

Royal Borough of Kingston Local Enforcement Plan

December 2024

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1. Introduction and purpose of this document

- 1.1. [The Town and Country Planning Act 1990](#) (the “Act”) establishes the primary legislative framework for addressing breaches of planning control. The Act grants local authorities the necessary powers to manage such breaches, while the [National Planning Policy Framework](#) (NPPF) and [National Planning Practice Guidance](#) (NPPG) provide further direction on how these powers should be applied.
- 1.2. The NPPF and NPPG emphasise that the powers conferred by the Act are discretionary and should only be exercised when deemed absolutely necessary. Any enforcement action undertaken must be proportionate to the severity of the breach and the harm caused or likely to be caused by it.

- 1.3. The NPPF states that “Effective enforcement is important to maintain 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. They 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 appropriate.”
- 1.4. In practice, this means that the Council is not obligated to take enforcement action but retains the discretion to do so based on the seriousness of the harm caused by a breach of planning control. Any enforcement action must be proportionate to the nature of the breach and undertaken only where it serves the public interest. Whilst the Council is not required to take enforcement action, Councils are expected to investigate alleged breaches of planning control. If a breach is identified, then the Council needs to assess whether enforcement action is appropriate.

2. Service Aims

- 2.1. To operate in accordance with the procedures outlined in this Plan and the overarching [Council Plan 2023-2027](#)
- 2.2. To provide an efficient and effective planning enforcement service within the resources available, whilst treating all our customers with courtesy, respect and fairness.
- 2.3. To remedy the undesirable effect of unauthorised development and to strike a balance between protecting amenity/environment and other interests.
- 2.4. When it is considered appropriate and proportionate to do so, take a robust approach to enforcing against confirmed breaches of planning control.

3. What is a breach of planning control

- 3.1. The enforcement of planning law is complicated. This is because it seeks to balance the rights of individuals to use or alter their property / land against the need to safeguard the character and quality of the local area, the amenity of local people, and to uphold adopted planning policies, as set out in the Development Plan.

- 3.2. The planning enforcement system operates in such a way that it gives those undertaking any unauthorised development, the opportunity to seek to correct matters before taking formal action. This is set out in the [National Planning Policy Guidance](#) paragraph 12 NPPG.
- 3.3. A breach of planning control occurs when one of the following takes place:
- The carrying out of operational development (building or other works) without the required planning permission.
 - The carrying out of material changes of use without planning permission.
 - The failure to comply with a condition or limitation subject to which planning permission was granted.
 - The carrying out of works to a Listed Building without the relevant consent(s).
 - Unauthorised works to a tree protected by a Tree Preservation Order or works carried out to trees within a Conservation Area without giving the Council the required notice.
 - The display of advertisements without advertisement consent.
 - The failure to comply with a Legal Agreement / undertakings.
 - The carrying out of engineering operations such as the raising or lowering of ground levels and formation of earth bunds; without the benefit of planning permission.
 - Failure to build in accordance with the approved plans (following the granting of planning permission or Listed Building consent).
- 3.4. Most breaches of planning control are not criminal offences. Under the current legislation a criminal offence only arises if the requirements of an enforcement notice have not been complied with in the time required within the notice.
- 3.5. However, certain breaches of planning control are criminal offences from the outset. Such breaches include:
- Carrying out unauthorised works to a Listed Building.
 - Carrying out unauthorised works to a Protected Tree or a tree within a Conservation Area.
 - The display of advertisements which do not benefit from deemed (automatic) consent.

4. Matters which are not breaches of planning control

- 4.1. The following list contains examples of those matters which are not a breach of planning control. This list is not exhaustive:

Alleged Breach	Who to Contact	Contact Details
Internal alterations to a building which is not a Listed Building	N/A	N/A
The obstruction of a highway or public right of way.	RBK Highway Team TfL	https://www.kingston.gov.uk/report-problems-highways https://tfl.gov.uk/help-and-contact/contact-us-about-streets-and-other-road-issues#:~:text=If%20you'd%20like%20to,or%20use%20this%20contact%20form.
land ownership disputes and boundary disagreements.	This is a private matter between land owners, you are advised to seek legal advice	https://solicitors.lawsociety.org.uk/
Operating a business from home, where the residential use remains to be the primary use of the property and there is no significant impact on the residential amenity or the character of the area.	N/A	N/A
Covenants and restrictions on Deeds and Land Registry enquiries.	This is a private matter, you are advised to seek legal advice.	https://solicitors.lawsociety.org.uk/ https://eservices.landregistry.gov.uk/
Advertisements which are exempt or benefit from deemed consent.	N/A Further guidance on Advertisements https://www.gov.uk/government/publications/outdoor-adv	

