

Buckinghamshire Council

Buckinghamshire Council Planning Enforcement and Monitoring Plan

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1 Overview

- 1.1 An effective Planning Enforcement service plays a key role in upholding the integrity of the planning process and provides an important contribution to maintaining public confidence in the planning system.
- 1.2 The National Planning Policy Framework (NPPF) therefore encourages Local Planning Authorities to publish a local enforcement plan to appropriately manage planning enforcement matters in their area.
- 1.3 Buckinghamshire Council has decided to adopt a Local Enforcement and Monitoring Plan to set an overview of the service and an understanding of the planning enforcement function within the overall planning service.
- 1.4 This plan sets out the way in which Buckinghamshire Council will investigate alleged breaches of planning control and how our decisions on formal enforcement action will be made.

2 Background

- 2.1 As the local planning authority, Buckinghamshire Council, has a duty to investigate reports of alleged breaches of planning control and the discretion to take formal enforcement action where appropriate.
- 2.2 As a new planning authority, it is important to ensure the seamless amalgamation of the legacy enforcement services to provide a single enforcement service. This document provides a single service approach to planning enforcement across the whole of the new area.
- 2.3 Buckinghamshire Council aims to provide an efficient and effective planning enforcement service that is focused on protecting its area against harmful development in a way that is clear, consistent and proportionate.
- 2.3 The Council also has the requirement to monitor mineral and landfill permissions and a duty to ensure that appropriate periodic inspections of waste sites are carried out.

3. The purpose and aim of the planning enforcement service

- 3.1 The purpose of the planning enforcement service is to investigate alleged breaches of planning control, taking enforcement action where appropriate. The aim of the service is to remedy planning harm being caused by breaches of planning control.
- 3.2 To undertake works without first obtaining planning permission is not a criminal offence and the planning legislation specifically allows for the submission of planning applications for development already undertaken. In this respect, the enforcement of planning control does not therefore seek to punish people for undertaking works without first obtaining planning permission. The key consideration in deciding whether to take formal enforcement action is, **if** a planning application had been submitted, would that application have been refused or only granted with conditions.

4. Investigation of alleged breaches of planning control - What you can expect

- 4.1 The Council investigates a variety of alleged breaches of planning control. Such breaches may include unauthorised building works, changes of use, breaches of planning conditions, unlawful works to trees and hedgerows. Issues that we are unable to investigate include party wall matters, fly-tipping, graffiti, noise concerns, building site health and safety concerns etc.

More information about what we can and cannot investigate can be found on the Council webpages together with relevant details of the relevant service, department or authority. You will also find information on how to report a breach of planning control and what information we need from you to pursue an investigate the matter.

- 4.2 Upon receipt of a report of an alleged breach of planning control we will undertake an informal triage process to ascertain if the report is a planning matter and/or if the matter requires further investigation. The triage process may include:
- Determining if it is a planning matter
 - Identifying if it is permitted development
 - Researching the planning history of the site
 - Identifying any special designations or constraints e.g. Listed buildings
 - Searching other Council data or publicly held information.
 - Contacting the person responsible for the alleged breach to discuss the works being undertaken.
- 4.3 If the matter reported is not a Council issue or if no alleged breach of planning control is identified, then the reporter will be notified accordingly and the planning enforcement service will take no further action.
- 4.4 Where the matter being raised falls within another Council service area the reporter will be advised accordingly and their concerns and details will be forwarded on as appropriate for further investigation. Alternatively, the reporter will be signposted to the relevant service area to pursue the matter directly.
- 4.4 Once a decision is made regarding further investigation, the matter will be logged on the Council's database accordingly and given an appropriate level of priority. There are two priority levels which are set out in table 1 below and are determined by the type of breach reported.

