

A Planning Information Leaflet

The Complete Guide to the Enforcement Service at Rochford District Council



A guide to Rochford District Council's planning enforcement service

1 Introduction

The aim of this document is to:

- clearly explain how the enforcement service works;
- explain how to let us know if you suspect someone of breaking planning controls; and
- provide advice if you have broken the rules.

As the local planning authority (LPA), we make planning decisions on new work and the use of land and buildings (known as '**development**') by considering what is in the **public interest**. Our planning enforcement service can only take account of issues that relate to the public interest – we cannot consider private matters. To help you, we have in this leaflet listed examples of matters that are covered by this service and those that are not.

The planning enforcement policy (available from our offices in Rayleigh and Rochford or from our website) explains our commitment to fully investigate all reported complaints, and the level of customer service that you can expect. In dealing with enforcement matters, the main aims of the service are to:

- respond quickly, in line with local performance targets, to customers'

complaints about cases where planning controls have been broken; and

- deal with cases where the break in planning controls is clearly harming the attractiveness of the district or affecting a resident's right to reasonably enjoy their home.

The number of complaints we receive about planning issues is growing, and people look to us to protect their environment from being used inappropriately. We receive complaints from members of the public, ward and parish councillors, local-authority departments and teams, and other public and private organisations.

You must make complaints in writing, by e-mail or by filling in the special form on our website. There are more details in section 6, 'How can I report a break in planning controls?'

2 Our duty to investigate

We have a duty to investigate any possible break in planning controls we are told about, as long as the person making the complaint does so **in writing** (as a letter or e-mail) and gives their name. While we try to deal with complaints quickly, we need to prioritise cases and so some complaints may take longer to deal with than others.

Not all development on land will necessarily be breaking planning controls. We provide guidance leaflets to explain what is classed as '**permitted**

development' (that is, development that does not need our permission to go ahead).

3 When we can take enforcement action

One of the most important parts of planning enforcement, but perhaps one of the least understood, is the fact that we have to make a decision about whether or not to take enforcement action. Because something is breaking planning controls isn't, in itself, a reason for us to take enforcement action. The first point to make is that most breaks in planning controls are not criminal offences. Second, we have to be sure that there are valid **planning reasons** to take action when we have identified a break in planning controls.

Most breaks in planning controls cannot be stopped straight away. If they involve a planning application or enforcement appeal to the Planning Inspectorate (a part of the Government totally independent of the council and called 'PINS' for short), they may take some time to deal with.

Even so, we want to make sure people keep to the planning system in our district, and will guide development in line with our and the Government's decisions and policies. That means taking great care to make sure that the right development takes place in the right areas, and taking appropriate steps to limit the harmful effects of any development which has taken place without our permission.

4 Breaks in planning controls

The table below highlights **some** examples of matters which our planning enforcement team can and cannot deal with under the planning laws.

What are breaks in planning controls	What are not breaks in planning controls
<ul style="list-style-type: none"> ✓ New buildings ✓ Significant changes in how a building is used ✓ Changes to an approved plan ✓ Not keeping to a planning condition ✓ Fixed signboards, placards, signs, flags and so on (all called 'advertisements') not on the highway (which includes footpaths, grass verges and so on) ✓ Untidy sites ✓ Unauthorised work to listed buildings ✓ Dropped kerbs on classified roads (for example, A roads, B roads and so on) 	<ul style="list-style-type: none"> x Disputes over boundaries or who owns a piece of land x Permitted development (for example, dropped kerbs on non-classified roads – see our advice leaflets and website) x An obstruction on any footpath, road or right of way x On-street parking problems x Building regulations (for example, work inside a building) x Disputes over the Party Wall Act, which protects your property if your neighbour is carrying out building work x Piping ditches x People trespassing on or stealing land x Pollution, fly-tipping and noise nuisance x Not keeping to health and safety laws

This is not meant to be a full list, and we recommend that you contact our enforcement team for advice and guidance.

