



Birmingham

Local Enforcement Plan

Consultation Draft • October 2020



Birmingham
City Council



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FORWARD

Foreword

The Birmingham Local Enforcement Plan sets out our vision and a strategy for an effective and efficient planning enforcement service.

The City faces a number of challenges that will need to be addressed if we are to achieve our ambition for Birmingham to be renowned as an enterprising, innovative and green City.

The population is projected to grow by an additional 156,000 people by 2031, requiring new homes and jobs to be created, as well as quality environments in order for residents, workers, businesses and visitors to thrive.

The Birmingham Local Enforcement Plan has a central role in how we address these challenges. The Plan sets out a framework that will provide a planning enforcement service which is a clear, consistent, proportionate and transparent. It is recognised that establishing effective controls over unauthorised development assists in conserving the natural and built environment whilst helping to protect the quality of people's lives and maintaining the City's.

Councillor Ian Ward

Leader,

Birmingham City Council

Introduction

This Birmingham Local Enforcement Plan (BLEP) relates to Birmingham City Council's planning enforcement service and describes the purposes of the service and how it will be delivered.

Although planning enforcement is discretionary and not a mandatory function of Local Planning Authorities, it is commonly recognised that the integrity of the Development Management process depends on the Council's commitment to take effective action against unauthorised development.

The BLEP explains the Council's policy and procedure for dealing with reports of alleged breaches of planning control and handling planning enforcement issues. It identifies local priorities for enforcement action so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control.

The BLEP will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.

Purpose of planning enforcement

The purpose of planning enforcement is to ensure that development is undertaken in accordance with regulations and planning permissions and where it is undertaken without permission to ensure that harmful development is dealt with effectively.

Development requiring planning permission includes:

- Most types of building works.
- Engineering works.
- Material changes of use to land including buildings.

Planning Enforcement cannot take action if there is no breach of planning control, or the dispute concerns boundary disputes, covenants, deeds or civil issues.

Legislation and policy

The Town and Country Planning Act (T&CPA) 1990 (as amended) provides the statutory basis for most planning enforcement matters, including trees. Tree enforcement is also governed by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. The statutory powers for Listed Building enforcement are provided principally by the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Birmingham Development Plan (BDP) was adopted by Birmingham City Council on 10 January 2017. It sets out the City's vision and strategy for the sustainable growth of the City for the period up to 2031. It is the City's key statutory strategic planning document, guiding decisions on all development and regeneration activity to 2031 and is therefore fundamental in guiding decisions relating to breaches of planning control.

The BDP conforms to the National Planning Policy Framework ('the Framework') which was first introduced in March 2012 and updated in February 2019. Paragraph 58 of the Framework states that:

"Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate." (NPPF)

In addition to the Framework the Planning Practice Guidance document titled "Ensuring effective enforcement" provides national guidance in responding to suspected breaches of planning control. (Planning Practice Guidance)

In preparing this plan the City Council has followed the National Planning Policy Framework and the Planning Practice Guidance.

INTRODUCTION



CHALLENGES

Accommodating the City's increasing population and ensuring that economic growth is delivered in a sustainable and inclusive way, meeting the objectives of the Council's priorities, is a key challenge for the City.

Growth must be managed in the most positive, effective and sustainable way possible to ensure that development is guided to the right location, is of a high standard, fit for purpose and that inappropriate development is deterred.

The conversion and reuse of existing buildings for housing can help to meet the changing housing needs of the city. There has been a significant trend for this form of housing in the private rented market in Birmingham in recent years. This trend has emerged in part due to the accommodation needs of the city's substantial student population, but also to cater for transient populations and to address a general need for low cost accommodation for young professionals unable to afford home ownership. The impact of Houses in Multiple Occupation (HMO) growth is a challenge in Birmingham. In order to manage the growth of HMOs in the City, the Council made a decision to introduce a city-wide Article 4 Direction which will mean a planning application must be submitted for proposals to convert family houses (C3 Use Class) to small Houses in Multiple Occupation (HMOs) (C4 Use Class). The direction came into force on 8 June 2020.

Birmingham has 1,500 Listed Buildings ranging from Grade I (buildings of exceptional quality), Grade II* (particularly important buildings) and Grade II (majority of Listed Buildings of special interest).

