

# **Redditch Borough Council Planning Enforcement Policy**

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## **Introduction**

This Enforcement Plan ('The Plan') relates to Redditch Borough Council 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 recognised that the integrity of the Development Management process depends on the Council's commitment to take effective action against unauthorised development.

The Plan explains the Council's policy and procedure for dealing with reports of alleged breaches of planning control. It identifies local priorities to assist with case management. The Plan sets out the approach to planning enforcement and provides greater clarity for all parties engaged in the development process.

## **Purpose of planning enforcement**

The purpose of planning enforcement is to ensure that development and/or change of use of land and buildings, 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.

A breach of planning control has to occur for enforcement action to be considered. An assumption cannot be made on intent. Similarly disputes concerning boundaries, covenants, deeds or civil issues are not relevant.

## **Legislation and policy**

The Town and Country Planning Act 1990 (as amended) provides the statutory basis for most planning enforcement matters. The statutory powers for Listed Building enforcement are provided principally by The Planning (Listed Buildings and Conservation Areas) Act 1990.

The Borough of Redditch Local Plan No.4 (referred to as BoRLP) was adopted by Redditch Borough Council on 30<sup>th</sup> January 2017. The plans set the vision and strategy for the sustainable growth of the area up to 2030. It is the Council's key statutory strategic planning document, guiding decisions on all development activity and is therefore fundamental in guiding decisions relating to breaches of planning control.

The BoRLP conforms to the National Planning Policy Framework ('the Framework') which was first introduced in March 2012 and subsequently. 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. In preparing this plan the Council has followed the National Planning Policy Framework and the Planning Practice Guidance.

## Principles

### 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.”

A breach of planning control 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.

In certain circumstances, planning permission is not required, this is referred to as Permitted Development Rights, examples include, some extensions or structures, walls, and fences. Further information can be found in the Ministry of Housing, Communities and Local Government document published in September 2019 ‘Permitted development rights for householders.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830643/190910\\_Tech\\_Guide\\_for\\_publishing.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830643/190910_Tech_Guide_for_publishing.pdf)

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 to a Tree Preservation Order (TPO) or 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.

### The principles of good enforcement

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

The Council will not condone breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so. The 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 relatively quickly remedied, officers will give owners/developers a chance to quickly rectify matters. It needs to be recognised that this process will take some time due to, matters of negotiation, realistic compliance periods to rectify building works for example. 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. It must be realised that details of the investigation cannot be shared with any party until the case has concluded.

- **Accountability for our actions** - members of the public and businesses will know what to expect when an officer visits and how to raise any allegations they may have, and the council will report back on performance.

### 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 Council's discretion to use enforcement powers.

The Town and Country Planning Act 1990 Section 171B establishes three different time limits for enforcement, after which the change is considered immune from enforcement:

- Four years for operational development [Section 171B(1)];
- Four years for change of use to a single dwellinghouse [Section 171B(2)];
- Ten years for any other breach such as a material change of use.

These time limits as set in legislation guide our approach to managing and prioritising our work.

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

### Expediency

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

'Expediency' has no statutory definition but it has been interpreted in the High Court as:

'Expedience as a test suggests the balancing of the advantages and disadvantages of a course of action'.

The Practical Planning Guidance (PPG) issued by Government in 2019 provides examples where planning enforcement action may not be expedient at paragraph 011:

- *"there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
- *in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed."*

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

- Whether the breach is in accordance with the policies of the Local Plan.
- Whether action would be proportionate with the breach to which it relates.

And in relation to 'harm':

- Whether permission would likely to have been granted, had a planning application been submitted before the development occurred
- The breach against any other material planning considerations
- 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 any action would be in the public interest.

### What is harm?

Harm in this context relates only to planning harm. Harm that results from a breach in planning control could concern residential amenity or highway safety issues. Examples of 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 Council would be involved.

This means that the 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 enforcement role for officers to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the this Enforcement Plan and the relevant Local Plan. There is no right to appeal the Council decision not to take enforcement action. However, if someone is dissatisfied with the decision making process, they can proceed to follow the Council's Complaints Procedure.

## Using the Enforcement Policy and our enforcement powers

### Formal action

The 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. Failure to respond or provision of inaccurate information is a criminal offence.

- 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. 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 Council will 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. The council may place a charge on the land to aid future recovery or seek confiscation under the Proceeds of Crime Act 2002.

### Power or entry onto land and buildings

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 Enforcement Officers 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 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, the council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.

The council will defend any appeal but if it is allowed (i.e. if the appellant wins), the council 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, for example.



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 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.

