



Service Specific Enforcement Policy

Planning Enforcement

To be read in conjunction with the Cheshire East Council
Enforcement Policy

July 2016

CHESHIRE EAST BOROUGH COUNCIL

PLANNING ENFORCEMENT PLAN

1. Aims of this Plan

1.1 To advise and inform businesses and members of the public of:

- the legislative powers available to the Local Planning Authority in relation to the effective enforcement of planning control and how and when those controls will be exercised;
- the decision making process;
- how priorities are set; and
- a framework for measuring the performance of the service

1.2 This policy is to be read in conjunction with the Cheshire East Corporate Enforcement Policy.

2. Introduction

2.1 National guidance on planning enforcement is contained in the National Planning Policy Framework (NPPF) www.planningportal.gov.uk/planning/nppf and National Planning Policy Guidance (NPPG) www.planningportal.gov.uk/planning/nppg .

2.2 Paragraph 207 of the NPPF relates specifically to enforcement of planning control and makes it very clear that the Council's use of its enforcement powers is discretionary.

2.3 Enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits. Legislation provides that planning permission may be granted retrospectively to regularise development which has already been carried out without the necessary permission.

2.4 Any development carried out without the necessary planning permission is done so at the developers own risk. However it does not constitute an offence. It only becomes an offence at a point when the requirements of a Notice have not been complied with.

2.5 Planning enforcement aim to deal with all allegations of breaches of planning control in accordance with the priorities and timeframes set out in this plan. However some cases take a considerable amount of time to resolve, for example due to the need for a full and in depth investigation, negotiation or formal enforcement action. There is a right of

appeal against most types of notice which suspends the Notice coming into effect until the outcome of the appeal.

- 2.6 Effective enforcement is important to:
- Tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area.
 - Maintain the integrity of the decision-making process
 - Help to ensure that public acceptance of the decision making process is maintained.
- 2.7 Any action which is taken must be proportionate to the breach which it is seeking to remedy and must also be expedient.
- 2.8 An effective enforcement function is essential to a credible planning service and it is with this in mind that resources must be targeted to dealing with the most serious breaches of planning control where clear and demonstrable harm is being caused.
- 2.9 Decisions on enforcement action will have regard to the Development Plan and relevant material considerations.
- 2.10 As a unitary authority the Council also fulfils the role of Minerals and Waste Planning Authority. Alleged breaches of planning control which involve minerals or waste related development are investigated, and if necessary, enforced against by the Minerals and Waste Team in consultation and liaison with the Planning Enforcement Team. Those investigations are also covered by this policy.

3. Breaches of Planning Control

- 3.1 A breach of planning control, as defined by section 171A of the Town and Country Planning Act 1990 includes the following:
- Carrying out development without the required permission
 - Failing to comply with any condition or limitation subject to which planning permission has been granted

Note: Development is defined by section 55 of the Town and Country Planning Act 1990. This includes material changes of use of buildings and land as well as building work. Certain demolition work may also be included.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

- Building or Land whose external condition adversely affects the amenity of the area may also be at risk of enforcement action by the Council

3.2 Some breaches of planning control constitute criminal offences and can be subject to legal action and significant fines from the court. Such offences include:-

- Unauthorised work to a listed building
- Unauthorised advertisements
- Unauthorised demolition of certain unlisted buildings in a Conservation Area
- Unauthorised works to trees protected by a Tree Preservation Orders
- Unauthorised works to certain trees within a Conservation Area.

3.3 A list of matters commonly reported to planning enforcement which either do not fall within the remit of the Local Planning Authority or **DO NOT** constitute a breach of planning control is set out in Appendix 1.

4. Legislative Framework

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

4.2 The following sets out the legislative framework applicable to breaches of planning control (this list is not exhaustive and is subject to change by parliament):

- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- The Town and Country Planning (Trees) Regulations 1990 (as amended)
- The Tree Preservation England
- The Town and Country Planning (General Permitted Development) Order 2015 (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.
- The Human Rights Act 1998
- Caravan Sites Act 1960 and 1968

5. How to Report an Alleged Breach of Planning Control

5.1 Alleged breaches of planning control can be reported to the Council using the online enforcement enquiry form located at www.cheshireeast.gov.uk/planning/planning_enforcement.aspx or by telephoning the

Councils Contact Centre on 0300 123 5014. Full details of the allegation must be provided along with full contact details including an email address (where applicable) this allows the Local Planning Authority (LPA) to target its limited resources and contact the complainant more readily.

5.2 A complainants details will be kept confidential (subject to any request from the Information Commissioners or the Courts).

5.3 A reported breach will be acknowledged within 3 working days and will be investigated in accordance with the timescales set out in this plan.