Listed Buildings are considered nationally important and have extra legal protection within the planning system. Challenges occur when historic fabric is removed to accommodate the demand for new uses and more accommodation and floor space, or poor quality alterations and adaptations take place that compromise these buildings.

Privately owned buildings and land left to deteriorate can cause significant harm to the amenity of the local area, blots on the urban landscape or the urban street. When this happens they not only become wasting assets in their own right, but they degrade the quality of the surrounding environment too. One of the challenges is to reduce the number of these sites.

In light of these challenges and within the constraints of existing resources, the objectives will be:

- To ensure that the distribution and concentrations of HMOs across the City can be managed.
- To protect and enhance the City's heritage assets and historic environment.
- To preserve significant buildings in Conservation Areas and ensure that any development maintains or improves the special character of those areas.
- To protect the amenity of occupiers and nearby residents/ occupiers.

PRINCIPLES

The principles of good enforcement

The integrity of the planning system and the service for the Birmingham City area depends on the City Council's readiness to take enforcement action when it is appropriate to do so. Planning laws and policies are designed to control the development and use of land and buildings in the public interest; they are not meant to protect the private interests of one person against the activities of another.

The City Council is committed to providing an effective planning enforcement service. In order to undertake effective investigations, it is essential that there is co-operation between the City Council departments and other agencies, such as the Police, Environment Agency, HMRC and the Health and Safety Executive. The City Council will continue to develop these relationships in the future in order to make best use of all our available resources.

The City Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so.

The City Council will investigate all reports about alleged breaches of planning control, except those reported anonymously, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action,

mindful to the basic principles of enforcement:

- Proportionality - enforcement action will be proportionate to the risks and seriousness of any breach, including any actual or potential harm caused by the breach.
- Helpfulness - where it should be possible for breaches of control to be quickly remedied, officers will give owners/developers a chance to quickly rectify matters. All correspondence will identify the officer dealing with the matter and give contact details. Officers will not tolerate abusive language or aggressive behaviour.
- Targeting of enforcement action - focusing enforcement action on the most serious risks and recognise that it is not possible to prioritise all issues of non-compliance or to take action against breaches causing no significant harm.

- Consistency of enforcement approach - consistency does not mean uniformity, however a similar approach will be taken in similar circumstances with the appropriate exercise of individual discretion and professional judgement.
- Transparency of how enforcement operates and what can be expected - where non-compliance has been identified, officers will explain what must be done to remedy the breach, clearly explain the reasoning behind their decision, give reasonable timescales for compliance and provide clear instructions of what will happen if they do not comply.
- Accountability for our actions - members of the public and businesses will know what to expect when an officer visits and how to raise any complaints they may have, and we will report back on our performance.

What is a breach of planning control?

Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 ("the 1990 Act") as;

"carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted' (s.171A).

Section 55 of the 1990 Act defines development as;

"the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land."

This could involve such matters as the unauthorised erection of a building or an extension to a

building, a material change of use of land or a building, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:

Unauthorised works to Listed Buildings - most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively, the Act also gives local planning authorities the power to serve Listed Building Enforcement Notices to which there is a right of appeal.

Unauthorised works to trees subject of a Tree Preservation Order (TPO) or in a Conservation Area - it is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Where works are proposed to trees in

a Conservation Area, the Local Planning Authority should be notified, and permission obtained in advance. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.

Unauthorised demolition of a building which is located within a Conservation Area - It is a criminal offence to demolish a building, which is located in a Conservation Area, without consent.

Breaches of Planning Conditions - A breach of condition notice can be served where there is a failure to comply with any condition imposed on the grant of planning permission. There is no right of appeal against a breach of condition notice.

Untidy land where it affects the amenity of the area - where land or premises have become an eyesore, the Local Planning Authority has the power to serve a notice under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the condition of land. There is a right of appeal to the Magistrates Court.

Deliberate concealment of unauthorised building works or changes of use - where a person deliberately conceals unauthorised

development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Not building in accordance with the approved plans that form part of a planning permission - In some cases this can result in the whole development being deemed as unauthorised.

Unauthorised engineering operations, such as raising of ground levels or earth bunds - these matters may involve engagement with the Environment Agency.

Enforcement action is discretionary

Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what, if any action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the City Council's discretion to use enforcement powers.

