



Chelmsford City Council Overview and Scrutiny Committee

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Planning Enforcement Inform and Debate

Report by:

Director of Sustainable Communities

Officer Contact:

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Purpose

The report sets out the ways in which the Planning Enforcement service within Development Management operates.

Recommendation

That the content of the report is noted.

1. Introduction

1.1. The Planning Enforcement Team is an integral part of the Planning service and has responsibility for investigating alleged breaches of planning control and ensuring that development is carried out in accordance with the relevant planning permission.

1.2. A breach of planning control is defined in 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.”

1.3. Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. Local planning authorities have a range of enforcement powers handed down through Part VII of the Town and Country Planning Act 1990.

1.4. The National Planning Policy Framework (NPPF) sets out the government’s planning policies for England and how these are expected to be applied. This policy document also sets out the objectives and importance of the enforcement function within the planning system as follows:

‘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.’

2. The Planning Enforcement Team

2.1. The Council’s Planning Enforcement Team is managed by the Planning Environment Manager.

2.2. The team consists of:

2 full time Planning Investigators;
1 full time Senior Planning Enforcement Officer;
1 Senior Planning Officer (Enforcement).

2.3. The Planning Enforcement Team works closely with and as an integral part of the Development Management Planning Service. The Enforcement Team has day-to-day communication with Planning Officers within Development Management, often working alongside one another on different aspects of sites and cases.

2.4. In addition to the Development Management Service, the Planning Enforcement Team work collaboratively with the Council’s Principal Heritage Officer to investigate and resolve breaches of planning control relating to Listed Buildings and Conservation Areas.

2.5. The Planning Enforcement Team work collaboratively with the Council’s Public Health and Protection Service when investigating alleged breaches of planning control with noise disturbance and licensing implications.

2.6. When dealing with Gypsy and Traveller encampments on land within their ownership, the Planning Enforcement Team lead on enforcement action and work with the Council's Legal Service and Essex County Council Countywide Traveller Unit. On encampments on Council owned land, the Planning Enforcement Team assist Parks and Green Spaces, Corporate Property Services and the Essex County Council Countywide Traveller Unit where necessary, but do not take the lead as stronger powers exist outside of the planning regime.

3. Enforcement Policy

3.1. The Government encourages the preparation and adoption of local enforcement plans. This is because they:

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

3.2. The Development Management Enforcement Plan sets out the policies and procedures that the Planning Enforcement Team follow, and the level of service that is delivered.

3.3. The purpose of the plan is to define the service we provide and identify priorities and objectives to ensure the Team make the most effective use of resources.

3.4. The plan also provides advice and information to:

- anyone complaining about a potential breach of planning control;
- anyone who may have carried out development in breach of planning control; and
- members of the public.

3.5. The Development Management Enforcement Plan sets out general principles, the Council's enforcement policy, procedures, service standards, prioritisation, timescales and the planning enforcement powers available.

3.6. A copy of the Development Management Enforcement Plan is attached at [Appendix 1](#).

4. What the team does

4.1. The matters for which the team are responsible include:

- Unauthorised building and engineering works
- Unauthorised change of use of land or buildings
- Non-compliance with conditions attached to planning approvals
- Works taking place to Listed Buildings without consent
- Display of unlawful advertisements
- Land or buildings whose condition causes significant harm to the amenity of the local area
- Unauthorised demolition of a building within a Conservation Area
- Unauthorised felling or carrying out works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area.

4.2. The team investigate all potential breaches of planning control that are reported to the Council. Anonymous complaints are not normally investigated. Investigation includes site visits, taking measurements where necessary, reviewing planning legislation, and reviewing any relevant planning history. Officers keep all parties informed of the situation, any action taken and any action proposed to be taken.

4.3. In the first instance Officers seek to resolve all breaches of planning control through negotiation. Where appropriate this may include the submission of a regularising planning application. In some instances, the breach of planning control will be resolved through discussion with the developer to remove the breach in a timely manner. Officers provide extensive advice about how to resolve a matter without the need for formal planning enforcement action.

