

A GUIDE TO PLANNING ENFORCEMENT IN WESTMINSTER

Enforcement - Striking the Right Balance

Planning enforcement is a very **complex** area. This is because the Town and Country Planning Acts seek to strike a balance between the freedom of owners to use or alter their property as they wish, with the need to safeguard the amenities of their neighbours and conserving historic buildings and areas (heritage assets).

The relevant enforcement legislation is itself complex and is qualified by High Court judgements and appeal decisions made by the Secretary of State. There is also a considerable body of Central Government advice which must be given due regard in each case. The resultant enforcement procedures operated by the City Council may therefore appear complicated.

A major issue facing the City Council is to ensure that despite this inherent complexity, when formal enforcement action against unauthorised works or uses is warranted on its planning merits, it is taken as quickly as possible and its effectiveness is not reduced by protracted negotiations or delays by the party responsible for the breach of planning control.

When is enforcement possible?

Planning enforcement action can only be taken when something has been done without the appropriate permission/consent. Planning permission and/or listed building or advertisement consent maybe required for:

- carrying out building works e.g. construction of buildings or extensions and certain external alterations;
- demolition work or alterations (external and internal) to listed buildings;
- certain material changes of use of land or buildings;
- certain advertising signs; and
- non-compliance with conditions attached to permissions or consents.

When a report of unauthorised works or change of use is received by the City Council, one of the first things which needs to be established is **whether permission is required**.

It is important to appreciate that planning enforcement action **cannot** be taken if the works or change of use do not require permission/consent, or if it is permitted by planning legislation.

For this reason action cannot be taken on many of the reports of apparent unauthorised development the City Council receives.

It must also be understood that Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially

constitute a criminal offence, except for unauthorised works to listed buildings and the display of certain advertisements. Under current legislation, a criminal offence only rises in the majority of cases when an enforcement notice has been issued, has taken effect and its requirements have not been complied with; only when this stage has been reached can the City Council take prosecution action in the courts.

Should enforcement action be taken?

Even when it is technically possible to take enforcement action, in law the City Council is required first to decide whether such formal action would be **'expedient'**; this means that formal enforcement action is discretionary and all the relevant planning circumstances of each case must first be considered.

Whilst Central Government advice is that ordinarily formal action should be taken as a last resort, when the breach of planning control is causing unacceptable harm or nuisance they advise that essential enforcement action should not be delayed by protracted negotiations. If a breach is unacceptable and is causing serious harm to public amenity they advise that immediate enforcement action should be taken to prevent further harm. Enforcement action must however always be commensurate with the seriousness of the breach of planning control.

The City Council investigates all reported breaches of planning control. When pursuing enforcement action, the Council gives **priority** to:

- **preventing the loss of permanent residential accommodation (by a change to another use, e.g. office use);**
- **prevention of harm to residential amenity (e.g. noise disturbance, loss of daylight or privacy);**
- **protection of retail uses throughout the City;**
- **preservation or enhancement of our heritage assets which includes buildings listed for their historic or architectural significance and our conservation areas;**
- **enforcement of street management issues including but not limited to the display of advertisements, shopfronts, tables and chairs, markets and street trading pitches;**
- **protection of theatres and social and community uses;**
- **mitigation against climate change and protection and provision of biodiversity.**

Many breaches of planning control reported to the City Council are very minor and formal action cannot always be justified. In other cases the change may be basically acceptable in planning terms and the contravenor will be advised

to make a retrospective application for permission or consent, possibly involving modifications to the building or restrictions on the use. In these cases any application would be the subject of the City Council's normal publicity and consultation procedures with adjoining occupiers and residents' groups prior to determination.

When can formal enforcement action be taken?

Except in cases where unauthorised works or uses are causing serious harm, formal enforcement action is taken only once attempts to amicably resolve the problem have been tried and have failed. Initially, the City Council must give the contravenor a reasonable opportunity to make amends. If the enforcement system is to retain the public's confidence, however, warnings and negotiations must not be allowed to become protracted. When an unauthorised development is unacceptable on its planning merits and warning letters to the responsible parties fail to obtain a satisfactory remedy within a reasonable timescale, the City Council will not hesitate to initiate formal enforcement or prosecution action.

