



PLANNING ENFORCEMENT PLAN

MAY 2023

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ENFORCEMENT PLAN 2023

1. Introduction

Planning legislation is designed to control the development and use of land in the public interest. The credibility of the planning system relies on the Council's readiness to take effective enforcement action when needed. The Council is committed to providing a speedy and efficient planning enforcement service to respond to breaches of planning control.

The Council has signed up to the Government's Enforcement Concordat which sets out the principles of good enforcement practice. These are:

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

Helpfulness: to work with all parties to advise on and assist with compliance. To provide contact details for further information.

Consistency: to carry out duties in a fair, equitable and consistent manner.

Proportionality: to take action in proportion to the risks posed and how serious the breach is.

Complaints about the Service: to provide well-publicised, effective and timely complaints procedures.

In Burnley, planning enforcement work is carried out under the Scheme of Delegation. The power to investigate allegations of breaches of planning control is given to the Head of Housing and Development Control and the power to take enforcement action, including court proceedings and serving statutory notices is given to the Head of Governance and Law.

2. Purpose of document

This policy is intended to provide guidance to officers, to businesses and to members of the public, setting out the principles and the standards the service will work to in enforcing breaches of planning control. It sets out what we can and can't do in terms of planning enforcement. It also explains how complaints are investigated, how we prioritise and what tools we have available where enforcement action is considered necessary. It replaces the Burnley Enforcement Plan 2015.

3. About planning enforcement

Government guidance to local planning authorities on enforcement is set out the **National Planning Policy Framework** at paragraph 59. This states:

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.

The National Planning Policy Framework is supported by DLUHC and MHCLG Guidance (Enforcement and post-permission matters. Responding to suspected breaches of planning control.) which can be viewed at [Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/enforcement-and-post-permission-matters)

There is no duty under the Town and Country Planning Acts to take planning enforcement action - powers given to local authorities are discretionary. In deciding whether to take enforcement action, the Council must decide whether the unauthorised works would unacceptably affect public amenity. The Government expects any action taken to be expedient and proportionate to the harm caused. For example, it would not be appropriate to take action in the case of a small extension to a dwelling which, although technically needing planning permission, does not cause any harm to the amenity of the area or nearby residents.

In deciding whether to take enforcement action the Authority is also required to have regard to the **Development Plan** and to any other material considerations including the National Planning Policy Framework. A significant element of the development plan for Burnley is the Burnley Local Plan, adopted in 2018. This document can be viewed here:

[Burnley's Local Plan - burnley.gov.uk](https://www.burnley.gov.uk/planning-and-building-control/planning-policy/burnley-local-plan)

It is important to remember that, in general, it is not a criminal offence to carry out development before obtaining planning permission and it only becomes an offence when there is failure to comply with a formal enforcement notice.

However, there are exceptions to this in that unauthorised works to listed buildings, carrying out works to protected trees and the display of advertisements without the necessary consent all do constitute offences which are liable to prosecution. (See further information at 10, 11 and 12 below)

It is also important to understand that planning enforcement does take time, particularly where evidence needs to be collected or where formal notices are served and the right to appeal is exercised. A satisfactory outcome can take many months to achieve.

There are **time limits** after which enforcement action cannot be taken. Generally speaking, if a building has been completed for more than 4 years, or a use has been carried on, or a planning condition breached, for more than 10 years, the Council will not be able to take any enforcement action. (This does not apply in the case of listed buildings)

4. What we deal with

- Unauthorised building works
- Unauthorised change of use
- Works to listed buildings
- Demolition in Conservation Areas
- Works to trees covered by a Tree Preservation Order or within a Conservation Area
- Works not being carried out in accordance with the approved plans
- Breaches of planning conditions
- Unauthorised advertisements

5. What we don't deal with

- Works that do not require planning permission
- Works that are anticipated but have not yet started (except in exceptional circumstances where a serious breach can be prevented)
- Boundary disputes
- Obstruction of a highway or public footpath (this is dealt with by Lancashire County Council)
- Advertisements on the highway or on street furniture (this is dealt with by Lancashire County Council)
- Enforcement of deeds or covenants (these are enforced by the landowner)
- Untidy land/fly-tipping (these are dealt with by the Council's Streetscene service)
- Fly-posting (dealt with by Streetscene)
- Noise complaints (dealt with by the Council's Environmental Protection Team, unless there is a condition attached to a planning permission restricting noise levels that is being breached).

