

Information/Discussion Paper

Overview & Scrutiny Committee - 9th September 2024

Local Enforcement Plan

This note contains the information to keep Members informed of matters relating to the work of the Committee, but where no decisions from Members are needed.

1. Why has this come to scrutiny?

- 1.1 To inform the committee of the draft local enforcement plan and to provide members with the opportunity to scrutinise and comment on its content in advance of it coming to Cabinet on 24 September 2024.

2. Summary of the Issue

- 2.1 The council's Planning Enforcement function is tasked with ensuring that alleged breaches of planning control are investigated and, where appropriate, action is taken to remedy that breach. Enforcement action is discretionary, as is the local enforcement plan, and action is only taken when it is deemed expedient to do so (i.e. in the public interest) having regard to the development plan and any other material considerations; a local enforcement plan is one such material consideration.

- 2.2 Paragraph 59 National Planning Policy Framework states that,

“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”.

- 2.3 The National Planning Practice Guidance sets out at Para 006 (Reference ID: 17b-006-20140306) why the government considers local enforcement plans to be important:

“The preparation and adoption of a local enforcement plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process.

2.4 The council's most recent local enforcement plan (the 'Built Environment Local Enforcement Plan') was published in January 2014. This version provides a useful overview and summary of the planning enforcement process, which includes the setting out of priorities, but it is out of date in a number of legislative areas and does not reflect current approaches; there is a clear need for it to be fundamentally reviewed.

2.5 There has been a longstanding ambition to replace this plan, however as many councils across England, the planning and enforcement service has been significantly challenged by resourcing issues. This has been the case for Cheltenham's planning team and as such we have had to prioritise the statutory duties that we are required to perform.

2.6 The new (draft) local enforcement plan it is not an update to the 2014 version, it is an entirely new document setting out the approach and priorities for Cheltenham Borough Council's planning enforcement team in 2024. It's structure and content are summarised below.

3. Summary of evidence/information

3.1 The draft local enforcement plan begins by explaining the scope and remit of the planning enforcement function. It is important to set expectations at the outset as to what matters may or not be investigated and/or acted upon. The enforcement team currently receive a high number of reports relating to matters which fall entirely outside of planning control. The draft plan sets out what is meant by a 'breach of planning control' and lists the categories that a legitimate breach may fall into. The draft plan goes on to list the most common complaints received by the enforcement team which fall outside of planning control and thus will not be investigated. Useful signposting to third party advice (or bodies) is provided in respect of those non-planning matters.

3.2 The draft plan goes on to explain how investigations into breaches of planning control are to be prioritised; this is largely unchanged from the 2014 iteration with works considered to be the most harmful and/or irreversible given a high priority and minor works causing a lower level of harm (or no harm at all) given a lower priority; with matters of medium harm sitting in between.

3.3 The priority (and therefore urgency) of a case is reflected in the time scale within which an investigation will be opened; it is proposed that investigations are opened

within:

- 3 days for high priority cases,
- 10 days for medium priority cases and
- 20 days for low priority cases.

It should be noted however that these timescales are **only** achievable when the enforcement team is fully staffed which at present, it is not.

3.4 The draft plan explains how we will approach an enforcement investigation once its priority has been set and initial investigation undertaken. We will follow one (or more) of four options;

1. do nothing (typically when there is no breach of planning control, or the infringement is of a very minor or trivial nature);
2. negotiate a solution, this is our preferred 'go-to' course of action employed when the cessation of an unacceptable activity or amended building works can be informally agreed;
3. invite a retrospective application to regularise the breach (if considered acceptable) or to render it acceptable through the imposition of planning conditions or;
4. formal action, our policy is that this is the last resort when the aforementioned options have been exhausted and have ultimately failed to satisfactorily rectify the breach. The draft report details the main forms of formal action available to the council.

3.5 Additional sections have been added to the draft plan setting out the council's position in respect of listed building enforcement, tree enforcement, high hedges, the Proceeds of Crime Act and proactive compliance.

4. Next Steps

4.1 A task and finish member meeting has been scheduled made up of member representatives from across all political parties of the council, including membership from Planning Committee. In addition, members of the Audit Committee have been made aware of this Overview and Scrutiny item and may attend to discuss the detail if they so wish.

4.2 A copy of the draft Local Enforcement Plan is appended to this report, through the Overview and Scrutiny meeting, feedback and reflections are welcomed and these will be reported to Cabinet.

