



To: Members of Planning Committee
Report by: Patsy Dell, Head of Planning

Wards affected: Abbey, Arbury, Castle, Cherry Hinton, Coleridge, East Chesterton, King's Hedges, Market, Newnham, Petersfield, Queen Edith's, Romsey, Trumpington, West Chesterton.

PLANNING ENFORCEMENT POLICY

1.0 Summary

Legislative changes and in particular the Regulators Code which came into force in April 2014 has made it necessary to review and update the Council's Planning Enforcement Policy.

2.0 Recommendations

Planning Committee are recommended to adopt the proposed Planning Enforcement Policy which is attached at Appendix A.

Officers also request that authority is delegated to the Head of Planning Services to amend the 'Further Information' section of the Policy to update the links to the information. No changes would be made to the body of the Policy without further reference back to Members.

3.0 Background

3.1 The current Planning Enforcement Policy has not been reviewed since 2000 and is now out of date and does not reflect current legislation, in particular the Regulators Code. The Council's Corporate Enforcement Policy which was reviewed in October 2014 forms the overarching document under which specific service enforcement policies sit. The Planning Enforcement Policy is in line with the overarching principles contained in the Corporate Enforcement Policy.

3.2 The policy is essential to provide clarity to residents and businesses in the way we act, as well as, minimising risks associated with failed

enforcement action. The Planning Enforcement Policy is one of a number of methods and tools used to deliver the Council's Vision "One Cambridge – Fair for All".

- 3.3 Section 7 of the Policy includes authority for Senior Officers to close enforcement cases.

4.0 Implications

(a) **Financial Implications**

The policy has no direct costs as services are staffed to undertake the relevant enforcement roles. Working to an up to date policy will reduce enforcement risks and potential award of costs.

(b) **Staffing Implications**

There are no staff implications other than communicating the change and ensuring action is taken in accordance with the policy

(b) **Equal Opportunities Implications**

An EQIA has been carried out in respect of the Corporate Enforcement Policy and there are no specific issues relevant to planning enforcement that have not already been covered by the existing EQIA. It has been agreed that Officers will monitor any issues with the Corporate Enforcement Policy as it is implemented and the EQIA will be updated after a year. It is considered therefore, that the Planning Enforcement Policy does not require a specific EQIA to be carried out.

(d) **Environmental Implications**

The Planning Enforcement Policy will be used to guide the way officers enforce appropriate legislation that regulates and protects the environment.

(e) **Procurement**

Not Applicable

(f) **Community Safety**

The Planning Enforcement Policy in conjunction with the Corporate Enforcement Policy is used to guide the way we enforce appropriate legislation that regulates the environment.

5.0 Consultation and communication

- 5.1 This document has been produced in consultation with officers in Planning Services, Legal Services and Environmental Health.
- 5.2 One of the issues raised during the production of this document was whether or not to consult more widely on the document, taking into account the following factors:
- Whether the public generally, or any particular groups have a legitimate expectation to be consulted.
 - The Council's own Code of Best Practice on Consultation (2011).
 - Practice among other local authorities.
- 5.3 Although some local authorities have consulted on their enforcement policies, and although there is some merit, in public interest terms, of carrying out this exercise, on balance officers decided not to consult for the following reasons:
- There is no statutory duty to consult as there is with many other planning policies.
 - There is a wider public need to have updated policies in place quickly.
 - The Corporate Enforcement Policy was not subject to a public consultation.

6.0 Background papers

Cambridge City Council Corporate Enforcement Policy.
EQIA for Corporate Enforcement Policy.
Planning Investigation Service Enforcement Policy (December 2000)

7.0 Appendices

Appendix A: Planning Enforcement Policy.

8.0 Inspection Papers

To inspect the background papers or if you have a query on the report please contact:

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Planning Enforcement Policy

The effects of unauthorised development can be harmful and undesirable to the public and the wider environment and affect the amenity of a neighbourhood. The Council has a duty to balance the need for sustainable development with the impact it will have and this is done through the planning system.

The purpose of this Planning Enforcement Policy is to explain the ways in which we will use our enforcement powers. The policy sets out what people who are affected by planning enforcement activities can expect and assists Cambridge City Council staff in applying enforcement powers fairly and consistently. The Policy sets out what action can be taken and how decisions will be made in respect of pursuing formal action.

1.0 Principles of Planning Enforcement

The Council has agreed the following aims for the Planning Enforcement Policy:

- To remedy the undesirable effects of unauthorised development.
- To ensure that the credibility of the planning system is not undermined.
- To ensure compliance with the conditions imposed on planning permissions.
- To resolve breaches of planning control through voluntary compliance before resorting to formal action when it is appropriate to do so.
- To ensure that we enforce in a fair, equitable and consistent manner.
- To take firm action when it is necessary and appropriate to do so.
- To carry out enforcement action that is risk-based, consistent, proportionate and effective.
- To ensure that any formal action taken is proportionate to the breach of planning control.