5 Confidentiality

If you think there has been a break in planning controls and you ask us to investigate it, we will keep your complaint confidential as far as we are able to. Under the Freedom of Information Act or the Environmental Information Regulations, people can make formal requests, in writing, for certain information we hold. However, information about your identity may be classed as 'exempt information' under the Freedom of Information Act, and so we may not have a duty to release it if we receive a formal request from a member of the public.

Even so, if we begin taking formal enforcement action we may have to defend our position at a public inquiry or in court. It may help our case if you are able to take part, as the day-to-day information and evidence you provide may be vital. However, if at this stage you still feel that you would rather keep your identity confidential, we will not reveal your details. We may ask you to provide us with an anonymous statement.

If, after our investigation, someone puts forward a planning application, you will have the opportunity to comment on it. However, we will make these comments available to the public.

6 How can I report a break in planning controls?

When you report a possible break in planning controls, it will help us greatly if you can:

- provide details of the exact **location** of the site (for example, the house number) – we can send you a plan if this will help you;
- describe what has **happened** on the land;
- provide dates for **when** this took place;
- identify who you believe is **responsible** and give us their names; and
- provide, if possible, dated **photographs** of the activities that have taken place.

We will not usually investigate anonymous complaints (where people make a complaint without giving their name), unless they are about a matter that could put the public's safety at risk or cause serious to the environment. Please see our planning enforcement Policy – available on our website or as a leaflet you can get from our offices – for more details.

Reporting a break in planning controls

You can report a possible break in planning controls in a number of different ways.

- 1 By filling in the form on our website. Look in the 'Planning' section of the website for a link to the form.

- 2 By writing to the Planning Enforcement Team, Rochford District Council, Council Offices, South Street, Rochford, SS4 1ED, or sending an e-mail to planning.enforcement@rochford.gov.uk.

Please **include as many of the details listed above as possible**. Because we will not investigate anonymous complaints, you must include your full contact details, including your address and phone number.

7 Investigations

Case officers

We will pass new planning enforcement cases on to one of our case officers, and send you an acknowledgement giving you the name and contact details of the officer dealing with your complaint.

Initial visits to the site

Once we have passed your case to the case officer, they will visit the site within the target times set out below.

Category	Type of break in the planning controls	Time we aim to respond
A	Serious breaks in planning controls (for example, work to a listed building, removing a tree, breaks that seriously harm the environment)	24 hours
B	Minor breaks, such as a development not being built to the approved plan, a new access road being connected to a highway	7 working days
C	Other breaks, such as the use of domestic outbuildings	10 working days

Explaining whether we will take enforcement action

We will not take action in every case, and we will make our decision based on the reasons explained below.

‘No actionable breach’

It may be the case that planning controls have not been broken. For example, the work may be ‘permitted development’ (see page 2). Or, there may not be any evidence to show that a change in how the building is used was ‘material’ (that is, significant enough to involve development). Similarly, changes to plans that have already been approved may not be serious enough for us to consider them as breaking planning controls. Or, it

may be that the development comes into one of the categories listed in section 4.

‘The breach is not expedient to pursue’

A technical break in planning controls is not, in itself, enough of a reason for us to take enforcement action. Government guidelines recommend that we should only take enforcement action when a break in planning controls is unacceptable for planning reasons. For example, taking long and expensive enforcement action to demand that someone removes a conservatory built without planning permission may be pointless if an application to keep the conservatory would be likely to be approved.

‘The development is lawful’

The development may be legal in planning terms due to the length of time since it was completed or if the building has been used continuously for a specific activity. The table below explains when development or the use of a building is considered to be legal.

Activity or development	Time after which the development becomes legal
‘Operational development’ (for example, building work)	Mainly completed for more than four years
A building being built or used as a single house	Mainly completed and used continually for more than four years

Activity or development	Time after which the development becomes legal
A change in how the building is used, such as using a residential property for business purposes	If the building has been used for the same level of activity for more than 10 years
A building being used in a way that breaks a condition of its planning permission	If the building has continually failed to keep to a condition of its planning permission for more than 10 years

Negotiations

We can sort out many breaks in planning controls, or the effects of them, by negotiating with the person or organisation that owns or uses the building. In most cases, we will only take enforcement action if we are unable to successfully negotiate in this way.

