

# London Borough of Hammersmith and Fulham

## Local Enforcement Plan

### Planning



June 2018

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## Executive Summary

As a public authority, the Council has a responsibility to deliver services with fairness, openness, and proportionality when considering interventions such as planning enforcement.

This document sets out the approach we will take in relation to breaches of planning rules in the London Borough of Hammersmith and Fulham. In dealing with enforcement we will take into account the Principles of good enforcement.

Nationally, the planning enforcement system is based on two important principles:

1. A breach of planning control is not a criminal offence, except for:

- Unauthorised works to listed buildings;
- Illegal advertisements (such as illuminated poster hoardings); and
- felling of protected trees.

2. 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 – and any action taken must be proportionate to the harm caused by the breach (NPPF Para 207).

The enforcement service seeks to record and investigate all legitimately made reports of breaches of planning control. This plan sets out how the enforcement service can be accessed by members of the public, and the structured process by which investigations will be carried out in a fair and proportionate way. This plan sets out when people reporting breaches can expect to be updated on the progress of an investigation, and when the service will aim to have delivered particular results on an investigation.

This plan also explains how decisions are made, and describes the tools available to the Council for carrying out planning enforcement.

# LOCAL ENFORCEMENT PLAN

This *Local Enforcement Plan* has been prepared in line with the requirements of Para 58 of the National Planning Policy Framework (NPPF) which sets out how we will investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

## **1. Introduction**

Planning enforcement is a key element in the planning, and specifically, the development management process.

This document sets out what local residents, businesses and others' being regulated can expect from the London Borough of Hammersmith and Fulham's planning enforcement service.

This document forms part of the policy basis under which the Council will seek to protect against undesirable and unacceptable developments, and use the available planning powers to help keep the Borough clean and protect its character.

A strong enforcement system will help ensure that inappropriate development is discouraged and controlled. This supports the delivery of planned economic growth and new housing that is sustainable.

By having a plan about how planning enforcement will be delivered, and having measurable service delivery targets, the enforcement service is open and transparent about how planning enforcement will take place in the Borough. It also shows that the process has been considered, and is open to review to ensure that the service is accessible and provides value for money.

## **2. Principles of Good Enforcement: Policy**

The main purpose of Hammersmith and Fulham's enforcement activities is to protect the environment for residents, businesses and the public. These enforcement functions should be carried out in an equitable, practical and consistent manner so as to help to promote a thriving local and national economy. The Council is committed to these aims and to maintain a safe and attractive environment.

### **Standards**

- We will have clear standards setting out the level of service and performance the public and the business community can expect to receive. We will publish these standards and our annual performance against them on the council website.

### **Confidentiality**

- Names and addresses of the complainants will be kept strictly confidential within the Council. All data relating to the enforcement investigation is held in accordance with the Council Policies in line with GDPR.

### **Openness**

- We will provide information and advice in plain language
- All correspondence and guidance will be in plain English.
- We will be open about how we set about our work, including any charges that are set, consulting business, voluntary organisations, charities, consumers and workforce representatives.
- We will discuss specific complaints, compliance failures or problems with anyone having difficulties with our process.

### **Helpfulness**

- We will work actively with our residents and local businesses, to advise and assist with enforcement enquiries and investigations.
- We will provide a courteous and efficient service
- Our staff will identify themselves by name.
- We will provide a contact point, email address and telephone number to residents and other members of the public to contact us directly.
- Applications for approval of planning permission etc. will be dealt with efficiently and promptly.
- We will deal promptly with all enforcement related property searches and be open about our charges.
- We will ensure that our enforcement service is effectively coordinated to avoid unnecessary overlaps and time delays.

### **Proportionality**

- We will minimise the costs of compliance for residents and local business by ensuring that any action we require is proportionate to the risks.
- As far as the law allows, we will take account of all the circumstances of the case, and the impact on those involved when considering action.
- We will take particular care to work with residents, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense.

### **Consistency**

- We will carry out our duties in a fair, even handed and consistent manner.
- We will make all decisions, taking account of legislation and National and Local Planning Policy documents.

## **3. Principles of Good Enforcement: Procedures**

- Advice from an officer will be in plain English;
- It will be confirmed in writing (on request) and give reasons why remedial work is necessary and over what time-scale.

