



Local Enforcement Plan May 2018



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1.0 Introduction

- 1.1 Planning plays an important role in managing development to ensure a high quality environment, facilitating a better pattern of land use and securing the efficient use of resources. An effective planning enforcement service is an important means of achieving these goals and maintaining the integrity of the planning system.
- 1.2 As part of its commitment to the delivery of an efficient and effective planning enforcement regime, the Royal Borough has prepared this Local Enforcement Plan, in adherence with the National Planning Policy Framework (NPPF, 2012).
- 1.3 The plan sets out our approach to planning enforcement; it explains how we will investigate alleged cases of unauthorised development, the basis on which our decisions are made, and our approach to pro-active monitoring.
- 1.4 The majority of building works and changes of use need planning permission. The display of adverts or works to protected trees also require consent. Undertaking development without getting permission or consent, or carrying out the work without complying with the conditions of a permission is described as a breach of planning control.

2.0 Our Principles

- 2.1 We recognise that carrying out unauthorised development without first obtaining the necessary planning permission or consent, can have a harmful impact upon our residents, businesses and visitors. Effective planning enforcement is important for public confidence and for the perception of fairness to those who follow the rules and those experiencing the impacts of construction. However, we must also operate within the law and remember that the legal framework is initially about removing harm caused by those breaching the rules.

Discretion

- 2.2 We will seek to remedy all breaches of planning control that are harmful using all the tools at our disposal, and where there is serious harm we will act swiftly and robustly, to resolve it.
- 2.3 However, the law says that we may issue an enforcement notice if we consider that it is expedient to issue the notice, having regard to the local plan and any other material considerations. We must consider whether the breach of planning control is harmful in making our decision.

Proportionality

- 2.4 The action we take must be proportionate to the degree of harm caused by the unauthorised development. We will not hesitate to take swift, firm enforcement action where there is serious harm. In cases where the harm is not so serious we will first try to resolve it through negotiation, in a cost effective and timely manner, before issuing an enforcement notice if required.

Consistency and Fairness

- 2.5 We are committed to ensuring that all enforcement related allegations are dealt with in a consistent and fair manner. We will take into account other similar cases and where possible, we will adopt a similar approach.

Transparency

- 2.6 We will identify ourselves by name and provide our contact details in all of our correspondence. We will explain our decisions clearly, in plain English and try to avoid jargon.
- 2.7 We will monitor our performance and publish the results annually in the Council's Monitoring Report.
- 2.8 Fees and charges associated with our planning enforcement service will be published on our website: www.rbkc.gov.uk/planningenforcement.
- 2.9 We will maintain our enforcement register. Enforcement related notices are being transferred to our webpage. The initial transfer will make enforcement related notices served since 2014 searchable on the website: www.rbkc.gov.uk/planning/searches/default.aspx.
- 2.10 Older notices served before 2014 are available on request, via email to planning@rbkc.gov.uk.

3.0 The Investigation

How to report a breach of planning control

- 3.1 The best way to report a breach is by filling out the form on our website, www.rbkc.gov.uk/planningenforcement.
- 3.2 You need to give your name, address and contact details and a description of the breach, including the address. It would also be helpful if you could:
- say when it began
 - say who you think is responsible including their name and contact details
 - provide clear photos of the alleged breach
 - say how you are affected.

It may take us longer to investigate if we don't have this information.

- 3.3 We will not accept anonymous allegations as we need your contact details to update you on the investigation and/or actions we take, or to request further information. We will ensure that your identity is safeguarded within the Council, unless it is necessary for you to give evidence at an appeal or legal proceedings. If you do not wish to provide these details, we encourage you to consult with your ward councillor who may assist with lodging a complaint on your behalf.

Our priorities

- 3.4 The Council receives approximately 1,500 reported breaches of planning control each year. We will aim to provide an efficient service by prioritising alleged breaches on the basis of the likely degree of harm.
- 3.5 Reported breaches of planning control that may result in immediate, substantial or irreversible harm will be given the highest priority, for example:
- unauthorised works to listed buildings
 - (substantial) demolition works in a conservation area
 - works to protected trees
 - substantive breaches of a Construction Traffic Management Plan.
- 3.6 For these high priority cases the case officer will provide you with an update within 4 working days. For all other cases we will commence the investigation within 7 working days.
- 3.7 We will collaborate with other departments to secure resolutions effectively and efficiently.

What can you expect if you report a breach?

- 3.8 After a valid planning enforcement query has been received it will be logged and allocated a case reference number. The case will be allocated to a planning enforcement officer to investigate. We will send you an acknowledgement with the reference number and the name of the case officer.
- 3.9 We will aim to allocate your case to a planning enforcement officer and send you an acknowledgement within 2 working days.
- 3.10 The officer will identify whether planning permission or consent is required for the alleged breach. They will then consider whether it is likely that a permission or consent would be granted.
- 3.11 The time with which planning enforcement cases are resolved depends upon a number of factors, such as:
- the level of detail included in the initial complaint
 - the type of breach
 - the level of harm that the breach is causing
 - the evidence required to prove that there is a breach
 - the willingness of the developer to aid in our investigations
 - whether an appeal is submitted against an enforcement notice.
- 3.12 We will update complainants of the progress of all enforcement investigations within 5 weeks, and at key stages of the process, such as the service of an enforcement notice or the receipt of an appeal.
- 3.13 We will tell you when and why each enforcement investigation is closed.

The contravener – what to expect?

