

Hyndburn Borough Council



Planning Enforcement Plan

DATE

Introduction

1. This Local Planning Enforcement Plan (the Enforcement Plan) explains how Hyndburn Borough Council (the Council) will deal with reports of unauthorised development. It sets out how we will investigate potential breaches of planning control and take action where needed. The plan aims to balance the need to provide an effective enforcement service that maintains public confidence in the planning system and making the best use of the Council's resources.
2. The Enforcement Plan has been prepared in line with Policy GC3 of the Hyndburn Development Management Development Plan Document and national planning policy. While not part of the development plan, it is a material consideration. It replaces the previous Hyndburn Planning Enforcement Code of Practice (2010) and Hyndburn Planning Enforcement Plan (2018).

Background

3. Planning law sets out a requirement for planning permission for the carrying out of any development of land. The term 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
4. The carrying out of development without the required planning permission or failure to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. However, not all building/engineering work or changes of use require planning permission. Many are either considered not to be development at all or are defined as 'permitted development', meaning that they have a national grant of permission and do not require a planning application to be made. Details of 'permitted development' are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
5. Some other matters frequently occurring fall outside the remit of planning controls. The local planning authority cannot investigate the following:
 - Matters usually dealt with under environmental health legislation (e.g. statutory noise and nuisance, pest control and air pollution), unless that matter constitutes a breach of condition.

- Land ownership disputes including boundary disputes, or damage caused to neighbouring property during construction work (this is a civil matter, and we would advise that you seek your own legal advice).
- Covenants imposed on property deeds (this is a civil matter, and we would advise that you seek your own legal advice).
- Dangerous structures (this is a matter for the Council's Building Control Team and, where there is imminent danger of collapse, the emergency services).
- Unsafe construction practices (this is a matter for the Health and Safety Executive).
- The parking of vehicles on the public highway (This is a matter for the highway authority, which is Lancashire County Council).
- The obstruction of the public highway (this is a matter for the Police).
- The obstruction of a Public Right of Way (this is a matter for Lancashire County Council's Footpaths Officer).

6. The Council have a range of formal enforcement powers to take action against breaches of planning control. However, enforcement action is discretionary and we must act proportionately in responding to suspected breaches of planning control and take action only when it is expedient to do so in the public interest. Not all breaches cause harm to warrant enforcement action. The local planning authority considers the expediency of each enforcement case based upon its own merits.

How to make a complaint

7. You can report any suspected breaches of Planning Control by contacting the Planning Enforcement team through the Contact Centre on 01254 388 111 and asking for Planning Enforcement or by direct email to planningenforcement@hyndburnbc.gov.uk. Alternatively, you can write to the Council at the following address: Planning Enforcement, Planning and Transportation Service, Hyndburn Borough Council, Scaitcliffe House, Ormerod Street, Accrington, BB5 0LD.

8. The Council will not normally deal with anonymous complaints. For any complaint being made about an alleged breach of planning control the Council will ask for the following information to be provided:

- The name, address, e-mail address, and contact telephone number of the person making the complaint;

- The identity of the person / organisation responsible for the breach and the date and / or Time the breach began (where known);
- The location of the property, or land to which the complaint relates;
- The nature of concern i.e. the alleged breach of planning control; and
- An indication of any harm being caused.

9. If a member of the public feels unable to complain directly to the Local Planning Authority, they should make the complaint through their ward councillor who should provide the information above.

10. The Council will manage personal data in accordance with the Privacy Notice that is available to view on the Council website at:
<https://www.hyndburnbc.gov.uk/privacy-notice/>.

11. The Local Planning Authority will protect the identity of complainants and will treat such details as confidential. Although the general public will not have access to the Local Planning Authority's enforcement files, if the investigation proceeds to formal action, resulting in prosecution or a public inquiry, it may not be possible for the Local Planning Authority to guarantee the anonymity of the complainant. Some information can also occasionally be subject to the Freedom of Information Act 2000 and therefore may exceptionally have to be disclosed. In these cases, the complainant will be informed of the situation in advance.

12. The Council may refuse to accept a case if it is apparent that the complainant is pursuing a complaint without merit and intends to cause inconvenience, harassment or expense to the company or the person concerned, or to the Council. The Council will also not investigate repetitious complaints about an alleged breach of planning control unless there has been a material change in circumstances in the nature of the complaint.

13. Where a complaint is received that concerns a matter that does not fall under the responsibility of the Council, the Council will seek to forward the complaint to the appropriate body or organisation responsible, where possible. The Council will inform the complainant accordingly.

