

DEVELOPMENT CONTROL ADVICE NOTE 7

How are the planning regulations enforced?

This is one of a series of advice notes to help our customers use the Development Control Service in Tower Hamlets. The service is responsible for the determination of planning applications and the enforcement of the planning regulations.

INTRODUCTION

1. This advice note explains the powers available to us to enforce the planning regulations.

WHAT WE CAN INVESTIGATE

2. A breach of planning control occurs when "development" takes place without the necessary consent from us. Unauthorised development includes the following:
 - Carrying out building works or the change of use of a property (for example, from a house to a shop) without planning permission or a building not built in accordance with an approved plan or not complying with the conditions on a planning permission
 - Carrying out works to a listed building without listed building consent
 - Displaying certain signs or advertisements without advertisement consent
 - Felling or carrying out works to a tree, which is the subject of a tree preservation order or is situated within a conservation area without authorisation
3. A breach of planning control is not usually a criminal offence. However, carrying out unauthorised works to a listed building, the unauthorised display of advertisements or damage to a protected tree may involve a criminal offence.

WHAT WE CAN'T INVESTIGATE

4. The following are examples of activities, which are not breaches of planning control, and therefore no enforcement action can be taken under planning legislation:
 - Parking of commercial vehicles on the highway, even in residential areas
 - Operating a business from home where the residential use remains the primary use and it is not causing local problems
 - Parking a caravan within the residential boundary of a property provided that it is ancillary to the dwelling (for example, it is stored or being used as an extra bedroom)

THE ENFORCEMENT SERVICE

5. Our planning enforcement officers deal with the investigation and resolution of breaches of planning control across the whole borough. These are drawn to our attention either from complaints made by telephone or in writing and by the monitoring of building works. Complaints about possible breaches of planning control should be made in writing (by letter or email). Anonymous complaints are difficult to investigate and action will only be taken where the breach of planning control appears to be serious and causing local harm. Your complaint will be acknowledged, when you will be told which enforcement case officer will be handling it. The case officer will act as your point of contact and will ensure that you are advised of the progress and outcome of the case.

WHAT CAN THE PUBLIC DO TO HELP?

6. During the enforcement process, information from residents is very important to us. The assistance of the public is often crucial to the success of planning enforcement action. Due to the amount of building activity in Tower Hamlets, it would be impossible for us to identify all possible breaches of planning control, without an army of enforcement officers and at great expense. Enforcement investigations therefore generally follow a written, telephone or email complaint.
7. When alerting us to a possible breach it is useful to have as much information as possible included in the written complaint and, where appropriate, photographs. This should include the date the activity started, the exact location of the site, the names, addresses and telephone numbers of the owners, occupiers, builders, agents etc (if known) and details of the effect that the activity is having (for example, noise, traffic, smells, overshadowing etc). The more details provided, the quicker the problem can be resolved. Such information can be invaluable and may help speed up the process of determining whether there is a breach of planning control.
8. If an appeal is lodged against an enforcement notice, we will notify anyone who informed us of the matter and ask if they wish to submit additional information or appear at an inquiry or hearing, to support our case. We will help you with this. The strength of local support can be crucial to our success.

FURTHER INFORMATION OR HELP

We hope you find this advice note helpful. Other leaflets about our service are available from our reception (Tower Hamlets Town Hall, Anchorage House, 2 Clove Crescent, London E14 2BG) or our web site (towerhamlets.gov.uk). If you need further advice, please phone (020) 7364 5009 or call into our reception between 9am and 5pm Monday to Friday (the offices are closed on Bank and Public Holidays). A duty planning officer is available for general planning advice between 9am and 5pm Monday to Friday either by phone or in our reception.

ARE COMPLAINTS CONFIDENTIAL?

9. If you have reported a breach of planning control, details of your identity will be kept confidential insofar as the law will permit us to do so. Your name and address will not be revealed to the person or organisation involved in the possible breach. In certain cases, you may be asked to assist us by providing evidence at an appeal or in court. Before this happens, we will ask for your consent. If an appeal is lodged or a case goes to court, any representations received usually become public documents that are available for public inspection, including by the appellant and their legal representatives.

WHAT WE MUST CONSIDER

10. The enforcement officer has to consider a number of questions before being in a position to recommend a particular course of action. The sequence of events is usually as follows:

Is it controllable under planning law?

11. Many minor works, including alterations to buildings, small extensions to dwellings, outbuildings up to certain limits, some "changes of use" and many advertisement signs do not require consent from us. If this proves to be the case, no action can be taken.

Has permission already been given?

12. Most planning permissions can be taken up at any time within 3 years of being granted. Once partially implemented, there may be no time limit on its final completion. So if you see works taking place, but cannot recall a recent planning application, the activities are not necessarily unauthorised. On receipt of a written complaint, the enforcement officer will check if the development has consent and is being carried out in accordance with the approved plans and conditions.

Can permission be given?

13. In considering whether enforcement action is appropriate the decisive issue for us will be whether the breach of planning control is causing local problems. Enforcement action will not normally be initiated where a trivial or technical breach of planning control has occurred which causes no general harm. We will not take enforcement action solely to regularise an otherwise acceptable development.

14. To commence building works or make a change of use without planning permission is not in itself an offence. Local authorities must consider an unauthorised development in exactly the same way as a planning application and can ask for a planning application to be submitted to try and regularise the situation. This is the most common and recommended approach if the activity or building is potentially acceptable. Local residents and businesses will be consulted on any application in the normal way. Conditions can be imposed on any permission granted in order to control the development; for example, the opening hours of a business.

If the matter is unacceptable, what is the most appropriate action to take?

15. Local authorities have a wide range of enforcement options from which to choose and which one(s) we will use will depend on the nature of the case. Our priorities are to protect the local area, safeguard the environment generally and uphold local planning policy in the speediest and most effective way. The integrity of the planning system depends on taking effective enforcement action where it is necessary and there is clear harm or nuisance.

HOW LONG DOES ACTION TAKE?

16. We see enforcement action as an important component in controlling development. Reports of possible breaches of planning control are taken seriously and investigated as quickly as possible in accordance with a priority system. More serious breaches are given priority. All other investigations are dealt with within agreed timescales.

17. Government advice is to use persuasion and negotiation before using formal enforcement action. Often, this proves to be the quickest and most effective way to resolve the problem. For this reason, the person responsible for the breach is usually advised of the problem, what needs to be done to make matters acceptable and the powers we have if they fail to do so. In the majority of cases, they will take the necessary action of their own accord.

18. If persuasion and negotiation are not successful, we may then instigate formal action. This can include serving an enforcement notice, taking out an injunction or a prosecution. Immediate prosecution is only possible in the case of unauthorised works to a listed building, the unauthorised display of advertisements or damage to a protected tree.

19. There is a right of appeal to the Secretary of State (dealt with by the Planning Inspectorate) against an enforcement notice. The requirements of the notice will be suspended until the appeal is completed. Appeals against enforcement notices can take up to a year to be heard and decided. If we lose the appeal we can take no further action. If we win the appeal the period for compliance (which may have been varied by the Inspector hearing the appeal) begins from the date of the appeal decision. Legal action (prosecution proceedings) can be taken if an individual then fails to comply with the requirements of an enforcement notice after the time allowed by the Notice. The process can therefore take a long time to be successful.