- 3.14 We will tell you what you need to do, and by when, to resolve the problem. If the problem persists and is harmful we will take enforcement action. If the problem could be resolved with conditions attached to a planning permission, then you will be advised to submit a retrospective planning application. However, you should not assume that planning permission will be granted.
- 3.15 If you do not provide the necessary information required to establish whether a breach of planning control has occurred, or the extent of the development, then we may serve you with a Planning Contravention Notice which requires you to provide us with specific information.
- 3.16 If enforcement action is taken, you will receive information relating to any right of appeal.

4.0 The decision/action

- 4.1 We have a wide variety of tools that we can use if we decide to take action. These can be viewed via the planning practice guidance: <https://www.gov.uk/guidance/ensuring-effective-enforcement>.
- 4.2 The reasons for taking enforcement action, what you are required to do and the time in which to carry out the works will all be clearly stated.
- 4.3 The vast majority of cases do not result in enforcement action being taken. Enforcement investigations can be closed for several reasons, such as:
- there is no breach of planning control
 - the breach is rectified (by informal action)
 - planning permission has been granted retrospectively
 - planning permission is not required
 - the development is lawful (due to time elapsed)
 - it is permitted development
 - it is minor works not needing planning permission
 - it is not expedient (not causing harm).
- 4.4 It is not always expedient to take enforcement action, for example, the works may be so minor that they do not cause harm (often referred to as a technical breach of planning control).
- 4.5 If your complaint is not planning related we will forward it to the relevant team and tell you who is dealing with it.

5.0 The appeals process

- 5.1 There is a right of appeal to the Secretary of State against an enforcement notice, a listed building enforcement notice and an advertisement discontinuance notice.
- 5.2 If an appeal is lodged with the Secretary of State further enforcement action from the Council regarding this notice will be suspended until the appeal decision is issued.
- 5.3 For information on how to appeal a planning enforcement notice or how to submit comments on an appeal of an enforcement notice please visit: <https://www.gov.uk/government/organisations/planning-inspectorate>.
- 5.4 There is a right of appeal to the magistrate's court for Section 215 notices. Further enforcement action will be suspended if an appeal is lodged to the magistrate's court.

- 5.5 There is no right of appeal for a temporary stop notice, a stop notice, Section 224 advertisement notice or a breach of condition notice.
- 5.6 For every notice served we will include details of any right of appeal.

6.0 Where an offence is committed

Prosecution

- 6.1 It is a criminal offence to carry out works that require listed building consent without getting consent first, or to carry out works to protected trees without prior notification. It is also an offence to display some advertisements, or undertake substantial demolition within a conservation area without prior permission. In most other cases a criminal offence only arises when an enforcement notice has been issued, has taken effect and its requirements have not been complied with by the specified date. We will apply the two key tests set down in the Code for Crown Prosecutors in deciding whether prosecution is justified ([cps.gov.uk/](https://www.cps.gov.uk/)). These tests are:
- is there enough evidence against the defendant
 - is it in the public interest to bring the case to court?
- 6.2 We will always try to use officers as witnesses in Court, however there may be some cases where we need to rely on evidence provided by witnesses outside of the Council. Then, we will advise the witness of the possible need to attend court and to provide a written witness statement.
- 6.3 We will always look to recover costs from the offender where evidence suggests offenders have profited from the illegal works, as a deterrent and to remedy the breach. We may place a charge on the land to aid future recovery or seek confiscation under the Proceeds of Crime Act 2002.

Direct Action

- 6.4 We will also consider taking direct action to get the breach resolved. This means that the Council will carry out the works and recover the costs from the offender. We might need to apply for an Injunction to prevent access when the works are in progress.

Injunction

- 6.5 We will also consider injunctive action where a breach of planning control is severe, or there is a threat of it becoming severe, and which can be halted by the successful application to the High Court (or County Court) for an Injunction.

We may also consider injunctive action for longstanding cases where the offender has failed to comply with an enforcement notice and the harm is ongoing and now needs to be brought to an end.

7.0 Proactive enforcement

7.1 We proactively enforce planning decisions in a variety of ways including:

- investigating licensing applications and providing comments
- investigating Demolition Notices submitted to the Council to ensure all necessary permissions have been granted.

Monitoring of Listed buildings

7.2 Kensington and Chelsea is a beautiful and historic part of London and has over 4,000 listed buildings. The protection of our heritage assets is important to us. We will proactively monitor a sample of decisions, in particular internal listed building consents, to ensure they are complied with. We may take action against unauthorised listed building works dating back to the date the building was listed. The length of time that has elapsed since the breach occurred may be a relevant consideration when considering whether formal action is expedient.

Appendix

Useful addresses

www.rbkc.gov.uk For planning advice and to see if planning permission has been granted

<https://www.planningportal.co.uk/> The Planning Portal for advice on whether planning permission is required

www.gov.uk/guidance/ensuring-effective-enforcement The government guide to planning enforcement

<https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance> Permitted Development Rights for Householders: Technical Guidance

Local Enforcement Plan

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers> Outdoor advertisements and signs: A Guide to Advertisers

Other Council departments can be contacted at:

Environmentalhealths@rbkc.gov.uk For noise nuisance

<https://www.rbkc.gov.uk/contact-us/report-street-problems> For materials or debris left on the highway

Parkinginvestigation@rbkc.ov.uk For parking enforcement

www.rbkc.gov.uk/Parking/suspensionsearch For parking suspensions