Background Papers

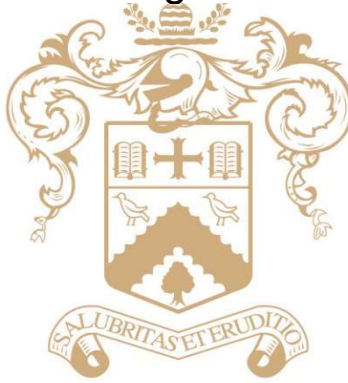
Draft Local Enforcement Plan (September 2024)

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Accountability

Cllr Mike Collins Cabinet Member for Planning
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CHEL TENHAM

BOROUGH COUNCIL

Planning Enforcement Plan

September 2024

DRAFT

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1.0 Introduction

Government policy states, at Paragraph 59 of the National Planning Policy Framework (NPPF), that local authorities should consider publishing a **local enforcement plan** to manage planning enforcement proactively, in a manner which is appropriate to their area. Paragraph 59 states that such a plan should set out how authorities will monitor the implementation of planning permissions, investigate alleged breaches of planning control and how action will be taken where appropriate.

This document constitutes the latest iteration of Cheltenham Borough Council's Local Enforcement Plan and comprehensively updates and replaces the 2014 version of the document. This document should be read alongside the Council's Corporate Enforcement Policy which sets out the guiding principles by which legislation will be enforced by the Council to protect public health, safety, amenity and the environment within the Council's jurisdiction.

We believe that planning enforcement has a key role to play in achieving the high standard of development being sought for our area. The purpose of this Local Enforcement Plan therefore is to set out our approach to handling planning related enforcement matters. It will be of interest to anyone who thinks the planning rules may have been broken in their area (often referred to as a 'breach of planning control').

This plan sets out:

- the Council's priorities for investigation,
- what will be investigated and what will not,
- the Council's general discretionary powers with regard to planning enforcement,
- the priorities for responses to complaints along with explaining the considerations that are undertaken and outcomes that may result.

Planning enforcement action is discretionary and serves a remedial purpose, meaning that action is taken to remove the harm caused by a breach of planning control. The NPPF is clear that that local planning authorities should act proportionately in responding to suspected breaches of planning control and as such formal enforcement action should not be taken simply to punish somebody who has carried out unauthorised development, but the council should weigh up the contravention in the context of the public interest. Planning laws and policies that support planning enforcement are not intended to protect the private interests of one person against the activities of another.

Fundamentally it is the objective of planning enforcement to remedy any undesirable effects of unauthorised development; this is important as the planning system would lack credibility if failure to adhere to it was without consequence.

The UK planning system is plan-led. Effective planning enforcement ensures that development complies with the provisions and policies of the development plan. It is our objective, through effective planning enforcement, to ensure that the policies of the Cheltenham Plan and the Joint Core Strategy (and their replacement) are implemented.

Enforcement activities differ in range and scale, some activities are as simple as checking details on site against approved plans. However, enforcement activity can become complex and can lead to lengthy investigations to gather the facts, interviews under caution where there is concern a criminal offence has taken place, and legal action. These activities take time and resources and as such having



a clear plan with defined priorities is important in establishing clear parameters whilst enabling the Council to exercise discretion to take enforcement action if it is considered expedient to do so.

Planning enforcement is not an isolated activity responding only to failures in planning control. It is part of wider development management activity to deliver good community outcomes in line with our approved planning policies and reflecting the Council's aims and objectives as set out in the Council's Corporate Plan 2023-2027. The Council's six guiding principles are as follows:



Help all our communities to benefit and prosper from our strong local economy



Work together with everyone in our networks to improve our borough and support our residents to be healthy, our communities to be strong and our businesses to thrive



Be commercially minded to keep costs down and our council financially stable, so we always provide value for money to the taxpayer



Use data and research to drive improvement, listening carefully to our residents, communities and businesses to underpin informed decisions



Ensure the climate emergency agenda is at the forefront and integral to all our decision-making



Be risk aware, rather than a risk averse

2.0 What is a Breach of Planning Control and What We Will Investigate

Our Planning Enforcement Team can only investigate breaches of planning control; the Planning Enforcement Team have no remit nor authority to deal with any other unauthorised works or actions, however undesirable or harmful they may be.

A breach of planning control is principally defined in section 171A of the Town and Country Planning Act 1990 as:

1. the carrying out of development without the required planning permission; or
2. failing to comply with any condition or limitation subject to which planning permission has been granted.

