreted in the light of decisions made by the Courts and account has been taken of relevant appeal decisions made by and on behalf of the Secretary of State. Planning legislation seeks to strike a balance between the rights and freedom of an individual to develop their property and the protection of the amenities of neighbours and the conservation/protection of the environment.

### **How are breaches discovered?**

Breaches are brought to the Council's attention by the public, Councillors and by Council officers who monitor developments. Planning enforcement action can only be taken when works have been undertaken or a use commenced without the appropriate permission or consent. This may include any of the following:

Building works, including extensions and some external alterations;

External and internal works to listed buildings;

Substantial demolition of buildings in Conservation Areas;

Some changes of use of property or land;

Certain advertisements/signage;

Building works that differ from approved planning drawings or non-compliance with conditions on permissions or consents.

When an enforcement complaint is made to the Council, officers must first establish whether permission was needed: enforcement action cannot be taken if the works or use do not require permission or are permitted by the planning legislation.

### **Priorities**

All investigations, including initial site visits will be carried out promptly. However, priorities have been set down by the Council as follows:

### **HIGH PRIORITY**

- A.** First response to a complaint within five working days; works to listed buildings; and substantial demolition in Conservation Areas.
- B.** Major building works in Conservation Areas including non-compliance with approved drawings; "bad neighbour" changes of use; changes of use involving loss of residential.

### **MEDIUM PRIORITY**

- C.** Minor building works in Conservation Areas; building operations outside Conservation Areas; changes of use and non-compliance with approved drawings/conditions.

### **LOW PRIORITY**

- D.** Estate agents' boards; minor works (trellis/fencing etc.); satellite dishes; advertisements.

### **Should the Council Enforce?**

Under current legislation with the exception of works to listed buildings and the display of some advertisements, the carrying out of unauthorised works or changes of use are not criminal offences. A criminal offence only arises when an Enforcement Notice takes effect and its requirements have not been complied with. Even when a breach has been established, the Council must first decide if it is expedient to take action. This means that enforcement action is discretionary. The Council will decide on the seriousness of the breach, how much harm has occurred and the practicality of enforcement before taking action. Many breaches are very minor and formal action cannot be justified or a breach may have occurred yet be acceptable in planning terms e.g:

- a) is considered to have a minimal impact upon the environment or amenity of adjoining owners and:
- b) is likely to comply with the policies contained in the Council's Unitary Development Plan and the London Plan.

In the above example, an application for retrospective planning permission may be requested. Where a use or development is considered acceptable, it may be possible to make amendments or impose conditions which overcome the concerns of the complainant and other objectors. Under current planning legislation, all contraveners have the right to apply retrospectively for planning permission.

Retrospective applications go through the same decision making process as normal planning applications. We will write to complainants and neighbours and ask if they wish to make any comments in respect of the application. However, the names and addresses of those making representations regarding these applications are not confidential and any letters are available for public inspection.

When deciding whether or not to take enforcement action, the Council will pay due regard to the Human Rights Act 1998 and, in particular, to the requirement not to act in a way which is incompatible with any relevant Convention rights which are the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property. These rights are qualified rights which means that, when considering enforcement action, the Council will balance the rights of those who may be in breach of the planning legislation against those affected by the breach, including the community at large.

### **Formal Enforcement Action**

Central Government advice is that ordinarily formal enforcement action should be taken as a last resort, and only after attempts to resolve the situation amicably through negotiation have failed; under current Government guidance, the Council must give the contravener the opportunity to put the breach right. However, if the contravener fails to respond within a reasonable time or if a breach is considered unacceptable, because for example, it causes harm to the environment and/or disturbance to neighbours, or fails to comply with the policies contained in the Council's Unitary Development Plan, then formal enforcement action is likely to be initiated by the Council.

Enforcement Notices are documents served by the Council which may require the unauthorised use to stop, the restoration of the site to its condition prior to the breach of development, compliance with a planning permission or other steps to make the development acceptable, within a specified time limit. However, there is a right of appeal against an enforcement notice to the Secretary of State and this appeal suspends the notice from taking effect. The Council's policy is to robustly defend appeals, but if the contravener wins the appeal, subject to limited rights of appeal to the High Court, no further action can be taken by the Council. If the Council wins and the appeal is dismissed, the notice becomes effective, although the Secretary of State or an Inspector acting on his behalf can amend it, including the compliance period.

If the unauthorised development remains in place after an enforcement notice becomes effective, the Council may prosecute for non-compliance. If the harm caused by the alleged breach is in the extreme, the Council may serve a "Stop Notice" to halt the relevant works or activity, before an enforcement notice becomes effective.

