

Planning Enforcement Policy

January 2013

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1. Introduction

This policy aims to provide clear guidance on how Rossendale Borough Council carries out its planning enforcement activities. The Council exists to serve the members of its public and it is therefore vital that clear guidance is given on what the Council can do with the resources available to it. The Policy will be in place for a period of 5 years from the date of the adoption, however it will be monitored during this period and reviewed in light of customer feedback and any changes to relevant legislation and Government guidance.

2. Is Planning Permission Required?

Planning enforcement action can only be considered where the development (be it building work or material change of use) being undertaken requires planning permission. An initial investigation by the enforcement officer, upon receipt of a complaint, will seek to determine the planning status of a development.

There are certain types of building works or changes of use which do not require planning permission and are defined as 'permitted development' within the Town and Country Planning (General Permitted Development) Order 1995. Further information on what constitutes 'permitted development' can be found on the website www.planningportal.gov.uk

3. What is Planning Enforcement?

Planning enforcement deals with any alleged breach of planning control reported by members of the public, Councillors or other departments within the Council. Additionally, we also monitor conditions imposed on planning permissions wherever possible to ensure that development is being undertaken in accordance with the planning approval.

Situations that can be considered for planning enforcement include:

- Unauthorised building works
- Unauthorised material changes of use to a building or land
- Unauthorised display of advertisements
- Unauthorised works to protected trees
- Unauthorised work to statutorily listed buildings
- Unauthorised demolition of certain buildings within a Conservation Area

- Unauthorised engineering operations
- Works not being carried out in accordance with plans approved as part of a planning permission, or in breach of a condition of a planning permission

4. What is the purpose of Planning Enforcement Action?

Planning laws are designed to control development and use of land and buildings for the greater public interest.

Where a breach of planning control is identified, in most instances the Council will provide an opportunity for an application for retrospective planning permission to be submitted to Council for formal consideration. This allows the Council to consult interested parties and seek guidance from relevant specialist bodies (e.g. the local highway authority). However, in the event that serious harm is being caused by the breach, the Council will take firm action quickly.

The Council operates its enforcement activities in accordance with Government guidance, notably the National Planning Policy Framework. Enforcement action is discretionary, and in the first instance the Council must decide whether the breach of planning control unacceptably affects quality of life. Action will not be taken solely because development has started without planning permission. The Council does not always have to take action against a breach of planning control and the particular circumstances of the case must always be considered and the Council will respond in a proportionate manner. For a minor breach of control that causes no real harm it may not be expedient to take formal action.

5. How to make an enforcement complaint

Anyone who believes that a breach of planning control has occurred can make a complaint and if you are concerned about unauthorised building work or a change of use you should contact the Planning Enforcement section of the Licensing and Enforcement Unit. Complaints must be made in writing.

A complaint can be registered by email to planningenforcement@rossendalebc.gov.uk or in writing to:

Planning Enforcement
Licensing and Enforcement Unit
Rossendale Borough Council
One Stop Shop
Lord Street
Rawtenstall
BB4 7LZ

In order to be investigated, a complaint must include the following information:

- Complainant's address and contact details
- Description of what has taken place
- The address details of where the alleged breach has occurred
- If possible a plan indicating the exact area the works are occurring and photographic evidence

In cases of extreme urgency such as the unauthorised felling of protected trees or unauthorised demolition of a listed building please telephone the Licensing and Enforcement Unit on 01706 238643.

6. What action can the Council take?

The Council has a procedure established for investigating planning enforcement complaints as follows:

Allegations of breaches of planning will be recorded individually and any complaint made in writing will be acknowledged within seven working days of receipt. The acknowledgement letter will provide the Enforcement Officer's contact details. If you wish to make a complaint it is important that Council has your contact details in order to keep you informed of the progress of the investigation or to seek additional information from you. Enforcement files and the complainant details are kept confidential, however if formal action is taken it may not be possible to keep your complaint confidential.

An investigation of the complaint will be undertaken as soon as possible although priority will be given to more urgent alleged breaches, such as unauthorised building works, which need to be dealt with quickly before work becomes too advanced.

With breaches of planning control arising from building or engineering operations the Council cannot take enforcement action after the end of a period of four years beginning with the date on which the operations were substantially completed. With breaches of planning control concerning the change of use of a building to a dwelling, the council cannot take enforcement action after 4 years from the commencement of the breach.

Other planning breaches (such as other unauthorised changes of use of buildings or land) are subject to a 10-year time limit from commencement. After that time, the Council cannot take action and the use can become legitimate. The landowner can even apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period, and if the evidence is clear can regularise the situation.

It should be noted that there is no time limit for enforcement action against unauthorised work to a listed building.

In the event that the Council's investigation shows no breach of planning has taken place, the complainant will be informed of this and the investigation file closed.

Where it is clear that a breach of planning control has taken place the Council will exercise its discretion to determine whether it is appropriate for enforcement action to be taken based on the level of harm caused by the breach. If following an assessment, it is considered likely that the development is or could be made acceptable in planning terms, the person(s) responsible would be invited to make an application for retrospective planning permission. If it is considered that the development does not require planning permission, an application for a Certificate of Lawful Existing Use or Development (CLEUD) would be invited where appropriate.

If it is unlikely that retrospective planning permission would be granted for the development in question, the Council will commence enforcement action where it is expedient to do so, after allowing a suitable time period for the breach to be remedied. Examples of harm resulting from a breach of planning control can include, but are not limited to - highway safety issues, loss of daylight or privacy and noise nuisance. In these situations the Council will exercise its discretion and will proceed with formal enforcement action if it is considered in the public interest to do so, where the breach is causing significant harm to the environment or local amenity.