5 Enforcement Priorities

- 5.1 In order for us to make best use of our resources, alleged breaches of planning control are prioritised in accordance with the planning harm caused by the alleged breach. This enables the us to ensure that the most harmful cases are quickly investigated and actioned accordingly. The priority given to a case may be subject to change as the matter is investigated.
- 5.2 All valid reports of breaches of planning control will be logged on the Council's database, acknowledged and investigated to an appropriate level.
- 5.3 Investigation priorities are split in 2 categories – A & B.
A description of the priorities and their associated timescales are set out in table 1 below:

Table 1 - Priorities for investigating Breaches of Planning Controls

Priority A	
<ul style="list-style-type: none"> • Unauthorised works to listed buildings • Unauthorised works to protected trees or hedgerows • Breaches of planning control that could cause serious or irreversible harm. • Breaches of conditions that likely to cause significant harm to amenity, living conditions, trees, wildlife, ecology, archaeology, or heritage assets. 	<p><u>Planning enforcement service response:</u></p> <p>Undertake an initial investigation including a site visit (if necessary) within 1 working day.</p>

Priority B	
<p>Alleged breaches of planning in relation to all other building works not covered by those described in priority A including:</p> <ul style="list-style-type: none"> • Non-compliance with pre-commencement conditions that do not fall into Priority A. • Advertisements, fences, walls, satellite dishes, most householder type breaches of control. • Alleged unauthorised mineral and waste developments. 	<p><u>Planning enforcement service response:</u></p> <p>Undertake an initial investigation including a site visit (if necessary) within 10 working day.</p>

- 5.4 The Council will, if necessary, undertake a site visit and will do so in accordance with the timescales set out in the priorities table above.
- 5.5 We will provide an update to interested parties on the investigation at key points as identified in the 'Customer Experience Path' at appendix 1. Key points include when formal action is taken or if a planning application or appeal is submitted. However, if in the meantime, if you require an update on the investigation then we can be contacted via the contact details on your acknowledgement letter/email or through the details in the council's website.
- 5.6 Investigations into alleged breaches of planning control often overlap with other legislation enforced by other public bodies/Council departments such as Environmental Health, the Environment Agency, Building Control and Housing. Where an activity does not fall within the remit of the Council's planning enforcement service to investigate, the investigating officer will advise the reporter accordingly and with details of the relevant investigative authority (where possible). Sometimes the responsibilities of two or more authorities may overlap and in these situations we will seek to work with those other agencies to remedy the breach(es) occurring. Where appropriate the officer will take details from the reporter and forward such details to the relevant team, in accordance with the council's privacy notice.
- 5.7 We will communicate planning enforcement successes via a number of communication channels. We may seek to use our relationships with Town and Parish Councils and Community Boards to advertise where the team has successfully resolved breaches of planning control as well as using local press releases and social media platforms when appropriate.

6 Investigation and assessment of the Breach of Planning Control

- 6.1 The Council will investigate the alleged breach of planning control.
- 6.2 Where a breach of planning control has occurred the we will consider the planning merits of the development being undertaken, taking into account national and local planning policies, and will decide on the most appropriate of action.
- 6.3 When making that decision we will take into consideration the public interest and the expediency of formal enforcement action.

7 Investigation Outcomes

- 7.1 Once the investigation is concluded it could result in a number of different outcomes. These are outlined below:

7.1.1 No breach established

The reported matter has not occurred, has ceased, or is outside of planning control.

7.1.2 The development is immune from enforcement action

Breaches of planning control become immune from enforcement action if they have existed for a certain period of time. More information in relation to the time periods for immunity can be found at <https://www.gov.uk/guidance/ensuring-effective-enforcement> (Note: There is no period of immunity for unlawful works to a Listed Building).

7.1.3 A breach planning control has occurred but causes no planning harm.

The fact that a breach of planning control has occurred does not automatically mean that formal action will be taken. Some breaches of planning control are minor and therefore cause limited or no planning harm (i.e. if an application were to be submitted it would be unconditionally approved). In these instances, the Council will use its discretion not to take further action as it would not serve a useful purpose or be a good use of our resources to do so. We will however advise the offender of the breach of planning control advising that planning permission is required for the works undertaken and of their right to regularise the development retrospectively under Section 73A of the Town and Country Planning Act 1990.