When conditions imposed on a planning permission have not been complied with, the Council may serve a Breach of Condition Notice. There is no right of appeal against a Breach of Condition Notice.

### **Charter Standards and Principles** **What you can Expect from the Service**

#### **Complainant:**

##### **Standard 1 – Confidentiality for Complainants**

We will not release any information that would identify you as the

complainant.

When handling personal information received in the course of an enforcement investigation, the Council will comply with the Data Protection Act 1998. You should be aware however that the Council can be required to disclose non-personal information on receipt of a request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

### **Standard 2 – Registration of Complaint**

We will register the enforcement complaint on our computer system within 3 working days of receipt.

### **Standard 3 – Acknowledgement of Complaint**

We will acknowledge a complaint within 72 working hours of receipt.

### **Standard 4 – Initial Site Visit and Assessment**

We will carry out an initial site visit (if relevant) or make an initial assessment within 20 working days.

### **Standard 5 – Action Following Initial Assessment: No Breach**

We will send a letter or telephone you within 20 working days to advise that there has been no breach of planning.

### **Standard 6 – Action Following Initial Assessment: Breach of Planning Control Identified**

If, following the site visit, a breach of control is identified, the Council will allocate a priority to the case under one of three headings, namely 'High', 'Medium' and 'Low', and identify what action the Council intends to pursue.

### **Standard 7 – Feedback to Complainant**

We will send a letter to you within 12 weeks to advise of progress of Investigation.

We will send an update letter to you every three months thereafter.

### **Standard 8 – Feedback to Complainant after Decision to Pursue Enforcement Action**

Once a Committee of the Council, or its authorised officers, have officially sanctioned Enforcement Action, and all that remains is for Enforcement Notices, Stop Notices, Breach of Condition Notices or other related Notices to be served, we will send you, and to the developer, a letter confirming this within 10 working days of the decision being made.

### **Standard 9 – Closing of Cases**

We will advise you in writing of outcome of investigations and give a reason for closing a case.

### **If a Complaint Has Been Made Against Your Property**

#### **Standard 10 – Notification of Complaint**

We will write to you or telephone within 20 days saying a breach has been reported.

#### **Standard 11 – Entry to Property**

We will ask to enter your property only if necessary and we show you authority and proof of identity.

#### **Standard 12 – Investigation**

We will carry out a full and independent investigation.

#### **Standard 13 – Openness and Advice**

We will advise you in writing of any conclusions we have reached concerning the alleged breach; what the breach is, how it can be put right, the time scales and what will happen if you do not follow this advice.

We will advise you which officer is dealing with your case.

We will be polite, helpful and courteous and give you the opportunity to discuss the case.

We will write to warn you if a decision has been made to pursue formal enforcement action either by the issue of notices or prosecution, and will advise you of how to appeal.

#### **Standard 14 – Closing of Cases**

We will write to advise you when your case is closed and that no further action is to be pursued.

### **How to Use the Enforcement Service**

If you wish to report a possible breach or would like information on a development, you can contact us as follows:

In writing to:

The Executive Director, Planning and Conservation  
Room 325  
Town Hall  
Hornton Street  
London W8 7NX

By email to:

[planning@rbkc.gov.uk](mailto:planning@rbkc.gov.uk)

In person at:

The Planning Information Office  
Town Hall  
Hornton Street  
London W8 7NX

Open 09.00 – 5.00pm Mondays to Fridays

No appointment is necessary.

By telephone: 020 7361 3012 – Planning Line

### **How you can help**

If you ask us to investigate an alleged breach, please be ready to provide the following information:-

- The correct address of the site where the alleged breach is occurring.
- Your name.
- Your address.
- Your telephone number.
- As much information as possible, including the exact location, what has occurred and when, names of those responsible.
- In a small minority of cases, be prepared to act as a witness; this may be especially important if the Council decides to prosecute.

If you are the subject of a complaint, please:

- Be prompt and co-operative fully in providing all the information requested by officers to pursue an investigation.

## **Enforcement Concordat**

The Council has signed up to the Government's Enforcement Concordat and prepared its own Enforcement Policy to implement the Concordat. The Enforcement Concordat sets out the Government's principles of good enforcement, policy and procedures, which are:

- The setting of standards.
- Openness.
- Helpfulness.
- Proportionality.
- Consistency.
- Publicity on how to complain about the service.

Copies of the Concordat are available free from Planning Information Office, Room 325 at the Town Hall.