### How to report an alleged breach of planning control

In order that your enquiry 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: Breach reporting Online form -

<https://www.redditchbc.gov.uk/planning-and-building-control/planning-enforcement/breach-reporting-online-form.aspx>

Advertisements may be removed, without notice, under powers granted by the Highways Act 1980. Unauthorised advertisements placed on the public highway or on Redditch Borough Council owned land are dealt with by the Environmental Services Support Unit. This team has instant powers of removal. This relates predominantly to advertisements attached to street furniture and highway features. It also includes A-boards on the public highway that are deemed to be causing a distraction or nuisance. Public highway is with reference to all public highway areas, including footways, verges, accesses and public areas that are on highway land.

[You can report an unauthorised advertisement here – bsu@bromsgroveandredditch.gov.uk](mailto:bsu@bromsgroveandredditch.gov.uk)

For enquiries relating to trees, please visit; [Tree Works contact details - redditchbc.gov.uk](https://www.redditchbc.gov.uk/tree-works)

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

#### Acknowledgement

You will receive an acknowledgement following the registration of your allegation of breach of planning control. This provides you with the name and contact details of the Officer who will be assigned to your enquiry. We will always keep your personal details confidential, unless required to disclose as part of court proceedings.

#### Site Inspection

In most cases the officer will visit the site following the dispatch of the acknowledgement, 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, the site will usually be visited as soon as possible.

#### 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 assigned Officer will endeavour to provide you with updates when key events take place in a case, such as the serving of an Enforcement Notice or when an investigation is completed. In cases where there may

be a technical breach of planning control, but the harm caused is not sufficient to warrant formal action, the council will notify you of the reason for not taking formal action and close the case.

### Anonymous complaints

Anonymous allegations of breaches of planning control will not usually be investigated. All informants are required to provide their full name, a postal address, telephone number and where possible an email address. They are also required to provide the full address of the address where the allegation of a breach of planning control is occurring. Fundamentally this approach aims to ensure that public resources are not spent unnecessarily investigating hoax or malicious allegations. This information is also essential as the Council may need to contact the informant 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 informant as the case progresses. All details provided by an informant will 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 informant before disclosing any information.

### What happens if an allegation is made against you?

If an allegation of breach of planning control is received that affects you, and we have your contact details, contact will be made to advise you of such. Typically, a site visit follows, and 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 (PCN) which will ask further questions pertaining to the alleged unauthorised development. There is a legal requirement to respond to a PCN. 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.

If a formal notice is served and not complied with, the case 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.

### 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.

## How will we prioritise your allegation of a breach of planning control?

In order to make the best use of the resources available to the Council it is important to prioritise the allegations received in accordance with the seriousness (harm) of the alleged breach. This will initially be decided by the Council following receipt of the allegation 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 Informant, 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. During the course of the investigation, the priority classification may alter due to the information gained. There are four 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.

#### Priority 2

Development in the green belt

#### Priority 3

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.

#### Priority 4

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.

No further action will be taken for matters that do not constitute breaches of planning control such as:

- Where there is a perceived intention to breach planning controls, but no breach has occurred
- 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). Report via: [Roads, pavements, verges and lighting | Worcestershire County Council](#)
- 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). [Further information - Health and Safety at Work etc Act 1974 Section 3: Enforcement \(hse.gov.uk\)](#)
- High hedge disputes (evergreen hedges)
- Dangerous and defective structures are dealt with under the Building Act by Building Control officers. [Building Control \(NWBC\) contact details - redditchbc.gov.uk](#)
- Failure to comply with a Section 106 agreement.
- Derelict / Abandoned buildings and Fly posting info can be found here:

<https://www.redditchbc.gov.uk/my-place/empty-homes.aspx>

<https://www.redditchbc.gov.uk/my-place/street-cleaning/fly-posting.aspx>

### Immunity 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.

### 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

case officer. Additionally, you can take the matter further through the Councils 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 Council is guilty of maladministration. The Local Government Ombudsman does not have powers to make the Council take formal enforcement action when it has previously decided not to.

This is the link to the Council's complaints and comments service:

[Compliments and Complaints - redditchbc.gov.uk](https://www.redditchbc.gov.uk/compliments-and-complaints)

The website allows you to submit an online complaint or, alternatively, you can call:

Bromsgrove: 01527 64252

or write to: Walter Stranz Square, Redditch B98 8AH

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 Council.

The Local Government Ombudsman can be contacted at:

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

Local Government Ombudsman Website [Home - Local Government and Social Care Ombudsman](https://www.local.gov.uk)

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

## IMPORTANT

Planning permission and building regulations approval (building control) are different, being two separate areas of legislation of which you may require both, only one or none at all. This guide relates to planning legislation ONLY

If you are unsure whether you require building regulations approval, then you should contact:

**North Worcestershire Building Control (NWBC)**, Parkside, Market Street, Bromsgrove, B61 8DA

[b.control@bromsgroveandredditch.gov.uk](mailto:b.control@bromsgroveandredditch.gov.uk)

Telephone: 01527 881402

# ENFORCEMENT PROCEDURES FLOW CHART