In accordance with section 172 of the 1990 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (e.g. amenity, design).

If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unlikely. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.

Expediency test - In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken.

An expediency test will usually involve the Planning Enforcement Officer assessing:

- Whether the breach is in accordance with the policies of the Local Plan.
- The breach against any other material planning considerations.

- Whether had a planning application been submitted before the development occurred, permission would likely to have been granted.
- Whether the breach unacceptably affects public amenity.
- Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
- Whether action would be proportionate with the breach to which it relates.
- Whether action would be in the public interest.

What is harm?

Significant harm that results from a breach in planning control could concern residential amenity or highway safety issues. Examples of significant harm could include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows.

The following are NOT examples of harm:

- Loss of value to a neighbouring property.
- Competition to another business.

- Loss of an individual's view or trespass onto someone else's land.

It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and is not an area where the City Council would be involved.

This means that the City Council may not take formal enforcement action in all cases where a breach of planning control has been identified. It is part of the normal duties/responsibilities of the investigating Enforcement Officer with the Head of Enforcement and/or the Principal Enforcement Officer and Area Planning Officers to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the Local Enforcement Plan and the Birmingham Development Plan (BDP).

There is no right to appeal the City Council decision not to take enforcement action. However, if someone is dissatisfied with the decision making, they can proceed to follow the City Council's Corporate Complaints Procedure, details of which are towards the end of the document.





Using the BLEP and our enforcement powers

Enforcement plays a pivotal role within the planning system and maintaining its integrity. The Birmingham Local Enforcement Plan identifies and sets out the challenges that affect development pressures within the City and also sets out a clear direction in the face of these challenges whilst complimenting the priorities of the Birmingham Development Plan 2032. It will be important to utilise the tools that are in place under legislation to tackle these challenges which will assist in the delivery of the overall vision for Birmingham.

Formal action

The City Council has a range of formal powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. The more common forms of enforcement action are:

- The service of a Planning Contravention Notice (PCN) - Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected. This is usually carried out very early in an investigation where further information is required.
- The service of a Request for Information (RFI) - Section 330 enables a notice to be served requesting details to be provided of any owners, occupiers or any other persons with an interest in the land. This is usually served prior to a formal enforcement action being taken.

- The service of an Enforcement Notice - Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy the breach of planning control.
- The service of a Breach of Condition Notice (BCN) - Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission.
- The service of a Section 215 Notice - Section 215 of the Town and Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied.

These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have powers under Section 219 to undertake the clean-up works themselves and to recover the costs from the landowner.

- The service of a Stop Notice (SN) or a Temporary Stop Notice (TSN) - Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. SN and TSN action are reserved for much more serious breaches that are causing serious harm to amenity.
- In addition to the above further action is available by way of the service of Injunctions, the taking of direct action to remedy a breach or to instigate prosecution proceedings for non-compliance where it is deemed necessary to do so. As above, this action would only be taken in very severe cases.

- The City Council will always look to recover costs from an offender where evidence suggests offenders have profited from the illegal works, as a deterrent and to remedy the breach. We may place a charge on the land to aid future recovery or seek confiscation under the Proceeds of Crime Act 2002.

Power of entry onto land

Section 196(a) of the Act 1990, the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Order Act 2003 gives Officers of Planning and Regeneration the power to enter land and/or premises at all reasonable hours in order to undertake his/her official duties. Wilful obstruction of a person exercising a right of entry is an offence. The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the legislations unless twenty-four hours prior notice of the intended entry has been given to the

occupier of the building. Failure to comply with the City Council's request can lead to a request to the Courts for a warrant to enter.

What happens when we take formal enforcement action?

A formal Enforcement Notice will be served on the owner of the property along with any other party with a legal interest in the land or building in question. The Enforcement Notice will specify what action is required to remedy the breach and will give a period for compliance.

The recipient of the Enforcement Notice has a minimum of 28 days to appeal against the notice to the Planning Inspectorate. Where an appeal is lodged, we can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.

We will always vigorously defend any appeal but if it is allowed (i.e. if the appellant wins), we can take no further action. If it is dismissed however, the Enforcement Notice will take effect, although the Inspector can amend its requirements, including the period for compliance.