## **General Principles**

These general principles are based on Government Guidance, the Council's Service-wide Enforcement Policy Statement.

### **Principle 1**

In the carrying out of its planning enforcement functions, in the organisation of its planning enforcement service, and in deciding whether to take enforcement action in any particular case of unauthorised development, the Council will respect the current advice issued by the Government, in particular, in 'Planning Policy Guidance Note 18 – Enforcement of Planning Control', and the advice contained in the DETR Good Practice Guide (1997).

An efficiently organised and effective enforcement service upholds the integrity of the planning system as a whole and gives confidence to the public that the Council is using its planning enforcement resources to best advantage in the protection of the environment.

### **Principle 2**

When considering whether to take enforcement action, the decisive issue for the Council will be whether the breach of control would unacceptably affect public amenity, or the existing use of land or buildings or be contrary to Council planning policy, meriting protection in the public interest.

### **Principle 3**

The Council will follow Government advice that enforcement action should always be commensurate with the breach of planning control to which it relates, and that it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to

amenity in the locality of the site.

#### **Principle 4**

Any decision as to whether to take enforcement action must always be well-founded. Whether it is appropriate, in the public interest, for the authority to initiate formal enforcement action, to remedy or stop an alleged breach of planning control, requires thorough assessment of each individual case and must be based only on planning grounds.

#### **Principle 5**

In considering whether it is appropriate to take enforcement action, each individual case of unauthorised development will be carefully assessed on its own merits. We will assess how the development relates to the property in question and its particular local environment, and any relevant Unitary Development Plan policies.

#### **Principle 6**

The Council will not tolerate unacceptable unauthorised development and will do all the law allows to bring it to a stop.

#### **Principle 7**

The Council recognises that it is generally unreasonable for a Council to issue an Enforcement Notice solely to remedy the absence of a valid planning permission. If it is concluded on appeal that there is no significant planning objection to the breach of control "Councils who take enforcement action in these circumstances are at risk of an award of costs against them" (PPG18). It notes Government advice that the Enforcement system should not be used to "punish" anyone for not having obtained planning permission first.

#### **Principle 8**

The Council recognises its responsibility to take enforcement action where appropriate, and that the Government Commissioner for Local Administration (the 'Ombudsman') has said that there is 'maladministration' if a Council fails to take effective enforcement action which was plainly necessary.

#### **If you are Dissatisfied with the Service**

Should you wish to make a complaint about the service you have received or the way you have been treated by officers, please contact the Area Team Leader that covers your part of the Borough or the Head of Development Control. If you do not receive satisfaction, please write to or telephone the Executive Director, Planning and Conservation, who is responsible for the operation of the entire Directorate.



If your informal approach does not satisfy your concerns, the Council operates a Formal Complaints procedure which you may follow. Leaflets may be obtained from the Planning Information Office.

#### Additional References/Legislation

- RBK&C Unitary Development Plan 2002.
- London Plan
- Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning and Compulsory Purchase Act 2004
- Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005
- Temporary Stop Notice ODPM Circular 02/2005
- Planning Policy Guidance Note 18 "Enforcing Planning Control", Department of the Environment 1991
- "Enforcing Planning Control: Good Practice Guide for Local Planning Authorities", Department of the Environment, Transport and the Regions 1997.
- Environment Circular 10/97 "Enforcement Planning Control: Legislative Provisions and Procedural Requirements", Department of the Environment, Transport and the Regions 1997.
- Enforcement Concordat – Cabinet Office 1998.
- Enforcement Policy – RBKC

#### **Other Useful Contacts (Have we included the contacts for enforcement complaints?)**

**Noise nuisance** - Environmental Health  
24 hour call out service Office Hours – 020 7341 5282  
Including noise from building sites, Out of Hours – 020 7361 3484  
air conditioning units.

**Highway/Pavement Obstruction** - Highways Enforcement  
Tables, chairs, planters, 020 7341 5284  
display boards, rubbish dumped in street  
removal of supermarket trolleys,

abandoned vehicles.

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| <b>Odour nuisance</b>                                               | -      | Environmental Health<br>020 7361 5282                                    |
| <b>Dangerous structures</b>                                         | -      | Building Control<br>020 7361 3838 (day)<br>020 7373 6099 (evening/night) |
| <b>Trees Overhanging Pavements,<br/>Felling or Pruning of Trees</b> | -<br>- | Planning Services<br>Arboricultural Section<br>020 7361 2767             |
| <b>Graffiti/Flyposting</b>                                          | -      | Planning Services<br>Conservation and Design Section<br>020 7361 3235    |