

# Public Document Pack



To all Members of the Strategic Planning Board

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DATE: 2 March 2009

OUR REF: DM

YOUR REF:

Dear Councillor

## **STRATEGIC PLANNING BOARD - WEDNESDAY, 4TH MARCH, 2009**

I am now able to enclose, for consideration at next Wednesday, 4th March, 2009 meeting of the Strategic Planning Board, the following reports that were unavailable when the agenda was printed.

### **Item 9 - Enforcement Protocol (Pages 1 - 12)**

The Strategic Planning Board is invited to adopt the proposed Planning Enforcement Protocol.

Protocol attached

Yours sincerely

*Diane Moulson*

Democratic Services Officer  
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**PLANNING ENFORCEMENT  
PROTOCOL**

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## **1. INTRODUCTION**

From the 1<sup>st</sup> April 2009 Cheshire East Borough Council will be responsible for the delivery of all services previously delivered by the district council's of Crewe and Nantwich, Congleton and Macclesfield Borough as well as the Cheshire County Council planning functions within this area. The Development Management service will sit within the Places Directorate and will include planning enforcement.

The purpose of this protocol is to set out the Council's approach to the delivery of planning enforcement services including the Minerals and Waste planning enforcement service.

## **2. BREACHES OF PLANNING CONTROL**

A breach of planning control broadly means the carrying out of development without the grant of planning permission from the Council, or deemed permission by government order. A breach will also include the carrying out of development without compliance with the approved plans or any conditions attached to a planning permission.

Unlike the breaches identified above unauthorised works to listed buildings, trees covered by Tree Preservation Orders, trees within a Conservation Area and also unauthorised adverts constitute a criminal offence.

The Council also investigates offences under the Hedgerows Regulations 1997 and High Hedge complaints under Part 8 of the Anti-social Behaviour Act 2003.

## **3. LEGISLATIVE FRAMEWORK**

Local Planning Authorities have powers within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control and have powers to remedy proven breaches by statutory and other means.

The following sets out the legislative framework applicable to breaches of planning control:

- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Building and Conservation Areas) Act 1990
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

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- Town and Country Planning (Trees) Regulations 1999 (as amended)
  - The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
  - The Town and Country Planning (Use Classes) Order 1987 (as amended)
  - Part 1 of the Wildlife and Countryside Act 1981 (as amended), section 25 - Role of Local Authorities

Advice from Central Government on planning enforcement is set out primarily in the following documents:

- Planning Policy Guidance Note 18 'Enforcing Planning Control': December 1991 (PPG18) published by the Department of the Environment (DOE)
- Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements: July 1997 published by the Department of the Environment and the Regions (DETR)
- Enforcing Planning Control: Good Practice Guide for Local Planning Authorities: July 1997 published by the Department of the Environment and the Regions (DETR)

The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the Council to act in a way that is incompatible with a Convention right.

#### **4. ENFORCEMENT PRIORITIES**

The following sets out the Council's priorities for investigating alleged breaches of planning control or reported criminal offences.

The Council will acknowledge receipt of a reported breach of planning control or a reported criminal offence as set out in section 2 within 3 working days. The acknowledgement will either be by letter, e-mail or telephone and will provide the name and contact details of the investigating officer. If on initial receipt of a complaint it is obvious that it is not a planning matter or there is deemed to be no breach of planning control the complainant will be notified. If the reported breach relates to a function or activity enforced by another Council service the complaint will be forwarded to the relevant department.

To make the most effective use of available resources, the Council will investigate alleged breaches of planning control in accordance with the priorities listed in table 1 below. The priorities take into account the significance and impact of the breach, the level of harm caused and also the need to react expediently. For example unauthorised works to listed buildings often require

immediate investigation in order to prevent loss of historic features which may be irreplaceable. Other complaints are minor in nature such as certain breaches of conditions which may not be causing any direct harm and therefore do not require immediate investigation.

As an investigation of a particular case proceeds it may become necessary to change the priority level.