'Development' for the purposes of s171A of the TCPA 1990 includes not only building and engineering operations but also any material change of use of land or buildings.

There are a number of other actions/works which also constitute a breach of planning control and thus will be investigated, these include:



- **Unauthorised works to a listed building** – unauthorised work to any one of Cheltenham’s 2602 listed buildings, irrespective of its grading, inside and out, which affects the building’s character as a building of special architectural or historic interest. Most works to Listed Buildings require consent, and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990., the Act gives local planning authorities power to serve a Listed Building Enforcement Notice.
- **Unauthorised demolition in a conservation area** – a substantial part of Cheltenham falls within a conservation area within which planning permission is required to demolish all but the very smallest of buildings (those under 115 cubic metres volume) and the lowest of walls (those under a metre high adjacent to the highway or under 2 metres high elsewhere).
- **Unauthorised advertisements** – the display of a wide range of advertisements requires Advertisement Consent from the Council. Some advertisements do not require the Council’s consent however, details of which advertisements benefit from ‘deemed consent’ can be found here [insert link].
- **Unauthorised works to trees protected by Tree Preservation Orders (TPO) and trees within conservation areas** - if a tree is protected by a TPO or within a conservation area then it is an offence (with some limited exceptions) to undertake works to it without the Council’s written consent. Works requiring consent include (but are not limited to) felling, lopping, topping and works to the roots. Where works are proposed to trees in a conservation area the Council must be notified; we will evaluate the contribution the tree(s) make to the area. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.
- **Breaches of s106 Agreements** – a s106 agreement is a legal agreement, usually between the council and the landowner/developer, which binds the parties to certain actions within agreed timescales should the associated planning permission be implemented (for example the construction of specified highway works before a certain number of houses are occupied on a new housing estate). A s106 agreement is a delivery mechanism for the matters that are necessary to make a development acceptable in planning terms (those matters that cannot be dealt with imposing a condition) and as such are a key part of the development management process. The council monitors and where appropriate will take action against non-compliance with s106 agreements.

A s106 agreement can be enforced by injunction. In the case of a breach of the agreement, the Council can, where appropriate, take direct action and recover expenses. If planning obligations under a section 106 agreement are not met, then the LPA has powers to take enforcement action by way of:

1. invoking an injunction (section 106(5) TCPA 1990). This can be for both the fulfilment of a requirement or restriction under the agreement.
2. entering onto the land to carry out the works and recover the Council’s reasonable expenses for so doing. To do so, the Council must first give 21 days-notice to any person against whom the obligation is enforceable (sections 106(6) and 106(7), TCPA 1990).



- **High hedges** – Councils are able, by virtue of Part 8 of the Anti-social Behaviour Act 2003, to deal with complaints about high hedges. We must first decide whether the hedge in question is causing an adverse impact on a neighbour’s enjoyment of their home/garden because of its height. If it is, then we can order the hedge’s owner to trim or fell the hedge to alleviate the problem. This legislation relates only to hedges and not to trees. High hedge complaints are managed by the council’s Trees Team in the first instance, however subsequent Remedial Notices (if required) are a matter for the Planning Enforcement Team.
- **Untidy land where it affects the amenity of the area** – Where land or premises have become derelict or untidy to the extent that it adversely affects the amenity of the area, the Local Planning Authority has the power to serve a notice under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the untidy condition of land. We will also work with other council services to find the most appropriate resolution to such issues as they arise, including other powers of enforcement available to the Council.
- **Deliberate concealment of unauthorised building works or changes of use** – Where a person deliberately conceals unauthorised development, the concealment may not come to light until after the normal time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Some breaches of planning control become exempt from enforcement action through the passage of time. Unauthorised operational development (building and engineering works) becomes exempt from enforcement action **10 years** from the date that it was substantially complete – if no formal enforcement action is taken by the Council. Unauthorised changes of use and breaches of conditions imposed on planning permissions also become exempt from enforcement action after the passage of **10 years** – again, if the council has not taken any formal enforcement action during that period.

