



**BLACKBURN WITH DARWEN BOROUGH COUNCIL**

**LOCAL ENFORCEMENT PLAN**

**( DRAFT )**



**( JULY 2016 )**

## **LOCAL ENFORCEMENT PLAN**

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## **1.0 Introduction**

The National Planning Policy Framework (NPPF) sets out the governments planning policies for England and how these are expected to be applied. The NPPF states that effective enforcement is important as a means of monitoring public confidence in the planning system and that Councils should use their discretionary powers proportionately in responding to suspected breaches of planning control. The NPPF recommends that Council's should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area and that this should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

This document is the Council's response to the NPPF and sets out how the Council investigates alleged cases of unauthorised development, what action it will take when appropriate to do so and the monitoring it will carry out of the implementation of planning permissions. It aims to give guidance on what we can do and how we balance the demands on our services against the resources available to us. It should be noted that planning law can be very complicated and this document is only a guide.

### **The purpose of planning enforcement**

Planning laws are designed to control development in the public interest. They are not meant to protect the private interests of one person against the activities of another. The Council must operate its enforcement activities in accordance with government guidelines and its own policies. Councils have a general discretion to take enforcement action when they regard it as expedient. In considering any enforcement action, the decisive issue for the Council is whether the breach of planning control would unacceptably affect public amenity or an existing or an existing use of land or buildings meriting protection in the public interest.

The Council will only take enforcement action when it is considered expedient to do so. In deciding whether to take action the Council will consider its Core Strategy and Local Plan. The Council aims to enforce planning legislation in a fair, equitable and consistent manner having carefully considered the merits of each individual case. Carrying out building work or changing the use of land or buildings is not a criminal offence and while it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission and indeed the Council does not condone such action, enforcement action will not be taken solely because the development is unauthorised. Any action will be proportional to the breach of planning control to which it relates and formal action will not be taken against minor technical or trivial breaches of planning control. It may be that the development is acceptable on its planning merits and in most cases the Council will give the

opportunity to apply for retrospective planning permission. However where severe harm is being caused, the Council will take firm action quickly.

## **2.0 Planning enforcement explained**

The Council's planning enforcement service deals with unauthorised developments, unauthorised works to listed buildings, unauthorised demolition of buildings within a conservation area, unauthorised display of advertisements and untidy land.

### **Unauthorised development**

Section 55 of the Town and Country Planning Act 1990 (as amended) defines development as the carrying out of building, mining, engineering or other operations in, on, under or over land, or the making of any material change in the use of any buildings or other land and Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 171A of the Act establishes that the carrying out of development without the required planning permission and the failure to comply with any condition or limitation, subject to which planning permission has been granted constitutes a breach of planning control.

**Planning enforcement deals with breaches of planning control and planning enforcement action can only be considered where the building works or change of use undertaken require planning permission.**

It is not a criminal offence to carry out development without first obtaining planning permission and Section 73A of the Act provides that a grant of planning permission may relate to development carried out before the date of the application for permission. These applications for permission for development that has already been carried out are known as retrospective applications and are dealt with in the same way as any other planning application.

Certain building works or changes of use benefit from what is called "permitted development". Provisions contained in the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended) give permission for some types of development when in accordance with specified size limits / criteria without the need for the express permission of the Council via the grant of an application for planning permission. Information and advice about permitted development can be found online at the DCLG Planning Portal.

Section 171B of the Act sets out time limits for taking enforcement action and if enforcement action is not taken within these time limits the unauthorised development becomes lawful and immune from enforcement action. The time limits are –

- Built development – 4 years from the date on which operations were substantially completed.
- Change of use to a single dwellinghouse – 4 years from date of change.
- All other changes of use – 10 years from date of change
- Non –compliance with planning conditions – 10 years from date of non-compliance.

### Listed buildings & Conservation Areas

Listed buildings have special protection under the Planning (Listed Buildings and Conservation Areas) Act 1990. Listed building consent is required from the Council to carry out any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. It is a criminal offence to carry out such works without consent. Certain demolition works and the removal of trees within a conservation area require conservation area consent.

### Advertisements

The display of advertisements in England is controlled by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) and the Town and Country Planning Act 1990 (as amended). There are exclusion and deemed consent provisions contained in the regulations for the display of certain advertisements when in accordance with specified size limits / criteria.

