

## **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 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.

### **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.