**Croydon Council**

**Planning Enforcement Plan 2017**

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1. **Introduction**

1.1 Croydon Council has a duty to investigate alleged breaches of planning control and has the statutory powers to remedy such breaches. It is our policy to exercise those powers in a way that ensures that we control development effectively within the resources available to the planning enforcement service.

1.2 This document outlines the procedures we follow and the standard of service that can be expected when enquiries are made about alleged unauthorised development. Planning enforcement can be a complex process and the main aims of this document are to make sure:

* that adopted procedures are fair and reasonable;
* that all interested parties are kept informed whenever possible to do so, and
* that the outcome of any action taken is commensurate with the breach of planning control.

1.3 This Enforcement Plan has been prepared having regard to Government policy and guidance on planning enforcement to show how the Council will manage enforcement proactively.

1. **Government Guidance**

2.1 The National Planning Policy Framework (NPPF) prepared in 2012 sets out the following comment on planning enforcement at paragraph 207:

*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.*

2.2 National Planning Practice Guidance (NPPG) is the Government’s online reference for national guidance across the range of planning issues and includes a section titled “Ensuring Effective Enforcement”. The NPPG states that the preparation and adoption of a local enforcement plan is important because it:

* *allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
* *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
* *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
* *provides greater certainty for all parties engaged in the development process.*

2.3 Moreover, the NPPG states that effective enforcement is important to:

* *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
* *maintain the integrity of the decision-making process;*
* *help ensure that public acceptance of the decision-making process is maintained.*

1. **What is a breach of planning control?**

3.1 A breach of planning control is defined under Section 171A of the Town and Country Planning Act 1990 (as amended) 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.*

The breach of planning control may relate to operational development, such as the construction of a building or extension, or to a material change of use of land or a building.

3.2 Furthermore, any contravention of the limitations on, or conditions belonging to permitted development rights, under the Town and Country Planning (General Permitted Development) Order 2015 (and subsequent amendments) (the GPDO), constitutes a breach of planning control against which enforcement action may be taken.

3.3 Other matters which also constitute a breach of planning control are:

* works being carried out to a listed building which affect the historic character or setting, without listed building consent being granted;
* removal of, or works carried out, to protected trees without consent being granted or proper notification given;
* the display of advertisements, which require consent under the advertisement regulations and that consent has not been gained;
* failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory planning notice

3.4 There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. However, enforcement action is discretionary and the NPPG advises that local planning authorities should act proportionately in responding to suspected breaches of planning control. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action and those who are affected by a breach of planning control.

3.5 Enforcement powers are discretionary, to be used when expedient to do so. In considering appropriate action, the Council has to bear in mind the particular circumstances of small businesses and self-employed people and in respect of householders, the degree to which an unauthorised development exceeds the “permitted development” allowance in the GPDO.

3.6 Our advice note “How are the Planning Regulations enforced?” should be read in conjunction with this document. This is available on the Council’s website [www.croydon.gov.uk](http://www.croydon.gov.uk). It provides information on the nature of the planning enforcement service at Croydon and how to make an enquiry about a suspected breach of planning control.

**4. What we do not do**

4.1 The planning enforcement service can only investigate alleged breaches of planning control. It does not investigate matters that are outside the controls in the Planning Act such as neighbour disputes, highway issues, environmental health matters, breaches of covenants, the Party Wall Act or boundary disputes. The planning enforcement service cannot act as a negotiator or arbitrator in matters that are outside of its planning powers.

**5. Resources**

5.1 The overall enforcement workload can vary greatly depending on the number of complaints received and the complexity of the cases involved. Consequently, the response time to complaints may vary from time to time, but we will endeavour to provide a high standard of service delivery. The resources available for enforcement activities will be reviewed periodically to ensure that an appropriate level of service delivery can be maintained having regard to the Priorities and Service Standards set out below.

5.2 Enforcement action must be balanced between protecting the local area and enabling acceptable development to take place. We therefore take a common sense approach using professional judgement to evaluate the harm in each situation. Given the discretionary nature of enforcement powers, formal action will only be taken when it is expedient to do so.

5.3 The cost of enforcement action against a breach of planning control may involve research, site surveillance and legal work lasting several months. Given this, the Council aims to direct its resources towards cases where the greatest harm is being caused to public amenity or the environment.