Advertisements which do not benefit from exclusion or deemed consent require advertisement consent from the Council. It is a criminal offence to display an advertisement that is not in accordance with the regulations.

### Untidy land and buildings (Section 215)

Where the condition of land and buildings is such that it is affecting the amenity of the area, the Council has powers to require proper maintenance of the land under Section 215 of the Act. The Council as part of its Growth Agenda are proposing to use these powers more frequently, particularly on more prominent sites along the gateways in the borough, to ensure the borough's appearance is not affected to the detriment of existing and prospective residents.

### **Things that are not planning enforcement issues**

Boundary disputes / trespass & ownership / access rights

Property damage & unsafe structures

Devaluation of property

Commercial / competition complaints

Noise nuisance / Anti-social behaviour

The contact details on the final page of this document give information on organisations who deal with some of these matters.

### **3.0 Making a complaint**

Anyone can make a complaint about a breach of planning control. The Council does not normally respond to anonymous complaints and except for urgent cases all complaints should be made in writing by e-mail, post or the Council's website. The identity of a complainant is kept confidential (subject to compliance with the Data Protection Act & Freedom of Information Act). In order to investigate the complaint, the following information is required as a minimum –

Name and address of complainant

Exact address of property

Details of alleged breach (and any other relevant information)

You can make your complaint in the following ways -

Council Website: [www.blackburn.gov.uk](http://www.blackburn.gov.uk) – report a breach of planning.

E-Mail: [planning@blackburn.gov.uk](mailto:planning@blackburn.gov.uk)

Post: Planning Service, Blackburn with Darwen Borough Council, Town Hall, King William Street, BLACKBURN, BB1 7DY

On receipt of a complaint we will –

- Acknowledge the complaint in writing or by e-mail within 2 working days. This will include the case officer's details.
- Visit the site in line with the priority categories outlined in this document to establish whether or not there has been a breach of planning control – refer to categories in Section 5.
- Update the complainant of progress during and at the conclusion of investigations.



#### **4.0 The action that the Council can take**

The case officer will investigate the complaint to establish whether a breach of planning control has occurred.

Where a breach of planning control has occurred, an assessment will be made of the harm caused by the breach and what action is required. Where an assessment is made that planning permission may be granted unconditionally, an application for retrospective planning permission will be invited. Similarly if the development can be made acceptable by the grant of planning permission subject to conditions a retrospective planning application would be the most appropriate course of action. The case officer may seek to resolve the breach of planning control through negotiation and advice. This may include advice regarding appropriate remedial action such as making amendments to unauthorised developments to make them permitted under the legislation or proposed amendments to developments which may make it possible to grant planning permission. In some cases this could be advice to stop an activity or remove an unauthorised structure.

Should no retrospective application be received by the Council or the remedial action requested by the Council taken the Council will commence formal enforcement action where the breach of planning control is causing sufficient harm to justify it.

There are a number of enforcement actions which the Council can take and these are outlined in the following table –

Type of enforcement action	Purpose
Planning Contravention Notice	Legal notice served on the owner / occupier of property, requiring the recipient to provide specific information. This is often undertaken to determine if there is a breach of planning control and to decide an appropriate course of action.
Breach of Condition Notice	Legal notice which can be served where development has taken place without compliance with a condition(s) of a planning permission. This notice sets out steps that are required to be taken to secure compliance with the conditions specified within a planning permission.
Enforcement Notice	Legal notice served on the owner and / or occupier of land. This notice states the breach of planning control and sets out the steps which are required to be taken to remedy the breach.
Stop Notice / Temporary Stop Notice	Legal notice, served in the most serious

	of cases, requiring unauthorised activities to cease with immediate effect to prevent further harm being caused.
Injunction	In the most exceptional and serious cases the Council may apply to the Court for an Injunction to prevent unauthorised development which is causing severe harm.
Section 215 Notice	Legal notice served on the owner of land / buildings to secure remedial action where the condition of the land / buildings is adversely affecting the amenity of the area.
Listed Building Enforcement Notice	Legal notice served on owner of a listed building to require remedial works where unauthorised works have taken place to the listed building.
Conservation Area Enforcement Notice	Legal notice served on owner of land / buildings where unauthorised demolition has taken place within a designated conservation area.
Removal Notice	Legal notice served to require removal of an illegal advertisement.
Works in default	In cases where the owner of land / buildings fails to comply with the requirements of an enforcement notice, section 215 notice or removal notice the Council may carry out works in default and then recover the costs of the works from the owner of the land / buildings.
Prosecution	Failure to comply with most notices is a criminal offence and the Council may take prosecution action. Also, some matters such as unauthorised works to a listed building and the unauthorised display of advertisements are criminal offences which the Council may prosecute. The Council will endeavour to recover all legal costs.