It is a criminal offence not to comply with an Enforcement Notice once the compliance period has passed. If the notice is not complied with the Council will consider prosecution. However, such action does require evidence to prove the offence is being committed by a named individual or company 'beyond reasonable doubt'. Collecting this evidence can sometimes be a lengthy and time-consuming exercise and in some cases pre-trial delays may be unavoidable.

The City Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and with the Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

What can you expect if you report an alleged breach of planning control?

We will investigate all alleged breaches (unless considered vexatious or anonymous) of planning control reported to the City Council via the online complaints form.

- Always keep your personal details confidential, unless required to disclose as part of court proceedings.
- Register your complaint where possible within 3 working days and provide you with an acknowledgement and reference number with a named officer as the main point of contact.
- Keep you informed of the progress of the case and of any decisions made about whether the City Council is to take action and if any, what action will be taken, and the likely timescales involved.
- Actively pursue your complaint where it is in the public interest to do so.
- In cases where there may be a technical breach of planning control, but the harm caused is not sufficient to warrant formal action we will notify you of the reason for not taking formal action and close the case.
- Where appropriate, we will negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of successful resolution.

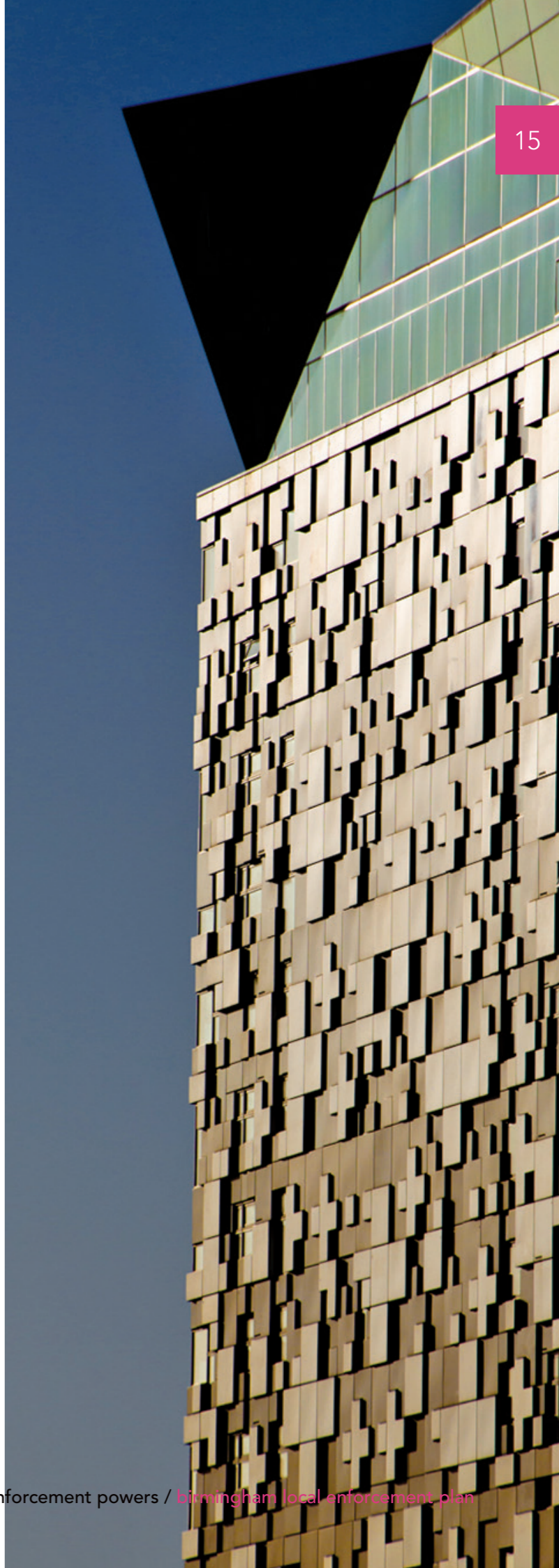
Your complaint will be:

- Given a priority based on the City Council's published priority table which is contained in this Plan.
- Investigated and a site inspection undertaken in line with the published timescales, where possible, contained in this Plan.
- Pursued until such a time that the matter is satisfactorily resolved, regularising the breach or if the development is found to be lawful or until a decision is taken that it is no longer expedient to pursue the matter.
- If a formal notice is served and not complied with, the case to which your complaint relates may be pursued through to the Magistrates Court or higher court where necessary.
- Where prosecutions are pursued, in the more severe cases, the Council will consider the use of Confiscation Orders under the Proceeds of Crime Act 2002 to recoup the financial benefit gained from the breach of planning control.