**6. Priorities**

6.1 Upon receipt, an enquiry will be prioritised and then allocated to an enforcement officer to investigate. To best utilise the limited resources available, when a breach is established it will be assessed with regard to the level of harm the unauthorised development is creating. For instance:

* Any associated risks or dangers to the public
* Its effect upon neighbouring individuals
* The effect upon the amenity of the area
* Any other relevant factors.

6.2 We will give greater priority to a case where harm to immediate neighbours arises rather than more general amenity impacts on the neighbourhood. We will also prioritise alleged breaches that involve the provision of inappropriate or substandard forms of residential accommodation. The highest priority will be afforded to unauthorised works taking place to a listed building or if preserved trees are threatened.

6.3 The initial priority afforded determines the time scales for the first site inspection of the alleged breach of control. This is set out in the table below.

|  |  |  |
| --- | --- | --- |
| Priority | Type of breach of planning control | Deadline for 1st Site inspection |
| 1 | * Unauthorised works to a listed building * Unauthorised works to trees protected by a Tree Preservation Order (TPO) * Works that are irreversible or irreplaceable and constitute a very serious breach of control * Activities that cause significant harm to residential amenity or to the environment | Within 48 hours |
| 2 | All other breaches of planning control, such as:   * Not adhering to planning conditions * Not adhering to approved drawings * Building works in excess of permitted development allowances * Unauthorised changes of use * Untidy land, and * Unauthorised advertisements | Within 10 working days |

6.4 In practice an initial site inspection on Category 2 cases may take place well within 10 working days, but this will depend on resource levels and other commitments at the time of receipt of the alleged breach of control.

6.5 Where no clear evidence of a breach of planning control has been provided and a desktop analysis concludes that that one does not appear likely, the service may choose not to make a site inspection and inform any complainant why the matter will not be followed up by planning enforcement.

**7. Service Standards**

7.1 By publishing our service standards, Croydon Council aims to improve its planning enforcement service and make it as responsive as possible. We will monitor the contents of this policy to ensure that an appropriate high level of service is being provided.

7.2 The standards are:

* All enquiries will be acknowledged within a maximum of 5 working days following receipt.
* The acknowledgement will include a reference number for that particular enquiry and set out when you can expect to hear from us again.
* The enquirer will be informed of key milestones in the investigation.
* The enquirer will be informed of the outcome of the investigation.
* If at the end of the process no further action is to be taken, the reason for this will be explained.

**8. Anonymous Enquiries**

8.1 Whilst we recognise that in some circumstances a member of the public may consider it preferable to withhold their contact details when submitting an enquiry to us, this can limit what we do. We will be unable to keep the complainant up-to-date with our investigation, seek additional information if required or inform of the case outcome.

8.2 For this reason, the planning enforcement service will generally not investigate anonymous enquiries, particularly if the complaint is vague and lacking in evidence that a potential breach has taken place.

8.3 If a member of the public is keen to submit an enforcement enquiry but anxious to remain anonymous, it is recommended that he or she presents the enquiry to an elected Ward Councillor or to a local Residents’ Association. These parties can then present the enquiry to the planning enforcement service, if they agree that the matter should be followed up. The Ward Member or Residents’ Association representative can act as the point of contact for the service.

**9. Confidentiality**

9.1 The planning enforcement service will seek to maintain the identity of any enquirer or complainant about an enforcement issue as confidential. Enforcement files and the information contained therein, including the complainant’s details are covered by the Environmental Information Regulations 2004(EIR).

9.2 In handling the information that it holds, the Council is governed by the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998. Under this legislation, there is a presumption that Councils should disclose information to the public unless its disclosure would adversely affect the interests of the person who provided the information (Regulation 12(5)(f) E I Regulations). The Council retains absolute discretion on the disclosure of any information it holds.

9.3 If the Council subsequently receives a request to disclose information, it is under a duty to consider why the information cannot be disclosed at that time. If the enquirer indicated they wish us to treat any material as confidential, we will contact them to see if the circumstances have changed and whether they still wish the material to be treated as confidential, before we make a decision about disclosure.

9.4 In certain cases, the Council may contact interested parties to assist us by providing evidence at an appeal or in court. Before this happens, we will ask for 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. This will include the appellant and their legal representative.

