

# Planning Enforcement and Direct Action Policy

To ensure an effective, consistent and clear approach to carrying out enforcement with regards to breaches in planning control



## PLANNING ENFORCEMENT AND DIRECT ACTION POLICY

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The National Planning Policy Framework (2012) recognises that:

“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”.

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# 1. Introduction to Planning Enforcement

**The Council's strategic ambitions for Redbridge are to:**

-  increase fairness;
-  empower communities to help shape the borough
-  improve quality of life and civic pride and
-  transform to respond to future challenges

Planning Enforcement plays an important role in achieving these goals and improving the quality of life and civic pride amongst our communities. This Planning Enforcement and Direct Action Policy is focused on ensuring that Redbridge continues to be a place of choice to live and work because of the good quality of life it provides. It will ensure that Redbridge maintains a high quality built environment and fosters civic pride amongst residents who are proud to call Redbridge their home.

The Council is responsible for dealing with issues of Planning Enforcement across the Borough. This is important to ensure that all development accords with both national and London wide planning policies while at the same time achieving the Council's spatial vision for Redbridge.

The National Planning Policy Framework (2012) recognises that:

**“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”**

Development without planning consent can cause upset and distress for residents, businesses and visitors to the Borough. Most breaches of planning control are not a criminal offence although there are some notable exceptions, such as unauthorised works to listed buildings, unlawful advertisements and demolition in conservation areas without consent.

All complaints regarding a potential breach of planning regulations are subject to an initial investigation and the Council has discretion over what action will be taken and when. This will be based on the particular merits of each individual case and enforcement action will be taken where and when it is considered fair, reasonable, proportionate and expedient to do so.

This policy sets out how the Council will deal with breaches of planning regulations. It provides information and guidance to residents, developers and those with other interests, regarding how the Council will deal with developments which do not accord with national and local policies. It seeks to balance the concerns of local people with the rights of owners, and sets out the nature and timescales associated with taking timely enforcement action where appropriate.

The enforcement process followed by the Council is in accordance with the national approach set out in the Government's Planning Practice Guidance (2014).

## 2. Planning Enforcement – Principles

### The definitions

#### What is Development?

The meaning of development is defined with the Town and Country Planning Act 1990 Section 55 as:

**“Development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”**

#### What is a breach in planning control?

A breach of planning control is defined under Section 171A of the Town and Country Planning Act 1990 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”**

**Before taking enforcement action consideration will be given to the Human Rights Act 1998 and to the Equalities Act 2010.**



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### **The Council's Planning Enforcement Service can investigate the following:**

- development consisting the change of use of land/buildings without planning consent
- works to listed buildings without consent
- any activity giving rise to direct or indirect damage to protected trees or qualifying trees in conservation areas
- non-compliance with conditions attached to planning permissions
- unauthorised building works and/or engineering works
- display of unlawful advertisements
- untidy rear gardens – the Council's Civic Pride Service has powers to deal with untidy front gardens.\*

### **The Council's Planning Enforcement Service cannot investigate:**

- boundary wall disputes and other land ownership issues as these are civil matters outside of the planning legislation
- legal covenants
- devaluation of property
- obstructions, parking and traffic enforcement\*
- graffiti and anti-social behaviour\*
- dangerous structures\*
- noise nuisance\*

*\* The Council has other powers to deal with these breaches – please see the useful contacts sections in Appendix A of this policy*