4.4. Where resolution through negotiation or a regularising planning application is not possible, or the breach of planning control would not be granted planning permission when assessed against the Chelmsford Local Plan, the team will use the full range of enforcement powers available. This can include the service of a planning enforcement notice which requires a breach to cease and steps taken to remedy the breach by a specified date. This is the most common type of formal action. Other powers include:

- Planning Contravention Notices
- Temporary Stop Notices & Stop Notices
- Untidy Land Notices
- Breach of Condition Notices
- Injunction
- Direct Action
- Prosecution

4.5. Should an enforcement notice be issued the owner/occupier may submit an appeal to the Secretary of State (Planning Inspectorate). The appeal may be decided by written representation, an informal hearing or at a Public Inquiry. The Secretary of State can decide to dismiss the appeal and uphold the

Enforcement Notice, to alter or quash the Notice, or grant planning permission for the breach. Where an appeal is submitted the Planning Enforcement Team will represent the Council at all stages, including submitting written submissions and giving evidence at a hearing or Public Inquiry.

- 4.6. The Planning Enforcement team will always act proportionately, in the public interest and in a way to ensure fairness and consistency between cases.
- 4.7. The team do not take enforcement action just because development has taken place without the necessary permission. An assessment is made of the harm and effect on public amenity of the unauthorised development before deciding what action to take. Enforcement action is only taken where a breach of planning control unacceptably affects public amenity or is justified in the public interest. Action is not normally be taken where a breach of control is trivial or technical and causes no harm to amenity.
- 4.8. The team are currently dealing with several complex cases with significant levels of public interest. In March 2024, following a period of six months continuous work in building a case and securing interim court orders, the Planning Enforcement Team secured a final High Court injunction order to require an unauthorised Travelling Showman's site to be removed and the land restored to its former condition should their planning appeal be dismissed. The Court also required the defendants to pay 70% of the Council's costs.
- 4.9. In April 2024 the Team worked in collaboration with Braintree District Council on a joint application for a High Court injunction order to require compliance with five planning enforcement notices affecting one site that straddles the boundary of both local authorities. Chelmsford City Council's Planning Enforcement Team took the lead in the proceedings. The Judge granted the injunction order and also granted the Council's application for the defendant to pay 100% of the Council's costs.
- 4.10. In addition to the high-profile High Court injunction cases, the Team has continued to investigate complaints, negotiate resolutions, and take formal action on all other current planning enforcement cases.

Workload

- 4.11. The manager of the Planning Enforcement Team circulates a monthly email about the team's performance to all Members and Parish Councils.
- 4.12. At present (September 2024) there are 242 active investigations underway where the team are seeking to remedy breaches of planning control.
- 4.13. 233 new enforcement cases have been opened this year (since 1st January 2024). On average, the team open 6 new cases per week.
- 4.14. The team has taken the following enforcement action since the beginning of the year (table 1):

Table 1: 2024 Action to Date (17/9/2024)	Number
Number of enforcement notices issued	13
Number of stop notices issued	0
Number of temporary stop notices issued	2
Number of planning contravention notices issued	17
Number of breach of condition notices	0
Number of Article 4 Directions made	1
Number of enforcement injunctions granted by the High Court	2

4.15. So far this year, the team have secured the submission of 98 planning applications accounting for £30,218.00 in fee income.

4.16. Over the year, the team have received five appeal decisions resulting from appeals made against enforcement notices that have been served. The team defends the issue of enforcement notices, and whether planning permission should be granted, as part of these appeals. All of the appeals were dismissed and the enforcement notices upheld by the Planning Inspectorate, this is indicative of the quality of the enforcement work carried out by the team.

5. Issues

General

5.1. Planning enforcement is often referred to as a 'discretionary service' and not a statutory duty, however, Councils have a duty to investigate planning breaches. It is only the taking of further action that is discretionary.

5.2. Planning enforcement services generally are under continuous pressure. Local residents often advocate strongly for their complaints to be resolved, demonstrating a persistent commitment to their complaints. Furthermore, the encouragement of construction by central government, as well as the expansion of national Permitted Development Rights seems to result in more unauthorised development.

5.3. The ongoing housing crisis adds a further layer of pressure and seems to incentivise landlords and developers to provide substandard residential accommodation.

5.4. Furthermore, the frequently changing rules over Permitted Development Rights and changes to the Use Classes Order mean that there is an increase in enforcement complaints from local residents who want officers to check development complies with the numerous limitations and conditions.

5.5. Planning legislation is complex, frequently amended and often the subject of judicial review. Considerations are often subjective, with very few definitions or clear directions in law. As such, it is a challenge to keep abreast of case law. It is also challenging as each case can present nuanced considerations which

are complex and often not clear-cut. This gives rise to challenges, both from members of the public and professional advocates.