**10. Monitoring Implementation of Planning Permissions**

10.1 Planning officers maintain a dialogue with applicants on the largest application sites in relation to the discharge of pre-commencement conditions attached to planning permissions ahead of the implementation of schemes. Developers also liaise with the Council’s Building Control service ahead of the commencement of building operations.

10.2 However, the implementation of a planning permission is a discretionary matter and commencement of development can take place at any time within the three year period normally afforded before a planning permission expires. In some cases, the developer is obliged to inform the local planning authority of the commencement of work, for example to pay Community Infrastructure Levy (CIL). However, in many applications, the developer is not obliged to inform the local planning authority of the commencement of work. The planning enforcement service does not have the resource to regularly monitor all unimplemented planning permissions. As such, the enforcement service is reliant in part on adjoining occupiers and other interested parties to inform of suspected breaches of planning control. Much of the live case work at any one time arises as a result of such contacts.

10.3 It is the intention of the Planning Enforcement Service to prepare Quarterly Update Reports on progress being made and outcomes in relation to higher profile and significant planning enforcement investigations, which will be published on the Council’s web site from time to time.

**11. Timescales for Taking Enforcement Action**

11.1 Development becomes immune from enforcement if no action is taken within time limits set by Section 171B of the Town and Country Planning Act 1990. The time limits are:

* Within four years of substantial completion for a breach of planning control consisting of operational development;
* Within four years for an unauthorised change of use to a single dwellinghouse;
* Within ten years for any other breach of planning control (essentially other changes of use).

**12. Where no further action is proposed**

12.1 There are several reasons why no further action may be proposed at an early stage in the enforcement investigation. These include:

* No breach of planning control has been established; the concerns raised may not be planning matters.
* The breach is now lawful under planning law as a result of the passage of time referred to in section 11 above.
* The development is lawful under planning law due to permitted development allowances set out in planning legislation; this would be the case for many householder extensions built within the tolerances set out in the General Permitted Development Order (GPDO).
* There is insufficient evidence to pursue the matter.
* The development is in compliance with a grant of planning permission and the planning conditions attached to that permission.

12.2 In these circumstances, the enquirer will be informed of the position and the case will be closed.

**13. Options when a breach is established**

13.1 It is not an offence to start building works or make a change of use without first obtaining planning permission and therefore just because a development has not got planning permission does not necessarily mean that we can or should take action to stop it. Developers or land owners will be informed that if the breach of control continues, they continue at their own risk and that we may be obliged to take enforcement action at a later date.

13.2 Where a breach of planning control is established, the enquirer will be informed how the planning enforcement service intends to proceed with the investigation and what course of action is intended.

13.3 There are four principal courses of action available:

* **Informal action**: In many cases breaches of planning control can be rectified through negotiation rather than by more formal action. An unauthorised use may cease or unauthorised building works removed or reduced to permitted development levels. Such an approach will be taken when this is seen to be the best way of dealing with a breach.
* **Submission of a retrospective planning application**: In many cases we will ask the developer to submit a retrospective planning application. The development can then be assessed on its planning merits following normal planning application procedures. Local residents and other interested parties will have opportunity to make representations prior to any decision being taken. If planning permission is granted, then the breach of control will have been resolved subject to compliance with any planning conditions. If the application is refused, then other options will need to be considered.
* **No further action**: This may be appropriate where a minor or insignificant breach of control has occurred and formal action is not justified. The development may exceed permitted development allowances by only a small margin and no harm in a planning sense arises**.** Sometimes a retrospective application is invited but not received and there are no planning grounds to refuse permission. In such cases, it would not be expedient to take formal enforcement action. The enquirer will be informed of the circumstances and the file closed.
* **Formal action**: Where the breach has little prospect of being approved, relevant evidence will be gathered and discussed with expert planning and legal officers to agree on the most appropriate course of action. A report will be prepared explaining why it is expedient to take the agreed course of action.

13.4 In cases where a retrospective application has been submitted for unauthorised works, but it is considered that there is no prospect of the application succeeding, we may still take enforcement action regardless of the submission of the planning application.

