

Development Management Enforcement Plan

Functions of the Planning Enforcement service

1. 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 permissions
 - 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 protected tree (by virtue of a Tree Preservation Order or a Conservation Area designation).

Purpose of the Plan

2. 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 (NPPF)

3. The National Planning Policy Framework was revised on 12 December 2024 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:
4. *'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 – Adopted May 2020

5. 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.
6. 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.

Planning Practice Guidance (PPG)

7. The PPG is published by the government and provides guidance on how the Council should respond to suspected breaches of planning control. This states:

“There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 60.”

“Effective enforcement is important to:

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

General Principles

8. The Council will:
 - a) Provide an efficient, effective and timely planning enforcement service with the resources available, whilst treating our customers with courtesy, respect and fairness.
 - b) Where expedient to do so, investigate potential breaches of planning control reported to the Council within published timescales
 - c) Update the parties when a material event occurs in the investigation
 - d) 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

- e) Monitor certain types of new development to ensure compliance with the terms and conditions of the relevant planning permission
- f) Where reasonable, provide guidance and advice to try and resolve a breach of planning control without the need for formal enforcement action
- g) Consider the use of the full range of enforcement powers available to resolve unacceptable breaches of planning control which cannot be satisfactorily resolved through negotiation or agreement
- h) Act proportionately and in the public interest when responding to suspected breaches of planning control.

Enforcement Policy

9. 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.
10. The Council will not normally investigate anonymous complaints.
11. 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, as well as all other relevant planning harm, of the unauthorised development before deciding what action to take.
12. In order to give the best possible service and to manage the limited resources within the Council, there are some cases that will not normally be investigated. These include:
 - a) Neighbour disputes and boundary disputes – Unless clear planning issues identified.
 - b) Hobbies or activities that take place as part of the residential enjoyment of a person's home.
 - c) Sewers, soakaways and most other drainage matters
 - d) Anonymous complaints – Unless what is alleged is 'high priority' in nature.
 - e) Trade complaints – Unless clear planning issues are identified.
 - f) Business uses operating from residential properties where no evidence is provided – A log covering a minimum period of 14 days must be provided when making a complaint. This should include times, dates and activities.
 - g) Complaints that would appear, from the information provided, to fall under a different legislative framework e.g. Building Regulations, The Party Wall Act, Environmental Health or highway issues.
 - h) Issues that are clearly not planning related e.g. matters regarding land ownership, deeds or covenants.
13. The Council will not investigate vexatious or frivolous complaints, or those made principally for the purposes of eliminating or diminishing business competition.
14. Enforcement action may only be taken where it 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.

15. The action taken will always be commensurate with the breach of planning control to which it relates.
16. A decision to take action will not be based on the number of separate breaches identified, or the number and/or vociferousness of individual complainants.
17. The Council will usually give an opportunity for the breach to be resolved voluntarily before formal action is taken.
18. 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.
19. Correspondence with complainants or those alleged to have breached planning control will not be allowed to hamper or unduly delay the Council in providing an efficient and effective planning enforcement service.
20. Complainants will be informed when the case has been resolved. The resolution of a case means:
 - a) The case has been investigated and there is no breach of planning control; or
 - b) There is a breach of planning control which has been remedied, either by the submission of an application, or the works have been removed or use has ceased; or
 - c) There is a breach of planning control, but it is not considered expedient to pursue the matter further; or
 - d) An enforcement notice has been served.
21. The Council will prioritise and where necessary triage enforcement complaints and cases to focus resources on those breaches of planning control which are most severe. The investigation of minor breaches will not be allowed to hamper or unduly delay the resolution of severe breaches or the provision of an efficient and effective planning enforcement service.
22. 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

23. When investigating a complaint from a member of the public or other external body or agency we will:
 - a. Acknowledge the complaint and obtain any supplementary information required to investigate it.
 - b. Investigate the current facts and the planning history.
 - c. Undertake a site inspection, unless circumstances prevent this or a site inspection is not considered to be necessary.
 - d. It will be necessary to take photos on a site visit. Photographic evidence that identifies an individual is regarded as personal data. Although it is preferable to obtain the consent of the individual concerned before obtaining or using their

personal data, it is recognised that this is not always possible. The Information Commissioner's Office has identified six situations where the consent of the subject can be dispensed with. In this context, the following may be relied upon:

- e. Public task: the processing is necessary for the Council to perform a task in the public interest or for their official functions, and the task or function has a clear basis in law.
 - f. Produce a report that sets out our initial findings and recommended actions.
 - g. Update the complainant when a material event occurs in the investigation (i.e. breach has been identified and the most appropriate remedy/action has been considered; or alternatively no breach has occurred or identified on the basis of the available information).
 - h. Advise any person(s) carrying out a breach of planning control of the outcome of our initial investigation and any actions required (i.e remedial works or a retrospective application).
24. In most circumstances, 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.
25. 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.
26. 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. The invitation of an application should not be considered as determinative that an application will be approved. It should be noted that where 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.
27. 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

28. The Council may 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 the date by which the steps must be taken.
29. 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. An overview of the reasons will be set out on the notice itself.

30. Appendix A sets out the range of enforcement powers available to the Council and the circumstances in which they are likely to be used.
31. 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:
- a) Planning permission ought to be granted;
 - b) The matters alleged did not occur;
 - c) The matters alleged do not constitute a breach of planning control;
 - d) At the date when the notice was issued, no enforcement action could be taken;
 - e) That copies of the enforcement notice were not served as required;
 - f) The steps required to remedy the breach of planning control are excessive;
 - g) That the time allowed for compliance is not reasonable
32. The appeal may be decided by written representation, an informal hearing or at a Public Inquiry.
33. 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 unauthorised development.