Public Interest & Expediency

- 5.6. Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest. There is a public interest in enforcing planning law and planning regulation in a proportionate way, however what is proportionate will vary depending on the case circumstances. Furthermore, where the balance of public interest lies will vary from case to case.
- 5.7. This consideration is often challenged by complainants and local residents. To a resident, a breach of planning control may appear significant, however when considered in the round it may be a minor technical breach of planning control that does not warrant formal action. Just because a breach of planning control exists, it does not follow that action should be taken; an assessment must take place.
- 5.8. In deciding whether to take formal planning enforcement action the local authority must also consider whether it is expedient to do so. This assessment requires consideration against the Chelmsford Local Plan and any other material considerations in a similar way to which planning applications are considered. This presents a number of challenges, firstly in terms of resourcing and consideration without all the documents and consultations you would expect with a planning application, but also that complainants and local residents will almost certainly disagree with a decision.

Powers & Sanctions

- 5.9. Ultimately, the local planning authority have limited planning enforcement powers. Hard hitting and preventative powers, such as injunctions and stop notices, are costly, require a lot of resource and run a risk of financial compensation. Other powers, such as enforcement notices and prosecution for failure to comply with an enforcement notice, result only in punitive charges; often fines (albeit unlimited) paid to central government. Successful prosecutions, and dismissed planning enforcement appeals, do not in themselves resolve the actual breach of planning control.
- 5.10. In exceptional circumstances, the Local Planning Authority has the power to enter the land, undertake the steps necessary to remedy a breach of planning control and attempt to recover the costs. This is known as 'direct action'. Whilst direct action to resolve a breach of planning control is a power available to the Council, this is rarely used. This is largely due to the financial cost associated with such action. This power can only be used in exceptional circumstances following a balanced assessment of expediency, necessity, cost, risk, and other powers available.
- 5.11. Where necessary, officers may interview individuals under the provisions of the Police and Criminal Evidence Act 1984 (PACE interviews) where the

individual is suspected of involvement in a breach of planning control. PACE interview conduct is strictly governed and failure to comply with the requirements of the Act and Codes of Practice can have significant consequences for any subsequent enforcement action, such as exclusion of evidence from a prosecution trial through to the stopping or collapse of an entire case because of non-compliance with evidential and procedural requirements. Attendance to interviews is not compulsory and interviewees are free to leave at any time.

Managing Expectations

- 5.12. Public opinion can bring pressure to take enforcement action. In particular, where a development has been granted consent following objections from local residents, it is often expected that Planning Enforcement will police the development. The team do not have the resources to actively monitor development, and instead is a re-active service whereby we will investigate following a complaint.
- 5.13. Furthermore, managing complainants' expectations is a challenge. With over 200 active cases at any one time the team does not have the resources to visit sites multiple times at every stage of development or an ongoing breach. In the majority of cases, covert surveillance cannot be justified.
- 5.14. In addition, as described above, formal planning enforcement action is largely punitive and does not always result in the cessation of the breach of planning control. Furthermore, the time taken in taking action, waiting for retrospective applications and appeals to be determined, and potential criminal prosecution proceedings can be considerable.

Workload Management

- 5.15. The Planning Enforcement service faces a considerable number of cases where there is an alleged breach of planning control. So far this year the team have served 13 Enforcement Notices. This follows a high of 22 enforcement notices served in 2023. This is set out below (table 2):

Table 2 – Notices Served	2019	2020	2021	2022	2023	2024 (as of 17/9/2024)
Enforcement & Breach of Condition Notices	16	11	14	14	22	13

- 5.16. In light of the challenges faced by the service, coupled with ever stretched local planning authority resources and a difficulty recruiting public sector Planners, workload continues to grow. A small number of active cases require a disproportionate amount of officer time; in terms of investigating the alleged breach of planning control and responding to persistent local residents. Workload management is at a critical level, with each Planning

Investigator and Senior Planning Enforcement Officer carrying a case load of over 80 cases. Since 2019 the number of high priority cases (ENFA – such as cases causing immediate and irreparable harm, unauthorised demolition of a heritage asset, unauthorised felling of a tree protected by a Tree Preservation Order) has increased as shown in table 3:

Table 3 – High Priority Cases	2019	2020	2021	2022	2023	2024 (as of 17/9/2024)
Case numbers	1	1	3	3	9	2

6. Challenges

Evidential Tests

6.1. One of the main challenges faced by the Planning Enforcement service relates to evidence gathering. Any formal planning enforcement action must be based on and backed up by robust evidence that a breach of planning control has occurred as a matter of fact. This is a challenge and can often require a significant amount of officer time. In addition, the Service do not have the authority to investigate covertly; all investigations must be overt. This can present difficulties as those carrying out breaches of planning control will be aware of our investigation. Furthermore, complainants often expect the Service to take action based on ‘word of mouth’ or speculative circumstances. Basing formal action on these types of allegations would not stand up in Court and would likely result in allowed appeals and costs awarded to the other parties.

