



**Planning
Local Enforcement Plan**

January 2021

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Introduction

Effective and proportionate enforcement of planning controls is essential in protecting the quality of our local environments, and is important in maintaining the public’s confidence in the planning system.

Wigan Council has published this Local Enforcement Plan to explain how we will deal with alleged breaches of planning control, so that all parties are clear on what to expect in terms of our response times and the process involved. The Plan should be read alongside the Council’s corporate Enforcement Policy, which can be viewed [here](#).

Background

Legal background

The legislative background for planning enforcement is the Town and Country Planning Act 1990 as amended (“the Act”). Section 171A of the Act defines a breach of planning control as:

- *the carrying out of development without the required planning permission; or*
- *failing to comply with any condition or limitation subject to which planning permission has been granted.*

This includes any contravention of the limitations on, or conditions belonging to, permitted development rights.

The Act provides a range of tools that authorities can use to take “formal” enforcement action. These include:

- Breach of Condition Notices (s187 of the Act)
- Planning Enforcement Notices (s172 of the Act)
- Stop Notices and Temporary Stop Notices (s183 and s171E of the Act)
- Injunctions (s187B of the Act)

In addition to these definitions and powers relating to development, Section 215 of the Act also gives authorities the ability to take action where land is in a condition that impacts on the amenity of their area. Under this power authorities can serve notice on landowners specifying the steps to be taken to address the impact.

The Act also requires authorities to consider when it is “expedient” to take enforcement action, having regard to the development plan (their local planning policies) and other material planning considerations.

National policy and guidance

The National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG) set out how the Government expects authorities to approach potential breaches of planning control. The NPPF and PPG also expand on the ways that authorities should use “informal” approaches to resolving planning breaches where appropriate, without the need to initiate the “formal” steps available through the legislation.

The role of the Enforcement Plan

This Plan sets out how the Council will deal with alleged planning breaches at each stage of the process, from initial reporting of a breach through (if necessary) to prosecution in court. It also explains how, in appropriate cases, the Council will offer its services to work positively with property owners to support them in what they are trying to achieve, while still securing rectification of any breach.

How the Council will deal with alleged planning breaches

Reporting a concern

Any report of a planning breach must be made in writing. The form on which this should be done is on the Council’s website at <https://www.wigan.gov.uk/Resident/Planning-and-Building-Control/Planning/Enforcement-and-breaches.aspx> Reports made only by telephone cannot be accepted and will not be investigated. For customers who do not have access to the internet there are self-service facilities at the Wigan Life Centre and in libraries; if these are unavailable then friends or family may be able to help.

The Council will only investigate alleged breaches where **all** the following information is supplied:

- Address of the alleged breach
- Details of the alleged breach, including:
 - Nature and location of any new building, alteration or structure alleged to have been created without planning permission
 - Nature of any use alleged to be under way without planning permission, including times when such a use is occurring if intermittent
 - Nature of any contravention of a planning condition, including times if intermittent
 - Nature of any impact on amenity arising from the condition of land, including specific information about what is causing the impact, details of where the land can be seen from, and the length of time the land has been in the condition described.
- Name, address (postal and email) and telephone number of the person reporting the breach (this will be kept strictly confidential but anonymous reports cannot be accepted and will not be investigated)

If photographs of the alleged breach are available, these may assist the Council. They can be uploaded alongside the form, via the web page above. Under no circumstances should complainants place themselves in any danger or expose themselves to any risk in an attempt to obtain photographs.

The Council may itself become aware of a breach without a report being received from an external party. These cases will be logged and acted upon in the same way as any other breach, in accordance with this Plan.