Anonymous complaints will not be investigated because there is no way for the Council to ascertain further detail about the alleged breach and whether the complaint may be malicious. All complainants are required to provide their full name, a postal address and where possible an email address. Fundamentally this approach aims to ensure that public resources are not spent unnecessarily

investigating hoax or malicious complaints. This information is also essential as the Council may need to contact the complainant prior to any site inspection being carried out to seek further information or clarification regarding the details of the alleged breach and to obtain feedback from the complainant as the case progresses. All details provided by a complainant will always remain totally confidential, unless the information is required for use as evidence in court. If this does happen, the Council will make all reasonable efforts to check with the complainant before disclosing any information.

The City Council recognises that, on occasion, a complainant may feel that a complaint has not been resolved to their satisfaction. However, in a minority of cases members of the public pursue their complaints in a way that is unreasonable. The Council will not continue to register and open cases for the same reported breach of planning control if no breach has been found on previous investigations. Equally, we reserve the right not to investigate complaints raised due to recipients of notices being unhappy with action that the City Council is taking against them.





How will we prioritise your complaint?

In order to make the best use of the resources available to the City Council it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the City Council following receipt of the complaint but may be subject to change following a site inspection or when further information comes to light.

Priority categories

To make the most effective use of resources, all incoming enforcement cases are prioritised when registered, based on information provided by the complainant, and an assessment of any planning history. This will determine the time frame for making an initial site visit and will be affected mainly by the assessment of the type and extent of the harm caused. There are three enforcement priorities:

Priority 1

Where irreversible harm is likely to be caused if the Council do not act immediately.

Example: Unauthorised works to Listed Buildings; unauthorised felling/pruning of protected trees.

Priority 2

Where there is significant public concern or where there is (or is the potential for) significant harm to be caused to residential amenity in the surrounding area.

Example: Breaches of planning conditions specifically identified to meet expressed public concerns, such as hours of operation; unauthorised uses/activities which are causing significant harm; illegal advertisements, particularly larger scale advertising on hoardings.

Priority 3

Smaller scale infringements which do not result in significant immediate or irreversible harm.

Example: Single storey rear extensions and rear dormer windows, unauthorised building of walls/fences; unauthorised installation of satellite dishes.

Complaints will not be registered if they do not concern breaches of planning control. Matters that are not breaches of planning control include:

- Internal works to a non-Listed Building.
- Boundary/ownership disputes.
- Party Wall Act issues.
- Opposition to business competition.
- Non-material planning considerations such as loss of property value or loss of view.
- Obstruction of a highway or public right of way (PROW).
- Parking of vehicles on the highway or on grass verges.
- Parking caravans on residential driveways or within the curtilage of domestic properties if they are incidental to the enjoyment of the property.
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity.
- Land ownership disputes or trespass issues.