‘Gaming’ the System

6.2. Planning laws and loopholes are widely publicised. For example, many land owners are aware that after a period of time (now ten years, previously four years, as set in ‘Planning Reforms’ below) a building, or the use of a building as a house, will become immune from planning enforcement action.

6.3. This legislation applies across England and results in many people attempting to ‘game’ the planning system by carrying out a development, documenting the completion date, and then keeping it quiet whilst the immunity period ticks down. This is particularly common in more rural areas where it is easy to ‘hide’ development. As the Planning Enforcement service is a reactive service, buildings can be built in the hope that no one sees them, and then they become lawful by virtue of the passing of time. The immunity period also adds an additional challenge in that even when investigating a ‘new’ case, the development may have already been there for a long time and either be immune or quickly approaching immunity from formal planning enforcement action.

Legal Wording

- 6.4. Planning law and guidance, similar to many other areas, is challenging to read and often includes words with no definition. This brings about challenges in itself. In addition, phrases in the National Planning Policy Framework (NPPF) are often open to interpretation and frequently challenged through the Courts.
- 6.5. This brings a challenge to the Service as wording can be disputed. These disputes can result in a disproportionate amount of officer time being spent on what could otherwise be straightforward cases. In some circumstances, planning enforcement notices can be quashed by a Planning Inspector over the use of a slightly wrong or inaccurate word.

7. Planning reforms

- 7.1. The Levelling up and Regeneration Act 2023 (LURA) has introduced a number of useful changes for planning enforcement to strengthen powers. Many of the changes relating to Planning Enforcement took effect on 25th April 2024.
- 7.2. The LURA overhauls the immunity rules for enforcement action, confirming that all breaches of planning control can only become immune from enforcement action after 10 years. This includes breaches such as a change of use of a building to a residential use, or operational development, which previously became immune after four years without planning enforcement action. This change is helpful, particularly in preventing circumstances of 'gaming' the planning system.
- 7.3. The LURA also grants local planning authorities the power to issue temporary stop notices where they believe works are being carried out to a listed building without listed building consent, or in breach of a condition set out on a listed building consent. The duration of temporary stop notices for all types of development has also increased from 28 days to 56 days, which gives the Planning Enforcement service longer to consider the breach and any further action without the risk of the development continuing.
- 7.4. The Act has also given Local Planning Authorities the power to issue enforcement warning notices, inviting regularisation applications when it appears that a development has taken place in breach of planning control but would likely be granted planning permission. This provision is unlikely to be used often, and is likely to result in greater administrative duties. By their nature, enforcement warning notices should only be used where planning permission would be granted. As such, they are unlikely to be of much assistance in resolving breaches of planning control.

8. Future Direction

- 8.1. Following recent recruitment and restructuring of the team, the service will be altered to include:
- Introduction of an element of compliance monitoring

- Review of Development Management Enforcement Plan (Appendix 1)
- Selected complaints investigation

Compliance Monitoring

8.2. In order to more proactively monitor new development, it is hoped that recent recruitment will allow for an element of compliance monitoring. This could result in potential breaches of planning control being noticed earlier, increased planning application fee income as a result of increased retrospective applications, and the potential for more financial contributions to be captured and secured on major developments. The scope of compliance monitoring is however likely to be limited without additional resource due to the number of other cases requiring investigation.

Development Management Enforcement Plan

8.3. Moving forward, the Planning Enforcement Service's Development Management Enforcement Plan will shortly be reviewed to bring service standards in line with the way the wider Development Management team operates. The intention is to review and revise communication policies, particularly with complainants, in order to maximise officers' time to focus on case work and manage customers' expectations.

Selected Complaints Investigation

8.4. As part of the Development Management Enforcement Plan review, the possibility of selectively investigating alleged breaches of planning control will be explored. This would reduce the number of open cases to those which are considered to be expedient and in the public interest, and would allow officers to prioritise the high-profile cases rather than minor, technical or trivial breaches of planning control.

List of appendices:

Appendix 1 - Development Management Enforcement Plan

<https://www.chelmsford.gov.uk/media/zymmfxj/development-management-enforcement-plan-2022.pdf?allid=192192>

Background papers:

None.