3.0 What We Will NOT Investigate

For the avoidance of doubt the following matters fall outside of planning control but are nonetheless common issues that the planning enforcement team are asked to investigate; this list is not exhaustive. We will **NOT** investigate:

- concerns relating to unauthorised waste, mineral extraction or planning applications determined by the County Planning Authority (Regulation 3 Development). These are matters for Gloucestershire County Council and any breaches are considered within the context of their [Enforcement Plan](#).
- land ownership disputes
- neighbour disputes (unless directly relating to a Planning Enforcement matter)
- the enforcement of legal covenants
- the behaviour of builders and their contractors, including parking practices.
- party wall issues
- structural issues and other building control matters

Further advice and signposting regarding the above listed non-planning enforcement matters is provided overleaf.



Unauthorised Deposit of Waste	➤	Gloucestershire County Council Planning Enforcement
Concerns relating to Mineral Extraction	➤	Gloucestershire County Council Planning Enforcement
General Property Disputes	➤	GOV.UK – Housing Tribunals
Land Ownership Disputes	➤	Citizens Advice -Boundary Advice HM Land Registry
Construction Noise and Similar Nuisance	➤	CBC Statutory Nuisance Advice envhealth@cheltenham.gov.uk
Builders/Contractors Poor Parking	➤	Contact: parking@gloucestershire.gov.uk
Party Wall Issues	➤	GOV.UK – Party Walls
Structural Issues and Concerns	➤	Cheltenham & Tewkesbury Building Control

4.0 How We Prioritise Cases

The Council receives a significant number of reports relating to planning enforcement matters every month and therefore it is necessary to prioritise our investigations according to the level of harm that may be being caused.

The table below sets out how planning enforcement complaints are prioritised with those most potentially harmful actions categorised as priority 1 (high priority) and lesser degrees of harm prioritised accordingly.

When we assess whether formal action should be taken, we must ensure that our actions are reasonable, proportionate and in the public interest. This is known as the ‘expediency test’; it means



weighing up carefully the merits of each case before deciding what to do. The question of, whether or not it is expedient to act, is at our discretion. The speed in which a breach of planning control can be resolved will vary depending on the complexity of the individual case and officer workloads. Some complex cases can take a significant period of time due to the nature of the investigation process.

The appeal process, which is handled by the Planning Inspectorate and therefore out of the Councils' control, can introduce very significant delays into the process; recipients of most forms of notices have a right of appeal.

Priority 1 (High)	We will open an investigation within:
<p>Unauthorised works, demolition, or alteration to a Listed Building, or the demolition of a building within a conservation area causing immediate or irreparable harm;</p> <p>Unauthorised development which leads to substantial and/or permanent damage to a scheduled ancient monument, Sites of Special Scientific Interest (SSSI) or other nationally or locally designated sites of nature conservation;</p> <p>Works being undertaken in contravention of the requirements of an extant enforcement and/or stop notice;</p> <p>Properties which cause serious concern to public safety/amenity;</p> <p>Unauthorised advertisements on Listed Buildings or where public safety is being put at risk;</p> <p>Unauthorised works to a tree subject to a Tree Preservation Order or a tree within a conservation area</p>	<p>3 working days</p>
Priority 2 (Medium)	
<p>Unauthorised building work, engineering operations or uses of land;</p> <p>Breach of planning conditions or legal agreements where demonstrable harm is being caused to the neighbourhood amenity;</p> <p>Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action is imminent;</p> <p>Unauthorised householder development.</p> <p>Unauthorised engineering operations</p> <p>Deliberate concealment of unauthorised building works or changes of use</p> <p>Untidy land and buildings (S.215 Notices – see below)</p> <p>Advertisements in a conservation area</p>	<p>10 working days</p>



Priority 3 (Low)	
Minor unauthorised works; Breaches of a technical nature; All other advertisements.	20 working days

5.0 Our Approach

Upon receiving a complaint that a breach of planning control may have occurred, we will log the complaint and open an investigation prioritising the matter according to our published priorities as set out in section 4 above. It should be noted that we **will not accept anonymous complaints** unless it clearly relates to a matter categorised as **Priority 1**. Personal details provided by a complainant will be kept confidential and will not be disclosed unless required to do so as a result of any formal legal proceedings.