	ertisements-and-signs-a-guide-for-advertisers	
Any development deemed to be “Permitted Development” by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015	N/A Further guidance https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance	
Clearing land of overgrowth, bushes or trees (provided the trees are not subject to a Tree Preservation Order or within a Conservation Area).	N/A Find out if a tree has a TPO here Find out if a site is within a Conservation Area here	N/A
Unsafe work practises on a Construction Site	The Health and Safety Executive	http://www.hse.gov.uk/
Party Wall Issues	This is a private matter, you are advised to seek legal advice.	https://solicitors.lawsociety.org.uk/
Building Regulation issues	RBK Building Control (however, please note, not all Building Control work is carried out by the Council, some work is carried out by private companies)	building.control@kingston.gov.uk
Dangerous structures	RBK Building Control	https://www.kingston.gov.uk/building-control/dangerous-structures-emergencies#:~:text=020%208547%205002%20(Monday%20to%20Friday%2C%209am%20to%205pm) 020 8547 5002 (Monday to Friday, 9am to 5pm)

		020 8547 5800 outside office hours
Noise nuisance	RBK Environmental Services Team	https://www.kingston.gov.uk/environmental-health/noise/2
Pollution / Air Quality	RBK Environmental Services Team	https://www.kingston.gov.uk/environmental-health/air-quality-complaints/4

5. Enforcement action is discretionary

- 5.1. As mentioned elsewhere in this document in most cases it is not a criminal offence to undertake development without first obtaining planning permission or other formal consent.
- 5.2. The Government has made it clear through legislation and guidance that the response to an alleged breach of planning control is a matter for the discretion of the local planning authority (Council) and not every breach of planning control justifies the taking of enforcement action.
- 5.3. The Council must make a judgement having regard to National Planning Policy (including the National Planning Policy Framework), the adopted Development Plan, Made Neighbourhood Plans, case law and any other relevant planning considerations and constraints.
- 5.4. Guidance from Central Government is that councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to formal action such as an Enforcement Notice. Any such service of a formal notice must be proportionate and commensurate with the alleged breach of planning control.
- 5.5. In exercising planning functions, the Council is required to consider whether enforcement action is in the public interest. At the same time, it is also under an obligation to act consistently with the European Convention on Human Rights (in particular, Article 8 – the Right to Respect for Home, Privacy and Family Life, Article 14 – Prohibition of Discrimination, and Article 1 of the First Protocol – Right to the Enjoyment of Property). Regard must also be given to the Equality Act 2010.

- 5.6. Any one or a combination of these factors may mean that the Council will decide not to take formal action in any case where there has been a breach of planning control. It will however act where a breach causes serious planning harm.

6. Before you report a breach you should check the following

Check if Permission has already been granted

- 6.1. You can search our [planning database](#) for the planning application to check if planning permission has been granted for the work being carried out.
- 6.2. If you can't find any planning permission for the development, that doesn't necessarily mean that there is a breach of planning control.

Check if Permission is required

- 6.3. Not all developments require planning permission as the work may legally be done using permitted development rights, a type of planning permission granted by Central Government. For further guidance on Permitted Development please refer to

- [Permitted development rights for householders: technical guidance](#)
- [Planning Portal - Interactive House](#)

7. How to report an alleged breach of planning

- 7.1. If someone believes that a breach of planning control has occurred, they should notify the Council's Planning Enforcement Team using the following options:
- 7.2. the primary method for reporting is by using the online reporting form which can be found on the Council website accessed via this link: [Breaches of planning control](#)
- 7.3. If you are unable to complete the form online yourself, please write to

Planning Enforcement
Guildhall 2
High Street
Kingston
KT1 1EU

- 7.4. In order for the Council to investigate your report of suspected breach of planning control you will need to provide the following information:

- The address of the site or details of the precise location.
 - What the breach of planning control is and when it first occurred.
 - The name and address of the landowner(s) and/or the person responsible for carrying out the works, (if known).
 - When referring to non-compliance of approved plans or conditions we will require the specific planning application reference number and conditions.
 - Any photographs obtained can be uploaded as part of the online form.
 - Your name, postal address, email address and telephone number.
- 7.5. The formal reporting process creates a lasting record against the property in question. In certain circumstances our enquiries may lead to a criminal investigation. So we cannot accept anonymous reports. You must also ensure that the information you provide is accurate and a true representation of the facts.
- 7.6. The planning enforcement officers will ensure that the complainant's identity is safeguarded, though in some circumstances it may be necessary for a complainant to give evidence at an appeal or any legal proceedings.
- 7.7. We may ask you for further information in the form of written statements, logs, photographs or evidence. If an investigation progresses to court or an appeal is lodged you may also be asked to appear as a witness. Your help can be an essential component of taking successful enforcement action.