Corporate Implications

Legal/Constitutional: This report to Overview and Scrutiny Committee enables the Committee to fulfil its function per section 3.2.3(e) of the Constitution "to oversee the

proper and efficient administration of the Council; and review the effectiveness of the Council's work and services".

Financial: None

Potential impact on climate change and the environment: None.

Contribution toward achieving a net zero carbon position by 2030: None.

Personnel: None.

Risk Management: None.

Equality and Diversity: Impact assessment not required.

Health and Safety: None.

Digital: None.

Other: None.

Consultees:

None.

Relevant Policies and Strategies:

Development Management Enforcement Plan

Development Management Enforcement Plan

Functions of the Planning Enforcement service

The Planning Enforcement team is an integral part of the Development Management service and has responsibility for investigating alleged breaches of planning control and ensuring that development is carried out in accordance with the relevant planning permission. Those matters for which the team are responsible include:

- Unauthorised building and engineering works
- Unauthorised change of use of land or buildings
- Non-compliance with conditions attached to planning approvals
- Works taking place to Listed Buildings without consent
- Display of unlawful advertisements
- Land or buildings whose condition causes significant harm to the amenity of the local area
- Unauthorised demolition of a building within a Conservation Area
- Unauthorised felling or carrying out works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area

Purpose of the Plan

This plan sets out the policies and procedures the service will follow and the level of service the Council will aim to deliver. Its purpose is as follows:

- To define the service that we will endeavour to provide
- To identify priorities and objectives to ensure the most effective use of resources
- To provide advice and information to those complaining about or alleged to have breached planning controls, and to other members of the public.

The National Planning Policy Framework

The National Planning Policy Framework was revised on 20 July 2021 and sets out the government's planning policies for England and how these are expected to be applied. This policy document also sets out the objectives and importance of the enforcement function within the planning system as

follows:

‘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.’

Chelmsford Local Plan (2013-2036)

The Local Plan outlines the strategic priorities and long-term vision for Chelmsford and identifies locations for delivering housing and other strategic development needs such as employment, retail, leisure, community and transport development. It contains a Spatial Strategy to deliver this vision. The Local Plan sets out the amount and location of new development, and how places will change and be shaped throughout the Local Plan period and beyond. The Local Plan together with the Minerals and Waste Local Plan, South East (Inshore) Marine Plan (once adopted) and any made (adopted) Neighbourhood Plans form the Development Plan for the area. Planning applications will be determined against the Development Plan, unless material considerations deem otherwise. The Development Plan policies should be read as a whole and alongside the National Planning Policy Framework (NPPF). All decisions about the expediency of taking enforcement action will have regard to the planning policies and objectives adopted in the Local Plan.

General Principles

The Council will:

- Investigate all potential breaches of planning control reported to the Council within published timescales
- Keep all parties informed of the current situation, actions taken and actions proposed to be taken
- Seek to resolve breaches of planning control in the first instance through negotiation and agreement, and where appropriate through the submission of a regularising planning application
- Monitor certain types of new development to ensure compliance with the terms and conditions of the relevant planning permission
- Provide guidance and advice to anyone carrying out unauthorised development to try and resolve the matter without the need for formal enforcement action
- Use the full range of enforcement powers available to resolve unacceptable breaches of planning control which cannot be satisfactorily resolved through negotiation or agreement

- Act proportionately and in the public interest when responding to suspected breaches of planning control

Enforcement Policy

Complainants will be required to provide their name and contact details, as well as setting out how any alleged breach of planning control affects their amenity and/or the amenity of the local area.

The Council will not normally investigate anonymous complaints.

The Council will not take enforcement action just because development has taken place without the necessary permission. An assessment will be made of the harm and effect on public amenity of the unauthorised development before deciding what action to take.

Enforcement action will only be taken where a breach of planning control unacceptably affects public amenity or is justified in the public interest. Action will not normally be taken where a breach of control is trivial or technical, and causes no harm to amenity.

The action taken will always be commensurate with the breach of planning control to which it relates.

The Council will usually give an opportunity for the breach to be resolved voluntarily before formal action is taken.

Negotiations will not be allowed to hamper or unduly delay enforcement action to resolve the harmful effects of unauthorised development, such as serious or irreversible harm to the environment or amenity in the surrounding area.

Any planning application submitted in an attempt to regularise development that has already taken place will be processed and determined in exactly the same way as if the development had not already taken place. The decision taken will not be influenced by the fact that the application is retrospective.

The submission of a retrospective planning application will not be allowed to delay formal enforcement action where it is clear that the application is likely to be refused.