It may be necessary during the early stages of our investigation to serve notices on those alleged to be responsible in order to obtain further information or clarity. These include:

- A Requisition for Information (RFI) or;
- A Planning Contravention Notice (PCN)

Both of the above seek information/clarity only and do not seek to remedy a breach. Once our initial investigation has been concluded we will then determine the most appropriate course of action; one of the following options will be taken:

Option 1: No Further Action
Our investigations may determine that no breach of planning control has occurred; if this is the case the Council has no authority to take any further action and the case will be closed. We may also decide to take no further action when a breach <i>has</i> occurred, but it is so minor or insignificant in nature that there is no public benefit in pursuing it (the ‘expediency test’).
Option 2: Informal Action - Negotiate a Solution
If there is both a clear breach of planning control <u>and</u> it has been concluded that it is expedient to take action, the Council favours the informal resolution of the matter. In general, we will first seek to resolve the matter informally and only escalate matters to formal action in the event that informal action is unsuccessful. In cases where a breach has occurred, but a negotiated solution may be possible, we will seek to enter into such discussions. For example, in cases where an unauthorised harmful activity is underway, we will in the first instance, seek to negotiate informally its cessation, reduction or deintensification - to a level that is acceptable. It is at the Council’s discretion whether to pursue a negotiated solution.
Option 3: Informal Action – Invite a Retrospective Application
It is often the case that unauthorised development is not actually in conflict with planning policy nor the cause of unacceptable harm. In such cases we will invite a retrospective application to regularise the breach. We will also invite a retrospective application in cases where we have



concluded that unacceptable harm can likely be mitigated through the imposition of planning conditions; this is because the grant of planning permission provides the council with the opportunity to impose such conditions.

Option 4: Formal Action

If a breach of planning control has occurred, the breach is unacceptable in planning terms, a negotiated solution is not feasible nor appropriate and it is expedient to take action, then formal action is likely to follow. There are a number of ways of pursuing formal enforcement action depending upon the specifics of each individual case and these are set out in Section 6 below.

Freedom of Information (FOI) and Data Protection

Under the terms of the FOI Act 2000, any information supplied to the council may be subject to an FOI request. However, information of a predominately personal nature, which would conflict with the Data Protection Act 2018, the General Data Protection Regulation and information of a highly confidential nature that would not be in the public interest to disclose, will be exempt from release to the general public. Enquiries seeking the release of planning enforcement information, including the release of complaints themselves pursuant to the FOI Act will be treated on a case-by-case basis.

The following summarises the Council's approach to the enforcement of breaches of planning control:
[insert flow chart here]



6.0 Formal Action

In accordance with government guidance, our first priority is to try and resolve any breaches of planning control through negotiation as mentioned. Only when such negotiations fail to secure a solution should formal action be considered. The Council will however try to avoid negotiations becoming protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease. In the event that the breach of planning control cannot be rectified on an informal basis through discussions with those responsible, formal action will be necessary if it is expedient to do so. The table below sets out the range of formal notices at the Council's disposal as well as the circumstances when serving those notices is likely to be appropriate.

Enforcement Notice (EN)
The purpose of an enforcement notice is to remedy the breach of planning control. The notice must explain exactly what the council considers the breach of planning control to be; what actions are required by the council to remedy that breach; and the timescale for compliance. The recipient has a right of appeal against an EN. Non-compliance with the notice is a criminal offence once the specified period for compliance has passed (and if there is no pending appeal).
Breach of Condition Notice (BCN)
A breach of condition notice may be used where the Council wishes to secure compliance with a planning condition(s) imposed upon a planning permission. There is no right of appeal against a breach of condition notice although an appeal against the imposition of the condition itself is possible. Failure to comply with a breach of condition notice is a criminal offence.
Stop Notice
A stop notice can be utilised by the Council to order a stop to any of the unauthorised activities specified on the associated enforcement notice. A stop notice could be used for example to bring a halt to particularly harmful building operations currently underway. Particular care must be taken in serving a stop notice because if it is subsequently quashed, amended or even withdrawn, the Council can be liable for compensation in certain circumstances. Failure to comply with the terms of a stop notice is a criminal offence.
Temporary Stop Notice (TSN)
A temporary stop notice is similar to a stop notice in that it can order the cessation of unauthorised activities on site. There is no requirement for it to be linked to an enforcement notice and therefore it may be served immediately. A TSN expires 28 days after it has been displayed on site and only one can be served. Non-compliance is a criminal offence.
Planning Enforcement Order
Unauthorised development becomes lawful, and thus immune from enforcement action, after a period of 10 years. In situations where it is evident that an unauthorised development has been deliberately concealed, the Council is able to obtain a planning enforcement order which then enables it to take formal action despite time limits having expired. The Council must apply to the magistrates' court to obtain such an order and must do so with the requisite evidence (of concealment etc.)
Injunction
Injunctions are a last resort, but in some cases will be justified due to the seriousness of the breach; an injunction will be sought in cases where the Council considers it to be expedient



(and proportionate) for a serious breach of planning control to be restrained using the power of the courts. Failure to comply with the terms of an injunction carries a custodial sentence for contempt of court.

s215 Notice

Sometimes referred to as 'Untidy Land Notices', s215 of the Town & Country Planning Act 1990 enables local authorities to serve notice on landowners to require them to improve the appearance of their land or building *if* its condition is adversely affecting the amenity of the area. Failure to comply can lead to prosecution in the magistrates' court. The recipient may appeal against a s215 notice to the magistrates' court.