### 3. Time Limits for Taking Enforcement Action

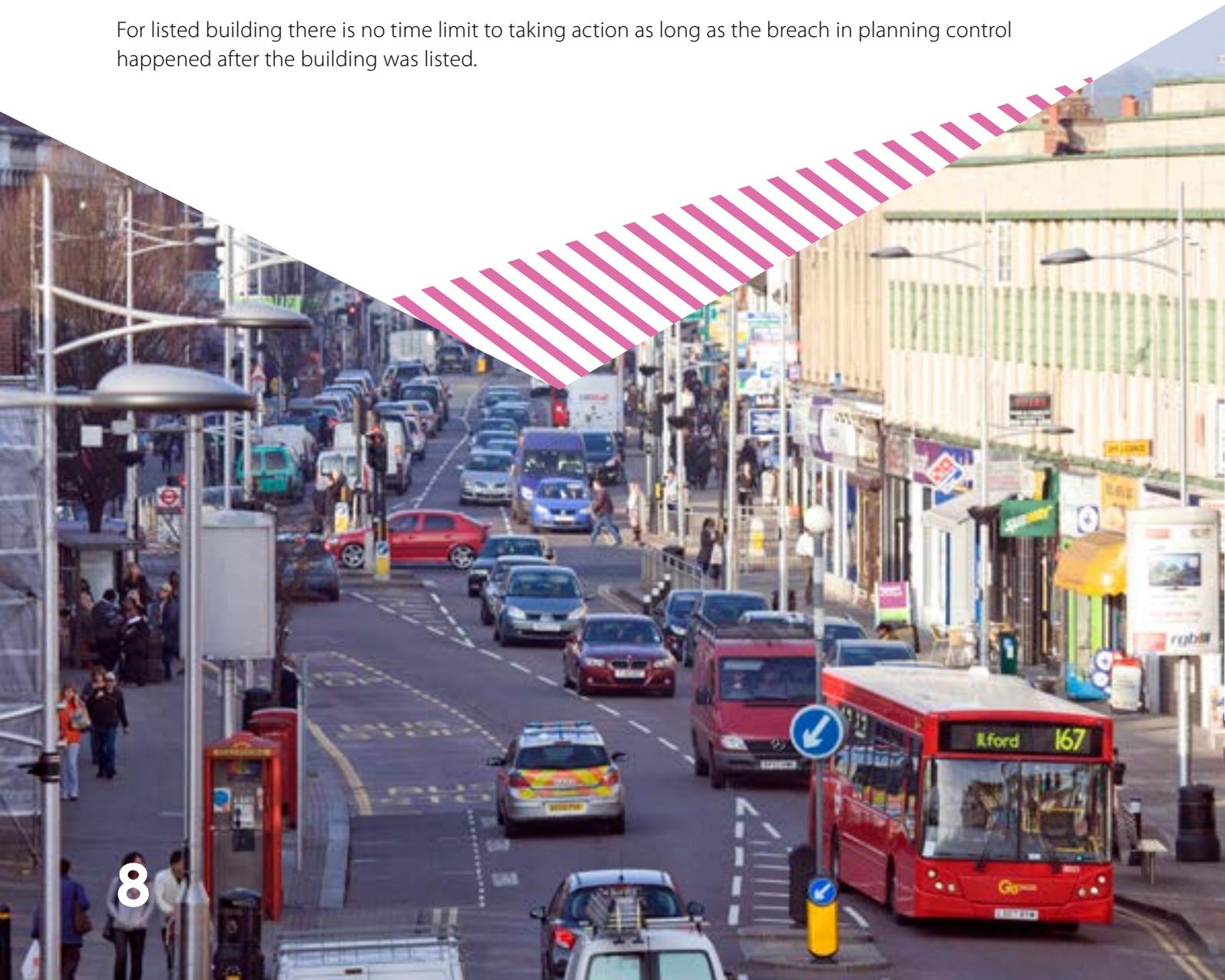
The Council may take enforcement action against unauthorised operational development for up to four years from the date the breach commences. Operational development includes for example:

- erection of an front side or rear extension
- dormer windows / mansard roof
- other alterations to houses
- alterations commercial property
- shopfront installation

For any development involving a change of use to a residential use (C3) the Council has four years to take enforcement action.

For any other development involving a change of use or breach of planning conditions the Council may take action up to **ten** years from the commencement of the breach.

For listed building there is no time limit to taking action as long as the breach in planning control happened after the building was listed.





### 6. Redbridge Planning Enforcement – objectives and process

The Council aims to treat all service users in a fair and consistent manner and will deal with all cases where a breach is discovered in a transparent way.

Where a breach has occurred we will:

- ☐ communicate clearly to the responsible person by explaining what steps are required to resolve the breach and the possible consequences in the event that those steps are not taken
- ☐ update the complainant about what actions are being taken - this means we will inform you at each key stage of the process, for example during the progress of the investigation, whether an enforcement notice has been served or an appeal against a notice has been received
- ☐ provide identification when we visit
- ☐ take formal enforcement action where required in the event that attempts to negotiate a remedy appear to fail
- ☐ explain the right of appeal against the notices
- ☐ let the complainant know the final outcome of their complaint

Although personal circumstances may be considered in some instances and each enforcement complaint received will be considered on a case by case basis, the Council will generally deal with enforcement complaints in line with process set out in Section 7.

### 8. Enforcement toolkit

#### Negotiation

Negotiation is encouraged in all but the most serious cases as the best way to resolve a breach.

#### Planning contravention notice (PCN)

This is a notice which allows the Council to collect evidence which will help to determine if a breach is taking place and the next steps. The owner and/or person responsible have 21 days to respond, failure to do this may result in prosecution.