Procedure following the receipt of a complaint alleging a breach of planning control

In response to a complaint from a member of the public or other external body or agency we will:

- Acknowledge the complaint and obtain any supplementary information required to investigate it
- Investigate the current facts and the planning history

- Undertake a site inspection unless circumstances prevent this
- Produce a report that sets out our initial findings and recommended actions
- Advise both the complainant/s and any person/s the subject of an investigation the outcome of our initial investigation and any next steps to be taken

If unauthorised development has taken place, the Council will initially seek to reach a negotiated outcome to overcome the breach of planning control. This may take the form of voluntary remedial works or an undertaking to cease an unauthorised activity.

If the owner/occupier is not prepared to enter into cooperative discussions with the Council, the Council may issue a planning contravention notice to gain further information concerning the breach and/or to invite a constructive response to an investigation.

Where the Council considers that the unauthorised development is likely to be in conformity with planning policy, it may invite the submission of a retrospective planning application. It should be noted that in the event that an application is submitted against the advice of the Council and where the breach of planning control is clearly contrary to planning policy, this will not prevent the Council from taking any appropriate enforcement action that is considered to be necessary and in the public interest.

Where the Council considers that the harm arising from unauthorised development could be overcome by planning conditions, it will also invite the submission of a retrospective planning application. If an application is not received within a reasonable period, the Council will consider serving an enforcement notice specifying the steps necessary to overcome the harm arising from the breach.

Enforcement Notices

The Council may at any time decide that it is necessary, proportionate and in the public interest to serve an enforcement notice on the landowner/occupier. The notice will set out the steps to be taken to remedy the breach of planning control and date by which the steps must be taken.

The reasons why it is considered appropriate to serve an Enforcement Notice will be set out in a report which will consider the legal and planning merits of such action and have regard for personal and other circumstances.

Appendix A sets out the range of enforcement powers available to the Council and the circumstances when they are likely to be used.

When an enforcement notice is served the owner or occupier of the land may appeal in writing to the Secretary of State before the date specified. The possible grounds for appeal are:

- The action did not constitute a breach;

- The facts alleged did not occur;
- The local planning authority was out of time;
- The notice was served incorrectly;
- That planning permission should be granted.
- That the steps required to remedy the breach of planning control are excessive
- That the time allowed for compliance is not reasonable

The appeal may be decided by written representation, an informal hearing or at a Public Local Inquiry. The Secretary of State can decide to dismiss the appeal and up hold the Enforcement Notice, to alter or quash the Notice, or grant planning permission for the breach.

Prosecutions and litigation

It is an offence not to comply with any of the notices (set out in Appendix A), once the period for compliance has elapsed, and there is no outstanding appeal. The display of an unauthorised advertisement or unauthorised works to protected trees is also an offence.

In determining whether to pursue a prosecution or any other litigation in any case, the Council will satisfy itself first that there is sufficient evidence to provide a realistic prospect of conviction. If the case does pass this evidential test, the Council will next consider whether the proposed action would be in the public interest. In this respect the appropriateness and proportionality of the case will be weighed.

Proactive Enforcement

Compliance monitoring

The planning enforcement team will work to ensure that conditions attached to planning permissions granted by the Council are complied with.

Licensing applications (Licensing Act 2003)

We will monitor Licensing applications (alcohol, entertainment, late night refreshment, pavement and temporary events) submitted to the Council to ensure that the proposed activity and any related development has prior planning permission. Where no permission is found we will make further inquiries and where appropriate, initiate an enforcement investigation.

Licenses for Houses in Multiple Occupation (HMO) (The Housing Act 2004)

We will monitor licence applications for Houses in Multiple Occupation referred to us by the Council's Housing Standards team, and ensure that the properties in question have prior planning permission for such residential occupation to take place. Where no permission is found we will make further inquiries and where appropriate, initiate an enforcement investigation.

Unlawful advertisements

Enforcement officers will, in response to complaints received and where circumstances allow, exercise the powers available under the Town and Country Planning (Control of Advertisement Regulations) (England) Regulations 2007 to remove unlawful advertisements. Any reasonable costs incurred in undertaking this work will be recovered, where it is considered appropriate, pursuant to Section 225 of the Town and Country Planning Act 1990. The Council will exercise its discretion and not normally remove advertisements promoting true community events, such as school fetes and charitable events, from public land except where they are causing safety or other public concern or where the period that they are displayed is considered excessive.