7.1.4 Negotiation to find a solution.

Resolving breaches of planning control can take a long time, particularly when taking formal enforcement action. The amount of time it takes to resolve a breach of planning control very much depends on the severity of the breach combined with the actions and/or reactions of the land owner(s)/occupier(s).

Negotiations can often lead to a quicker resolution and to a better overall outcome. Where appropriate we will seek to negotiate with the owner/occupier and will consider options to address the planning harm resulting from the breach. The negotiation process may involve works being undertaken to remedy breaches of planning control to bring a development in line with permitted development rights or involve the submission of a retrospective planning application.

7.1.5 Invite a Retrospective Planning Application.

Upon investigating a breach of planning control, officers will consider the likelihood of planning permission being granted for the development upon application. Where appropriate, we will invite the submission of a planning application in an attempt to regularise the breach of planning control. In determining the application, the Council could impose conditions on the planning permission to address the harm being caused by the unauthorised development and/or in order for the Council to retain control of the development. This approach allows the planning merits of the development to be fully and openly considered. Applications for retrospective planning permission are considered in the same way as those for proposed development. The Council may, where it is appropriate and reasonable to do so, suspend any formal enforcement action whilst a retrospective planning application is being considered. However, where appropriate, the Council will not allow the application process to unreasonably delay enforcement proceedings.

7.1.6 Formal Enforcement Action

Almost all formal enforcement action is based on planning merits and can therefore only be taken where the development fails to meet the aims of the National and Local Plan Policies. In some cases, it will be necessary for the Council to take formal enforcement action against a breach of planning control.

Formal enforcement action will be taken where it is reasonable and justified to do so. Such scenarios may include:

- Where negotiation has failed to resolve the breach of planning control occurring.
- Where a breach of planning control has a serious harmful impact that it requires formal action.

All enforcement action follows an investigation and will be taken in accordance with the scheme of delegation.

7.1.7 How will we deal with the most serious types of breach of planning control?

The Council will use all resources available to investigate alleged breaches of planning control. Serious breaches of control will be strictly enforced, but particularly where those breaches have a significant detrimental impact on living conditions, the local area, or where the breach has the potential to cause irreversible harm. In such cases, the Council will use all the tools available to remedy the harm being caused. In some instances, the Council may decide that the breach of planning control is so serious that it warrants immediate cessation. The Council may therefore issue a temporary stop notice, or an enforcement notice accompanied by a stop notice.

Most formal notices have a right of appeal either to the Planning Inspectorate or through the courts.

7.1.8 Further Legal action

The failure to comply with the requirements of a formal notice is a criminal offence. Where such an offence is committed, the Council will gather information about the offence, assess that information and decide the best course of action. This may be by seeking prosecution proceedings, applying for a high court injunction, undertaking works in default (aka direct action) or continue to work with the offender to seek a suitable resolution. Where a crime has been committed and a successful prosecution has been secured, the Council will consider whether to make an application under the Proceeds of Crime Act.

When deciding on the best course of action, the Council will assess whether there is sufficient evidence to pursue the matter, whether such action is in the public interest and the expediency of pursuing the action.

7.1.9 The breach of planning control has been remedied.

A remedy to a breach of planning control can occur as a result of one or more of the other outcomes listed above. For example, planning permission may have been granted, or the offending development has been removed. Nevertheless, in more cases, upon the remedy of a breach of planning control the Council will close the enforcement case and notify the relevant interested parties accordingly. In some cases it may be that formal action (ie. prosecution or other legal action) may continue beyond the point of the breach being remedied. The decision to continue with this action will be made on a case by case basis and will be in line with the Council's corporate enforcement policy.

7.2 More information on the approach the Council takes to formal action can be found in the Buckinghamshire Council Corporate Enforcement Policy.

