

# London Borough of Camden

## Planning Enforcement Policy



Updated June 2014

# 1. What is planning enforcement?

## Introduction and context

This document sets out the approach we will take in relation to breaches of planning control in the Borough. Ideally we would like there to be no breaches of planning rules in Camden. However where breaches occur planning law lays down strict requirements which we have to follow before we can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the borough.

Despite the legal constraints placed upon us we do understand that breaches of planning rules impact on peoples' lives in a very direct way. Consequently, the delivery of effective planning enforcement is a very important issue for us. We will always investigate breaches of planning rules swiftly and pursue appropriate action using the powers that are available to us. We will also keep interested parties informed throughout the process in accordance with our service offer set out in Section 7 of this document.

In dealing with any enforcement issues we must take into account the Council's adopted frameworks and strategies, particularly:

### Local Development Framework (LDF)

Sets the planning strategy for managing growth and development in Camden and comprise a number of policy and guidance documents.

### The Camden Plan 2012-2014

Sets out the ambition for Camden to be a place where everyone has a chance to succeed and where nobody is left behind. The overall vision is to reduce inequality while preserving the social mix, by building resilience in individuals, communities, businesses and the Council itself. The overall vision is in the delivery of five themes:

- Providing democratic and strategic leadership fit for changing times
- Developing new solutions with partners to reduce inequality
- Creating conditions for and harnessing the benefits of economic growth
- Investing in our communities to ensure sustainable neighbourhoods
- Delivering value for money services by getting it 'right first time'

## 2. Planning enforcement – the principles, our policy and ‘expediency’ explained

Most types of building works, changes of use, works to listed buildings, works to protected trees and advertisement signs require planning permission or consent. If these have not been obtained and works have been carried out or uses implemented, a breach of planning control is said to have occurred. A breach also occurs when conditions attached to a planning permission are not complied with.

### **The planning enforcement system is based on two important principles:**

- A breach is not a criminal offence, except for unauthorised works to listed buildings, illegal advertisements (such as illuminated poster hoardings) and demolition without consent. A criminal offence only arises when an Enforcement Notice has been served and has not been complied with.
- It is at the Councils’ discretion whether action will be taken - many breaches may be unintentional and any action proposed must be in proportion to the alleged offence.

We will always investigate any alleged breach reported to us and make a reasoned decision whether it merits action. However because of the legal test of “expediency” we should only take formal enforcement action where it is fair and reasonable to do so. In making this decision we will assess the circumstances of the case and make reference to our adopted planning policies. In addition we must also consider Central Government enforcement policy. This is set out in the National Planning Policy Framework (NPPF) 2012 and the Planning Practice Guidance.

The NPPF sets out that ‘local planning authorities should act proportionately in responding to suspected breaches of planning control’.

In considering “expediency” the decisive issue is whether the breach would unacceptably affect public amenity or use of land that should be protected in the public interest. Any enforcement action should be proportionate to the breach, so for example, it would be inappropriate to take formal action against a trivial or technical breach. This duty means that we would not be acting lawfully if we enforced against every breach of planning control in the borough. There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.

### **3. Planning Enforcement- a holistic approach**

In carrying out our enforcement duties we will consider the part planning enforcement plays in protecting the needs of Camden as a whole.

The NPPF states that 'Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area'. Whilst we recognise that planning enforcement is usually complaints driven we will also take a more proactive approach by looking at how we can use our enforcement powers to achieve our wider planning objectives. This is in line with The Camden Plan and the policies in our LDF.

For example this could involve monitoring developments which have been granted planning permission but where a failure to comply with the terms of that permission could potentially have a serious impact on local amenity. This may also involve proactive enforcement projects which look to tackle a number of similar breaches simultaneously which has a cumulative impact

In identifying potential targets for this sort of action we will have regard to the views of ward members and local residents and seek views and partnership discussions with those parts of the authority and other stakeholders in the area concerned with planning, regeneration, culture, diversity, tourism and town centre management.

Targeted enforcement action may be taken through the usual enforcement route (i.e. the serving of enforcement notices) but we will also look at the use of more direct remedies e.g. court injunctions against a series of breaches. We also recognise that properly targeted enforcement action (particularly where pursued through the courts and publicised) may not just remedy the specific breach but it may bring about a measurable improvement to an area as a whole through its deterrent effect. It can also establish a benchmark for developers in terms of what Camden will not tolerate.