6. How to make a complaint

Complaints can be made via the link below and completing the pro-forma:-

www.burnley.gov.uk/planning/planning-enforcement/

You will need to provide:

- The address of the site
- Your own contact details, including your name and address
- Details of the alleged breach, including the start date, if known
- An indication of what harm is being caused, and to whom
- Any details you have about the persons responsible

The identity of a complainant will be treated as confidential. However, if the complaint results in a court case, the success of that case may rely on evidence being given by the complainant. In such a case, the Council will discuss this with any potential witnesses before taking a decision about whether to prosecute an offender.

Anonymous complaints will not be investigated unless they are of a very serious nature and it is in the public interest to do so.

7. How we prioritise complaints

To make the most effective use of the limited resources available, cases will be prioritised, taking into account the significance of the breach and the level of harm caused. Works requiring an urgent response, and are described thus:

- Demolition or irreparable alteration of a Listed Building.
- Demolition of a building within a Conservation Area.
- Works to trees protected by a Tree Preservation Order or within a Conservation Area.
- Development that creates a physical danger or is otherwise considered likely to be injurious to human health.

All other works are subject to a triage system and are accorded a level of priority accordingly. In all events Burnley Borough Council aims to deal with all enforcement matters as efficiently as Council resources allow. It is important to note that Council resources are finite, and that not all complaints can be dealt with straight away.

8. How we investigate a complaint

All complaints received via the Council's website are acknowledged automatically. Complaints are viewed by Council Officers and the degree of harm assessed. A view is subsequently taken as to the necessity and practicality of taking enforcement action. It is important to remember that many complaints received are not considered expedient to progress.

In most cases it will be clear from submitted information whether a breach has taken place, and in the event of a breach whether the matter requires further investigation. Some cases will require a site visit.

Authorised officers have statutory powers to enter land and buildings to investigate breaches of planning control. If the property is a dwelling, 24 hours advance notice may be required. Where these formal powers are used, officers will produce evidence of their authority, identity and the purpose of their visit when requested. It is an offence to obstruct an authorised person exercising their right of entry.

On occasion Burnley Borough Council may ask complainants for assistance, for example by keeping a log of alleged unauthorised activities. Successful prosecution requires sufficient evidence to demonstrate a breach of planning control.

The Council will not normally undertake covert surveillance for planning enforcement purposes. Should it be considered necessary to do so, surveillance will only be undertaken with prior authorisation and in accordance with the provisions of The Regulation of Investigatory Powers Act 2000 (as amended).

A Planning Contravention Notice (PCN) can be served where information is required regarding ownership of land or activities undertaken. A PCN can be served on anyone who is the owner or occupier of the land to which the notice relates, or has any other interest in it, or anyone who is carrying out operations on the land, or is using it for any purpose.

A PCN will require the recipient to provide information requested within 21 days relating to the alleged breach of planning control. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine currently being £1,000. To knowingly or recklessly provide false or misleading information on a PCN can result in a fine of up to £5,000.

A **Requisition notice**, under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 can also be used to establish information about the ownership of land. It is an offence to fail to respond to the notice or to knowingly or recklessly provide false or misleading information. The maximum fine on conviction is £5,000

9. What action we might take:

- **No action** – if it is found that planning permission is not required, or the breach is very minor and causes no harm to the environment or nearby residents, then no further action will be taken. Note that as a complainant, you may not automatically be informed that this is the case.
- **Negotiate solution** – if an issue is found to exist, we will try to negotiate a mutually acceptable solution to a planning breach wherever possible. It is acknowledged that his process can be both lengthy and frustrating for complainants who are waiting for a matter to be resolved, however this may be the most efficient method of securing a solution.

