

Enforcement Charter

Luton Council

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Planning Enforcement Charter

1. Introduction

Unauthorised development can have a harmful impact on the quality of life of local residents and the local environment. When development takes place without the appropriate planning permissions an effective planning enforcement service is paramount to maintaining the integrity of the planning service. This provides an essential contribution to maintaining public confidence in the planning system.

A Planning Enforcement Charter, specifies how the Planning Enforcement Team will respond to breaches of planning control and the National Planning Policy Framework (NPPF) suggests and encourages Local Planning Authorities to publish a local enforcement plan to appropriately manage planning enforcement matters in their area.

Luton Council has adopted an Enforcement charter to provide an understanding of the service and an overview of the planning enforcement function within the overall planning service. This Planning Enforcement charter lays out the way in which Luton Council will investigate alleged breaches of planning control and provides a framework of how we will provide that service.

2. The objectives and aims of the planning enforcement service

The purpose of the planning enforcement service is to investigate reports of alleged breaches of planning control. Breaches of planning control are not criminal offences in the majority of instances and it is the remit of the planning enforcement team to ascertain the harm caused by the breach. It is then the primary purpose of the planning enforcement team to remedy these breaches of planning control in accordance with paragraph 59 NPPF:

Effective enforcement is important to maintain 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. They 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 appropriate.

In accordance with Paragraph 59 seeking to remedy breaches of planning control is discretionary and every breach of control will not necessitate action. When the Planning Enforcement Team do take action it will be required to be proportionate and reasonable and action is not supposed to be punitive. The vast majority of breaches nationally are remedied without the requirement of formal action.

3. What is a breach of planning control –Not an exhaustive list

- Internal or external works to Listed Buildings without consent
- Cutting down or carrying out works to legally protected trees without consent
- Any kind of building works or operations carried out without the required planning permission

- A 'material' change of use of land or buildings without the required planning permission
- The noncompliance with a condition attached to a planning permission.
- Development not built in accordance with the approved plans of planning permission
- The unauthorised display of advertisements
- Land kept in poor condition if it has a significantly harmful effect on the character and appearance of an area

4. What is not a breach of planning control–Not an exhaustive list

- Works not involving development e.g guttering and pipes, and waste disposal
- Most boundary disputes
- Noise that does relate to a planning condition and anti- social behaviour
- Works to unprotected vegetation
- Most Parking disputes
- Trespass
- Damage to property
- Party wall act concerns
- Health and safety concerns
- Breaches of covenant
- Fly tipping

5. How we will investigate the alleged breach of planning control

Luton Council investigates a multitude of breaches of planning control. Upon receipt of your report we first need to ascertain if the matter relates to a breach of planning control. If it is concluded that the report is planning related we will then need to ascertain if the issue is permitted development or otherwise immune from enforcement action. This will involve a thorough research of the planning history of the site which will help us identify any specific conditions designations or particular circumstances affecting the land.

Once we have carried out the initial research required we will contact the developer and ascertain whether a site visit is necessary. It is not always necessary to carry out a site visit however we will usually engage with the developer and endeavour to gather as much information as possible electronically. Alleged breaches that require ongoing monitoring will only be pursued where complainants agree to supply evidence by way of diary logs. Once officers have established the facts and considered the matter a decision on whether it is expedient to take action will be made at the earliest opportunity. Given the demands on the service it is not always possible to provide updates at every stage on every case however we aim to provide an acknowledgement and a conclusion. There are a number of potential outcomes to a planning enforcement investigation, and these are explained further on at paragraph 12. However we will always attempt to negotiate a resolution and rely on voluntary compliance before instigating formal action.

6. How to report a breach of planning control

Reporting a breach of planning control can primarily be done through the Luton Council website and visiting the planning tab and using the following link:

https://myforms.luton.gov.uk/service/Planning_issues_request?noLoginPrompt=1 . The council will require the full property or land details of the site reported and will need an email address to correspond with the complainant and optionally a phone number and correspondence address.

In order to effectively deal with complaints it is important if possible that photographs are provided and that details of when the breach commenced and the harm caused are also provided.