Categorisation of reported breaches

On receiving a report of a planning breach, the Council will assign it to a category according to the degree of harm that appears to be being caused to planning interests. Reported breaches will be categorised as follows:

Category	Description
P0	Extremely severe harm to planning interests or planning breach resulting in risk to public safety
P1	<p>Significant harm to planning interests:</p> <ul style="list-style-type: none"> • Operational development without planning permission (other than as P2 below) • Change of use causing material impact on surrounding area with respect to amenity or the intensity of the activity • Development started without discharging pre-commencement planning conditions • Breach of condition leading to irreversible harm or significant impact on amenity
P2	<p>Material breach of planning control but limited harm:</p> <ul style="list-style-type: none"> • Operational development in excess of permitted development rights • Development not in accordance with approved plans • Breach of condition but not irreversible impact or significant impact on public safety • Development constituting a breach of planning control but also subject to other legislation, eg the Party Wall Act or civil processes dealing with encroachment <p>Land in a condition leading to impact on amenity:</p> <ul style="list-style-type: none"> • Impact due to presence of physical features on the site, eg mounds of earth / rubble, dilapidated structures • Land visible from public vantage points • Impact not due to a temporary situation, eg active demolition or development site
P99	<p>Trivial breach of planning control, no material harm, eg fence marginally exceeding permitted height</p> <p>Land in poor condition but visible only from one or a small number of private properties, eg domestic rear gardens</p> <p>Land that is in poor condition but where the only impact arises from overgrown vegetation (in extreme instances such cases may be classified as P2)</p> <p>Land that is in poor condition but where other legislation (for example the Building Act 1984) provides more appropriate powers for securing a lasting solution – such cases will be passed to the relevant Council service for further consideration</p>

Timescales for investigation

Other than in exceptional circumstances, the Council will carry out its initial investigation into reported breaches within the following timescales:

- P0 – within 1 working day
- P1 – 7 working days
- P2 – 15 working days
- P99 – breaches in this category will be recorded but will not be investigated further

The Council will normally provide an update to the person reporting the breach within three working days of carrying out its investigation, and no later than three working days beyond the timescales set out above.

Investigation of ongoing breaches

Where a report relates to an ongoing breach (for example a construction site working outside permitted hours, or a business operating from a domestic property that is receiving visits), the alleged breach will be assigned to a category in line with the above, and the person making the report will be provided with log sheets on which to keep a record over a period (normally 21 days) of the activity constituting the breach. If the log sheets are not returned, or are returned but do not contain sufficient information to clearly determine that a breach is occurring, the case will be recategorised as P99, and will not be investigated further.

Retrospective planning applications

Where the Council considers there to be a reasonable prospect that the development that has occurred would comply with the Council's planning policies, the property owner will be invited to submit a retrospective planning application, which may be for the development in its entirety or for part of it.

If a retrospective application is invited, a valid application must be submitted within 28 days of the Council requesting it. If a valid application is not submitted within this timescale the Council will normally proceed to enforcement action, subject to confirmation that is expedient to do so. No reminders will be sent.

A retrospective application will not be invited in circumstances where the development that has occurred is clearly contrary to the Council's planning policies. The Council will continue its enforcement process in relation to these cases even if an application is submitted. If a retrospective application is submitted and refused, applicants have a right of appeal to the Planning Inspectorate against this refusal. If no retrospective application is made, applicants wishing to make a case that the development being enforced against should have been granted planning permission, will be expected to do so via a Ground A appeal against any Enforcement Notice. Where appropriate the Council will seek to invite the Planning Inspectorate to deal with all relevant appeals concurrently.

More details on the appeals process can be found on the [Planning Inspectorate's website](#).

If the property owner believes that the development constituting the alleged breach has been in place for sufficient time to be "immune" from enforcement action (normally 4 years for building works and

10 years for changes of use), they have the option under the Act to submit an application for a Certificate of Lawful Development.

Resolution by negotiation

In some cases the steps needed to rectify a planning breach are simple for the property owner to achieve. This is normally the case in respect of land in poor condition. Where it appears that the breach can readily be rectified, the Council will attempt to secure the required steps through negotiation with the property owner. In respect of land in poor condition, the steps required will be those that would result in a sustainable solution to the amenity impact and minimise the possibility of repeat cases, for example the permanent clearance and levelling of land or, where appropriate, the erection of a substantial hoarding in place of temporary fencing. The Council will write to the property owner once, setting out the steps required and the timescale for completing them, which will normally be 28 days. If the breach has not been fully rectified within this timescale, the Council will normally proceed to enforcement action or the service of a Section 215 notice. No reminders will be sent. The Council will not entertain protracted negotiation or repeated submissions that incrementally adjust what is proposed.