#### Enforcement notice

The enforcement notice allows the Council to formally require a breach of planning control to be remedied. Government guidance states that enforcement notices should only be served when expedient to do so. Failure to comply within the specified timeframe is a criminal offence which can lead to prosecution proceedings. Enforcement notices can be appealed and the Planning Inspectorate can decide to uphold the notice, amend it or have it quashed.

#### Section 215 notices

Under Section 215 of The Town and Country Planning Act 1990 (as amended) the Local Planning Authority can deal with untidy land.

This section of the Act allows a Local Planning Authority to take enforcement action via an 'untidy land' notice where the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land.

#### Breach of condition notice (BCN)

A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the Local Planning Authority in the notice (Section 187A of the Town and Country Planning Act 1990).

Any recipient of a breach of condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with the conditions and any specified steps, will be in breach of the notice and guilty of an offence Section 187A(8) and (9) of the Town and Country Planning Act 1990. Summary prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice.

### Tree replacement notice

Section 207 of The Town and Country Planning Act 1990 (as amended) allows the Council to enforce the replacement of Tree Preservation Order trees on parties who have failed to comply with their duty to replace under Section 206. The notice specifies the date from which the replacement Notice becomes enforceable, not less than 28 days from the date of service.

### Planning enforcement order

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

### Stop notice

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice (Section 183 of the Town and Country Planning Act 1990).

A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence (Section 187(1) of the Town and Country Planning Act 1990).

A person guilty of this offence is liable on summary conviction to a fine not exceeding £20,000 – and on conviction on indictment, to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

### Temporary stop notice

A temporary stop notice (Section 171E of the Town and Country Planning Act 1990) requires that an activity which is a breach of planning control should stop immediately.

A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening this notice will be prosecuted for an offence.

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### Prosecution

It is a criminal offence not to comply with the requirements of a statutory notice. The Council can prosecute or formally caution parties who fail to comply with the requirements of an enforcement notice.

A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment an unlimited fine.

Examples of recent prosecutions include:

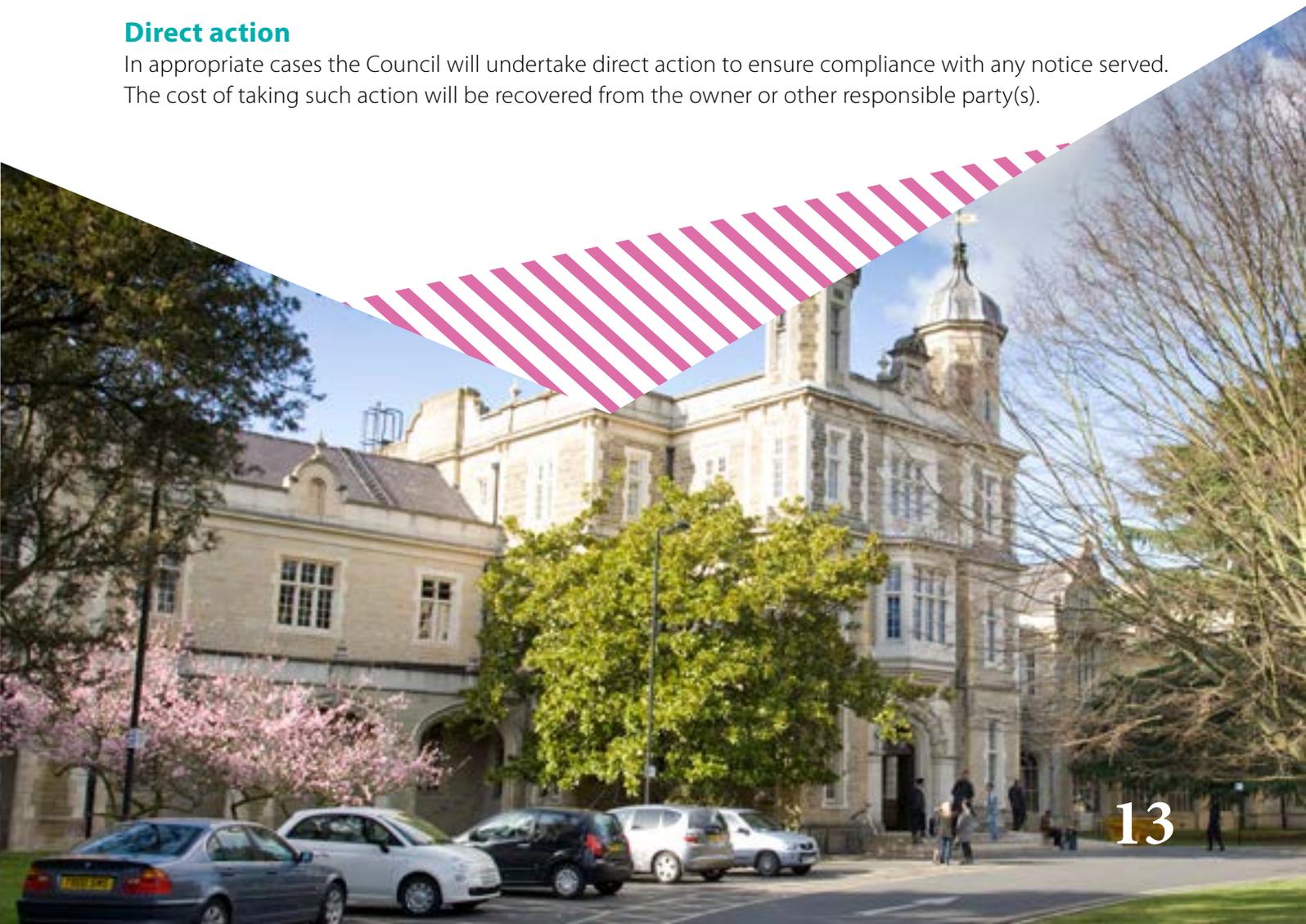
- ☞ non-compliance with an enforcement notice
- ☞ non-compliance with a breach of condition notice
- ☞ unauthorised works to listed buildings
- ☞ demolition in a conservation area and
- ☞ unlawful display of advertisements