The council encourages complainants to use the online form provided via the above link whereby a response will be sent out.

7. Confidentiality

All reports relating to breaches of planning control received by the planning enforcement team will be treated confidentially and in accordance with the Data Protection Act 1998, the Council will not disclose any information relating to the identity of a complainant. We will only respond to anonymous complaints where we consider that it is necessary to prevent serious planning harm.

8. Prioritising Enforcement Action

The council receives a significant number of reports of alleged breaches of planning control. In order to make the most effective use of the service and its resources we are required to prioritise the breaches of planning control into 3 categories. The lists below are not exhaustive and the time frames given represent initial investigation only as planning enforcement investigations can be complex and time consuming. There may also be unforeseen national issues and emergencies that may affect these time frames.

All valid reports of breaches of planning control will be acknowledged and investigated to an appropriate level.

9. Priority 1

We will undertake an initial investigation including a site visit, if necessary, within 1-2 working days for on-going works however for historical pre-existing works an immediate response may not be necessary.

- unauthorised works to listed buildings
- unauthorised works to protected trees or hedgerows
- breaches of planning control that could cause serious or irreversible harm
- breaches of conditions that are likely to cause significant harm to amenity, living conditions, trees, wildlife, ecology, archaeology or heritage assets

10. Priority 2

We will undertake an initial investigation including a site visit, if necessary, within 10 working days for alleged breaches of planning control in relation to the following matters:

- Breaches of condition not causing serious immediate long term amenity harm
- Works not in accordance with the approved plans

- Unauthorised adverts
- Changes of use not causing serious immediate planning harm
- Sub division of dwellings and large houses of multiple occupation

11. Priority 3

We will only undertake a site visit if necessary and will undertake an initial investigation within 15 working days:

- Minor breaches of control relating to the approved plans
- Minor breaches of control relating to householder development e.g small out buildings
- Fences and walls not causing obvious highways obstructions
- Satellite dishes
- Untidy land

Site visits if deemed necessary will be carried out within the above time scales. Ongoing updates will not always be possible however we will attempt to update when necessary and once the investigation has been concluded. There will also be a certain amount of information available on the council's public access system. If an enforcement appeal is received or a retrospective planning application submitted involving an enforcement case, we will endeavour to notify the relevant parties, however if there are multiple complainants this will not always be possible, and interested parties will be encouraged to check the public access system.

12. Potential outcomes of a planning enforcement investigation

After the above investigation has taken place and a breach of planning control has been established then there will be a number of possible outcomes.

1. The breach is causing serious demonstrable harm and so formal action is taken to remedy the breach.
2. As a result of taking formal action a planning application or appeal against the formal notice is submitted.
3. The breach of control may cause some harm but would otherwise be acceptable and a planning application is therefore invited to be made in order to regularise the development by way of conditions attached to mitigate any harm caused.
4. There is a breach of control, however the harm is minimal and it is not considered expedient in the public interest to take any further action
5. That the breach of control is acceptable in planning terms and a planning application can be submitted to regularise the breach.
6. The breach of planning control has become immune from action through the lapse of time.
7. We consider that there has not been a breach of planning control and that no further action is required.

Nationally the vast majority of planning breaches are resolved without the need for formal action. However when necessary there are a number of enforcement powers at the councils disposal which can be viewed by following the links at the end of this document.

13. Serious harm

If outcome number one is applicable formal action may be necessary. There are a number of formal notices which can be served by the council to resolve matters in this category. The council will consider robust action if immediate remedial action is not taken. However it is often preferable to attempt to rectify these issues through voluntary channels without the potentially lengthy and costly process of formal action. It is discretionary for councils to pursue formal action and it is required to be proportionate and necessary with reference to all the material considerations. Therefore it is usually preferable when possible to resolve breaches of planning control without the requirement for costly action.

14.

We consider that harm is being caused and the developers submits a planning application or appeals a formal notice or planning application

In outcome 2 it is often good practice to await either the decision of the planning application or the appeal. The council can decide not to determine the planning application, but if the council have decided to determine the planning application then it is often preferable to await the determination, before potentially pursuing further action. The same position applies to appeals, and it is generally considered preferable to await the determination of the appeal before pursuing further action. If an enforcement notice is appealed we will need to await the outcome.