A formal **enforcement notice** is served on the contravenor and any other party with a legal interest in the land or building in question. This notice will specify what action is required to remedy the problem and will give a period for compliance. Any recipient of an enforcement notice can, however, **appeal** against it to the Secretary of State. An appeal suspends a notice from taking effect. The City Council will always vigorously defend any appeal but if it is allowed (i.e. the contravenor wins), no further action can be taken by the City Council. If it is dismissed, however, the enforcement notice will take effect, although the Secretary of State can amend its requirements, including the period for compliance.

After an enforcement notice has taken effect, if compliance with its requirements does not then occur within the set compliance period, a **criminal offence** arises. The City Council will initially give an offender notice of this offence but thereafter will pursue **prosecution** action without further delay. Such action in the Magistrates' or Crown Courts does, however, require evidence to prove the offence against a named individual or company 'beyond reasonable doubt'. Collecting evidence of this quality can be time-consuming and in some cases pre-trial delays may be unavoidable.

In exceptional circumstances, where unauthorised works or a use has a very serious impact upon public amenity in a locality, the Council can serve a **stop notice** or seek an **injunction** from the Courts to force the unauthorised works or use to cease immediately. An amendment to the Planning Act in 2004 has introduced **temporary stop notices** which when issued stop an unauthorised development or use for a period of 28 days. During this time the impact of the development or use can be assessed and consideration given to issuing a formal **enforcement notice** and **stop notice**.

Unitary Development Plan Policy

The City of Westminster Unitary Development Plan (UDP) was formally adopted by the City Council in January 2007. It sets out the City Council's strategic and detailed land use policies for the City and provides a framework for new development proposals and development management, including enforcement.

It recognises that unauthorised developments can have a significant effect on the achievement of the City Council's aims and policies. As a result enforcement is regarded as a matter of the greatest importance. In taking enforcement action, priority will be given to the unauthorised use of residential units for uses such as offices, the protection of residential amenity and the historic environment and enforcement of street management issues.

Policy STRA 39 of the Unitary Development Plan: Taking Enforcement Action, states:-

“It is the City Council's aim:

To pursue enforcement vigorously where it appears appropriate to do so. In doing so, regard will be had to the UDP, other corporate initiatives and policies, and to any other material considerations.”

In line with Central Government Policy the City Council is progressing its Local Development Framework which essentially constitutes the new plan-making system as set out in the *Planning and Compulsory Purchase Act 2004*. Westminster's Local Development Framework is a 'portfolio' of documents which together provide a comprehensive local policy framework for the City.

The adopted Unitary Development Plan was saved by the Secretary of State on the 14th January 2010, however not all the policies within it were saved. The following policies and sites no longer form part of the Unitary Development Plan:

STRA20, STRA32, STRA33, STRA38, COM4, COM5, ENV1, DES2 and the sites in Schedule 1(a) R1, R3, R6, R11, Schedule 1(b) O2, O3, Schedule 1(c) H1, H2, H3, Schedule 2 OP1, OP11, OP28.

The UDP will eventually be replaced by the Core Strategy and the City Management Plan and together with the London Plan will comprise the statutory 'development plan' for the City. The Core Strategy sets out the vision for the City of Westminster up to and beyond 2025, and puts in place a policy framework to deliver that vision.

Westminster's Core Strategy was considered by an independent Inspector during an Examination in Public held in July and August 2010. As part of that process, the City Council has suggested some changes to the document. The Inspector is currently preparing her binding report into the soundness of the

Core Strategy. Once her report is received, it is likely that the City Council will adopt the Core Strategy and this could be as early as November 2010.

Upon adoption of the Core Strategy, it should be noted that the following further policies will be deleted from the Unitary Development Plan:

STRA1 – STRA19, STRA21 – STRA24, STRA26 – STRA31, STRA35 – STRA37, STRA39, CENT2, H1, H9, SS1, SS2, SS15, PSPA1 – PSPA7 and ENV11.

Once the Core Strategy is adopted, the local development plan for Westminster will comprise the Core Strategy and all the remaining policies within the Unitary Development Plan not deleted as detailed above. Where policies in the Core Strategy and the UDP conflict, the Core Strategy policy will take precedence as the document most recently adopted.