- Before formal enforcement action is taken, officers will make every effort to provide an opportunity to discuss the case and, if possible, resolve points of difference
- Where immediate action is considered necessary, an explanation of why such action was required will be given at the time.
- Where there are rights of appeal against formal action, we will give advice on how to appeal

#### **4. Contacting the Planning Enforcement Team**

Where someone considers that harm is being caused by a possible breach of planning control they should contact the Planning Enforcement Team via a number of channels:

Councils Website: [www.lbhf.gov.uk/planning](http://www.lbhf.gov.uk/planning)  
[EnfComplaints@lbhf.gov.uk](mailto:EnfComplaints@lbhf.gov.uk)  
 Telephone 0208 753 1081

**Post: Planning Enforcement, Hammersmith & Fulham Council, Town Hall, King Street, Hammersmith, London W6 9JU**

- During an enforcement investigation, the identity of a complainant is kept confidential, so you may write to the Council with confidence.
- All enquiries will be acknowledged within 3 working days of receipt, and the acknowledgement will include a reference number, the name and contact details of the investigating officer.
- The case officer will commence the investigation within 5 days of having received the enquiry.
- We will tell you about the outcome of the investigation if you tell us your contact details (address, telephone number or email address).
- To avoid vexatious allegations anonymous enquiries or complaints will not normally be acted upon.

#### **5: Duties of the Planning Enforcement Officer**

The planning officer working in the Planning Enforcement Team will take “ownership” of an investigation, from its start to its resolution. This helps the timely progress of an investigation with practical advantages in terms of efficiency, continuity and customer care through one point of reference for information.

The core duties of the Planning Enforcement Officer include:

- Investigating allegations and enquiries
- Carrying out site visits
- Liaising and writing to complainants and offenders
- Negotiating remedial action

- Liaising with other Council departments to ensure consistency of approach
- Making recommendations as to the expediency of enforcement action
- Dealing with planning applications submitted as a result of the investigation
- Preparing enforcement reports for Enforcement Action
- Checking compliance with enforcement notices
- Dealing with related Planning and Enforcement Appeal
- Appearing as a Council witness in prosecutions in the Magistrates and/or Crown Court

The purpose of the enforcement investigation is to gather, and record sufficient information so that a reasoned judgement can be made, whether there is a breach of control and, if so, whether it is sufficiently harmful to justify taking enforcement action

It is desirable to avoid delays in taking any necessary enforcement action. For this reason, the Planning Enforcement Team aims to conclude investigations by agreed remedial action or formal action within a period of 12 weeks. However, some cases may result in formal action being taken much sooner than the above time periods, for example in higher priority cases. Some of the more complex investigations however, will take longer to process through the various stages.

## **6. Investigation Priorities**

We will prioritise investigations as follows:

**Priority 1.** A first site is carried out within 3 days.

- Works to listed buildings;
- Works to TPO trees or trees in conservation areas;
- Demolition of buildings;
- Uses likely to result in the service of a stop notice.

**Priority 2.** A first site visit is carried out within 7 days.

- Building works which are being carried out, either without or not in accordance with planning permission.
- Changes of use, including residential conversions;
- Breaching planning conditions;
- Works to form roof terraces;
- Untidy sites.
- Building control applications where there is no planning permission.

**Priority 3.** A first site visit is carried out within 10 days.

- Fencing, boundary walls and other means of enclosure (unless causing immediate harm other than visual).
- Advertisements;
- Satellite dishes;
- Estate Agents boards;

Our aim is to be clear and helpful without prejudging the outcome of the investigation. After the first investigation we will:

- Tell the 'offender' what the breach is and how they should remedy it.
- Make every effort to negotiate with the 'offender' and advise them how to remedy the breach.
- Give a deadline for the remedial action. Failure to meet these deadlines could result in the Council taking enforcement action.
- Suggest a planning application is made when appropriate.
- Prepare and publish reasoned reports when recommending any form of action.
- Case Officers will liaise with other departments as necessary to ensure a thorough and consistent approach in dealing with enquiry.
- The offender will be advised if it is the intention of the Council to take enforcement action.
- On completion of the investigation, where unauthorised development has taken place, Officers will prepare a report with a recommendation for or against enforcement action being taken. This requires the Team Leader/Deputy Team leader authorisation under delegated authority.
- The complainant will be kept informed and will receive confirmation at the end of the investigation explaining what action was taken by the Council and the reasons why.

## **7. The Decision to Take Enforcement Action**

Enforcement action is discretionary, and the Council will act proportionately in responding to breaches of planning control.