8. What can you expect if you report an alleged breach of planning control?

- 8.1. On receipt of the online report ([Breaches of planning control](#)) an automated acknowledgement will be sent to you by the system.
- 8.2. We will then triage the complaint based upon the information supplied and the level of planning harm. We prioritise our resources for matters which are a breach of planning control where significant harm is being caused.
- 8.3. If it appears at the outset the reported matter is not a breach of planning:
- We will not set up a case for it.
 - If we believe that another team / department within the Council can assist you we will share your details and complaint with them to allow them to make contact with you directly.

- 8.4. We will keep your personal details confidential, unless we are required to disclose them during an enforcement appeal or as evidence to help secure a prosecution in the courts.
- 8.5. In the first instance we carry out a desk-top evaluation to confirm the relevant planning/enforcement history. We will then undertake a site visit where appropriate within the requisite time (see priorities below) – planning enforcement officers have powers to enter land at any reasonable hour to investigate alleged breaches of planning control. Should access be required to a dwelling house 24 hours' notice must be given, in accordance with Section 196A of the Town and Country Planning Act 1990.
- 8.6. We will then establish whether an actual breach of planning control has taken place. In cases where we decide there has not been a breach of planning control, we will close the case.
- 8.7. In cases where there may be a technical breach of planning control, but the harm caused is insufficient to warrant formal action we will close the case.
- 8.8. Investigations into alleged breaches of planning control will take some time as cases can be complex and raise a variety of issues that need careful consideration.
- 8.9. All contraveners have a right to submit a retrospective application to attempt to gain the relevant permission/consent. The application must be dealt with under the normal application process and is subject to the notifications, consultations and statutory time periods associated with the determination process.
- 8.10. The Council aims to make this decision on any retrospective planning application within the statutory period, which could take 8, 13 or 16 weeks, depending on the nature of the application. If an application submitted to regularise a planning breach is refused, the applicant has the right to appeal the planning decision and it is rarely considered appropriate to commence formal enforcement action until the outcome of the appeal is known. Appeals can take a year or more to be determined.
- 8.11. The Council will negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern rather than issuing a formal notice in the first instance, unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success, at which point consideration to serving formal notices will be undertaken.

- 8.12. When a breach of planning control is found to have occurred and it is causing significant 'harm' the case will be pursued until such a time that the matter is resolved, or the breach is regularised or found to be lawful, or the decision is taken that it is not expedient to pursue any further for sound planning reasons.
- 8.13. If a formal notice is served and not complied with, the Council will consider pursuing the case through the Magistrates' Court or Crown Court where necessary and appropriate.
- 8.14. We will not re-open a case that has been closed unless there is a significant new piece of information or change on site.
- 8.15. On conclusion of the enforcement investigation Officers will produce a report making a recommendation on what, if any, action should be taken. Officers will not provide regular updates on the status of the investigation. Residents are advised to follow the [Planning Register](#) on our website to be alerted to any planning application submitted to regularise any breach of planning.
- 8.16. If an Enforcement Notice is served this will be recorded on the Enforcement Register - to view the Enforcement Register you should email Development.management@kingston.gov.uk
- 8.17. We will not keep you updated other than when we have decided what action (if any) to take and when the case is recommended to be closed, you should not email requesting an update. You will not receive a notification if it is determined that no action is to be taken. Please note it is likely to take many months before a decision on a breach is made.

9. Our priorities

- 9.1. To make the most effective use of resources, complaints regarding suspected breaches of planning control will be assigned a Priority Rating depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses. We will try and investigate all breaches reported to us, but we may take a little more time to look into minor technical breaches. The resources of the Planning Enforcement Team will be focused on dealing with Priority 1 cases, this is not to say that other cases will not be investigated, but investigations into Priority 2 and 3 cases may take many months.
- 9.2. It is important for us to operate in an open and transparent manner, so we have set out clearly what our enforcement priorities are:

Priority	Target Site Visit	Examples of Alleged Breach of Planning Control
1	Within 5 working Days (depending on severity)	<ul style="list-style-type: none"> ● Works that are harmful to listed buildings ● Demolition of buildings in conservation areas ● Damage to protected trees ● Serious traffic safety hazards ● Contamination and or pollution being created ● Development where there is actual or imminent residential occupation that could be harmful to the prospective occupant and/ or the environment/ public amenity
2	May not be necessary depending on other available information including photos.	<ul style="list-style-type: none"> ● Building works have just commenced ● Non-compliance with certain planning conditions, such as pre-start conditions ● Development causing localised harm to residential amenity ● Development that harms the character of a Conservation Area ● Inappropriate commercial uses ● Breaching of planning conditions that cause noise, disturbance or loss of privacy ● Loss of permanent dwellings or the creation of substandard homes
3	May not be necessary depending on other available information including photos.	<p>All other cases which don't have a wide impact, perhaps affecting the amenity of a single property and which are likely to remain stable and are unlikely to give rise to severe or lasting harm to amenities.</p> <p>Type of breach</p> <ul style="list-style-type: none"> ● Untidy sites ● Non-compliance with non pre-start conditions ● Erection of satellite dishes, ● The unauthorised display of advertisements ● The erection of fences ● Development or breaches of where minimal harm is anticipated ● Temporary breaches ● Breaches that would be likely to be granted planning permission ● Estate agent boards and small advertisements

10. What are the possible outcomes of an investigation?

- 10.1. No breach established: Following investigation it may be found that there is no breach of planning control because, for example, the unauthorised use has ceased, or the development is 'permitted development' or no development has taken place.
- 10.2. There is a breach of planning control but not considered expedient to pursue formal action: Just because a breach may exist does not automatically mean that formal action should be taken. Enforcement powers are discretionary and should be used proportionately. So, for minor or technical breaches that cause little or no harm it may be considered inexpedient to take enforcement action.
- 10.3. The development is lawful and immune from enforcement action: Breaches of planning control become lawful over time if enforcement action has not been taken. This is set out under section 171B of the Town and Country Planning Act 1990. These limits are summarised below:

Type of breach	Time-limit for enforcement action
Unauthorised building works	4 years from completion of the works (prior to 24th April 2024)/ 10 years from completion of works (from 25th April 2024)
Creation of a new residential dwelling	4 years from commencement of occupation (prior to 24th April 2024)/ 10 years from commencement of occupation (from 25th April 2024)
Unauthorised change of use	10 years from commencement of the use
Breach of a planning condition	10 years from commencement of the breach
Unauthorised display of an advertisement	10 days from the date of its first display
Criminal proceedings for works to a protected tree	6 months from the date of the offence being confirmed

In any such case, the person responsible for the breach is entitled to immunity from enforcement action. They may be asked to apply for a Certificate of Lawful Use or Development which will enable the Council to make a formal decision on whether the breach has become lawful by the passage of time and is therefore immune from enforcement action.

- 10.4. Negotiations take place to find a solution: In accordance with Government guidance, the priority is to try and resolve any breaches of planning control

through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not however allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

- 10.5. Invitation to submit a retrospective application: In accordance with Government advice, where a breach of planning control is acceptable in planning terms, the Council may invite the submission of a retrospective planning application for formal consideration by the Council.

A retrospective application will only be invited where we consider that there is a reasonable likelihood that permission or consent may be granted in line with Local and National planning policies or where a development may be made acceptable by way of the imposition of conditions. However, the fact that an application is submitted does not necessarily mean it will be approved. Where a retrospective application is submitted residents will be notified in the usual way.

11. The Enforcement Process

- 11.1. Every enforcement case is different and how it progresses will depend on a number of factors including gaining access to the site, the willingness of the offender to co-operate, the complexity of the issues being dealt with, the resources we have available and whether an appeal or legal challenge is mounted against enforcement action.
- 11.2. There is however a general 'process' that most cases broadly follow and this is shown in the flow-chart in Appendix B to help you understand the steps and procedures.

12. Enforcement Register

- 12.1. The Council has a statutory duty to hold and maintain an enforcement register. This records details and basic information about what notices have been issued. The notices contained within the register are:

- Enforcement Notices
- Breach of Condition Notices
- Temporary Stop Notices
- Stop Notices

Enforcement registers are public records and can be viewed by appointment at

Guildhall 2
High Street
Kingston upon Thames
KT1 1EU

To arrange an appointment please email:
development.management@kingston.gov.uk citing the relevant address you wish to review.