“Formal” enforcement action

The Council will normally move directly to “formal” enforcement action in the following circumstances:

- Where a retrospective application has been refused – in these circumstances the Council will serve the enforcement notice at the same time as refusing the application
- Where a breach has not been resolved by negotiation in the required timescale
- Where the extent or nature of the breach means that the works that have been carried out are clearly not in accordance with the Council’s policies and / or it appears that resolution by negotiation is unlikely

In determining whether “formal” enforcement is appropriate, the Council will make an initial assessment of whether it would be likely to be in the public interest for the case to be prosecuted should any notice not be complied with. The final decision on any prosecution will be made at the appropriate time.

Many of the types of action that the Council can take come with a right of appeal.

Prosecution

Although carrying out development without planning permission is not normally a criminal offence, the Act creates a number of offences relating to failure to comply with formal Notices, including all the types listed on page 2. A range of penalties apply, including in some cases unlimited fines.

The Council will make its decisions as to the prosecution of any planning enforcement related offence, in line with its corporate Enforcement Policy.

Works in default / direct action

The Act provides the Council with powers to take direct action to remedy planning breaches. The Council will make its decisions as to any use of these default powers on a case by case basis, having regard to:

- The degree and type of harm being caused by the breach, including to the wider community and to the public's confidence in the planning system
- The likelihood of the breach being resolved by any other means
- The effective use of public resources

Cases where assistance from other Council services may help remedy a breach

The Council recognises that there are situations in which property owners have breached planning control unintentionally or with the best of intentions. Although this does not alter the fact that a breach has occurred and will need to be remedied, the Council will also consider whether there is any other assistance that it can offer the property owner to achieve their overall aim.

In particular the Council will aim to assist individuals who are seeking to establish a small business by operating from their home, and who in doing so have changed the use of their property so as to include a component of business use. These types of activities change the character of the property and can have a significant effect on the wider residential area.

Businesses encountering these types of issues are often reaching a point where they are ready to progress into their own accommodation, in a commercial area appropriate for the use. If this is the case the Council's Economic Development service will work with the business owner with the aim of identifying a suitable premises. This service will also explore whether the business owner requires any other support.

Offering this support does not mean that the Council is not concerned about the breach of planning control that has taken place. The Council will continue to seek rectification of the breach through its planning powers, in line with the approach set out in this Plan. The Council will consider whether it is appropriate to allow longer periods to comply with its requirements: this will depend on the severity of the impact that the business is having on the surrounding residential area, and will be kept under review.

Enforcement aligned to other activity

This Plan sets out the basis for a consistent and transparent approach to planning enforcement, which will apply in all cases, including those reported by external parties and those that it identifies itself.

From time to time the Council may, in line with a corporate priority or as part of a package of coordinated activity, adopt an approach of actively seeking to identify breaches in a specific geographical area or of a particular type. Breaches identified in this way will be categorised and dealt with in line with this Plan.

Sources of further information and assistance

The following sources of information may assist property owners in understanding the planning system, and their rights and options:

- Wigan Council website www.wigan.gov.uk – information about Wigan Council’s planning policies, how to apply for planning permission, and how to get further advice
- The Planning Portal www.planningportal.co.uk – information about what does and does not require planning permission, how to apply, and an online portal to submit planning applications
- The Planning Inspectorate www.gov.uk/government/organisations/planning-inspectorate - information about the appeals process
- The Royal Town Planning Institute’s “Planning Aid” service <https://www.rtpi.org.uk/planning-aid/> – a source of free advice from qualified planners via the industry’s professional body
- Planning consultants who are chartered members of the Royal Town Planning Institute (MRTPI) – via an internet search