15. The breach of control may cause some harm

In instances where outcome 3 is applicable the submission of a planning application with conditions may be sufficient for the resolution of the breach. In these instances the enforcement team will work closely with planning officers to suggest conditions to mitigate any harm caused. As with most matters that require enforcement action it can take a significant time for an acceptable planning application to be submitted and approved. In some cases if an acceptable planning application is not submitted then the matter can be escalated to outcome 1.

16. That the breach of control is acceptable in planning terms

In outcome number 4 and 5 the breach of control is considered acceptable. As with most breaches of control an assessment is made against all the material considerations and the relevant development plan. If it is concluded that in accordance with the development plan and any other relevant material considerations that the breach is not causing demonstrable harm then a decision may be made that a planning application without conditions can be submitted to address the breach of control. This will be the case in many instances where a breach of control has been detected. It should be emphasized that a breach of planning control is not a criminal offence and therefore a retrospective planning application is a lawful and legitimate process for addressing breaches of planning control within this category. In these instances the council may decide that if they do not receive a planning application that they will not pursue further action. It should also be noted that it is not an offence under law to seek retrospective planning consent after the development or change of use has already occurred.

17. The breach of planning control has become immune from action

In outcome number 6 a lapse of time since the breach of control has been carried out has resulted in the breach becoming immune from action. In these instances the council are precluded from taking action, however it is often advisable for developers to submit certificates of lawful

development applications to confirm that they will not be liable to enforcement action. It should also be highlighted that the onus is on the developer to show that the works have been in place for the required period, although the council will often take the view through their own investigations that works are immune from action.

18. We consider that there has not been a breach

In outcome 7 if the conclusion is that there has not been a breach of planning control this will usually conclude the matter.

19. Failure to comply with formal notices

In some cases formal action will still not resolve the breach of control and further legal action will be required. In these instances a criminal offence will usually arise and action in the courts may be necessary. The burden of proof will move from the balance of probabilities to beyond reasonable doubt, which means that the council will have a higher evidential threshold to discharge than before the non – compliance with the formal notice. Therefore the council will carefully assess whether their case meets the strict evidential and public interest tests required for commencing prosecution action in the courts. In some very rare cases the council may take its own action often referred to as direct action and charge the offender for the costs of taking the action. Once an offender has been convicted then there may be actions available to the council to recoup some of the proceeds of their criminal activity under the Proceeds of Crime Act.

20. Glossary of terms explained

There are a number of terms that have a particular meaning in relation to planning enforcement:

Expedient/Expediency

Whether enforcement action will be reasonable and proportionate and achieve the councils aims in satisfactorily remedying the breach.

Harm

In planning terms this means the adverse impact that the development is having on the wider environment. This impact can be visual or it can be related to noise, disturbance and pollutants.

Immunity

The time limits for taking planning enforcement action are:

- 1) building, engineering, mining or other operations - four years beginning with the date on which the operations were substantially completed.
- 2) change of use to a single dwellinghouse – four continuous years beginning with the date of the breach.
- 3) other changes of use and breach of conditions – ten continuous years beginning with the date of the breach.

Breach

An infringement of any planning regulations.

21. Complaints

Complaints relating to the service provided by the planning enforcement team should be made to feedback@luton.gov.uk . The council will not normally investigate anonymous reports of alleged breaches of planning control but retains the discretion to do so. Repetitive reports will not be investigated where upon investigation no evidence of a breach has been established. Where it

appears to the council that the report is vexatious then the council reserves the right to consider whether further investigation will be merited.

22. Equality

As required as part of the Equality Act 2010 Section 149, in the drafting of this plan due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between different groups and foster good relations between different groups. It is not considered that the Enforcement Charter would conflict with the requirements of the Equality Act 2010 or the council's policy on equality.

23. Enforcement toolkit the range of enforcement powers available

View more information about the [types of action available to the council including formal notices](#)