How the Council will handle your complaint

14. Hyndburn Borough Council operates its planning enforcement activities in accordance with Government guidance. Some complaints will need to be investigated more urgently than others and these will be prioritised as follows:

Priority 1:

Development causing significant or irreparable harm including:

- Demolition or unacceptable alteration of a Listed Building.
- Development in a Conservation Area where immediate, irreparable damage would be caused to special architectural or historic interest.
- Works to trees protected by a Tree Preservation Order or within a Conservation Area.
- Development that would result in significant or irreparable harm to the interest of statutory protected archaeological or ecological sites.

Priority 2:

Development where there is a risk of substantial harm to the environment, public safety and/or amenity¹ including:

- Development in the Green Belt or countryside areas.
- Development of residential sites (including residential caravans).
- Development in a Conservation Area where the character and appearance of the area may be harmed (not falling within Priority 1).
- Building works which are ongoing at the time of the submission of the complaint and action could prevent unacceptable development from being completed.
- Other development, or breach of planning controls or conditions, that cause substantial harm to the environment, public safety and/or amenity.

Priority 3:

Cases where there is a risk of minor harm to the environment, public safety and/or amenity including:

- Development, or breach of planning controls or conditions, that cause minor harm to the environment, public safety and/or amenity.
- Other development which is clearly contrary to established policies and would be unlikely to receive planning permission.

¹ 'Amenity' refers to the quality or character of an area and elements that contribute to the overall enjoyment of an area. Residential amenity considers elements that are particularly relevant to the living conditions of a dwelling.

Priority 4:

All other complaints such as minor technical breaches where very little or no harm arises, and those relating to developments that are already complete or uses of land which already exist at the time the complaint is made including those that do not fall within any other category above:

- Development causing concerns which may be resolved by limited modification.
- Advertisements, satellite dishes and minor works including boundary treatments (except those caught by the categories above)).
- Small-scale uses or development that cause limited or no demonstrable harm.

15. The complaint will be given an initial priority classification, and an investigation will be carried out in accordance with the relevant timescale for that complaint. We will aim to achieve the following:

- Priority 1: Site visit carried out within 1 working days of receipt of complaint
- Priority 2: Site visit carried out within 10 working days of receipt of complaint
- Priority 3: Site visit carried out within 20 working days of receipt of complaint
- Priority 4: Site visit carried out within 25 working days of receipt of complaint

16. The examples given above are not exhaustive but give an indication of the type of breach of planning control which may fall into each category. Many will require an exercise in planning judgement. The priority of an alleged breach may also alter during the course of an investigation if circumstances change or new information is obtained.

17. Any investigation will usually involve a visit to the site as well as more desk-based investigations such as looking into the planning history of the site. The investigating officer may also contact the complainant and the person(s) against whom the complaint has been made, in order to gather evidence relating to the alleged breach. Council officers are authorised, under the provisions of Section 196A of the Town and Country Planning Act 1990 (as amended) to enter any land at any reasonable time for the purpose of investigating whether or not there has been a breach of planning control.

Nonetheless, if an owner/occupier of that land is present at the time, the officer will seek permission to go on to the land. Occasionally, more covert surveillance or monitoring may be required and, where necessary this would have to be appropriately authorised.

What happens next?

18. The Council will acknowledge receipt of the complaint in writing within 5 working days. Due to workload demands, Planning Enforcement Officers **will not** provide running commentary and will only contact complainants to gather evidence and to confirm the outcome of the investigation.
19. The complainant will be notified of our findings and what action, if any, we propose to take as soon as we have concluded our investigations. Dealing with enforcement complaints can be a lengthy and complex process and it is therefore not possible to give a standard 'target' time for dealing with complaints. 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 appropriate, the Enforcement Officers will liaise with other council services and external agencies in order to ensure the most appropriate form of action is taken to resolve any complaint. Where the nature of the breach overlaps with responsibilities of another agency, the Council will, as far as possible, work in partnership with that body to resolve the matter.

If a Complaint is made about you and your property

20. Where somebody has made an allegation to us that you are carrying out or have carried out operations or a change of use of land without planning permission, or where it is considered that there may otherwise be a breach of planning control, the site will be visited by an officer or officers of the council to determine whether or not a breach of planning control has occurred. In most cases this will involve looking around the site and/or buildings and may involve asking you questions to assist us in determining whether a breach of planning control has occurred. The site visit may be carried out without prior appointment and, if entry to the site or premises is necessary, an officer will introduce themselves to you or your representative, give their name and explain to you the purpose of their visit. This will include you being advised of the nature of the alleged breach of control. Where no one is available on site, the council

reserves its right to carry out an unaccompanied inspection in accordance with the law.

