

## PRESTON CITY COUNCIL LOCAL ENFORCEMENT PLAN

### 1 Introduction to Planning Enforcement

1.1 The planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.

1.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development carried out without the requisite consent from the Council.

1.3 One of the fundamental principles of planning enforcement is that of 'expediency', and the resolution of breaches of planning control is not therefore limited to taking formal action. A large number of identified breaches are in fact resolved by negotiation.

1.4 Most breaches of planning control are not criminal offences and the resulting development is unauthorised rather than illegal. Criminal offences in relation to planning only occur in the following circumstances:

- ◆ Unauthorised works to listed buildings;
- ◆ The demolition of some unlisted buildings in conservation areas;
- ◆ Causing damage to a tree protected by a Tree Preservation Order or within a Conservation Area;
- ◆ Displaying unauthorised advertisements; and
- ◆ Failing to comply with the requirements of an Enforcement Notice or other formal notice.

1.5 This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states:

"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 to do so”.

A number of other documents are also of relevance to Planning Enforcement. These include:

- ◆ The Town and Country Planning Act 1990 (as amended)
- ◆ The Planning (Listed Buildings and Conservation Areas) Act 1990
- ◆ The Planning and Compulsory Purchase Act 2004
- ◆ The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005
- ◆ The Town and Country Planning (General Permitted Development) (England) Order 2015
- ◆ The Town and Country Planning (Use Classes) Order 1987 (as amended)
- ◆ The Town and Country Planning (Development Management Procedure) (England) Order 2015
- ◆ The National Planning Policy Framework
- ◆ National Planning Practice Guidance
- ◆ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- ◆ The Central Lancashire Core Strategy, the Preston Local Plan and associated Supplementary Planning Documents
- ◆ The Human Rights Act
- ◆ The City Council's Corporate Enforcement Policy 2005

1.6 The Local Enforcement Plan makes it clear what those undertaking unauthorised development and those objecting to it can expect from the Local Planning Authority. The Plan also explains how the LPA will prioritise and undertake its investigations.

1.7 This Local Enforcement Plan supersedes in the Planning Enforcement Charter which was produced in April 2012.

## **2 When the Council takes action**

2.1 The City Council operates its planning enforcement activities in accordance with Government advice. This means that:

- ◆ The Council must decide whether a breach of planning control unacceptably affects the character of an area or the amenity of neighbours;
- ◆ It is usually inappropriate to take formal enforcement action against a technical breach of planning control which causes no significant harm to either the amenity of the area or the amenity of the occupiers of neighbouring premises; and
- ◆ Action should not be taken just because development has been undertaken without the necessary consent or permission.

2.2 In deciding whether or not to take action, the Local Planning Authority must consider if it is 'expedient' to do so, that is whether the action proposed to be taken is appropriate and commensurate with any alleged harm that has been or is being caused. This involves deciding whether the breach of planning control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest. A judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes.

2.3 The City Council undertakes all enforcement action within Preston with the exception of that which relates to minerals and waste development, and that which relates to works on adopted highways, for which Lancashire County Council as Local Planning Authority and Highways Authority respectively is responsible.

## **3 Non-planning issues**

3.1 There are often matters which concern local communities that do not involve a breach of planning control. Such matters will be outside the remit of planning enforcement, and the City Council as Local Planning Authority will not therefore take action. It may be possible to address issues such as these by way of civil action but this is a matter for the individual to pursue and is not an area where the Local Planning Authority could become involved. If such matters arise during the course of our investigations, we will however seek to direct you to the relevant department or outside body where possible. Examples of issues which may not be planning matters include:

- ◆ Unauthorised use of a highway;
- ◆ Dangerous structures;
- ◆ Internal refurbishment of buildings that are not listed;
- ◆ Party wall disputes;
- ◆ Disputes regarding right to light;
- ◆ Neighbour disputes;
- ◆ Boundary/ownership disputes; and
- ◆ Pests or vermin.

#### **4 Reporting unauthorised development**

4.1 Reports about unauthorised development can be made through the Council's website via the online 'report an enforcement issue' form ([www.preston.gov.uk/yourservices/planning/enforcement/](http://www.preston.gov.uk/yourservices/planning/enforcement/)).

4.2 In order to deal with an alleged breach of planning control, we will need the following information:

- ◆ Your name, address and contact details (preferably an email address or telephone number to enable us to contact you more quickly);
- ◆ The address where the alleged breach is taking place;
- ◆ What the breach is;
- ◆ When the breach occurred;
- ◆ How it affects you;
- ◆ If possible or known, the name or contact details of the property/land owner.

4.3 Please be aware that anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public amenity, or the natural or built environment.

4.4 If complainants still wish to remain anonymous but are concerned that the alleged breach would not fall into the exception above, they will be advised to contact one of their ward councillors and refer the matter to the Council through them.

- 4.5 All complainants will be made aware of the City Council's final decision following the investigation.

