

A Guide to Planning Enforcement

29 March 2011



Oldham
Council

1 Introduction

A primary aim of Oldham MBC, as Local Planning Authority, is to ensure that land and buildings are used and developed in a proper manner. Unauthorised and harmful development can have considerable adverse impact on public amenity, the environment generally and the quality of life. Effective enforcement is therefore a vital part of the development process.

Public confidence in the planning process is dependant upon the readiness of the Council to back up its planning policies and decision making by taking appropriate action in responses to breaches of planning control. It is therefore important that the public is aware of the Council's approach when there has been a suspected breach of planning control. The public should rightly be able to expect that harmful activities being undertaken in breach of the planning regulations, whether intentionally or otherwise, are dealt with quickly, effectively and consistently.

This charter tells you about planning enforcement at Oldham and gives an overview of the service that can be expected from the Council.

2 What is planning enforcement?

Enforcement is where the council takes action to remedy harm arising from breaches of planning control. It is however discretionary and should only be used where harm is occurring.

The council has a range of enforcement powers that can be used to remedy harm arising out of a breach of control. There is normally a right of appeal. In most cases a breach of planning control is not illegal, but it does become a criminal offence where an enforcement notice is not complied with. The council then has the discretion to prosecute where it considers it expedient and in the public interest to do so.

3 Breaches of planning control

Breaches of planning control can be varied and may comprise:

- development without planning permission, such as building or engineering operations, change of use of land or buildings
- breaches of conditions on a Planning Permission, Listed Building Consent or Conservation Area Consent
- unauthorised works to a Listed Building or demolition of a building in a Conservation Area;
- felling or work to a protected tree or a tree in a conservation area
- unauthorised display of advertisements
- the untidy condition of land which adversely affects amenity

Certain minor works or activities do not fall within the definition of development, and therefore do not require planning permission. For example, internal works to buildings (except Listed Buildings where Listed Building Consent may be required), or works that do not materially affect their external appearance of a building, or operations undertaken to inspect, repair or renew sewers, pipes or cables are usually exempt from planning control. Maintenance is also usually not considered development.

Furthermore, certain types of building works that fall within the meaning of development are defined as **Permitted Development**, in respect of which a formal application for planning permission is not required. Extensive permitted development rights are available to householders in order that domestic properties can be altered or extended without the need to seek planning permission beforehand.

The **Planning Portal** (www.planningportal.gov.uk) provides guidance on many common householder projects:

4 Priorities for investigation

The council receives a large number of complaints a year. It will normally give priority to those cases where the greatest harm is potentially being caused, as follows:

PRIORITY 1 - High:

- A serious threat to public health and /or safety and amenity, such as a development creating severe pollution problems, or a serious traffic hazard, or the storage of hazardous substances
- Permanent damage to the environment such as unauthorised work to or demolition of a listed building, breaches of conservation controls such as demolition of buildings and structures and Article 4 Directions, unauthorised work to or felling of a protected tree

PRIORITY 2 - Medium:

- Unauthorised and unacceptable development in the Green Belt
- Unauthorised development/uses causing nuisance to neighbouring uses through noise, smells, congestion, etc.
- Breaches of conditions attached to a planning permission where they are detrimental to residential amenity and/or are causing nuisance to neighbouring uses through noise, smells, congestion, etc.

PRIORITY 3 - Low:

- Disputes between neighbours which relate to householder or similar development, and where there is **limited public impact** (for example the erection of a fence or the construction of a shed or a greenhouse)
- The unauthorised display of an advertisement

Officers will aim to inspect sites within the following timescales:

- PRIORITY 1 (High) 1-2 working days
- PRIORITY 2 (Medium).....14 working days
- PRIORITY 3 (Low)28 working days

Information on the site address, the type of works/use being undertaken, when it started/takes place and how it is causing harm is the minimum amount of information required to properly investigate a complaint. The council will not investigate anonymous complaints unless they relate to unauthorised work to a listed building or a protected tree.

5 What enforcement action can the council take?

Where no breach of planning control has occurred, the complainant and land owner/occupier will be notified of this in writing with a clear explanation of how this decision has been reached.

Where a breach has occurred, the Enforcement Officer will:

- Inspect the site to establish matters of fact and where a breach of a priority 1 nature is identified advise those responsible to stop all work and/or cease all unauthorised uses
- If possible, attempt to resolve the matter informally through negotiation

- Where appropriate, invite a retrospective Planning Application or application for a Certificate of Lawful Use or Development Certificate

The complainant will be informed in writing of the outcome, within 5 working days of the decision being reached.

Where a retrospective application is not received, or is received and refused permission, the Council will consider whether it is expedient to take formal enforcement action. This will depend on the nature of the breach and the level of harm caused by the breach. Enforcement action will be taken where:

- The breach of control is causing sufficient harm to justify it
- There is no realistic alternative to the breach being made acceptable through negotiation or the submission of a retrospective planning application; and

If a retrospective planning application has been refused or negotiation has failed, the Council has a range of formal enforcement powers that can be used to remedy the harm caused by a breach of control. However, any enforcement action that is taken by the Council has to be proportionate to both the scale of the breach of planning control and to the level of harm that is being (or could be) caused.

It must also be born in mind that a breach of planning control is in most cases not a criminal offence and that the main purpose of planning enforcement is to remedy the harm rather than to punish the perpetrator.

The cause of good planning is not served by the pursuit of unimportant breaches of control but not to take action, where it is clearly necessary, can be considered to be maladministration. Enforcement action will not be taken solely to resolve planning issues of an essentially private nature where there is limited public impact, for example, disputes between adjacent landowners.

6 Appeals against a notice

There is a right of appeal to the Secretary of State against Enforcement Notices. Details are given when a notice is issued. Appeals are dealt with by a public inquiry, an informal hearing or written representations. On appeal a notice may be quashed, upheld or varied.

7 How to make a complaint

All complaints require to be put in writing unless they relate to works to a protected tree or to a Listed Building. An alleged breach of planning control can be reported as follows:

- By e-mail at: Planning.Enforcement@oldham.gov.uk
- In writing to the following address:
Planning Enforcement
Economy Place and Skills Directorate
Economic Development and Planning
PO Box 30
Level 12 Civic Centre
West Street
Oldham OL1 1UQ
- By fax: Tel 0161 770 3104
- In person at the planning reception desk situated on the ground floor of the Civic Centre. An Enforcement Officer may not be available but a duty Planning Officer is available

Monday-Friday 8.45am to 5.00pm (9.30am to 5.00pm Wednesdays). Complaints should be submitted in writing and handed to the enforcement/duty officer or other member of staff.

8 Confidentiality

All planning enforcement complaints and the files relating to them are confidential. There is no public access to the files and the identity of complainants and personal information is not disclosed.