13. Monitoring and performance

- 13.1. To ensure we operate in a transparent way our performance is monitored on a monthly basis. This includes how many breaches are resolved and how many instances of formal enforcement action are taken.
- 13.2. When a case is closed, its contents are publicly available through the Freedom of Information Act, although sensitive information such as people's names, contact details or private photographs may be redacted. We will not disclose the names of people who have reported a breach to us.

Appendix A Enforcement Powers Available to the council

Breach of Condition Notice (BCN)

Issuing a BCN where the unauthorised activity is in breach of a condition attached to a planning permission. It is an alternative to an enforcement notice and requires compliance with the condition. Failure to comply is a criminal offence and there is no right of appeal.

Court injunction

We could apply to the Court for an Order preventing an activity, or operation, taking place. Failure to comply with such an Order is a criminal offence.

Criminal proceedings

Where a breach has occurred that amounts to a criminal offence, we may seek to prosecute those responsible for the breach. Such action is usually reserved for the most serious breaches of planning control or where there is clear inaction to comply with an enforcement notice. Where such proceedings are successful, the Courts have powers to issue fines. The council may also consider applying for an order to confiscate any financial benefit accrued from the offence.

Default Powers (direct-action)

Ultimately we may enter land and take action necessary to secure compliance with enforcement notices. However, this power is only used in the most extreme of circumstances. We will then seek to recover all such associated costs.

Discontinuance Action

Where an advert benefiting from deemed-consent may in any event be causing serious harm to visual amenity or a danger to the public, we can issue a discontinuance notice which revokes the deemed-consent and requires removal of the advertisement.

Enforcement notices

Issuing an enforcement notice, which is a legal document requiring the owner/occupier to take specific steps to remedy the planning breach within a specified time. Failure to comply with the notice results in the breach becoming a criminal offence, which can be prosecuted in the courts. The notice may be appealed to an independent government Planning Inspector who can decide to uphold the notice, amend it or have it quashed. The requirements of the notice are suspended during the appeal process. Interested parties can make representations to the appeal.

Enforcement Warning Notice (EWN)

This is a tool that local planning authorities (LPAs) can use to address planning control breaches in England. Section 117 of the Levelling-up and Regeneration Act (LURA) 2023 gives LPAs the power to issue an EWN when they believe there has been a planning breach, but that planning permission would likely be granted if an application were made. The LPA

will issue an EWN to the owner or occupier of the land, and anyone else with an interest in it. The EWN will state what appears to be the breach and that further enforcement action may be taken if a planning application isn't made within the specified time. If an application isn't made within the specified time, the LPA can take further enforcement action.

Listed Building Enforcement Notices

Where unauthorised works have been carried out to a listed building, a listed building enforcement notice may be served requiring remedial works be carried out to remove any unauthorised additions and reinstate features of historic or architectural importance.

Listed Building Repairs Notice

If a listed building has been neglected and fallen into a poor condition, a listed building repairs notice may be served requiring detailed steps be carried out to bring the building back into a good state of preservation. Failure to comply with the notice may allow the council to apply to the Secretary of State for an Order to acquire the property.

Planning Contravention Notice (PCN)

Issuing a PCN, which is a legal notice to bring the breach to the attention of the owner/occupier and requires the alleged contravener to provide certain information within 21 days. Failure to respond could result in prosecution in the Magistrates Court.

Removal of Advertisements

In some cases, the council can remove advertisements displayed in breach of planning regulations providing the required notice is served on those responsible for its display.

Section 215 Notices

Issuing a Notice under Section 215 of the Town and Country Planning Act 1990, which is a legal document requiring the owner/occupier to remedy the condition of the land or building and provides a minimum of 28 days before it takes effect. Failure to comply with the Notice is a criminal offence. In such circumstances the council also has powers to enter the land, carry out the work itself and recover the costs of so doing from the owner. There is no right of appeal, but before the notice takes effect an appeal may be made to a Magistrates Court.

Stop Notices and Temporary Stop Notices

Issuing a Stop Notice in conjunction with an enforcement notice in order to require the cessation of works that are causing serious harm. Contravention of such a notice gives a liability of immediate prosecution. Issuing a Temporary Stop Notice, which has similar force to a Stop Notice, but is only valid for 28 days and does not require an associated enforcement notice.

Urgent Works Notice

Where a listed building requires immediate steps be taken to make it structurally safe and weatherproof, an urgent works notice may be served requiring those steps to be taken within

7days. In the event of non-compliance, the council may enter the land and carry out the works in default. Any costs incurred will be charged to the owner.

Appendix B

Enforcement Powers Available to the council