## **5 If a Complaint is made about you and your property**

- 5.1 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it). You are also entitled to explain the situation from your side. If a breach is established, you will be advised of the details and how it may be put right.
- 5.2 Your cooperation in remedying the breach will be sought and you will be given a reasonable amount of time to do this. In some circumstances you may be invited to submit a planning application to retain the unauthorised works or development, if it is considered that planning permission may be granted. Most breaches are resolved through negotiation and discussion, and you will therefore be encouraged to maintain an open dialogue with our enforcement team.
- 5.3 If you are issued with a formal notice, you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

## **6 Power to enter land**

- 6.1 Due to the nature of planning enforcement work, it is not normally prudent or possible to arrange a site visit ahead of time, and officers will not therefore ordinarily make an appointment. This may mean that access cannot be gained on the first attempt and as such it may take longer than the initial site visit period to conduct an effective visit. Officers of the Local Planning Authority have the power to enter land for the purpose of effective planning control. This right will be exercised where there are reasonable grounds to enter land to determine whether a breach of planning control has taken place and the nature and degree of the breach or to check for compliance with any requirements imposed. In the case of a property being used as a dwelling house, 24 hours notice has to be given prior to officers entering a property.

- 6.2 Where entry is refused, a warrant may be sought. Prosecution will be considered where wilful obstruction of an officer attempting to exercise the right of entry takes place. Officers carry identity cards bearing their name, post title and photograph and details of the legislation which gives them the powers to enter land for the purposes of investigating planning enforcement complaints.

## **7 Confidentiality**

- 7.1 The Local Planning Authority will protect the identity of complainants and will treat such details as confidential. Although the general public will not have access to the Local Planning Authority's enforcement files, if the investigation proceeds to formal action, resulting in prosecution or a public inquiry, it may not be possible for the Local Planning Authority to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation in advance.

## **8 Decision-making**

- 8.1 In making decisions regarding enforcement, the following principles will be followed:
- ◆ The City Council will only take enforcement action when it is expedient to do so. Enforcement action will not be instigated solely to regularise breaches of planning control.
  - ◆ In considering whether to take enforcement action, the City Council will not give weight, either way, to the fact that development may have commenced.
  - ◆ Decisions not to take enforcement action will normally be made by the planning enforcement team in consultation with the Head of Development Management or the Principal Planning Officers. Reasons for not taking action will be recorded.
  - ◆ The City Council will not allow prolonged negotiation to delay essential enforcement action.
  - ◆ In situations where an unauthorised development may only be made acceptable by the imposition of appropriate conditions, an application will be sought to regularise the development. Where such an application is not submitted within a pre-agreed period of time, enforcement action will be pursued, with the caveat that the City Council would be prepared to grant planning permission subject to specific conditions.

- ◆ In considering whether to take enforcement action, the City Council will not give weight to non-planning considerations.
- ◆ In considering whether to take enforcement action, the Local Planning Authority will have regard to the use of powers under other legislation, as such powers may be able to secure the desired outcome more efficiently.

## 9 The City Council's Priorities

9.1 In order to manage resources appropriately it is necessary for the City Council to adopt a priority system for responding to and dealing with alleged breaches of planning control. Complaints regarding breaches of planning control will be investigated in accordance with the following order of priority:

**Priority 1** – any immediate and irreparable harm to the natural or built environment, or public safety, for example:

- ◆ unauthorised demolition or alteration to listed buildings;
- ◆ substantial demolition to buildings within conservation areas;
- ◆ unauthorised residential sites; or
- ◆ unauthorised works to protected trees where there is a probability that an immediate response would stop any further damage being caused.

**Priority 2** – any unauthorised development or activity which causes clear and continuous harm or danger to amenity, for example:

- ◆ development which is unlikely to be granted planning permission without substantial modification;
- ◆ severe nuisance such as noise at unsociable hours or for a prolonged period; or
- ◆ dangerous vehicular access arrangements.

This may also include other unauthorised works to listed buildings and buildings within conservation areas.

**Priority 3** – any unauthorised development or activity where there is a risk of material harm to the environment and/or some harm to residential amenity, for example:

- ◆ a breach causing concerns which may be resolved by limited modification (such as the insertion of obscure glazing or restrictions on hours of operation);
- ◆ where works, or uses, have the potential to cause material long term damage to the environment; or

- ◆ developments and uses which are clearly contrary to established policies.

**Priority 4** – other breaches of planning, for example:

- ◆ advertisements, satellite dishes and minor works including boundary treatments (except those affecting listed buildings or within conservation areas); or
- ◆ unauthorised uses or development, which would be likely to receive planning permission; or
- ◆ untidy land.

9.2 The examples given above are not exhaustive but give an indication of the type of breach which may fall into each category. The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained. Any change in priority will be agreed by the planning enforcement team in consultation with the Head of Development Management or Principal Planning Officers.

9.3 By prioritising cases, the City Council is not condoning unauthorised development or implying that action will not be taken against other breaches of planning control. Some breaches may however, due to their significance, take longer to investigate and resolved.