1.1 We will:

- Prioritise cases in accordance with their urgency and potential harm.
- Not suggest a retrospective planning application is submitted unless there appears to be a reasonable prospect that planning permission would be granted.
- Impose enforceable conditions on any planning permission granted to control the impacts of the development.
- Seek to regularise breaches of planning control informally in the first instance wherever possible.
- Explain our reasons for deciding upon a particular course of action.
- Take firm action on repeated breaches of planning control.

2.0 The legislative framework

- The Town & Country Planning Act 1990.
- The Planning (Listed Buildings and Conservation Areas) Act 1990 and;
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

This framework gives the Council, as the Local Planning Authority, the powers to investigate and control unauthorised development/works.

Part VII of the Town & Country Planning Act 1990 (as amended) is the main source of powers available to the Council in relation to planning enforcement action.

The National Planning Policy Framework (NPPF) (2012) at paragraph 207 requires the Council to take enforcement action which is proportionate to a suspected breach of planning control. More detailed government guidance is provided by National Planning Policy Guidance: Ensuring Effective Enforcement.

When an application for retrospective planning permission is made, the Council must take into account the Development Plan for Cambridge. The Development Plan is currently the Cambridge Local Plan 2006. The Local Plan is currently under review. When it is adopted the new Cambridge Local Plan will become the relevant document for decisions on planning applications.

3.0 What is a breach of planning control?

Breaches of planning control can occur in many ways, for example where:

- Building works or engineering operations are carried out without planning permission.
- A development has planning permission but has not been carried out in accordance with the approved plans.
- Conditions attached to planning permission or the terms of a planning obligation (S106 agreement) have not been complied with.
- Unauthorised demolition has occurred.
- Works have been carried out to a listed building without listed building consent.
- There has been a material change of use of a building or to land without planning permission (this does not necessarily involve any building works taking place).
- There has been a change of use which requires 'prior notification' and no notice has been given to the Council.

- There has been removal of, or works to, protected trees and hedgerows without consent or 'prior notification' received by the Council.
- Display of advertisements that require consent under the Advertisement Regulations without that consent having been granted.
- An advertisement is "flyposted".

4.0 Making a complaint

The Council's planning enforcement powers extend to the investigation and resolution of breaches of planning control. The Council is not able to use planning powers to deal with neighbour or business disputes or a change to the environment that an individual or group of residents may not like through planning enforcement powers. There must be significant harm to amenity, safety or the environment for enforcement action to be justified.

The Council does not generally deal with anonymous complaints therefore, complainants will be asked for their name, address and telephone number. They will also be asked for:

- The site address or location;
- What the development or activity is that is causing the harm, when it began and who you believe is responsible for it.
- Details of how the development or activity is causing harm.

Officers will try to acknowledge initial complaints within 3 working days of receipt (in writing or by telephone) and will update the complainant at key stages of the investigation including:

- When a breach is established/ or not established and a decision is made about enforcement action.
- When a report is being presented to the Planning Committee
- When an enforcement notice has been served.
- When an appeal against an enforcement notice has been made.
- When the Council has received notification of an enforcement appeal decision.
- When a decision is made about a retrospective planning application.

4.1 Confidentiality

The identity of a person making a complaint is usually kept confidential unless the Council is required to release their name and address by law. If an investigation

proceeds to prosecution and a complainant's evidence is needed to support the Council's case, anonymity cannot be guaranteed.

4.2 How will complaints be prioritised?

Officers will use the following criteria to decide which cases will be given priority in the following categories.

Category 1

- Works to Listed Buildings.
- Demolition in a Conservation Area.
- Works to protected trees (either those covered by a Tree Preservation Order (TPO) or those within a Conservation Area) and safeguarded hedgerows.
- Development which may have a significant and permanent impact on (or destroy) a site of Nature Conservation Value or the natural environment (examples could include excavation work or tipping of waste on protected sites).
- Development which results in concerns for public safety.
- Significant unauthorised building works/structures.
- Compliance with planning conditions relating to working hours and contaminated land investigation.

Target for site visit within 3 working days from receipt of the complaint.

Category 2

- Operational and building works, changes of use, non-compliance with conditions/obligations that in the opinion of officers significantly affect residential amenity.
- Building work within Conservation Areas.
- Situations where the time to seek compliance is limited due to immunity rules for commencing formal enforcement action.
- Complaints concerning a site where previous formal enforcement action has been taken.

Target for site visit within 5 working days from receipt of the complaint.

Category 3

- Other changes of use where there is harm to visual amenity.
- Other building works/failure to comply with conditions.
- Advertisements.

- Satellite dishes.
- Untidy Sites.

Target for Investigation within 15 working days from receipt of the complaint.

5.0 Entering Sites

An enforcement officer or planning officer will visit the place where there is a suspected breach of planning control to investigate. This is usually by arrangement with the owner or occupier, although in some cases unannounced site visits are necessary.

Enforcement and Planning Officers have the right of entry onto non- residential land and buildings. They have further powers to enter residential properties, and can apply for a warrant from the Magistrates Court to gain access if their initial attempts to gain entry (after giving at least 24 hours notice) are unsuccessful.