The person or company carrying out the work (known in legal terms as the ‘transgressor’) will be allowed a certain length of time to correct the break in planning controls. This may involve putting forward an application to keep the development or continue to use the building in the same way, or putting forward plans to make a minor amendment to a plan that has already been approved. We will only take enforcement action as a last resort if there is no other option available to deal with the break in planning controls. We must be particularly sensitive to the needs of small businesses when we consider the need to take enforcement action.

‘Retrospective’ applications

This is the name for a planning application a person or company makes to keep an **existing** development. We handle this in the same way as any other planning application, and we will formally consult the person’s or company’s neighbours and give them a chance to comment. If we refuse planning permission, the person or company has the right to appeal to the Planning Inspectorate for an independent assessment of our decision. You can find more information on our website, and the Planning Inspectorate’s contact details are at the end of this leaflet.

Formal action

This will be in the form of a legal notice that may be made against the land rather than the person or company carrying out the work. The notice will set out the steps that need to be taken to deal with the break in planning controls and a timescale for when the steps should be carried out. Again, depending on the circumstances of the case, we will allow a reasonable period for the person or company to take the steps set out in the notice. If the person or company appeals to the Planning Inspectorate, the notice will be put ‘on hold’ until a decision is made on the appeal. As a result, this process can take a long time.

See section 11 of this leaflet for a detailed explanation of the different types of notice that we can serve.

Why does the process take so long?

There often appears to be a delay before we take any action to deal with a reported break in planning controls. In fact, before we make any enquiries, our officers need to be sure that:

- the information they have received is genuine; and
- the complaint is properly registered, recorded and researched.

The following factors can cause a delay in the time it takes to deal with a complaint.

- Difficulty in gaining access to the site.
- The need for more information (for example, a Land Registry check or a vehicle check with the DVLA).
- A planning contravention notice, or PCN (a procedure that asks for information from an owner about activities on a site), being prepared and served. A person served with this kind of notice will be given 21 days to provide the information.
- Having to carefully consider the response to a PCN before making a decision about what action to take.
- A person or company making a planning application which then fails.
- A person or company making an appeal against our decision.

Once we have identified a break in planning controls, the officer must discuss the situation with the person (or people) in control of the land. The officer must also list the action the person (or people) needs to take to sort out the break in planning controls. This is often followed by a period of negotiation, which could lead to the break no longer existing or the person making a planning application for the necessary planning permission. We must allow a reasonable time for a reported break in planning controls to be dealt with.

8 Priorities

We receive a lot of complaints about possible breaks in planning controls, and some of these may need us to carry out detailed investigations and research. As a result, we have developed a scheme to prioritise cases in order of how important they are. However, this may still mean that cases can take a great deal of time to sort out completely. The scheme we use to prioritise cases is shown in the following table.

Priority	Type of break, or stage in our investigation
High	<ul style="list-style-type: none"> • Initial visit to a site • Breaks affecting public safety • After a planning appeal has been dismissed, or the person or company is out of time to make an appeal against an application we have refused • Cases where authorisation has been given for a notice to be served • Cases where a person or company has not kept to a notice, and we have prepared evidence to present to the court • Preparation work for enforcement appeals
Medium	<ul style="list-style-type: none"> • Investigations of breaks that fail to keep to the aims of our policy • Investigations or visits to sites to find out whether the person or company is keeping to a notice
Low	<ul style="list-style-type: none"> • Technical breaks that do not fall into the above categories • Cases waiting for a decision to be made on a planning application • Matters not included above

9 Formal enforcement action

This section provides information about the enforcement process in cases where we decide to take formal enforcement action.

What do you need to know before taking enforcement action?