If building works or an unauthorised use are considered to be unacceptable, the Council will give the perpetrator time to remove the construction or cease the use. If this opportunity isn't taken by the perpetrator, formal enforcement action may follow.

- **Retrospective application** – where there is a realistic chance of an unauthorised development receiving retrospective planning consent, the perpetrator may be asked to make such an application. Such an application is only ordinarily submitted if enforcement action hasn't formally begun, as a Local Authority has the right to decline consideration of such an application following service of an Enforcement Notice.
- **Application for Lawful Development Certificate** – if it appears to the Council that a use or physical works might have become lawful due to the length of time the use or works have existed uninterrupted on the site, the perpetrator may be invited to submit an application for a Lawful Development Certificate. If such a Certificate is granted, no enforcement action can subsequently be taken. If such a Certificate is refused and no Appeal submitted, the matter may progress to service of an Enforcement Notice.
- **Breach of Condition Notice** – where a Planning Condition has not been complied with, a Breach of Condition Notice (BCN) can be served. A BCN clarifies steps needed to comply with said Condition and by what date these steps must be taken. There is no right of appeal against a Breach of Condition Notice and failure to comply can result in prosecution. The maximum fine on conviction is currently £2,500.
- **Enforcement Notice** – if attempts at negotiation are unsuccessful, an Enforcement Notice (EN) may be served. An EN must describe the breach, the steps necessary remedy the breach and an appropriate timescale to undertake those steps. Note that a period of no less than 28 days must elapse from the date of service of an EN until the Notice takes effect, and that the appropriate timescale to remedy the breach begins no earlier than the expiry of that 28 day period. The reality therefore is that from service of an EN, it may take a minimum of 56 days before the unauthorised use has to cease, or the unauthorised works be removed. There is a right of Appeal against an EN. If such an Appeal is lodged, the EN is suspended pending the outcome. If no Appeal is lodged, or if an Appeal is lodged and dismissed, subsequent non-compliance with an EN can result in prosecution in the Courts. The maximum fine on conviction is unlimited. In cases where prosecution has taken place, a Local Authority can apply for a Confiscation Order, under the [Proceeds of Crime Act 2002](#), to recover the financial benefit obtained through unauthorised development.

Stop Notice – in cases where urgent action is needed to remedy harm being caused, a Stop Notice can be served in addition to the Enforcement Notice. The purpose of a Stop Notice is to require activities to cease before the date for compliance set out in the Enforcement Notice. These are only used in exceptional circumstances where serious harm is being caused to public

amenity. There is no right of Appeal. A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence ([section 187\(1\) of the Town and Country Planning Act 1990](#)).

A person guilty of this offence is liable on conviction to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

- **Temporary Stop Notice** - These take effect immediately and do not have to be accompanied by an Enforcement Notice. They last for a period of 28 days during which the local authority must decide whether any further action is needed. They cannot be used in certain situations, e.g. the use of a building as a dwelling, or in some cases involving use of a caravan where it is the occupant's main residence (although there are exceptions to this). Failure to comply is an offence and the maximum fine on conviction is unlimited.
- **Injunction** - in very serious cases, where irreparable harm is being caused, or where all other methods of enforcement have failed, the Council can seek an injunction in the County Court or High Court to prevent a breach of planning control. Failure to comply with an injunction is a contempt of court and can lead to a fine, imprisonment or assets being seized. This is only used in exceptional circumstances.
- **Prosecutions** - although normally a last resort, are an important part of the enforcement function. In deciding whether to prosecute, the Council will take into account whether it is in the public interest and whether there is sufficient evidence to prove the case beyond reasonable doubt. As referred to in 8 above, this may be dependent upon complainants being willing to assist with the provision of evidence and by appearing in court.
- **Direct action** - When steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether to exercise its power to enter the land and itself take those steps necessary to remedy the harm; and to recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. If the costs cannot be recovered, a charge will be registered on the property with the Land Registry.
- **Planning Enforcement Order** - A local planning authority can seek a Planning Enforcement Order through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the "4 year rule" or the "10 year rule" which normally provide immunity from enforcement action. Its use will depend on whether or not there are other remedies available but also on whether or not any "concealment" was deliberate.