The Council can serve an Enforcement Notice on the owner and/or occupier of the land and anyone else who holds an interest in the land. The notice explains the nature of the breach of control and sets out what steps are necessary to

remedy the breach and the date by which this must be done. An Enforcement Notice can be appealed to the Planning Inspectorate. If the Notice is not successfully appealed or complied with, the Council may bring a prosecution in the Magistrates Court.

In the most serious of cases, the Council may also consider serving a Stop Notice or apply to the Court for an Injunction requiring specified activities to be stopped by the responsible persons.

In addition, the Council also carry out other enforcement action including:

- Service of a Planning Contravention Notice (this requires information to be submitted to the Council regarding who owns the property, and any other matters which the Council needs further information on to investigate an alleged breach of planning control).
- Service of a 'Breach of Condition Notice' where development has taken place without compliance with condition(s) of the planning permission
- Prosecution in connection with unauthorised advertisement display.
- Prosecution for unauthorised work to a listed building.
- Prosecution for unauthorised work to a protected tree.
- Prosecution for non-compliance with a requirement to replace a protected tree.

The Council may decide to prosecute for failure to comply with a Notice to prevent further harm and as a deterrent to others. Financial penalties served by the Magistrates Court may be substantial and the limits are set out in statute.

If found guilty within the Magistrates Court of non-compliance with an Enforcement Notice, Stop Notice or for doing unauthorised works to a Listed Building or to tree(s) subject to a Tree Preservation Order the offender may be liable to a fine with a maximum limit of £20,000. An offence in relation to displaying an unauthorised advertisement or failure to comply with a Breach of Condition Notice can incur a fine of £2,500 and for every day the breach continues following the conviction, a further fine, that being one-tenth of the fine.

7. Historic Buildings

The Council will take appropriate enforcement action to help preserve and enhance the borough's historic environment. Keeping historic buildings in good repair and, where possible, in use, is considered key to their preservation. Local authorities can take action to secure repair when it becomes evident that a building is being allowed to deteriorate.

The escalating enforcement measures (Section 215 Notices, Urgent Works Notices and Repairs Notices) afforded to local authorities can be effective tools to help secure the preservation of historic buildings.

The following notices are available for the Council to use:

Section 215 Notice – a relatively straightforward power to require the owner or occupier to carry out works to improve the external condition of a building or land if its neglect is adversely affecting the surrounding area.

Urgent Works Notice – a power that allows a local authority to directly carry out works that are required urgently to make an unoccupied listed building weather tight and thus prevent further deterioration.

Repairs Notice – a power that allows a local authority to specify to the owner works it considers reasonably necessary to secure the future of a listed building.

Compulsory Purchase Order – when all other measures fail, the local authority's last resort is to compulsorily acquire a listed building in order either to repair it itself or more usually to sell it on to be restored by a buildings preservation trust or other new owner.

Enforced Sale - Where a debt has been generated through Works In Default (i.e. a cost has been accrued through undertaking works to ensure compliance with a notice where the owner has failed to undertake the works) a charge will be placed on the property. Where properties and land meet the requirements of the Council's Derelict Properties Sales Policy and Standard Operating Procedure (Enforced Sales) then debts will be pursued through this policy.

For further information and guidance, please refer to the following websites:

<http://www.english-heritage.org.uk/publications/stoppingtherot/acc-stopping-the-rot-summary.pdf>

<http://www.english-heritage.org.uk/publications/stoppingtherot/acc-stopping-the-rot-guidance.pdf>

8. How long will it take?

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. As a consequence it is not possible to give a standard time period for dealing with enforcement cases. Planning enforcement cannot be considered as 'quick fix' solution. The Council's Planning Enforcement

Officers will endeavour to provide quarterly updates to complainants on the progress of investigations.

Where an enforcement notice is served the Notice takes a minimum period of 1 month to come into effect and during this time an appeal can be lodged against the notice with the Secretary of State for Communities & Local Government through the Planning Inspectorate. In the event of an appeal being lodged the Council can take no further action until the appeal has been determined. The appeal process can take a number of months and the Planning Inspectorate will determine whether to uphold, quash, or revise the Notice. The Enforcement Notice will outline the steps required for compliance and the period needed for compliance.

A Breach of Condition Notice seeks compliance with a condition imposed on a planning permission. A Breach of Condition Notice cannot be appealed and has a minimum compliance period of 28 days.

Where a breach of planning control creates significant or irreversible harm a Stop Notice or Temporary Stop Notice can be served which can take effect immediately. An example of such a situation may be the serving of a stop notice to halt unauthorised works to a statutory Listed Building.

In the event that the Council serves a Notice but the breach continues the Council can apply for an injunction from the Courts, and if the injunction is granted, it becomes a contempt of Court to continue with the breach.

9. Further Assistance

The Council has a duty to follow up on any reported breaches of planning control. If in receipt of correspondence from an Enforcement Officer concerning such a breach please do not hesitate to contact the Officer involved. The Council will always seek to resolve breaches of planning by way of negotiation and will only use formal enforcement action as a last resort.

Further information and guidance on planning regulations and the planning enforcement process can be obtained from the following websites:

www.rossendale.gov.uk – contains links to the Council's relevant planning policy documents. Advice can also be obtained by contacting the Duty Planning Officer directly on 01706 252580.

www.planningportal.gov.uk – contains advice on permitted development rights, when planning permission is required and the appeal process. A planning application can also be submitted online via this website.

www.legislation.gov.uk – relevant Government legislation can be found here, such as The Town and Country Planning Act 1990.

www.communities.gov.uk – national planning guidance can be found here, including the National Planning Policy Framework.