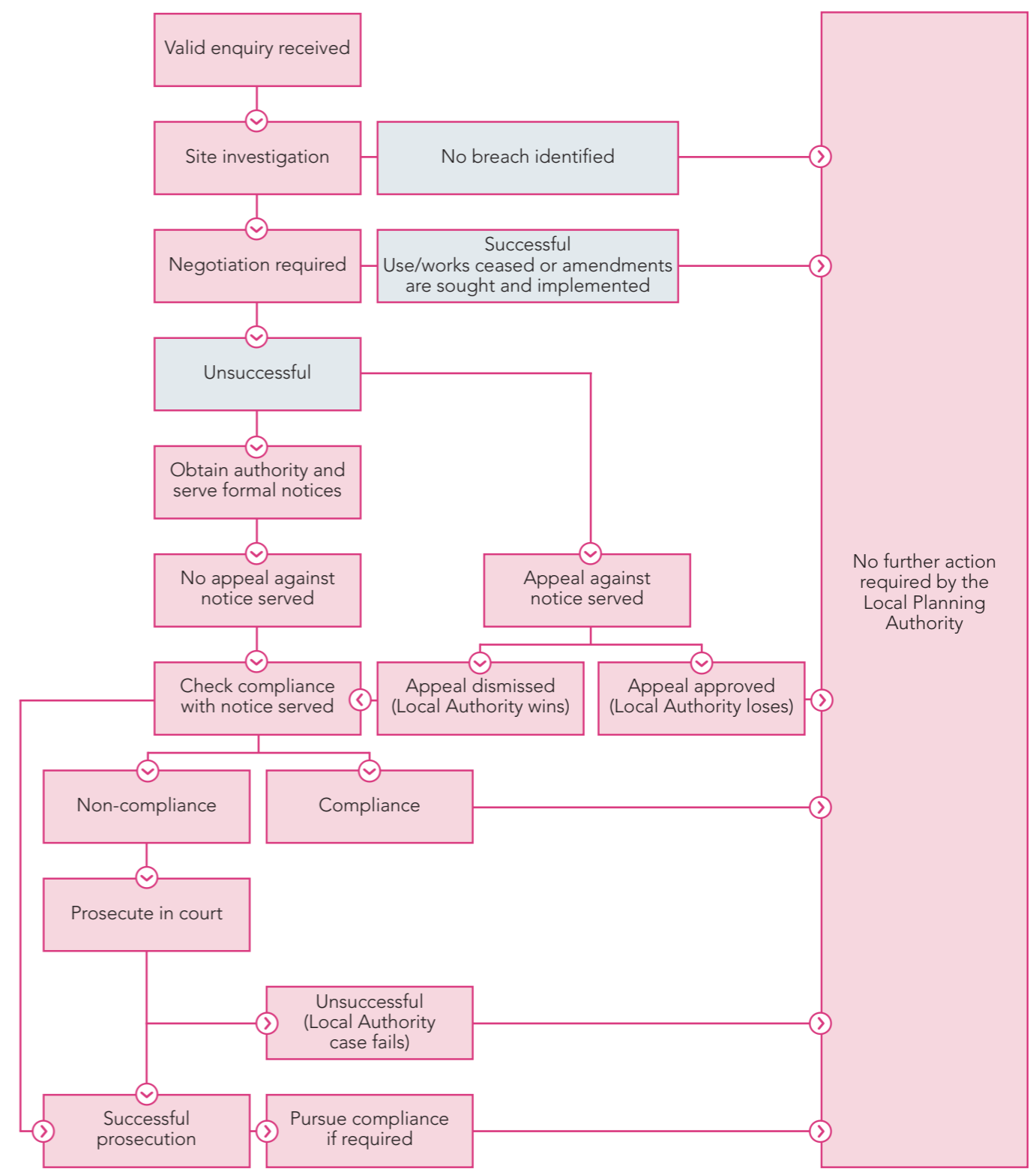
- Covenants imposed on property deeds.
- Any works that are deemed to be 'permitted development' under The Town and Country Planning (General Permitted Development) (England) Order 2015 and or substituted.
- Advertisements that are not subject to deemed or express consent requirements under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and as such are excluded from direct control.
- Dangerous structures or other health and safety issues such as those that fall within the remit of the Health and Safety Executive (HSE).
- High hedge disputes (evergreen hedges) - however, these are dealt with by Planning and Regeneration and are investigated by the City Council Arboriculturist Officers.
- Dangerous and defective structures are dealt with under the Building Act by Building Control officers.
- Failure to comply with a Section 106 agreement.

| Aim | Priority | | |
|---|---|------------------------|------------------------|
| | 1 | 2 | 3 |
| Register and allocate to case officer | Immediate background/history check | Within 3 working days | Within 3 working days |
| Site visit (date following registration) | Within 1 working day | Within 10 working days | Within 30 working days |
| Where possible contact complainant with case assessment and commence negotiations (date following initial visit)* | Within 5 working days of the site visit | Within 20 working days | Within 30 working days |
| Commence legal action or resolve | As soon as possible if irreversible | Within 10 weeks | Within 10 weeks |

* Complainant can contact officer for update

PROCESS

How the process works



Acknowledgment

You will receive an acknowledgement letter following the registration of your complaint. This provides you with the name and contact details of the enforcement officer who will be investigating your enquiry.