- **The Proceeds of Crime Act 2002** - provides for the confiscation or civil recovery of the proceeds from crime in the UK. The Council may be able to seek an award under the Act if relevant criteria are satisfied and a breach of planning control has resulted in monetary or other gain on the part of the perpetrator.

10. Trees

Trees are protected when they are subject to a Tree Preservation Order or if within a Conservation Area.

- It is an offence to cut down or otherwise destroy a tree covered by a Tree Preservation Order unless the local planning authority has given consent for those specific works. The maximum fine upon conviction is unlimited.
- Within a designated Conservation Area, an individual or organisation wishing to cut down or otherwise undertake works to trees is required to the Local Planning Authority 6 weeks' notice of said intent. Any person or organisation that carries out such work without service of such a Notice on the LPA is guilty of an offence. The maximum fine on conviction is unlimited.

If Burnley Borough Council is informed that a protected tree is in the process of being felled, the matter will be treated with priority. When questioning a landowner or an individual suspected of undertaking the works, it may be necessary to caution those concerned in accordance with the Police and Criminal Evidence Act 1984. A decision as to whether it is in the public interest to prosecute those concerned will be made following the interview, and in any event the planting of replacement trees will normally be required irrespective of whether or not prosecution takes place.

If a landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice to ensure compliance. There is a right of Appeal against a Tree Replacement Notice.

The Council does not have the power to insist upon work being undertaken to protected trees on privately owned land.

11. High Hedges

Matters concerning high hedges can be considered under Part 8 of the Anti-Social Behaviour Act 2003, in which the Council can act as mediator for a fee.

The Government has published explanatory leaflets for the public:

- ['High Hedge: complaining to the Council'](#)
- ['High Hedge Complaints: Prevention and Cure'](#),

Requests for mediation can be made via e-mail to planning@burnley.gov.uk. The following information should be included:

- Name, address and other contact details as appropriate;
- Confirmation that the address relates to a domestic property;
- Name and address of other individuals/landowners concerned;
- Location plan showing the hedge and all property affected;
- Photographs of the hedge, preferably with an indication of scale;
- Confirmation that the hedge is in excess of two metres tall and comprises predominantly evergreen or semi-evergreen species;
- An outline of the steps taken to date to settle the matter by negotiation, with copies of relevant correspondence or other papers;
- Details of how the hedge is affecting the reasonable enjoyment of property.

Upon receipt of this information, the Council will write to relevant landowners, inviting them to present their case. A site inspection will be carried out and the Council will assess whether the hedge adversely affects the amenity of the complainant. If it is determined that action is needed, a Remedial Notice will be served on the owners of the hedge setting out that action, and a reasonable timescale.

The recipient of a Remedial Notice has a right of Appeal. If an appeal is subsequently lodged, the recipient is not required to undertake the work until the Appeal is determined.

A complainant also has a right of Appeal should the Council decide not to issue a Remedial Notice.

For further information, the Government has produced the following explanatory leaflet:

- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9410/highhedgesappeal.pdf

12. Advertisements

It is an offence under the Town and Country Planning Act 1990 to display an advertisement without express consent. If officers consider that an application for the advertisement would probably be granted, then a retrospective application will be requested. Where the advertisement causes serious harm to amenity or public safety, a request will be made for its removal within a specific period. If the advertisement continues to be displayed after this period of time, then the offender will be prosecuted. The maximum fine on conviction is £2,500. In the case of a continuing offence, the maximum fine is £250 for each day the offence continues after conviction.