Although use of the criminal process is an important part of enforcement, prosecution action is not taken lightly or for purely punitive reasons. Often other approaches to enforcement may equally or more effectively resolve the matter and prosecution does not itself achieve tangible results. Prosecutions must be in the public interest and there are evidential and public interest tests set down in the Code for Crown Prosecutors which must be satisfied prior to taking prosecution action.



## **Action Times**

Initial response times are dealt with in the following section on priorities. Overall, dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement case vary considerably in complexity as does the time taken for their resolution. There is a right of appeal against most of the legal notices referred to in the above section on action which the Council may take and if a person decides to appeal against an enforcement notice, this will add to the time taken to resolve the case. Consequently, it is not possible to give a standard time for dealing with enforcement cases.

Where investigations indicate that a breach of planning control has occurred that requires the issue of an Enforcement Notice, a Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the Notice can appeal against it to the Secretary of State, via the Planning Inspectorate.

Where an appeal is lodged the Council can take no further action until the appeal is decided. The Council has no control over the time taken to decide an appeal and the process usually takes a number of months. The Planning Inspector appointed by the Secretary of State to decide the appeal can quash or revise the Notice. However, it should be remembered that where a breach of planning control is causing serious harm to public amenity, the Council can seek immediate remedial action via the service of a STOP NOTICE or by applying to the Court for an INJUNCTION.

## **5.0 Priorities & Projects**

Planning investigations are often lengthy and complex and it is essential that available resources are used effectively. In order to make the most effective use of resources cases are investigated using the following category priority rating -

### **Category 1** (visited within 24 hours)

- Works to listed buildings
- Demolition within conservation areas
- Works to trees either covered by tree preservation orders or within conservation areas
- Any works considered to be causing significant and immediate harm to amenity.
- Complaint received via Councillor

**Category 2** (visited within 10 working days)

- Changes of use
- Ongoing building developments
- Breaches of planning conditions
- Illegal advertisements

**Projects**

The Council is pursuing an agenda of growth and prosperity through its Core Strategy and Local Plan and priority is given to remedying breaches of planning control which will contribute to this agenda. In particular, land and buildings situated within gateways into the Borough, the condition of which are adversely affecting the amenity of the area will be prioritised.

**6.0 Service Standards**

The Council will –

- Investigate breaches of planning control in accordance with the Local Enforcement Plan
- Register your complaint within 5 working days, providing you with an acknowledgement and reference number and a named officer as point of contact
- Keep you informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved.
- Investigations into alleged breaches of planning control may take some time, however we will seek to close cases within 12 weeks from the date of receipt.

**What to do if you are dissatisfied with the way your complaint is dealt with**

The Council has a formal complaints procedure which is detailed on the Council's website.

In the first instance you should make your complaint to either, Mr Gavin Prescott, Planning Manager, or Mrs Kate McDonald, Acting Planning Implementation Team Leader.

## **7.0 Legislation & Policies**

Town and Country Planning Act 1990 (as amended)

Sections 171C, 172, 183, 187A, 215, 225, 225a

Planning (Listed Buildings and Conservation Areas) Act 1990

Section 38

Town and Country Planning (General Permitted Development) (England) Order 2015

Town and Country Planning (Use Classes) Order 1987 (as amended)

Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

Blackburn with Darwen Borough Council Core Strategy adopted January 2011

Blackburn with Darwen Borough Council Local Plan Part 2 adopted December 2015

National Planning Policy Framework, paragraph 207 (adopted March 2012)

Planning Practice Guidance – Ensuring Effective Enforcement

## **8.0 Contact Details**

Planning Enforcement Section – Tel: 01254 585236 / 585674 / 585112

Arboricultural Officer – Tel: 01254 585786

Planning Implementation Team Leader –Tel: 01254 585477

Planning Manager – Tel: 01254 585694

Blackburn with Darwen Borough Council website address: [www.blackburn.gov.uk](http://www.blackburn.gov.uk)

Planning Portal website address: [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

Council's Highways Section – Tel: 01254 273830

Council's Environmental Protection Service – Tel: 01254 267699