Site inspection

In most cases the enforcement officer will visit the site within 10 working days following the despatch of the acknowledgement letter, to obtain detailed factual information about the alleged breach and take photographs.

Where a more serious breach has been alleged, such as works to Listed Buildings/buildings within a Conservation Area or works to protected trees, the site will usually be visited within 3 working days following the despatch of the acknowledgement letter.

How long is the process likely to take?

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably as does the time taken for their resolution. It is for this reason that it is not possible to give a standard time for dealing with enforcement cases in full.

The Enforcement Officer will endeavour to provide you with updates when key events take place in a case, such as the serving of an Enforcement Notice. However, should you wish to enquire about the enforcement case, you can contact the investigating officer for an update.

What happens if an allegation is made against you?

If a complaint is received that affects you then the first thing that will happen is either you will be contacted in writing asking you to contact us within 7 days or the site in question will be visited by an

enforcement officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. You may be served with a Planning Contravention Notice (see above) which will ask further questions pertaining to the alleged unauthorised development.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach(es) of planning control. If compliance is not secured through negotiations or the submission of a retrospective planning application, formal action may be instigated.

No evidence of a breach

Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased, or the development is permitted development.

The development is immune from enforcement action and thus lawful

Section 171B of the 1990 Act restricts the Council's ability to take enforcement action after certain periods of time have elapsed. These time periods are dependent on the type of breach. In these instances, development without planning permission becomes immune from enforcement action.

- For building, engineering, mining or other operations, action cannot be taken after four years beginning with the date on which operations were substantially completed.

- For a change of use of a building to a single dwelling house, action cannot be taken after four years beginning with the date of the breach.
- For any other breach, action cannot be taken after ten years beginning with the date of the breach, including a continuous breach of planning conditions.
- It should be noted that there is no time limit in respect of Listed Buildings and in this regard enforcement action can be taken at any time.
- Time limits also do not apply when there is evidence of deliberate concealment.

Negotiations take place to find a solution

In accordance with Government guidance the priority is to try and resolve any breaches of planning control through negotiation.

Only when such negotiations fail to secure a solution should formal action be considered. The Council will however try to avoid negotiations becoming protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective application

The submission of a retrospective application may be appropriate where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions.

Minor or technical breaches of planning control may not be pursued if a retrospective application has been requested and not submitted or where it is not considered expedient to do so.

There is a breach of planning control, but it is not considered expedient to pursue

Just because a breach may exist does not automatically mean that formal action will follow. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be de minimis for example too minor to warrant the time and expense involved in pursuing them.

How to report an alleged breach of planning control

The City Council registers approx. 1800 cases per year. In order that your complaint can be dealt with as soon as possible it is important that you provide us with as much information as you can.

You can submit your enquiry via:

https://www.birmingham.gov.uk/info/20160/planning_applications/23/planning_complaints_enforcement

Confidentiality

The name and address of the person making the enquiry, or any other information allowing the enquirer to be identified, will be kept confidential and not made public. However, we may have to disclose the identity of the enquirer where we are commencing enforcement action in cases where the enquirer has been asked to collect or provide evidence to support the investigation. In these cases, the identity of the enquirer may need to be disclosed where they have consented to give evidence at any Court hearing.

To ensure that we are meeting the standards that we set ourselves, we will:

- Report the number of enforcement complaints received, the number of cases closed and the number of outstanding cases to Planning Committee members on a biannual basis.
- Report the outcome of all enforcement appeals to members of the Planning Committee.
- Report the outcome of all enforcement court proceedings to members of the Planning Committee on a biannual basis.

We do not intend to publicise details of individual enforcement cases under investigation, as, until our investigations are complete, it is not possible to confirm the status of an alleged breach of planning control. It would therefore be inappropriate and potentially unfair to publicise the details of an individual, business, site or operation which ultimately may be found not to have breached planning controls. However, any formal notice served on a property will be revealed in a Land Charges Search and, if a specific question is asked for example as part of a request for information under the Freedom of Information Act or Environmental Information Regulations, we may have to reveal that there is an ongoing investigation.

Proactive compliance

In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the City Council is committed to carrying out some proactive monitoring of large-scale developments to ensure compliance with conditions, planning permissions and other consents where it is appropriate.