5.4 **Anonymous Complaints** – It may not be possible to investigate such a complaint due to the limited information provided and officers are unable to make contact to obtain any additional information that may be necessary. In certain cases it may be possible to identify both the breach of planning control and the level of harm it is causing from an initial site inspection, e.g. an unauthorised building or extension. However, in other circumstances it will not be possible to identify the breach or seek to remedy it without evidence being provided by the complainant (e.g. allegations concerning running a business from a residential property, hours of operation). Without this evidence formal enforcement action will fail at appeal or in the courts and therefore will not be commenced. In these circumstances, the Council will undertake a desk top analysis in the first instance. If it is considered necessary one site visit will be carried out and if it is not possible to identify a breach of planning control from this visit the investigation will not be progressed any further. Complainants will be notified of this procedure when contacting the Council.

5.5 **Additional Investigations Required** - It may be necessary to carry out further investigations after the initial site inspection to determine whether or not a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services/agencies or seeking further information from the complainant, site owner or other parties.

In certain circumstances, e.g. where the allegation relates to a material change of use, it may be necessary for the complainant to keep a diary of activity, including dates, times, duration and nature of suspected breach, over a period of not less than three weeks to assist the Council in their investigations. In some cases the complainant may be requested to provide a witness statement and to give evidence in Court. If the complainant is unwilling to assist they may be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.

5.6 **Expedient/Proportionate**

Enforcement action will only be taken when the Council is satisfied that it can demonstrate that the proposed action is both expedient, i.e. necessary to remedy demonstrable harm, and proportionate, i.e. the remedy it is seeking does not exceed

what is reasonably required in order to remove/reduce the level of harm being caused. Where no material harm can be demonstrated enforcement action will not be taken.

In some circumstances, and in order to be proportionate, action may only be taken against certain breaches of planning control and may not include all of the development that has taken place without the benefit of planning permission.

5.7 Where resources permit the Council will undertake pro-active monitoring of compliance with planning conditions. Resources will be targeted to development sites in accordance with the designated hierarchy.

- Major development sites
- Development sites with significant ecological or heritage assets
- Other development

6. Priorities

6.1 Priority 1 – High - Site visit within one working day

- Unauthorised works to listed buildings
- Unauthorised demolition in a Conservation Area
- Development Causing Immediate and irreparable harm to an identified environmental asset.
- Development causing serious danger to the public
- Unauthorised works to or affecting trees covered by a Tree Preservation Order or in a Conservation Area.

6.2 Priority 2 – Medium – Site visit within 5 working days

- Operational development already in progress
- Development which is potentially immune from enforcement action within 6 months
- Development causing serious harm to amenity or the environment
- Breaches of Condition/non compliance with approved plans which is causing serious harm
- Development which represents a clear breach of planning policy and is unlikely to be granted planning permission.

6.3 Priority 3 – Low – Site visit within 15 working days

- Other operational development which is complete
- Development not causing significant harm to amenity or the environment
- Advertisements
- Breaches of condition/non compliance with approved plans causing no significant harm to or no harm to amenity

- Development which is likely to be permitted development
- Minor domestic development e.g. fences, small outbuildings, satellite dishes
- Untidy Land

NB There are certain circumstances where a site visit will not be required, e.g. where it can clearly be established that planning permission has already been granted.

7. Targets

7.1 The LPA aim to achieve an “identified action” in relation to alleged breaches of planning control within 8 weeks of receiving the enquiry or where a complainant is requested to keep a diary of activity receipt of that diary.

- Identified actions are:
- **No Breach**
If following an initial investigation it is evident that there has been no breach of planning control the case will be closed.
- **Action Not Expedient**
In some instances a breach of planning control may be identified but it may be considered to be minor, insignificant in nature or causing no material harm in planning terms. Alternatively there may be insufficient evidence to pursue the matter. In such cases enforcement action would not be expedient and the case will be closed. The developer may be invited to submit a retrospective application to regularise the development.
- **Breach ceased voluntarily**
Where it has been established that a breach of planning control has occurred, the Council will, where appropriate, attempt to negotiate a solution to remedy that breach without recourse to enforcement action. Such negotiations may involve the reduction/cessation of an unauthorised use or 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 a breach of planning control causes serious harm to amenity or an historical or ecological asset.
- **Planning application requested****
In circumstances where a breach of planning control has occurred and it is considered that the development could be made acceptable by the imposition of conditions, or where the submission of a planning application is likely to benefit the proper assessment of the impact of the unauthorised development, a retrospective planning application would be invited within a specified timescale. In such circumstances it will be made clear that the invitation is made without prejudice to any final decision the Council may make in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take enforcement action.