Removal Notice

Section 225A of the 1990 Act gives the Local Planning Authority the power to remove and dispose of structures (such as hoardings) which are being used for unauthorised advertisement displays, but not on buildings to which there is no public right of access. The Authority would first serve a 'removal notice and would then be able to recover the cost of removal if the structure was not removed by the date specified in the notice. The recipient has a right of appeal to a magistrate's court.

The Local Planning Authority would be liable to pay compensation where any damage is caused to land or property, other than damage caused to the display structure itself or damage reasonably caused from removing the structure.

Discontinuance Notice

Where an advert does not require consent the Authority can serve a Discontinuance Notice requiring its removal if it considers that the advert causes a substantial injury to the amenity of the locality or is a danger to members of the public. There is a right of appeal to the Secretary of State against a Discontinuance Notice.

13. Listed Buildings

Listed Building Consent is required for the demolition of a listed building or for alteration or extension to the building in a manner which would affect its character as a building of special architectural or historic interest. It is an offence to carry out such works without the necessary authorisation and the maximum penalty on conviction is 6 month's imprisonment, an unlimited fine, or both, in the Magistrates Court, and up to 2 years imprisonment, an unlimited fine, or both, in the Crown Court.

The Council can either prosecute an offender or serve a Listed Building Enforcement Notice requiring the unauthorised work to be remedied. There are no time limits for taking enforcement action in respect of listed buildings. In deciding whether to serve a listed building Enforcement Notice, or to prosecute an owner, the Council will take into consideration the length of time that has passed since the work took place and who was responsible for carrying out the unauthorised work. However, even where a property has changed hands since work took place, the current owner is still responsible for carrying out remedial works and liable for prosecution if these are not carried out.

However, prosecution will only take place as a last resort, in cases where the law has been deliberately flouted or a Listed Building Enforcement Notice has not been complied with.

The Council's first priority will be to negotiate a satisfactory solution with the owners. A retrospective application for Listed Building Consent may be necessary at this stage. If negotiations fail, then the Council may serve a Listed

Building Enforcement Notice. As with a general Enforcement Notice, this will set out the steps required and the timescales in which work must be carried out and there is a right of appeal to the Secretary of State. Failure to comply with a Listed Building Enforcement Notice is an offence and penalties are the same as those for a general Enforcement Notice.

14. Demolition in Conservation Areas

The demolition of an unlisted building in a conservation area requires planning permission. This can either be applied for in conjunction with a planning application for redevelopment of a site, or a separate application for 'relevant demolition' can be made. It is an 'offence for a person to carry out or cause or permit to be carried out the demolition of an unlisted building within a conservation area without the required planning permission. Similarly it is also an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted. The maximum penalty for this offence is an unlimited fine and/or 12 months imprisonment

Please note: All fines referred to in this document are the current levels at 30th April 2015 and are subject to change.

15. What to do if you are not satisfied with our service

We make every effort to provide good customer service and to follow correct procedures at all times. However, if you have a complaint, you should initially contact the Development Control Manager by email: planning@burnley.gov.uk who will try to resolve your enquiry informally in the first instance.

If you are not satisfied and wish to pursue the complaint, it will then be dealt with under the Council's formal complaints procedure. Details of this are set out at the following link:

<http://www.burnley.gov.uk/about-council/other-information/complaining-about-council-service/how-we-deal-complaints>

If, having gone through the formal complaints procedure, you remain dissatisfied, you may refer your complaint to the Local Government Ombudsman. Details of how to do this are on the Council's website at the link above, or on the Ombudsman's website www.lgo.org.uk.

For enquiries relating to planning enforcement, please contact:

Planning Enforcement
Development Control Team
Housing & Development Control
Town Hall
Manchester Road
Burnley
Tel: 01282 425011
Email: planningenforcement@burnley.gov.uk