What we will do

If you have reported a potential breach of planning control you will immediately be sent an acknowledgement letter telling you the name and contact telephone number of the Planning Inspector in the Planning Enforcement Team who will initially be dealing with the case. The Planning Inspector will endeavour to visit the site within 5 working days to obtain detailed factual information and photographs; when works to a listed building are involved an urgent inspection will be carried out on the same day where possible. A written report will be submitted for consideration by a Senior Planning Officer who will determine whether any action can or should be taken. You will be advised in writing of the outcome within 8 weeks and, if appropriate, the name and telephone number of the Senior Planning Officer who will subsequently be responsible for progressing the case. If no action is to be taken, or is possible, a full explanation as to why this is the case will be provided.

If action is to be taken, the Senior Planning Officer will inform you in writing outlining when the City Council has taken formal action e.g. the issue of an enforcement notice. You will also be informed if the case has been resolved by successful negotiations or that no further action can be taken. The nature and length of the procedures involved may mean that you do not hear from the Senior Planning Officer for some time, however you remain at liberty to contact the individual Officer **at any time** should you require an update on progress of the investigation. The Planning Enforcement Team aims to return all telephone calls, including voicemail messages, within 24 hours where possible.

The Progress Chart on page 9 attempts to simplify the complexities of the City Council's planning enforcement process from receipt of a complaint through to its resolution or when no further action is required or is possible by the City Council, as local planning authority.

How you can help

At all stages in the enforcement process the knowledge and information held by individual members of the general public and residents' groups can supplement that available to the City Council from official records and from site inspections. When reporting a potential breach of planning control it is helpful if you have as much information as possible about the current and previous situation e.g. the exact address, when activities started, the nature of the building works or use and the names, addresses and telephone numbers of known owners or other persons responsible.

Every effort is made to safeguard the **confidentiality** of any private individual who reports a potential breach of planning control. If an appeal is made against an enforcement notice any complainant will be notified and asked if they wish to submit additional representations or to appear independently at a public inquiry or hearing to support the City Council's case. The strength of local support is often crucial to the Council's success on appeal, but at this stage any representations must become public documents.

If it proves necessary for the City Council to commence prosecution action, the quality of the evidence needed to prove the guilt of a named individual or company is higher than that required to justify the issue of an enforcement notice against the original breach of planning control. Here the evidence of local witnesses can be of overriding importance, for example, in proving the frequency or duration of an unauthorised use and thus support the evidence that may be given by a Planning Officer on behalf of the City Council.

Points to bear in mind

All reported breaches of planning control will be investigated and complainants will be kept informed of who is dealing with their case and of progress at key stages.

When reporting any suspected breach of planning control, please give as much information as possible, especially the correct postal address of the premises or site.

The carrying out of unauthorised works or uses is not initially a criminal offence (except in the case of works to listed buildings and the display of certain advertisements).

In most cases a criminal offence only arises when a formal enforcement notice has been issued, has taken effect and its requirements have not been complied with.

Formal enforcement action is discretionary and the City Council must be satisfied that it is expedient, having regard to all the relevant planning circumstances in each case. If initial warnings and/or negotiations fail to remedy a breach, action will not be delayed if it is required on planning merit.

Planning enforcement action is a complex area and may take a long time if formal notices have to be issued, which can result in appeals and the need for prosecution action. Nevertheless, the City Council will vigorously pursue such action when it is warranted.

At all stages in the enforcement process, information from the general public can be of considerable help to the City Council; local support is often crucial at appeals.

Additional References

Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991, Planning and Compulsory Purchase Act 2004).

Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning Policy Guidance Note 18 "Enforcing Planning Control", Department of the Environment 1991.

"Enforcing Planning Control: Good Practice Guide for Local Planning Authorities", Department of the Environment, Transport and the Regions 1997.

Environment Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements", Department of the Environment, Transport and the Regions 1997.

Further Information

In order to contact other delivery units within the City Council and other frequently used services:

Tel: **(020) 7641 6000** (Council's switchboard)

or alternatively you can ascertain other services via the City Council's website

www.westminster.gov.uk

Braille, tape or large print versions of this document are available by ringing **(020) 7641 8088**.

FOR PLANNING ENFORCEMENT INFORMATION

If you would like further help or advice about planning enforcement please contact:-

The Planning Enforcement Team
Built Environment
Development Planning Delivery Unit
Westminster City Council
City Hall, 64 Victoria Street
London SW1E 6QP

Tel: **(020) 7641 2553**

Fax: **(020) 7641 3230**

E Mail: **planning.enforcement@westminster.gov.uk**

To report a breach of planning control, please click [here](#).

Planning Enforcement Progress Chart