The Council will only take enforcement action when it is considered necessary to do so in order to remedy harm. Formal enforcement action can not be taken just because planning permission has not been sought. When taking formal enforcement action, the Council will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach.

- In deciding whether to take enforcement action we will have regard to the local development plan and to any other material considerations including national policies and procedures.
- In deciding whether to take enforcement action we will consider whether the breach of planning control unacceptably affects residential or public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment.
- Planning enforcement operates to protect the public interest, not to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds. Representations will be taken into account in far as they relate to relevant planning considerations. Issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership disputes, breaches of covenant or party wall issues.

## **8. The forms of enforcement action that may be taken**



There are a number of different notices and/or actions that are able to be taken by the Local Planning Authority. Some of these are summarised as follows:

- Enforcement Notice;
- Breach of Condition Notice;
- Stop Notice;
- Temporary Stop Notice;
- Section 215 Notice;
- Injunctive Action;
- Formal Cautions;
- Planning Enforcement Order;
- Direct Prosecution (for offences committed under advertisement or TPO regulations);
- Direct Prosecution (for non-compliance with other formal notices);
- 225A Removal Notices (advertisements);
- Tree Replacement Orders;
- Listed Building Enforcement Notice;
- Direct Prosecution for Listed Building offences;
- CIL Stop Notices; and
- CIL Surcharges.

The definition and purpose of some of these various options and a more complete outline of the enforcement tools available to the Council can be found on the Government's national planning guidance pages:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

## **Right to Appeal**

Those parties subject to any formal action will have their rights of appeal set out in any Enforcement Notice they receive, or they will have the right to defend themselves in any court action taken.

## **9. Record of Enforcement Action Taken**

- There is a statutory duty (under Regs. 7 and 8 of the openness of Local Government Bodies Regulations 2014) to ensure that all decisions affecting the right of an individual (among other things) are recorded and publicised. All records of enforcement notices issued are recorded and publicised on the Statutory Enforcement Register a copy of which is available, upon Request, for inspection at the Council Offices.
- An Enforcement Notice, once issued, lies with the land, and is transferable to the new owners if the property is subsequently sold. All records of enforcement notices issued will be recorded against the property on the Land Charges Register and will be made available upon request (e.g. a property search by or on behalf of prospective buyers).

- Once the enforcement notice has been complied with the regulations permit the withdrawal of an enforcement notice upon request and at the discretion of the LPA. The authority to withdraw an enforcement notice (subject to payment of the appropriate administration fee) will only be considered where the council is satisfied that the breach is unlikely to re-occur (this would usually be where the costs involved would be prohibitive)

## **10. Prosecution**

It is not a criminal offence to carry out development without first obtaining planning permission. Failure to comply with formal enforcement action, including following an appeal decision, can be a criminal offence.

It is, also, an offence to erect unauthorised advertisements, fell a protected tree without consent, carry out unauthorised works to a listed building, or, fail to comply with an enforcement, breach of condition, planning contravention or stop notice.

For a successful prosecution to take place it is essential that the provisions of Police and Criminal Evidence Act 1984 (PACE), Criminal Procedure and Investigations Act 1996 (CPIA) and the Code of Conduct for Crown Prosecutors are followed. A cost benefit assessment of pursuing a case to prosecution will take place.

- The Council will pursue prosecution in the Magistrates and/or Crown Court where it can be demonstrated that is in the Public interest to do so.
- The Council will comply with the provisions (PACE) when interviewing persons suspected of a criminal offence and with the CPIA and Section 222 of the Local Government Act 1972, when carrying out prosecutions.
- In the event of a successful prosecution, in certain circumstances the Council may seek compensation under the Proceeds of Crime Act (POCA) (this relates to any profit the offender has derived from the offence)
- The decision to pursue this will be taken considering the likelihood of successful outcome.

## **11. Meeting Our Targets**

All complaint cases are monitored and the results published in the Council's "Annual Performance Plan" on the Councils website at [www.lbh.gov.uk](http://www.lbh.gov.uk)

These targets are:

- **90% First Action within 5 days**
- **80% Investigations completed within 8 weeks**
- **90% Investigations completed within 12 weeks**

For these purposes, the investigation is deemed to be “complete” when one of the following outcomes has been reached:

- The investigation identifies that no breach in planning control has occurred.
- The breach of planning has been identified and 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 an application requested, but not submitted. An assessment has been made determining that it is not expedient to take formal enforcement action in this case at this time.
- 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 or through the prosecution process.