13.5 Occasionally there are cases where a retrospective application has been requested, but the owner of the land will not submit one and the matter remains contentious locally. The planning enforcement service may prepare a report on the development with a provisional recommendation and afford interested parties an opportunity to comment on this in the same way as we would do with a planning application prior to a decision being taken on what action, if any, we will take. We will inform enquirers of the Council’s final decision having regard to comments received.

**14. Formal Action**

14.1 If formal action is proposed, it will be authorised by the Head of Development Management or other officer authorised to take such a decision. The formal action will generally involve the service of a formal notice on all relevant parties (anyone with a legal interest in the site), specifying what action they are required to take to correct the breach and by when this needs to be done.

14.2 In the cases of unauthorised works to a listed building, damage to a protected tree or the unauthorised display of an advertisement, these are offences under planning law and they can be taken direct to the Magistrates Court for prosecution. All other breaches of control only become an offence capable of being prosecuted after the formal notice becomes effective and is not subsequently complied with.

14.3 Planning legislation enables formal action to be taken in a variety of ways. The enforcement service has to discern the most appropriate tool for the particular circumstance. The most frequently used powers relate to the following notices:

* Enforcement Notice
* Breach of Condition Notice (in relation to conditions on a planning permission)
* Temporary Stop Notice
* Stop Notice
* Discontinuance Notice (in relation to advertisements)
* S.215 Notice (in relation to untidy land or buildings)

14.4 There are other formal powers that can be used in appropriate circumstances. A Planning Contravention Notice (PCN) can be served on land owners to require the submission of information about a development within a specified period to enable the service to judge the expediency of other formal action. There are also powers of entry on to land to enable a fuller understanding of a breach of control.

14.5 The Council maintains a register of formal enforcement actions and a summary of these cases can be viewed on the web site.

**15. Appeals**

15.1 A planning enforcement notice is the most regularly used formal action and can be applied to any unauthorised operational development or material change of use. However, those served with an enforcement notice can submit an appeal to the Planning Inspectorate before it comes into effect. This will suspend the need to comply with the notice’s requirements until the appeal has been determined.

15.2 An appeal Inspector may allow an appeal (in which case the enforcement notice will cease to apply) or dismiss the appeal, with or without variations to the requirements of the notice (in which case the enforcement notice becomes effective and the developer has a proscribed period to comply with the specified actions).

15.3 The submission of an appeal introduces delays to the resolution of breaches of control which can be frustrating for local residents and other interested parties. The enforcement service will inform enquirers of the submission of an appeal and provide guidance on how to submit representations to the Planning Inspectorate.

**16. Prosecutions and Direct Action**

16.1 If a developer does not comply with the requirements of a formal notice once it has come into effect, then a criminal offence has taken place and the developer is liable to prosecution in the courts. The enforcement service has to consider the expediency of instigating prosecution proceedings. It would not be expedient to seek a prosecution if a developer is clearly trying to comply with the requirements of the notice but requires a little more time than that specified in the notice. However, it probably would be expedient to take such action if few or none of the requirements in a formal notice have been satisfied and there is ongoing harm to the amenity of residents or to the environment.

16.2 Prosecution proceedings tend to be lengthy, as all parties concerned are subject to procedures and timescales of the courts. It is necessary for officers in the enforcement service to gather evidence of the ongoing breach of planning control and to prepare a witness statement. In some cases local residents or interested parties may also be invited to prepare a witness statement and appear in court.

16.3 An alternative to prosecution in some cases could be for the local planning authority to take direct action itself under default powers in relation to the requirements of a formal notice, and then seek to recover its reasonable expenses from the land owner.

16.4 In all cases involving non-compliance with formal notices, the planning enforcement service will endeavour to keep local residents and other interested parties informed of its intended actions.

**17. Contacts & Further Information**

17.1 For further information, please check the planning pages on the Council’s web site. It is possible to submit an enquiry for investigation by the planning enforcement service on the ‘report it’ tool on the web site.

17.2 Other means of contacting the Planning Enforcement and Trees team are set out below:

Telephone: 020 8726 6800 and choose option 1 for planning

Email: [planning.enforcement@croydon.gov.uk](mailto:planning.enforcement@croydon.gov.uk)

Address: Development Management

6th Floor Zones A & B, Bernard Weatherill House

8 Mint Walk, Croydon, CR0 1EA