Before we can decide what action to take to deal with a reported break in planning controls, we must fully research how the site has been used in the past and make enquiries about the reported break. This would include pointing out the detail of the break to the person responsible and noting their comments. In particular, we need to know:

- whether there is, or was, a break in planning controls;
- whether any time limits apply to the break;
- the names of the people involved in the activities on the land; and
- whether there is enough evidence to support taking enforcement action.

Who authorises enforcement action?

Most enforcement complaints, including formally serving enforcement notices when appropriate, are dealt with by our Head of Planning and Transportation. This is important as it means that we can take quick action to deal with breaks in planning controls. However, many complaints can be sorted out through negotiation and don't need us to serve enforcement notices.

Why do you not take action in every case?

We must consider a range of legal and other matters to decide whether there is a valid reason to take any action. We will generally consider the following points for all cases.

- Does the development keep to the local development plan?
- Would the break affect the attractiveness of public areas or the existing use of the land and buildings, and mean that protecting the land or buildings would be in the public interest?
- Would the break affect the resident's right to reasonably enjoy their home?
- Is the break unimportant or purely technical?
- The practical outcome of the enforcement notice. For example, could it lead to a more intrusive building being built as permitted development (that is, without the need for planning permission)?
- Government guidance and appeal decisions may mean that taking further action would not be justified or appropriate.
- Previous local planning authority and appeal decisions on the site may mean that the development has been accepted as appropriate.

It is generally unreasonable to issue an enforcement notice if, despite the lack of valid planning permission, there is no significant planning objection to the break in planning controls.

10 Contact information

You can contact our planning and building control officers by phone on the numbers below from 8.30am to 5.30pm Monday to Thursday and from 8.30am to 5pm on Fridays.

Planning administration: 01702 318191

Planning enforcement: 01702 318022

Or, you can visit the planning office in Rochford from 8.30am to 5.30pm Monday to Thursday (8.30am to 5.00pm on Fridays) and speak to a duty officer. You can also e-mail planning.enforcement@rochford.gov.uk or write to:

Rochford District Council
Council Offices
South Street
Rochford
SS4 1EF.

Mark your letters for the attention of 'Planning enforcement'.

11 Notices and legal terms explained

Planning contravention notice	A notice we serve asking the person or company that owns or uses the site to provide, within 21 days, certain information to help us decide whether there has been a break in planning controls. It is an offence not to respond to this request for information.
Enforcement notice	A formal notice we serve if there is a break in planning controls which is causing harm. The notice will list the steps the person or company that owns or uses the site needs to take to sort out the break. We only serve this notice as a last resort when negotiations have failed. Anyone who is served with this kind of notice has the right to appeal to the Planning Inspectorate (PINS).
Stop notice	A notice we serve to make sure certain activities stop immediately. We will serve a stop notice as well as an enforcement notice if we consider it to be important for an activity (for example, building work) to stop immediately.
Temporary stop notice	A notice we serve to make sure certain activities stop, but only for a temporary period. Unlike the stop notice, we can serve a temporary stop notice without the need to have first served an enforcement notice.

<p>Breach of condition notice</p>	<p>A notice we serve when a developer fails to keep to conditions we have set for planning permission. The notice gives the developer a duty to take steps to keep to the conditions within a specific period, and can be enforced in the magistrates' court.</p>
<p>Injunction</p>	<p>We can apply to the High Court for an injunction to control or ban certain developments or activities, no matter whether these are already taking place or if we expect them to take place in the future. We will usually only apply for an injunction in exceptional circumstances where the developments or activities could cause serious harm.</p>
<p>Article 4 direction</p>	<p>We can serve a notice that removes rights to carry out development that would normally be allowed under the planning laws. This might include removing someone's right to subdivide a large plot of land and put up fencing.</p>



Rochford District Council

Council Offices South Street
Rochford Essex SS4 1BW

Telephone: 01702 546366

Facsimile: 01702 545737

Website: <http://www.rochford.gov.uk>