21. 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 appropriately authorised.
22. All of the Council's planning officers and enforcement officers have the powers under the relevant Planning Acts and the Council's Scheme of Delegation, to enter land for the purposes of investigating breaches of planning control. Normally, and notwithstanding their right to enter the land, if you do not allow the officer(s) to enter the site or premises at that time, a date and time when entry must be permitted will be arranged by mutual agreement.
23. Occasionally, however, it may be necessary for the officer to look around the site immediately and you will be required to allow him/her access. Failure to allow such access is a criminal offence. If the site visit requires the officer to enter your home then, whilst you may refuse such a request, the officer may demand access at 24 hours' notice.
24. In some circumstances, where appropriate, you will be advised of your right to make a retrospective planning application to seek to regularise the breach, without prejudice to the decision that may be made on such an application. The council will, however, reserve its right to pursue enforcement action if it is expedient to do so. If you decide to submit a planning application, and it is subsequently approved, no further action will be taken provided any conditions attached to the planning permission are complied with. It cannot be assumed that retrospective planning permission will be granted.
25. 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 of this decision and the reasons why the action is considered necessary. The relevant enforcement notice will subsequently be sent to you and potentially to any other persons who have an interest in the land (e.g. mortgagee). 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 seek to 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 you in the Magistrates Court.

The Council's approach to planning enforcement

26. Where the breach of planning control is minor or it involves a technical breach of planning control that would be likely to benefit from retrospective permission, pursuing enforcement action would usually not be expedient. This is not to condone any breach of planning control, nor does it provide the landowner with a formal permission. Serious problems can still occur when the landowner tries to sell a property (or land) where the appropriate planning permissions have not been secured and where this is revealed on any land search. Landowners are advised to either regularise the position by applying for retrospective planning permission, or by applying for an Existing Lawful Development Certificate, although it cannot be assumed that retrospective planning permission will be granted.
27. Enforcement action taken by the local planning authority can be the subject of challenge, either on appeal or through the courts. For this reason, the local planning authority must be confident that the proposed enforcement action is necessary and reasonable to the alleged breach of planning control.
28. In the first instance, the council will endeavour to resolve any breaches of planning control through discussion and negotiation. Remedyng the breach means that the person responsible for the breach of planning control has taken action to remove the breach, or has remedied or altered it to ensure that it no longer breaches planning control, or that it has been made acceptable in planning terms. Where enforcement action is necessary, that action will be applied taking into account the council's adopted planning policies, and in accordance with any relevant professional codes of conduct.
29. Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost-effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it.
30. It is important to acknowledge that the use of planning enforcement powers is discretionary. In some instances, formal enforcement action may not be

appropriate. When deciding whether or not to exercise their enforcement powers the local planning authority will consider the expediency of each case on its own merits. Not all breaches will cause harm to justify enforcement action with a main consideration being whether any action would be in the public interest. This means that a judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes. It must consider whether the breach of planning control unacceptably affects public amenity or safety or the existing use of land or buildings merits protection in the public interest. The decision to take formal action will be authorised by any officer with delegated powers to do so.

31. In deciding, in each case, what is the most appropriate way forward, the Council will usually avoid taking formal enforcement action where:
 - There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
 - We consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.
32. It should be noted that the Council will not allow prolonged negotiation to delay essential enforcement action. In considering whether to take enforcement action, the Council will also have regard to the use of powers under other legislation, as such powers may be able to secure the desired outcome more efficiently.

Planning Law and Guidance

33. Sections 171 to 196 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, provide the legal basis for planning enforcement, including powers to serve various notices.
34. A number of other documents provide more detailed guidance on the operation of these powers:
 - National Planning Policy Framework (NPPF)
 - National Planning Practice Guidance (NPPG)
 - RTPI Practice Advice Note 6: Enforcement of Planning Control

- The Enforcement Concordat

Human Rights issues

35. 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

36. 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. The public sector equality duty must also be considered as a relevant factor when considering our decision.

Comments and Complaints

37. The Local Planning Authority is committed to providing an effective and efficient planning enforcement service. However, if you are not satisfied with the Service you should first contact the member of staff that you have been dealing with, or their manager, to try and resolve the problem. This is Stage 1 of the Council's Complaints Procedure.

38. If you are not satisfied with the response you receive at Stage 1, you can make a formal complaint under Stage 2. Your complaint will be investigated by a senior member of staff, usually the manager responsible for the service that you are complaining about. Details of the Council's Complaints Procedure can be found on the Council's website www.hyndburnbc.gov.uk.