- **Relevant Notice issued**

Where it has been established that a breach of planning control has occurred the Council will consider using the discretionary use of its powers to take action to remedy that breach. These powers are listed in Table 1 below. The use of these powers is discretionary and they will only be used when it is considered expedient to do so. Any action must be proportionate to the breach it is seeking to remedy.

There are rights of appeal to the Secretary of State against an Enforcement Notice/Listed Building/Conservation Area Enforcement Notice. In the case of a Breach of Condition Notice or a Temporary Stop Notice there is no right of appeal to the Secretary of State and they may only be challenged by an application for Judicial Review to the High Court. In the case of a S215 Notice (Notice Requiring the Proper Maintenance of Land) the appeal is made through the Magistrates Court.

Where it appears to the Council that a breach of planning control may have occurred it will consider the serving of a Planning Contravention Notice (PCN) or a Requisition for Information (RFI) to obtain information relating the suspected breach of planning control or site ownership details. There is a legal requirement for the recipient of a PCN or RFI to respond within the prescribed timescales.

- **Legal proceedings requested**

Where there is evidence that a Notice has not been complied with the Council may seek to prosecute any person/s responsible for that offence. Cases are normally heard in the Magistrates Court however certain proceedings may be taken to the Crown Court, County Court or High Court.

In such instances instructions will be sent to the Council's legal services with regards to those proceedings. In order for any case to proceed there must be sufficient evidence to support the allegation and it must be in the public interest to proceed with the matter.

If the Council considers it expedient and proportionate to seek an injunction it will do so through either the County or High Court. Injunctions are only sought in exceptional cases.

****Where an application has been requested the time period for submission will normally be 4 weeks from the date of the request.**

8. In relation to minerals and waste planning permissions all mineral and landfill sites will be visited annually (or more frequently where deemed appropriate) 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.

9. 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 inactive the fee payable shall be £96.

10. Enforcement Proceedings - Table 1

| Type of Enforcement Action | Description |
|---|---|
| Enforcement Notice/Listed Building/Conservation Area Enforcement Notice | <p>Where a breach of planning control is resulting in demonstrable harm or conflicts with planning policies and where the harm or conflict could not be overcome by the imposition of conditions on a grant of planning permission.</p> <p>The Enforcement Notice will specify the reason(s) for its issue, the steps required to remedy the breach, the date it takes effect and the time period(s) for compliance.</p> |
| Stop Notice | <p>Where a breach of planning control is causing 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 period of the related Enforcement Notice.</p> <p>The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities which are required to cease and the date it takes effect.</p> <p>(A Stop Notice cannot be used to prevent the use of a building as a dwelling).</p> |
| Temporary Stop Notice | <p>This differs from the normal Stop Notice in that 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.</p> <p>The Temporary Stop Notice will set out the activity that the Council believes to be in breach of planning control. It will also set out the Council's reasons for issuing the Temporary Stop Notice. A Temporary Stop Notice lasts for a maximum of 28 days.</p> |
| Breach of Condition Notice | Where the breach of planning control relates to |

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| | <p>non-compliance with a condition on a planning permission or a limitation under the Town and Country Planning (General Permitted Development) Order 2015.</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 (Untidy Land) Notice | <p>In instances where the amenity of an area is adversely affected by the condition of land or buildings a Notice can be issued which requires specified steps to be taken to address the adverse condition of the land and/or buildings within a prescribed timescale.</p> |
| Prosecution | <p>The Council will consider commencing prosecution proceedings in the Courts against any person/s who has/have 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 prosecution in the Courts where unauthorised works have been carried out to trees protected by a Tree Preservation Order or trees in a Conservation Area, as well as unauthorised works to a listed building, unauthorised demolition in a Conservation Area, unauthorised advertisements or where the recipient of a Planning Contravention Notice, Requisition for Information of S330 Notice has failed to provide the requested information within the prescribed timescale.</p> <p>Before commencing any legal proceedings the Council will need to 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> |
| Simple Caution | <p>Where appropriate consideration will be given to offering a simple caution to a person rather than pursuing a prosecution through the Courts. A</p> |

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| | caution will only be considered in instances where the Council is satisfied that there is sufficient evidence to offer a realistic prospect of conviction and the offender admits their guilt. |
| Injunction | Where a Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to secure compliance 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 is likely to cause exceptional or irreparable harm. In exceptional circumstances, and where there is substantive evidence of an apprehended breach of planning control the Council may seek a pre-emptive injunction. |
| Direct Action | Where any steps required by an Enforcement Notice have not been met within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a S215 (Untidy Land) Notice have not been met within the prescribed timescale the Council will consider whether it is expedient to exercise its' powers under S178 and 219 of the Town and Country Planning Act 1990 (as amended) to; <ul style="list-style-type: none"> (a) Enter the land and take the steps; and (b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. |

12.0 Reporting

- 12.1 A regular report on the performance of the planning enforcement service will be presented to the Strategic Planning Board (or any equivalent) for information.
- 12.2 Ward Members will be notified within 5 working days of the issue of a an Enforcement Notice, Breach of Condition Notice, S215 Notice, Temporary Stop Notice or Stop Notice in their ward.