## **12 Pro-Active Enforcement**

Whilst most of the work undertaken by the Planning Enforcement team is in response to complaints about possible unauthorised development i.e. re-active, the team also undertakes pro-active work where a clear benefit to the local community has been identified.

The Planning Enforcement Team will review its pro-active service on an annual basis, prioritising existing and new projects where there is an identified benefit to the community.

Existing Pro-active programme:

### **i) Estate Agents Boards**

The proliferation of estate agent’s boards, and the resulting visual harm, has been a regular source of complaint from the general public. Under the Town and Country Planning (Control of Advertisements) Regulations 2007, estate agents are permitted to display their boards on properties for sale or rent without the need for express consent from the Council. This is known as ‘deemed consent’.

In some areas of the Borough, significant visual harm has arisen from the high numbers of boards. To address this, we applied to the Secretary of State, under Regulation 7 of the Advertisement Regulations, for the removal of the deemed consent, which effectively prevents them being displayed within these areas. Six Regulation 7 “bans” have been approved and we monitor these areas to ensure compliance and where the breach is identified the estate agent is prosecuted and the advert removed.

The six designated areas are:

Barons Court Conservation Area

[Map of the Baron's Court Regulation 7 area \(pdf\)](#)

Lakeside/Sinclair/Blythe Road Conservation Area and Brook Green Conservation Area

[Map of the Sinclair Road Regulation 7 area \(pdf\)](#)

Olympia & Avonmore Regulation 7 area

[Map of the Olympia & Avonmore Regulation 7 area \(pdf\)](#)

Gunter Estate

[Map of the Gunter Estate Regulation 7 area \(pdf\)](#)

Harwood Road

[Map of the Harwood Road Regulation 7 area \(pdf\)](#)

Hammersmith Grove Conservation area

[Map of the Hammersmith Grove Regulation 7 area \(pdf\)](#)

Outside of these Regulation 7 areas the Planning Enforcement Team will identify illegal board displays and seek their removal and or prosecution. In addition, members of the public are encouraged to report possible illegal board displays, and to facilitate this we have set up an email reporting address –

[EnfComplaints@lbhf.gov.uk](mailto:EnfComplaints@lbhf.gov.uk)

## **ii) Advertisement Hoardings**

It is an offence for advertisers to display advertisement hoardings without consent unless they can show that the display has existed for a period of 10 years or more.

We have been targeting these illegal displays where they are considered to result in visual harm. We use powers to remove the advert within a set timescale. This has been extremely successful and to date very few illegal displays now exist.

We are also targeting those advert hoardings that have simply become lawful because of their long period of display. In order to do so the Council must demonstrate that the continued display would result in substantial harm to amenity. The advertiser has the right to appeal against the Notice; to date the Council have successfully defended 100% of these cases resulting in the removal of the adverts. This team will continue to monitor such adverts across the borough.

## **iii) Untidy Sites and Buildings**

Neglected sites and buildings can be a source of visual harm to the amenity of the area. We are seeking to identify these problem sites and seek cooperation from the owner to carry out remedial works to bring them back into good order. Where the owner is reluctant to do these works, the Council can use legal powers under S215 of the Town and Country Planning Act to remedy the harm.

#### **iv) Coordination with Building Control**

Apart from responding to complaints that development is not being erected in accordance with the relevant planning permission, the Planning Enforcement Team also co-ordinates with other services of the Council so as to be alerted at an early stage when development is commencing which may be deviating from the planning permission. The Team work closely with the Council's Building Control Team so can be alerted when submitted building control plans differ from approved plans.

#### **Liaison with Other Departments and Regulatory Bodies**

Where there are breaches of wider regulations (e.g. highways, noise nuisance), enforcement activities will be co-ordinated with other departments to maximise the effectiveness of any enforcement.

### **13. Review of the Local Enforcement Plan**

The Council will review this plan from time to time and at least every three years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures. The Council will monitor performance against the plan targets, and the overall effectiveness of the Plan on an annual basis.

This document is not subject to formal public consultation. However, comments on this document will be welcomed and will be considered as part of the review process, (please email comments to [planning@lbhf.gov.uk](mailto:planning@lbhf.gov.uk) heading your e-mail Local Enforcement Plan).