6.0 What the Council cannot investigate under planning legislation.

If a complaint relates to something not covered by the planning legislation the Planning Enforcement Service cannot take any action

Some examples of these cases are listed below and include:

- Disputes over land ownership.
- Moral and ethical concerns.
- Restrictive covenants and private legal agreements.
- Party wall matters.
- Commercial competition.
- Private interests.
- Parking issues not covered by planning conditions.
- Construction site safety.
- Other matters which are not always controlled by planning conditions (e.g. hours of construction).

In some cases a non-planning related complaint can be dealt with by another City Council Service or another agency. If this is the case then the complainant will be advised who they should contact and relevant information will be passed on.

7.0 What happens if there is a breach of planning control?

If investigations indicate that a material breach of planning control has occurred and informal attempts to resolve the situation have failed, then the options available to the City Council include:

- Invite a retrospective planning application (only where there is a reasonable likelihood that this will be acceptable).
- Invite an application for a Certificate of Lawful Development if it appears that the development/use is immune from formal action through the passage of time.
- Commence formal enforcement action, including seeking Planning Committee approval if necessary.
- Seek authority from Senior Officers to close the investigation.

8.0 Formal Enforcement Action

The decision to serve a formal notice is discretionary and will be made on a case by case basis bearing in mind the need to take a proportionate approach as set out in the NPPF. This decision will only be taken after careful consideration of the relevant facts, the planning merits of the case and Equalities and Human Rights legislation where appropriate and relevant. The Council must also be able to justify taking formal action, and be sure that the steps specified in the notice and the period for compliance with each step is reasonable.

9.0 Formal Action

Formal action includes:

- Enforcement Notices.
- Breach of Condition Notices.
- Temporary Stop Notices.
- Stop Notices.
- S215 Notices.
- Injunctions.
- Prosecution.

10 Appeals

The grounds of appeal against formal notices can be found at the Planning Inspectorate's website.

When an enforcement notice is served, the person receiving the notice will be advised of their right of appeal against the notice.

11 Criminal Offences

A breach of planning control is not automatically a criminal matter (until there is a failure to comply with a formal notice). However, in the following cases a criminal offence is committed once a breach is established.

- Unauthorised works to a Listed Building. This is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. There is no time limit upon the City Council within which to pursue Listed Building compliance action and/or prosecution.
- Display of an advertisement without the necessary consent: This is an offence under section 224 (3) of the Town and Country Planning Act (1990)
- Fly Posting – the displaying of an advert without the land owners' consent. Fly-posting is an offence under section 224(3) of the Town and Country Planning Act 1990.
- Unauthorised works to a tree the subject of a Tree Preservation Order (TPO). Under section 210 of the Act it is an offence to cut down, uproot, or wilfully destroy a protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it.
- Unauthorised works to trees in Conservation Areas: Most established trees (except fruit trees) in Conservation Areas are protected, under sections 211 and 212 of the Act.
- Unauthorised works to Hedgerows. It may be an offence under section 97 of the Environment Act 1995 and section 5 of the Hedgerows Regulations 1997, to remove hedgerows without the Council's consent.
- Failing to obtain planning permission for demolition of unlisted buildings in conservation areas. This is an offence under section 196D of The Town and Country Planning Act 1990.

12 Prosecutions and proceeds of Crime

The Council as an enforcing Authority will use discretion in deciding whether to prosecute offences. Prosecution will be pursued when it is in the public interest and in accordance with the Crown Prosecutor's guide.

Where appropriate the Council will consider seeking a Confiscation Order under the Proceeds of Crime Act 2002. The Act allows the Council to recover assets that have been accrued through criminal activity.

Further information available at:

Planning Portal (for legislation, NPPF and general guidance on planning and Permitted Development Rights)

<http://www.planningportal.gov.uk>

Planning Legislation, Human Rights Act 1988, Equality Act 2010 <http://www.legislation.gov.uk>

Regulators Code

<https://www.gov.uk/government/publications/regulators-code>

Human Rights

<https://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>

Equality Act

<https://www.gov.uk/government/publications/equality-act-guidance>

Data protection:

http://ico.org.uk/for_organisations/data_protection/the_guide

Police and Criminal Evidence Act (PACE)

<https://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

Proceeds of Crime Act

http://www.cps.gov.uk/legal/p_to_r/proceeds_of_crime_act_guidance/

S215 Notices Best Practice Guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf

Localism Act 2011

<https://www.gov.uk/government/publications/localism-act-2011-overview>

Regulation of Investigatory Powers Act (RIPA)

<http://www.legislation.gov.uk/ukpga/2000/23/contents>

Hedgerow Regulations 1997

<https://www.planningportal.gov.uk/planning/countryside/hedgerow>

Planning Inspectorate:

<https://www.gov.uk/government/organisations/planning-inspectorate>

S215 Notices Guidance:

http://www.broadland.gov.uk/jobs_and_careers/jobvacancies.aspx

Ensuring Effective Enforcement:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/>

Cambridge Local Plan:

<https://www.cambridge.gov.uk/local-plan>

Local Plan Review:

<https://www.cambridge.gov.uk/local-plan-review>

Guide to the display of advertisements

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>

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