What Happens Next?

In most cases the recipient of a notice or order has a right of appeal. Planning appeals, including the majority of planning enforcement related appeals, are dealt with by the Planning Inspectorate (although some enforcement appeals are dealt with via the courts).

We will not pursue action against an alleged breach while the outcome of an associated appeal is awaited. At the time of publication (September 2024) the Planning Inspectorate is taking on average 55 weeks to determine an enforcement appeal dealt with by the 'written representations procedure', and significantly longer for those dealt with by means of hearings and public inquiries. A substantial delay, which is beyond the Council's control, is therefore to be expected.

7.0 Tree Protection Enforcement

The National Planning Practice Guide states, at Paragraph 136, that:

"Local planning authorities should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases".

The following section constitutes Cheltenham Borough Council's policy in respect of tree protection enforcement.

Any person who undertakes, facilitates or otherwise engages in unauthorised work to a protected tree is guilty of a criminal offence; this includes works to trees protected by a Tree Preservation Order as well as those within a Conservation Area. Works deemed to constitute an offence include cutting down the protected tree, uprooting it or wilfully destroying it, or topping, lopping or wilfully damaging a tree in a way that is likely to destroy it; a person causing or permitting such activities is also guilty of an offence. Formal tree protection enforcement is therefore principally undertaken through the courts.

When the Council receives an allegation that unauthorised works to protected trees are underway, we will follow one or more of the following options:

1. **Do nothing – but only if justified by the particular circumstances;**
2. **Negotiate with the owner to remedy the works to our satisfaction;**
3. **Issue an informal warning;**
4. **Seek an injunction to stop on-going works and prevent anticipated breaches; or**



5. Consider whether the tests for commencing a prosecution are met (see below)

Unauthorised works to protected trees are **Priority 1** cases as set out in Section 4 above. Accordingly, we will inspect the site and investigate the alleged works within 3 working days of having received the complaint.

We will seek to prosecute those responsible should we consider there to be 1. a realistic prospect of a conviction and 2. should we consider it to be in the public interest to do so.

Section 210(2) of the Town and Country Planning Act 1990 provides that anyone found guilty of these offences is liable, if convicted in the magistrates' court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine. Section 210(3) provides that, in determining the amount of fine, the court shall take into account any financial benefit which has resulted, or is likely to result, from the offence.

Irrespective of prosecution, there is a legal duty placed on those acting in breach of tree protection legislation, to replace any tree removed, uprooted or destroyed. We will seek voluntary replacement planting on an informal basis in the first instance but will proceed to serving a '**Tree Replacement Notice**' should it be in the public interest to do so, having regard to amenity and the circumstances of the case.

8.0 Listed Building Enforcement

Cheltenham Borough has circa 2600 listed buildings of which 5 are Grade I listed (the highest grading); 387 are Grade II* and the remaining 2210 are Grade II listed.

Any alteration to a listed building which affects its character or appearance as a building of special architectural or historic interest first requires listed building consent (LBC) from the Council; this is irrespective of the building's grading and irrespective of whether the works are internal or external.

Carrying out unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. A person who is guilty of such an offence will be:

- liable on conviction to imprisonment not exceeding 3 months or a fine not exceeding the statutory maximum or both; or
- liable on conviction to imprisonment for a term not exceeding 12 months or a fine or both

Those intending to undertake works to a listed building should first contact us if they are uncertain as to whether LBC is required. If formal certainty is required, then a **Certificates of Lawfulness of Proposed Works (CLPWs)** may be applied for. There is no application fee for such a certificate, and it remains valid for a period of 10 years.