8 Proactive monitoring of Planning Permissions

8.1 The Council offers a mainly reactive planning enforcement service responding to alleged breaches of planning control. The Council will introduce proactive monitoring of key planning conditions on larger development sites and will take enforcement action where necessary.

8.2 Whilst the responsibility to adhere to planning permissions and comply with associated conditions lies with those undertaking the development, we recognise the importance of addressing harmful breaches of planning control. As a result, where possible, the Council will use its resources and promote cross department liaison to identify breaches of planning control and monitor compliance with conditions imposed on planning permissions.

- 8.3 The Council also has a duty to monitor mineral and waste permissions and we will also actively inspect all landfill, mineral and waste sites within Buckinghamshire in line with our statutory duties.

9 Role of the Parish and Town Councils

We recognise that parish and town councils can play an important role in the provision of an exemplar enforcement service. Town and parish councils have a great deal of local knowledge and awareness of activities in their area. We will seek their views on the delivery of the service and will engage, where appropriate, on enforcement matters. We will notify parish and town council of formal actions taken in their area and, where appropriate, will encourage them to aid in the detection of breaches of planning control as well as contributing to monitoring developments and in the compliance process.

10 Major infrastructure developments

- 10.1 Major infrastructure developments such as HS2 and Highway network works etc have their own Act within which they operate. The developments are generally enforced by their own internal monitoring team with complaints investigated by a commissioner, particularly in relation to HS2. Alleged breaches of planning control related to these developments will be investigated accordingly and the enforcement team will work with other internal teams as well as external partners to seek as resolution. However, such projects are not immune from enforcement action and the Council will pursue enforcement action against unauthorised development where it is appropriate to do so.

11 Commonly used terms explained

- 11.1 If you experience dealings with Buckinghamshire Council as the local planning authority, you may hear/read words used such as: discretionary, proportionate and expedient. These are explained below:

11.1.1 Discretionary

There is no statutory requirement for the Council to take enforcement action against alleged breaches of planning control. Enforcement action is based on planning merit which requires a planning judgement as to whether or not formal action is appropriate. In some cases, the Council may decide that enforcement action will not be taken and that an alternative approach is more appropriate (e.g. a retrospective application, further negotiation, no further action etc).

11.1.2 Expedient/Expediency

When assessing whether formal action should be taken, the Council will ensure that the action is reasonable, proportionate and is in the public interest in order to achieve a satisfactory result. The Council will consider what the effect of formal action will be and if it will have a meaningful outcome. The term expedient or expediency in planning enforcement relates to the 'planning balance' for taking action, not convenience.

11.1.3 Harm

When considering the expediency and subsequent proportionality of formal enforcement action, the Council give significant regard to the planning harm associated with a breach of planning control. Planning harm is the collective term used to describe the negative impacts of a development.

12 Service Provision

- 12.1 Everyone (including those reporting an alleged breach and persons suspected of a breach) will receive the same standard of courteous and impartial professional service at all times.

- 12.2 We will hold your personal details in the strictest confidence in line with GDPR requirements.
- 12.3 Where we identify a breach of planning control the Council will contact the owner/occupier and state clearly the alleged breach that has occurred, the options available and timescales to resolve it.
- 12.4 Throughout the enforcement case, we will be open to meaningful negotiations to remedy a breach even after formal action has been commenced.

13 Anonymous/vexatious/ repetitive reports

- 13.1 The Council will not normally investigate anonymous reports of alleged breaches of planning control but retains the discretion to do so. Repetitive or vexatious reports will not be investigated.

14 Review

- 14.1 This plan will be reviewed at least every 3 years or following a significant change in legislation, national or local policy.

15 Equality

- 15.1 As required as part of the Equality Act 2010 Section 149, in the drafting of this plan due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between different groups and foster good relations between different groups. It is not considered that the LEMP would conflict with the requirements of the Equality Act 2010 or the Council's policy on equality.

16 Enforcement Toolkit

- 16.1 More information about the types of action available to the Council including formal notices can be found at www.gov.uk/guidance/ensuring-effective-enforcement