## 4. Investigating alleged breaches

All allegations of planning control breaches will be prioritised and investigated thoroughly and accurately. Below are the priorities we have assigned to different types of alleged breaches, and the target times we have set to carry out an initial site visit:

**Priority A (High)** - we aim to carry out our first site visit within one working day

- *Unauthorised development which causes immediate, serious and lasting harm to neighbourhood facilities or other acknowledged interests. For example:*
  - unauthorised works to a listed building
  - unauthorised demolition or partial demolition of a building in a conservation area
  - unauthorised works to a tree protected by a Tree Preservation Order
- *Any unauthorised development causing severe disturbance to neighbours. For example:*
  - breaches causing danger on highways; premises creating serious noise and disturbance to neighbours
- *Complaints where the time limit for taking enforcement action is about to expire. For example:*
  - where development which goes against our policy is about to become immune from enforcement action

**Priority B (Medium)** - we aim to carry out our first visit within five working days

- *Significant harm to neighbourhood facilities. For example:*
  - unauthorised and inconsiderate residential alterations resulting in overlooking or loss of light
  - alterations which collectively would cause significant harm to the character or appearance of a conservation area
  - unauthorised commercial use
  - breach of condition resulting in significant noise or disturbance
- *Breaches to significant policies in the development plan. For example:*
  - loss of residential accommodation
  - loss of multiple occupancy houses
- *Situations where collective breaches are likely to cause serious harm to neighbourhood facilities or challenge policy objectives. For example:*
  - Unauthorised advert displays where the effect in an area is considered to lead to unacceptable harm to the amenities of that area, including alterations contrary to an Article 4 Direction\*.

**Priority C (Low)** - we aim to carry out our first visit within ten working days

- *breaches of conditions not covered by priority A or B;*
- *breaches where minimal harm to our policies is expected;*
- *breaches where planning permission is likely to be granted, with no or minor amendments, following the receipt of a retrospective application.*

## **After the initial investigation**

Once we have carried out the first visit to the site we will make an assessment of what further action may be needed. If it is decided that further enforcement action should be pursued the case will be progressed from a Planning Site Inspector to a Planning Enforcement Officer for further investigation.

Whatever the assessment, the complainant will be informed and advised of the next course of action in accordance with our service offer.

This may lead to the following courses of action:

- Case is closed because the investigation identifies that no breach of planning control has occurred.
- Case is closed because an alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted following the investigation.
- A breach in planning control has been identified and a retrospective application has been requested. An assessment has been made determining that it is not expedient to take formal enforcement action.
- A breach in planning control has been identified. An assessment has been made determining that it is expedient to take formal enforcement action in this case. Formal action may be in the form of notices issued.

## 5. Enforcement action – our approach

Government guidance on enforcement focuses not just on the impact of any breach on the complainant but on the rights of the owner or occupier where the alleged breach is occurring. Camden has to work within the Government's rules. However at the same time we also recognise the impact planning breaches can have on people's lives. Therefore where appropriate we will always use the tools available to us to seek a remedy to a planning breach. We will also aim to act in a transparent and accountable way by keeping interested parties informed at each stage of the process.

Our approach could include any or a combination of the following actions:

- **Negotiation:**  
Government guidance makes it clear that in all but the most serious cases we should initially seek to have planning breaches remedied through negotiation. The person carrying out the breach will be sent a letter confirming that the breach should be remedied in a specific timescale, or information should be provided to justify to us that no further action should be taken. However, we will not unnecessarily delay starting formal action while negotiations continue to resolve the breach, for example by asking for an application for retrospective planning permission. In Priority A cases, we will require that unauthorised work should stop immediately, and other immediate remedies may be sought.
- **Planning Contravention Notice (PCN):**  
This is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. The offender has 21 days to respond. Failure to respond could result in a prosecution in the Magistrates court. Sometimes it is necessary to serve these notices in circumstances where a site visit may not be able to obtain all the facts necessary to establish whether a breach of planning control has taken place. In some cases the formal nature of the PCN will highlight the seriousness of the situation to the alleged offender and will in itself lead to the breach being remedied.
- **Enforcement Notices:**  
Enforcement Notices are our main enforcement tool. The Government guidance makes it clear that in most cases Enforcement Notices should only be served where it is expedient to do so and after efforts to resolve the breach through negotiation have failed. So where we serve Enforcement Notices this will normally be around six to nine months from when the complaint was first made. Enforcement notices are formal legal documents that will require the owner or occupier to take specific steps to remedy the planning breach in a specified time. If the notice is not complied with

the planning breach will become a criminal offence which can be prosecuted in the courts. However the notice may be appealed to an independent government Planning Inspector (in which case the effect of the Enforcement Notice is suspended whilst the appeal is ongoing.) Inspectors can decide to uphold the notice, amend it or have it quashed. Interested parties can make representations to the Appeal.