13.0 Appeals

- 13.1 There is a statutory right to appeal against the Council's decision to issue an Enforcement Notice and S215 Notice. Guidance on how and where to make that appeal will be attached

to any Notice issued. These guidance notes also provide details of the grounds on which an appeal may be lodged. That appeal must be submitted before the Notice takes effect.

- 13.2 Where an appeal is lodged against a Notice it will be suspended from coming into effect until the outcome of the appeal is known. If the appeal is dismissed the Notice will come into effect on the date of the Inspectors decision.
- 13.3 There is no right to appeal against the Council's decision to issue a Breach of Condition Notice.
- 13.4 Appeals against a S215 (Untidy Land) Notice are heard in the Magistrates Court.

The Council maintains an Enforcement Register for Notices. Viewing of this can be done by arrangement at designated Council offices. Please contact 0300 123 5014.

14.0 Works in Default

- 14.1 The Council has the power to carry out works in default of certain Notices and recover all of its reasonable costs from the any person/s who own the land at the time of the works. It is not necessary for the Council to have exhausted all other avenues, e.g. prosecution before a decision is made to carry out works in default.
- 14.2 Where it is considered to be reasonable and proportionate the Council will carry out works in default and will seek to recover all of its costs either directly from the owner/occupier or by placing a registered charge on the land. Ultimately the Council may seek to use its powers to force the sale of land to recover its costs.

15.0 Verbal/Physical Abuse Towards Officers

- 15.1 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. To obstruct an officer in carrying out their duties is an offence and legal action may be taken against any person/s doing so.
- 15.2 Officers are entitled to, if subjected to verbal abuse either in person or on the telephone, terminate the meeting or telephone call.

16.0 Rights of Entry

- 16.1 Officers have the right to enter land or adjoining land, at any reasonable time to investigate an alleged breach of planning control with the exception of a dwelling house where 24 hours notice is required should access be denied.

- 16.2 To deny an officer access in any other circumstance could be considered to constitute an offence of obstruction for which the Council could seek to prosecute any person(s) obstructing an officer.
- 16.3 If access is denied to a dwelling house after 24 hours notice has been given that may also constitute obstruction.
- 16.4 In circumstances where access has been denied or there is reasonable prospect that it will be denied the Council can apply to the Magistrates Court for a Warrant of Entry.

17.0 Complaints and Compliments about the service

- 17.1 In accordance with the Council's Compliments and Complaints procedure persons wishing to submit a compliment or make a complaint about the planning enforcement service should do so in writing to:

Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ.

- 17.2 Alternatively you can telephone 0300 123 5500 or complete the "Contact Form" at www.cheshireeast.gov.uk

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

APPENDIX 1

A list of matters commonly reported to planning enforcement which either do not fall within the remit of the Local Planning Authority or **DO NOT** constitute a breach of planning control.

- Development which is Permitted Development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- Works to trees not protected by a Tree Preservation Order or in a Conservation Area
- Planting of shrubs/trees.
- Trespass or boundary disputes (Civil matters)
- Obstruction of a Public Right of Way
http://www.cheshireeast.gov.uk/leisure_culture_and_tourism/public_rights_of_way/public_rights_of_way.aspx
- Activity taking place on a highway (Highways)
http://www.cheshireeast.gov.uk/highways_and_roads/highways_and_roads.aspx
- Storage of a caravan on a driveway
- Re-roofing properties (unless listed building or in a Conservation Area)
- Standard television aerials
- Solar panels on houses (unless listed building or in a Conservation Area)
- Flying the national flag of any country (see Plain English Guide to Flying Flags)
- New uses which do not represent a material change of use and the only objection is increased competition.
- Restrictive covenants on deeds.
- Loss of property value.

The Local Planning Authority has no jurisdiction over such matters and has no power to intervene; therefore no action will be taken in respect of them. The Local Planning Authority will endeavour to direct the complainant to the correct enforcing authority where relevant.

Note: this list is not exhaustive but is provided to assist interest parties to avoid unnecessary complaints being raised, or help direct the enquiry to the correct enforcing agency or department .