Prosecutions and litigation

34. Where there is no outstanding appeal, the failure to comply with the requirements of any notice (set out in Appendix A) within the specified period is a criminal offence and will usually be pursued through the Court. The display of an unauthorised advertisement, unauthorised works to protected trees or unauthorised works to a listed building is also an offence.
35. 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

36. Where possible, 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)

37. 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.

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

38. We will monitor licence applications for Houses in Multiple Occupation (HMOs) 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

39. Enforcement action will only be taken in respect of advertisements in the interests of amenity and public safety, taking account of cumulative impacts. Complaints relating to 'for sale' or 'to-let' boards made by competing businesses will not be investigated.
40. 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

41. 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 to those vulnerable groups, such as 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

42. Investigations will be carried out using the process shown in Appendix B. The Council's aim is for a high quality of service working to the following principles:
- a) Council officers aim to be courteous and provide information and advice in plain language.
 - b) 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.
 - c) The Council will keep full records of each case it investigates.
 - d) 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

timescale, the Council will not hesitate to initiate enforcement or prosecution action.

- e) Wherever possible the Council will ensure the confidentiality of complainants, however the substance of the complaints themselves is not confidential. Complainants may wish to consider the likelihood of being identified by proximity or other factors. 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.
- f) Where details of a complaint are requested through the Freedom of Information procedure, we are unlikely to disclose the details of the complainant. We believe that to reveal complainant details would be likely to breach the first principle of the Data Protection Act by unfairly contravening their right to privacy and confidentiality, therefore we are unable to disclose this information.
- g) 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.

43. 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

44. 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

45. Breaches of planning control requiring urgent action:

- a) Any unauthorised development which causes immediate, irreparable and serious harm to the local area or the environment.
- b) Unauthorised works to a heritage asset or Scheduled Ancient Monument.
- c) Unauthorised demolition or partial demolition of a heritage asset.
- d) Unauthorised felling or carrying out works to a protected tree (by virtue of a Tree Preservation Order or a Conservation Area designation).
- e) Unauthorised demolition of a building within a Conservation Area.

Medium Priority

46. Substantive breaches of planning control requiring investigation:

- a) Unauthorised development or change of use of buildings or land where there is identifiable harm to amenity.
- b) Alleged breaches of planning conditions attached to planning permissions where there is identifiable harm to amenity.

Low Priority

47. Technical breaches of planning control where there is no significant conflict with the Council's planning policies or objectives.
48. Temporary breaches which will resolve themselves.
49. Breaches relating to land which it is alleged is untidy.
50. The display of an advertisement without consent.
51. 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.
52. The Council receives a high number of new planning enforcement complaints every year. Due to the often lengthy and complex nature of planning investigations and limits on resources, it is necessary to give priority to those cases where the greatest harm is being caused. Individual cases may be reprioritised as the investigation progresses where new and relevant information comes to light.

Timescales

53. After a new complaint has been received, the Council will work to the following targets:
 - a) Within three working days we will aim to acknowledge the complaint. An acknowledgement will be sent to the complainant setting out the case reference.
 - b) 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
 - Medium Priority – within 10 working days
 - Low Priority – within 15 working days
 - c) We will prepare an initial report into the findings of its investigation and initial recommendations to remedy any breach of planning control. We will update the complainant when a material event occurs in the investigation (i.e. breach has been identified and the most appropriate remedy/action has been considered; or alternatively no breach has occurred or identified on the basis of the available information). We will not contact you between times unless we require further information.
54. It is important to note that enforcement procedures can be extremely lengthy, and we cannot commit to resolve everything quickly, as much as we would like to.

Decision Making

55. A decision on the expediency of proceeding with enforcement action will usually be taken by the Director of Sustainable Communities under delegated powers.
56. Prior to taking formal action, officers may consult with the Legal and Democratic Services Manager, or seek other legal advice. Decisions to undertake or serve any of the following are usually taken under delegated powers:

- Injunction.
- Confirm Article 4 Directions under the Town and Country Planning (General Permitted Development) Order 2015 where there are no objections.
- 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.
- Written warnings and formal cautions in respect of unauthorised works to protected trees.

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

- a) Controversial and significant cases including issues of the Human Rights Act where formal action is recommended.
- b) Controversial and significant cases where it is considered that no further action should be taken.

Monitoring and reporting

58. 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.

59. 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.

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

- a) Site inspections undertaken within the stated time limits.
- b) Preparation of an initial investigation report within 28 days of the receipt of a complaint.

Important Note

61. 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 – Enforcement Powers

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.

Enforcement Warning Notice

Where a local planning authority considers that unauthorised development has a reasonable prospect of being acceptable in planning terms, it can issue an enforcement warning notice. The notice will set out the matters that appear to be a breach of planning control and state that, unless an application is made by a specified date, further enforcement action may be taken.

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. 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. Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice. A person guilty of such an offence is liable on conviction to an unlimited fine.

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. They will then be liable to prosecution in the Courts and a person guilty of an offence is liable on conviction 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 56 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 affect 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.

Formal Cautions and Written Warnings

When faced with what they believe are unauthorised works to protected trees, local authorities may consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution.

If the Council is minded to prosecute for an offence, but the alleged defendant is willing to admit their guilt and work with the Council to rectify any breach, the Council will consider issuing a formal caution which will be held on record and produced at sentencing if the suspect is found guilty of any future offences.

Listed Building Enforcement Notice

A Listed Building Enforcement Notice can be issued where there has been works to a Listed Building without consent or failure to comply with a condition attached to any consent. There are no time limits for issuing a Listed Building Enforcement Notice.

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.

APPENDIX B - Enforcement Process