- **Section 215 notices:**

A Local Planning Authority has the power to issue a notice under s215 if the amenity of part of its area is adversely affected by the condition of other land. The notice requires such steps as may be specified for remedying the condition of the land (includes buildings) and provides a minimum of 28 days before it takes effect. There is no right of appeal although before the notice takes effect an appeal may be made to a Magistrates Court by those served with the notice or any other person having an interest in the land.

- **Breach of Condition Notice (BCN):**

These can be used in addition to an enforcement notice or as an alternative, where the unauthorised activity is in breach of a condition attached to a planning permission. Under the Law a breach of condition is seen as a more minor breach than cases where development has no planning permission at all. For that reason there is no right of appeal against a Breach of Condition Notice. However, if compliance is not achieved we can proceed to prosecution.

- **Stop Notices and Court Injunctions:**

Both these remedies can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified or where other actions have failed. They will generally only be used in the most serious cases. We will consider the use of injunctions in particular in appropriate cases, such as, where a listed building is undergoing significant alterations without consent that affects its special historic and architectural interest.

- **Default Powers:**

These are generally seen as supportive powers to the main enforcement powers and allow us to enter land to take the necessary steps to secure compliance when an enforcement notice has been served. We will consider taking such action in appropriate cases, such as, the removal of poster hoardings.

- **Prosecution:**  
In most cases we cannot prosecute until we have taken formal enforcement action through the service of a legal notice. Prosecution does not bring about the remedying of a breach; rather it can be seen as the courts “punishing” the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect.

## 6. Policy approach – our general principles

We will abide by the following principles in dealing with enforcement;

- **Priorities**  
We deal with cases where the most serious harm is found, taking into account our planning policies and the circumstances of the case.
- **Consistency and fairness**  
We will look at past cases and try to take a similar approach, for consistency, where this seems fair and reasonable. Cases will be investigated in accordance with the priorities in this policy.
- **Transparency**  
Members, residents, existing and potential local businesses, complainants, alleged offenders and council staff understand how we provide the service and the principles that guide it. We will provide an easy-to-access service, where the procedures, level of service provided and the rights of appeal for the alleged offenders are clearly explained and easy to understand.
- **Proportionality**  
Any proposed action is in keeping with the scale of the alleged breach and the amount of harm caused.

In each case we will decide on the most appropriate course of action to follow. Under the law we are only allowed to take enforcement action if it is expedient to do so. Expediency is the legal test of any proposed enforcement action and is defined in Section 2 of the Policy.

## **7. Our service offer – How will we respond?**

Investigations of possible breaches can be worrying for everyone involved. We want to make sure our customers, both those who complain and those complained about, are kept informed throughout the planning enforcement process.

For those cases where no further action is required, we aim to inform all interested parties within 10 working days of the completed site visit. In cases requiring further investigation by a Planning Enforcement Officer, we will aim to finish our investigations, which may include negotiation, within 16 weeks. During this period we will provide regular progress reports to all interested parties by way of email or letter. At this point we will assess whether formal enforcement action needs to be taken.

### **If you make a complaint about a possible planning enforcement issue we will:**

- anonymous enquiries will not be taken
- write to acknowledge your complaint within three days of receiving it
- write to let you know the priority it has been given and who is investigating it
- contact you if we need further information
- Keep you informed - contacting you with initial findings within a month and then at least every two months to update you on the investigation
- let you know the likely course of action we will be taking and how long this might take
- Contact you at each key event, e.g. investigation progress, notice served or appealed
- Let you know the final outcome of your complaint
- As far as is possible we will treat your complaint sensitively and where possible confidentially. However it may be difficult to preserve confidentiality in every single case e.g. if we need to go to court we may ask you to give us further help with the case.

### **If we have been informed that you may be responsible for a planning breach we will:**

- provide identification whenever we visit
- provide the name of the officer carrying out the investigation
- investigate the complaint thoroughly before making any decision on what action to take
- write to you explaining our conclusions
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen
- Inform you if we decide to issue an Enforcement Notice or start legal action.

## **Additional References**

Town and Country Planning Act 1995 (General Permitted Development Order)

Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991, Planning and Compulsory Purchase Act 2004)

Planning (Listed Buildings and Conservation Areas) Act 1990

"Enforcing Planning Control: Good Practice Guide for Local Planning Authorities", Department of the Environment, Transport and the Regions 1997

Environment Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements", Department of the Environment, Transport and the Regions 1997

National Planning Policy Framework 2012

Planning Practice Guidance -  
<http://planningguidance.planningportal.gov.uk/>