**TABLE 1: ENFORCEMENT PRIORITIES**

| <b>ENFORCEMENT PRIORITIES</b>    |   |
|----------------------------------|---|
| <b><u>PRIORITY 1 – HIGH</u></b>  |   |
| -                                | Works to listed buildings (demolition/alteration/disrepair);  |
| -                                | Demolition in a conservation area   |
| -                                | Works to trees covered by a Tree Preservation Order or in a Conservation Area                               |
| -                                | Development causing immediate/irreparable harm to protected ecology or causing serious danger to the public |
| <b><u>PRIORITY 2- MEDIUM</u></b> |   |
| -                                | Operational development already in progress;  |
| -                                | Development where potentially immune from enforcement within 6 months                                       |
| -                                | Development causing serious harm to amenity;  |
| -                                | Breaches of condition/non compliance with approved plans causing serious harm                               |
| <b><u>PRIORITY 3 – LOWER</u></b> |   |
| -                                | Other operational development which is complete;  |
| -                                | Changes of use resulting in some harm to amenity;   |
| -                                | Advertisements;   |
| -                                | Breaches of condition/non compliance with approved plans causing non-serious harm to amenity;               |
| <b><u>PRIORITY 4 – LOW</u></b>   |   |
| -                                | Changes of Use resulting in no harm to amenity;   |
| -                                | Untidy land   |

Upon receipt of a reported breach of planning control or reported criminal offence as set out in section 2, the Council will endeavour to conduct an initial site inspection in accordance with the priorities listed in table 1 and within the timescales detailed in table 2 below.

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**TABLE 2 – ENFORCEMENT SITE INSPECTION TIMESCALES**

|   |
|---|
| <b>Priority 1</b> – Within 1 working days<br><b>Priority 2</b> – Within 10 working days<br><b>Priority 3</b> – Within 20 working days<br><b>Priority 4</b> – Within 65 working days |
|---|

Planning Enforcement Officers are not empowered to order unauthorised works to be stopped. Considerable back office support is required to administer enforcement proceedings and accordingly investigations are contained to normal office hours.

## **5. ENFORCEMENT OPTIONS**

Following the site inspection, the findings will be assessed and a view taken as to how the investigation will proceed.

### Option 1 - No further action

The Council may, following initial investigation decide that there has been no breach of planning control or that the breach is minor or insignificant in nature, or that there is insufficient evidence to pursue the matter.

### Option 2 - Further investigation required

It may be necessary to carry out further investigations from the initial site inspection to determine whether a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or further information from the complainant, site owner or other parties.

In certain cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.

Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice or Requisition

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for Information to obtain information relating to the suspected breach or site ownership details.

Option 3- Negotiate a solution

Where it has been established that a breach of planning control has occurred, the Council will normally attempt to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, the Council will consider whether or not it is expedient to take formal enforcement action.

Option 4 - Retrospective application for planning permission

Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action.

Option 5- Formal enforcement action

Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers listed in table 3 below is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control.

There are rights of appeal to the Secretary of State against an Enforcement Notice/Listed Building/Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices there is no right of appeal to the Secretary of State and these may only be challenged by application for judicial review to the High Court. In the case of Section 215 Notices, prosecutions and injunctions appeals must be made through the Courts.



**TABLE 3 – FORMAL ENFORCEMENT PROCEEDINGS**

| ENFORCEMENT ACTION  | DESCRIPTION   |
|---|---|
| Enforcement Notice/Listed Building/Conservation Area Enforcement Notice | <p>Where a breach of planning control is resulting in harm to amenity or conflicts with planning policies and could not be overcome by the imposition of conditions on an approved planning application.</p> <p>The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.</p>   |
| Stop Notice   | <p>Where a breach of planning control is causing very serious harm to public amenity and the environment, and in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice. A Stop Notice cannot be used to prevent the use of a building as a dwelling.</p> <p>The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease and the date that it takes effect.</p> |
| Temporary Stop Notice   | <p>This differs from the normal Stop Notice powers because the Temporary Stop Notice does not have to wait for an Enforcement Notice to be issued. In addition the effect of a temporary stop notice will be immediate. A Temporary Stop Notice cannot be used to prevent the use of a building as a dwelling.</p> <p>The Temporary Stop Notice will set out the activity that the Council thinks is a breach of planning</p>   |