## **10 Keeping People Informed**

10.1 Preston City Council is committed to treating both the person who has reported the alleged breach and the person who has allegedly carried out development without planning permission fairly. In many cases, due to lengthy and complex negotiations, failure to gain access to a property or make contact with the parties involved, there is nothing to report and therefore parties often believe that no work is being undertaken. This is not the case. We will endeavour to keep the person who reported the alleged breach of planning control informed as regularly as possible regarding the progress of our investigations, but potential stages of notification will vary depending upon the nature and outcome of the investigations. In addition, the person who has allegedly carried out a breach of planning controls will be advised of our intended course of action before we are able to advise the person who has reported the alleged breach.

10.2 We will send all complainants an acknowledgement of their complaint within 5 working days of receipt (2 working days for Priority 1 cases). This will outline the main point of

contact within the Development Management Division, the initial priority rating and the provisional timescales involved. It will also provide details of the City Council's website where further information, including this Charter, can be found. In addition to the acknowledgement, we will make contact with the complainant at the following stages of our investigations:

- after the site inspection advising of our findings and what our next actions will be;
- to provide an update if new information is received or deadlines are issued, for example the serving of a Planning Contravention Notice and the associated timescales, or the submission of a planning application;
- when the first phase of our investigations has been reached, and the outcome (see below);
- that the decision has been taken that that enforcement action is not necessary or expedient and the case has been closed. The reasons for the decision will also be provided;
- that formal action is being taken, the nature of this action and the timescales involved;
- if an appeal is lodged; and
- the outcome following formal action.

10.3 The first phase of investigation is complete when one of the following points has been reached:

1. a case is closed because the investigation identifies that no breach has occurred;
2. a case is closed because an alleged breach has been identified and resolved by negotiation;
3. a planning or other application has been submitted following the investigation which satisfactorily addresses the breach; [Please note: a case may be re-opened if a planning application is subsequently found not to address the breach and is refused or cannot be determined within an appropriate timescale due to insufficient information]
4. a breach of planning control has been identified and an application requested but not submitted. An assessment has been made determining that it is not expedient to take enforcement action in this case at this time; or
5. a breach of planning control has been identified. An assessment has been made determining that it is expedient to take enforcement action in this case. Instructions have been issued to the Council's Legal Services section to instigate proceedings.

10.4 Where the first phase of the investigation leads to further work (ie. where a case remains open), this will be undertaken in accordance with timescales agreed by the enforcement team in consultation with the Head of Development Management or Principal Planning Officers. The agreed timescales will take account of the nature and complexity of each case and the particular issues raised. Complainants will be kept informed of progress as detailed above.

## **11 Standards and Principles – what you can expect from the service**

11.1 Preston City Council will seek to ensure that enforcement procedures and decisions are always consistent, fair and appropriate. The Local Planning Authority therefore makes the following commitments:

1. The Local Planning Authority will, in the first instance, seek to negotiate a resolution by being flexible and considering genuine alternative solutions to resolving breaches.
2. The Local Planning Authority will keep people informed at the relevant stages of investigations, as detailed above.
3. In considering whether to take enforcement action the Local Planning Authority will not give weight to the fact that development may have commenced.
4. In considering whether to take enforcement action the Local Planning Authority will not give weight to non-planning considerations.
5. Decisions not to take enforcement action, or to close a case, will be made by the planning enforcement team in consultation with the Head of Development Management or Principal Planning Officers. Reasons for these decisions will be recorded in writing.
6. The Local Planning Authority will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Local Planning Authority will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.
7. The Local Planning Authority will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.
8. The Local Planning Authority will deal with all users of the Enforcement and Compliance Service in an honest, responsive and courteous manner.
9. We will not release any information that would identify a complainant as such (the Council can however be required to disclose non-personal information on receipt of a

request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

10. Where a complaint has been made about your property, we will ask to enter your property only if necessary and will show you authority and proof of identity.

## 12 Comments and Complaints

- 12.1 The Local Planning Authority is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the Service should first discuss any concerns with the relevant member of staff's direct line manager. If you remain dissatisfied, the Council has a formal complaints procedure. Further details can be obtained from the City Council's website. Matters may also, in certain circumstances be referred to the Local Government Ombudsman who may decide to investigate further. However, the Ombudsman may ask that the Council's procedures are completed before carrying out his/her own investigation. The Ombudsman will investigate the way your case has been handled, or the Council's failure to do something but does not question a Council's decision simply because you do not agree with it. Contact details for the Ombudsman can be obtained from the website – [www.lgo.org.uk](http://www.lgo.org.uk) or from the City Council's website.

## 13 Monitoring & Review

- 13.1 Details of certain enforcement cases (those which can be publicly discussed such as those which are the subject of formal action) are reported to the City Council's Planning Committee twice a year. The Planning Department's Service Delivery Plan contains one local performance indicator related to enforcement, which is monitored quarterly.

### Contact us

[www.preston.gov.uk/yourservices/planning/enforcement/](http://www.preston.gov.uk/yourservices/planning/enforcement/)

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