Land and buildings having a detrimental impact on the amenity of the local area

The local planning authority has discretionary powers pursuant to Section 215 of the Town and Country Planning Act 1990 to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. When exercising such powers the Council will have particular regard for those vulnerable groups, such the elderly and infirm. Where assistance may be required in carrying out works to improve the condition of their homes and gardens, the Planning Enforcement service will seek to refer the homeowner to the Council's Strategic Housing and Housing Standards teams. These teams are able to provide information as to external charities and organisations that may be able to assist and also offer information on grants available.

Service standards

The Council's aim is for a high quality of service in line with the principles of the "Enforcement Concordat" produced by the Cabinet Office and Local Government Association, working to the following principles:

- Council officers aim to be courteous and provide information and advice in plain language
- The planning enforcement team will work with other services within the Council and external local and central government agencies in order to share and obtain information needed to ensure a resolution to any investigation
- The Council will keep full records of each case it investigates
- The Council will enter into discussion with those experiencing difficulty and aim to help businesses and others to comply

- The costs of compliance will be minimised and we will work with small businesses and community organisations to ensure that they can meet their legal duties without unnecessary expense
- The Council will seek to resolve breaches of planning control without formal action and by negotiation where possible. However, where unacceptable development has occurred and informal negotiations fail to remedy the situation within a reasonable time-scale, the Council will not hesitate to initiate enforcement or prosecution action
- Wherever possible the Council will ensure the confidentiality of complainants. However, it may be necessary to reveal the identity of a complainant to support the Council's case if formal legal action is taken and there is an appeal against the action. Similarly, a complainant's identity may have to be revealed to the Court if a breach results in prosecution proceedings
- The Council will ensure fairness and consistency between cases, and will investigate cases in line with the prioritisation set out below, rather than the persistency or status of complainants
- In deciding to take enforcement action the Council will not discriminate on the grounds of gender, age, race, colour or nationality, ethnicity or national origins, religion or belief, sexual orientation, political or other opinion, property or other status

Prioritising

The Council will use the following criteria in order to prioritise its enforcement workload following completion of its initial investigation into the alleged breach:

High Priority

Breaches of planning control requiring urgent action:

- Any unauthorised development which causes immediate, irreparable and serious harm to the local area or the environment
- Unauthorised works to a listed building or Scheduled Ancient Monument
- Unauthorised demolition or partial demolition of a building which it is deemed essential to retain
- Unauthorised felling or lopping of a tree protected by a Tree Preservation Order
- Unauthorised demolition of a building within a Conservation Area

All other breaches of planning control

All other substantive breaches of planning control requiring investigation:

- All other unauthorised development or change of use of buildings or land
- Alleged breaches of planning conditions attached to planning permissions
- Technical breaches of planning control where there is no significant harm to the Council's planning policies or objectives
- Temporary breaches which will resolve themselves
- Breaches relating to land which it is alleged is untidy
- The display of an advertisement without consent

The above categorisation will be used as a guide. It should be noted that the Council does not condone any wilful breach of planning control. Each case will be considered on its merits and it is the Council's intention to take action in all cases where it is considered expedient to do so.

Time Scales

After a new complaint has been received, the Council will work to the following targets:

- i) Within three working days we will aim to acknowledge the complaint. An acknowledgement will be sent to the complainant setting out the case reference and the initial time frame to which we aim to work in investigating the complaint.
- ii) Site inspections will be conducted according to the priority categorisation of the case:
 - High priority – as soon as practicable and no later than 2 working days
 - All other breaches of planning control – within 10 working days
 - Unlawful advertisements – within 15 working days
- iii) The Council will prepare an initial report into the findings of its investigation and initial recommendations to remedy any breach of planning control within 28 days of receipt of the complaint.
- iv) The Council will aim to update complainant/s and person/s involved with the investigation within 28 days of receipt of the complaint.

Decision Making

A decision on the expediency of proceeding with enforcement action will usually be taken by the Director of Sustainable Communities under delegated powers.

Decisions to undertake or serve any of the following are usually taken under delegated powers after consultation with the Legal and Democratic Services Manager:

- Enforcement Notice
- Prosecution for failing to comply with an Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice
- Notice under Section 215 of the Town and Country Planning Act (untidy land)
- Direct action

The following cases will, as appropriate, be presented to the Planning Committee for consideration:

- Controversial and significant cases including issues of the Human Rights Act where formal action is recommended
- Controversial and significant cases where it is considered that no further action should be taken
- Cases which result in a recommendation for an Article 4 Direction to be made

In exceptional circumstances it may be necessary to take legal action in respect of controversial and significant cases. In such cases decisions will be made under delegated powers in consultation with the Legal and Democratic Services Manager.