|   |  |
|---|--|
|   | control. It will also set out the Council's reasons for issuing the Temporary Stop Notice.   |
| Breach of Condition Notice              | <p>Where the breach of planning control relates to non-compliance with a condition on a planning permission.</p> <p>The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.</p>   |
| Section 215 Notice (Untidy Land Notice) | <p>In cases where the amenity of an area is adversely affected by the condition of land or buildings.</p> <p>The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect.</p>  |
| Prosecution                             | <p>The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.</p> <p>The Council will also consider commencing a prosecution in the Courts where unauthorized works have been carried out to TPO trees or trees in a Conservation Area, as well as unauthorised works to listed buildings, demolition in a Conservation Area, advertisements or where the recipient of a Planning Contravention Notice or Requisition for Information has failed to provide a response within the prescribed time period or supplied false or misleading information.</p> <p>Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.</p> |

|               |   |
|---------------|---|
|               |   |
| Injunction    | Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause exceptional harm.  |
| Direct Action | Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a Section 215 (Untidy Land) notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Sections 178 and 219 of the Town and Country Planning Act 1990 (as amended) to: -<br>(a) enter the land and take the steps; and<br>(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. |

## 6. ANONYMOUS COMPLAINTS

A number of complaints are received where the complainant wishes for a variety of reasons to remain anonymous. In certain cases it will be possible to identify both the breach of planning control and level of harm it is causing from an initial site inspection, for example an unauthorised building or extension. However, in other circumstances it will not be possible to identify the breach of planning control or to seek to remedy it without evidence being provided by the complainant (e.g. allegations concerning running of businesses from residential properties). Without this evidence formal enforcement action will fail in the courts. In these cases the Council will carry out one site inspection and if it is not possible to identify a breach of planning control from this visit then the Council will not progress the investigation. Complainants will be notified of this procedure when contacting the Council.

## **7. MONITORING OF CONDITIONS**

As well as investigating alleged breaches of planning control the Council will, as resources permit, undertake pro-active monitoring of planning conditions. This will be achieved by monitoring a random sample of approved applications to ensure that works are being carried out in accordance with the attached conditions.

## **8. MINERALS AND WASTE ENFORCEMENT**

The Council will also investigate complaints relating to unauthorised minerals and waste operations and also monitor planning permissions granted on minerals and waste sites.

In the case of Minerals and Waste Planning permissions, all mineral and landfill sites will be visited annually to check compliance with any attached conditions. Under the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006, sites will have an agreed number of chargeable visits during the financial year (April to March) with a minimum of two and a maximum of eight.

Site visits are charged as follows:

- Where the site is an active site, or partly an active site and partly an inactive site, the fee payable shall be £288
- Where the site is an inactive site the fee payable shall be £96

## **9. COMPLAINTS ABOUT THE SERVICE**

Persons wishing to make a complaint about the planning enforcement service should do so in writing to:

(TO BE COMPLETED WHEN CHESHIRE EAST COUNCIL ADDRESS FOR COMPLAINTS IS KNOWN)

If the complainant is not satisfied with the Council's response then they may complain to the Local Government Ombudsman. Advice about the types of complaint the Local Government Ombudsman can investigate as well as application forms for such complaints can be found at the following web site at [www.lgo.org.uk](http://www.lgo.org.uk). Application forms for such complaints can also be made available on request at Cheshire East Borough Council offices.

#### **10. VERBAL/PHYSICAL ABUSE TOWARDS OFFICERS**

The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and where appropriate, will use legal action to prevent abuse, harassment or assaults on Officers.

#### **11. REVIEW**

This Protocol is designed to provide consistency of planning enforcement services across the administrative area of Cheshire East Borough Council following vesting day on the 1<sup>st</sup> April 2009. As a result of the on-going work to develop structures for the new Council the Protocol is intended only as an interim measure. It will therefore be necessary to review the Protocol once the Council's working structures are fixed and in order to ensure continuing service improvement it will also be necessary to keep the Protocol under review thereafter.

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