### Injunction

The Council may apply to a court for an injunction to restrain a breach of planning control that is occurring or is reasonably expected to occur. An injunction will be sought in the most serious of cases where immediate action is urgently required.

### Direct action

In appropriate cases the Council will undertake direct action to ensure compliance with any notice served. The cost of taking such action will be recovered from the owner or other responsible party(s).



### 9. Direct Action Policy

In order to ensure the Council is able to resolve breaches of planning consent, as a result of non-consented works in a timely manner, there are a range of methods by which the Council can secure compliance with the requirements of an enforcement notice.

This includes direct action which offers the opportunity for the Council to resolve a breach through remedial action.

#### Background

If the requirements of an enforcement notice are not met within the period of compliance specified in the notice, Section 178 of The Town and Country Planning Act 1990 (as amended) grants the Local Planning Authority additional powers to:

- Enter the land and take the steps to satisfy the requirements of a notice and
- Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so

In light of the social, physical and financial issues surrounding the use of Direct Action, this Policy serves to provide details of the procedure/considerations for undertaking such action and the process by which the Council will recover costs of this action.

#### When will direct action be taken?

Direct action may be taken either in isolation of or in conjunction with prosecution / injunction action. The Council may choose to take action as follows:

- Where the requirements of an enforcement notice have not been complied with by the compliance date and;
- Where the Council considers that direct action is necessary, considerations are given in light of significant harm and amenity considerations caused by a planning breach.

#### Direct action procedure

Once the date to comply with the requirements of an enforcement notice expires, Council officers will visit the site to check compliance. If following this site visit it is confirmed that the notice has not been complied with in full, the Council will assess whether it is expedient to take additional action, including prosecution, an injunction and/or direct action.

The Council will write to the owner/responsible parties to advise of the intention to take direct action, at least 28 days before works are due to take place.

In order to access the property, the Council may need to liaise with other services including the police, bailiffs and/or a locksmith.

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In taking direct action the Council may appoint an officer to project manage the works on-site to ensure that the steps of the notice are complied with.

It should be noted that any materials, debris or other items that are removed from a premises throughout the course of undertaking direct action will be stored securely for a minimum of three days.

The Council will take steps to advise the owner(s) of these items and how to recover such possessions. After this time the Council may choose to dispose of this material or sell these on to recover the expenses of taking direct action.

### Process for recovery of costs

In accordance with the provisions of Section 178 of The Town and Country Planning Act 1990 (as amended), the Council will undertake all reasonable endeavours to recover expenses incurred in undertaking direct action.

A charge will be applied to the land and an invoice sent to owners/responsible party(s); this charge is binding on successive owners of the land to which the original Enforcement Notices relates. This charge will take effect on the date that the Council undertakes direct action to comply with the Enforcement Notice.

The expenses recoverable will include such sums as the Council considers being reasonable in respect of its establishment charges. An establishment charge is the reasonable charge that a Local Authority incurs for administering the direct action procedure.

The Council will take all reasonable steps to recover the expenses as a debt and will raise an invoice in accordance with its existing practice and procedure.

As a matter of priority, the Council's Land Charges Service will be notified of the recoverable sums that will be entered as a record against the property in the register of local land charges. If the debt remains unpaid, the Council will take steps to register the charge at the Land Registry.



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