Monitoring and reporting

Cases are reviewed internally on a regular basis by the enforcement manager to ensure that progress in reaching a resolution is ongoing in each instance.

Reports will be provided on a monthly basis to both members and parish/town councils setting out all new complaints received and current complaints under investigation in their respective areas and also a list of those cases closed and the outcome of the investigation.

The enforcement team will monitor and aim to meet performance indicators set by the Direction for Sustainable Communities in respect of the following targets:

- Site inspections undertaken within the stated time limits

- A report setting out the findings of the initial investigation and recommendation/s for future action/s to overcome any breach of planning control completed within 28 days of the receipt of a complaint

Important Note

- 1.1 Nothing in this Policy limits an owner/occupiers' legal rights or obligations of the Council's rights to take any action as set out in any other relevant legislation.

APPENDIX A

Principal planning enforcement powers available to the local planning authority

In the event that the Council decides to take enforcement action in response to a breach of planning control there are a range of statutory powers in place that it may utilise.

Planning Contravention Notice

Planning Contravention Notices (PCN) can be used where it appears that there may have been a breach of planning control to obtain information about the possible breach of control and those parties responsible. A PCN may also invite the person responsible to meet an officer to discuss the case. It is a legal requirement to provide the requested information. The Council will usually issue a PCN where cooperation has not been forthcoming from those subject of an enforcement enquiry and where it necessary to obtain relevant information.

Breach of Condition Notice

These are used when conditions attached to a planning permission have not been complied with. These notices may be used where it is necessary to stop a breach of planning control restricted by a condition quickly. This may be, for example, because it is causing serious environmental harm or detriment to amenity or public safety. A Breach of Condition Notice may be served in conjunction with an Enforcement Notice and it should be noted that there is no right of appeal to the Secretary of State.

Enforcement Notice

Enforcement Notices are used when the Local Planning Authority is satisfied that there has been a breach of planning control that justifies the issuing of a Notice. A Notice sets out the required steps to rectify the breach.

Prosecution for non-Compliance with an Enforcement Notice

If an appeal is dismissed, or if an appeal is not lodged, and the Notice has not been complied with before it comes into effect, the person on whom the notice was served is guilty of a criminal offence. He/she will then be liable to prosecution in the Courts and can be fined up to £20,000 or on conviction on indictment to an unlimited fine. In setting the fine the Courts will also take into account any financial benefits gained by the person responsible for the breach as a result of non-compliance with the Notice. The Council may take the steps necessary to remedy the breach itself – including the removal of buildings and reclaim the costs.

Stop Notice

These can be used when the local planning authority considers it important for a breach to cease immediately and where it is considered essential to safeguard amenity or public safety in the

neighbourhood. They are issued in conjunction with or following the issuance of an Enforcement Notice.

Temporary Stop Notice

These can be used when the local planning authority considers it important for a breach to cease immediately for a period of 28 days to allow for the preparation of an Enforcement Notice (if assessed to be necessary). As such they may be issued independent of an enforcement notice and again where it is necessary to safeguard amenity or public safety in the neighbourhood.

Notice under Section 215 of the Town and Country Planning Act

This Notice may be issued by the local planning authority where it appears to them that the condition of a specified area of land is having an adverse effect upon the amenity of an area. The Notice can require a broad range of remedial works to be undertaken by a fixed deadline. Appeals against this Notice may be made to the Magistrates' Court.

Notice under Section 224 of the Town and Country Planning Act

This allows local planning authorities to remove and dispose of any display structure – such as an advertisement hoarding – which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to a structure in a building to which the public have no right of access.

Completion Notice

The purpose of issuing a completion notice is to encourage developers/landowners to complete developments which have been interrupted or left unfinished. This notice has the effect of ceasing the planning permission within a minimum period of 12 months following its effective date.

The use of this power by local planning authorities is discretionary and the notice does not take effect until it is confirmed by the Secretary of State.

Injunction

A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control.

Direct Action

In exceptional circumstances, the Local Planning Authority has the power to enter the land, undertake the steps necessary to remedy a breach of planning control and attempt to recover the costs.

Prosecutions

Prosecutions are normally brought in the Magistrates Court against the failure to comply with one of the notices listed above along with the unauthorised display of advertisements, unauthorised works to a protected tree or unauthorised works to a listed building. In some serious matters cases may be brought in, or referred to the Crown Court.