It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or

with any terms identified in legal agreements, such as Section 106 agreements. However, failure to comply can affect not only the quality of the environment in the City or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance.

Proactive monitoring will encourage and enable compliance with conditions to ensure that large scale development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. By carrying out proactive compliance monitoring in this way the number of retrospective enforcement complaints received can be managed.

Benefits of proactive compliance

The benefits of proactive compliance can be felt by the City Council, community and the development industry. By being proactive, the City Council can be aware of identified sites and can try and prevent major problems occurring. For the community, this means that the City Council can be confident that requirements and conditions within agreements and permissions or consent will be complied with ensuring a high quality of built development, while being efficient with our resources and reducing any

potential harm caused as a result of the development. For the development industry, there are benefits in raising the profile and need to comply with requirements and conditions to ensure future conveyance requests and solicitors queries can be dealt with. A clear process of compliance can only aid these future requests.

Complaints about the service

If you are unhappy about the level of service you have received from the Planning Enforcement Team or how the process has been managed then you may firstly discuss your concerns with the Head of Enforcement. Additionally, you can take the matter further through the Council's Corporate Complaints Procedure. If you remain unhappy then you may write to the Local Government Ombudsman who may investigate your complaint. However, please note that the Local Government Ombudsman will only investigate to establish if the City Council is guilty of maladministration. The Local Government Ombudsman does not have powers to make the City Council take formal enforcement action when it has previously decided not to.

This is the link to the Council's complaints and comments service: www.birmingham.gov.uk/yourviews

The website allows you to submit an on-line complaint or, alternatively, you can contact Planning's Customer Service co-ordinator to raise your concerns. The Customer Service Co-ordinator can be contacted by:

Email: planningcustomerservice@birmingham.gov.uk

Telephone: (0121) 675 2086

Or by writing to:
Planning and Regeneration,
Customer Service Co-ordinator,
Planning and Regeneration,
Birmingham City Council,
1 Lancaster Circus,
Birmingham,
B1 1TU.

If someone is not satisfied with the response they receive, they can take their complaint to the Local Government Ombudsman. The Ombudsmen is unlikely to consider a complaint unless it has already been fully investigated by the City Council.

The Local Government Ombudsman can be contacted at:

Local Government Ombudsman,
PO Box 4771,
Coventry,
CV4 0EH.

www.lgo.org.uk

Telephone: 0300 061 0614
(Monday to Friday 8.30am to 5pm)

Other contacts and sources of advice

City Councillors are an important source of local knowledge and advice and may be contacted and lobbied. However, it is important to bear in mind that they operate under a formal Code of Conduct and they will not be able to express an opinion on any development that they intend to consider formally at a later stage.

You may also find that your Member of Parliament may have information or knowledge of development that has taken place. Other sources of advice and guidance include private planning consultants and Planning Aid who may be able to provide you with free, professional and Independent planning advice.

Finally, the planning enforcement services at Birmingham City Council only has powers to enforce certain breaches of planning regulations. It may be that other organisations, such as the Environment Agency, Birmingham City Council Regulatory Services or the Health and Safety Executive have additional or more appropriate powers to enforce against any alleged unauthorised development or activity. Where appropriate we will refer reported breaches to the appropriate organisation.

IMPORTANT

Planning permission and building regulations approval (building control) are different, being two separate pieces of legislation of which you may require both, only one or none at all. This guide relates to planning permission ONLY. If you are unsure whether you require building regulations approval then you should contact Acivico Building Consultancy on (0121) 675 7006 or email them at: building.consultancy@acivico.co.uk



Contact

Planning and Development
Inclusive Growth Directorate
Birmingham City Council

E-mail:
blep@birmingham.gov.uk

Web:
www.birmingham.gov.uk

Telephone:
Mark Franklin
(0121) 464 3513

Office:
1 Lancaster Circus
Birmingham
B4 7DJ

Post:
PO Box 28
Birmingham
B1 1TU

The City Council will communicate this document in a suitable way to all audiences. In addition to the online and printed documents, requests for the document in alternative formats will be considered on a case by case basis including large print, another language and typetalk.

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The Birmingham Local Enforcement Plan produced by
Birmingham City Council, Planning and Development, Inclusive Growth Directorate.

Birmingham Local Enforcement Plan

Consultation Draft

October 2020