When the Council receives an allegation that unauthorised works to a listed building are underway, we will follow one of the following options:

1. **Do nothing (extremely unlikely in the case of unauthorised works to listed buildings)**
2. **Negotiate with the owner to either:**
 - **remedy the works to our satisfaction**



- where the works are considered to be acceptable, to apply for listed building consent to retain those works already carried out (such consent is not retrospective in that it does not remove the potential criminal liability that may have arisen under s9 of the Act);
3. Issue a listed building enforcement notice;
 4. Seek an injunction to stop on-going works;
 5. Consider whether the tests for commencing a prosecution are met and prosecute if appropriate

Unauthorised works to listed buildings are **Priority 1** cases as set out in Section 4 above. Accordingly, we will inspect the building and investigate the alleged works within 3 working days of having received the complaint.

In the event that we are unsuccessful in resolving the matter informally (Option 2 above) then we will proceed to seek to resolve the matter through more formal channels (initially Options 3 and 4 above) including the serving of a listed building enforcement notice (where it is considered expedient to do so). A LB enforcement notice may also be served in connection with a breach of a condition imposed on a listed building consent.

A LB enforcement notice will usually require the building to be restored to its previous state, or alternatively require works to be undertaken to alleviate the harm to the building that has been caused (where restoration is not feasible). A LB Enforcement Notice may also instruct works to be undertaken to bring the scheme in compliance with conditions imposed on the listed building consent.

We will seek to prosecute those responsible should we consider there to be 1. a realistic prospect of a conviction and 2. should we consider it to be in the public interest to do so. A prosecution may run concurrently with the serving of a listed building enforcement notice and irrespective of any associated remedial works.

Cheltenham Borough Council endeavours to tackle heritage crime. The Council is a signatory to Historic England's 'Memorandum of Understanding (MoU) on the Prevention, Investigation, Enforcement and Prosecution of Heritage and Cultural Crime and Anti-Social Behaviour'. The MoU provides an agreement to work in partnership to prevent crime with the Historic England, the police and other signatories, to undertake investigative and enforcement activity.

<https://historicengland.org.uk/advice/caring-for-heritage/heritage-crime/memorandum-of-understanding/>

9.0. The Proceeds of Crime Act 2002

The Council can use civil remedies to recover any property or debts and any costs incurred, but the Council also has the power to prosecute a wide range of offences under section 223 of the Local Government Act 1972.

Where there is enforcement action in a criminal court the Council can use the Proceeds of Crime Act 2002 legislation to recover money. The Proceeds of Crime Act 2002 ("POCA") enables local authorities to obtain confiscation orders against those committing offences. The purpose of these orders is to allow the recovery of any financial benefit that the offender has obtained from their criminal conduct, and they can be for substantial sums. The prospect of action pursuant to the Proceeds of Crime Act



provides a meaningful and significant deterrent to those intending to disregard the provisions of an enforcement notice or similar.

It is considered that proceedings pursuant to the Proceeds of Crime Act 2002 will be rare but nonetheless something that the council is prepared to pursue where it is in the public interest to do so. The potential for action will be reviewed on a case-by-case basis having regard to the particular circumstances.

10 Proactive Compliance

The Enforcement Team largely acts upon complaints received by third parties, principally members of the public, parish councils as well as our own members. In certain circumstances however, particularly when a common concern arises across multiple sites, we will instigate focussed proactive action seeking to resolve those issues collectively.

Proactive compliance projects however will not replace nor take precedence over the investigation and resolution of enforcement complaints which will continue to be prioritised in accordance with the requirements of Section 4 above. Proactive compliance projects will be prioritised as per Priority 3 cases and will have a defined objective, outcome and timescale.

11 Further Guidance and Useful Links

Cheltenham Planning Enforcement:

https://www.cheltenham.gov.uk/info/45/planning_enforcement

Report a Breach – Cheltenham Borough Council:

<https://www.cheltenham.gov.uk/report-a-breach-of-planning>

Government Enforcement advice:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

Cheltenham & Tewkesbury Building Control:

<https://ctbuildingcontrol.co.uk/>

Planning & Development – Cheltenham Borough Council:

https://www.cheltenham.gov.uk/info/12/planning_and_development

Search for a Planning Application – Cheltenham Borough Council:

<https://publicaccess.cheltenham.gov.uk/online-applications/>

The Planning Enforcement Handbook – Royal Town Planning Institute

<https://www.rtpi.org.uk/media/10004/nape-planning-enforcement-handbook.pdf>

Planning Aid England – Enforcement Advice:

<https://www.planningaid.co.uk/hc/en-us/categories/200527152-An-enforcement-officer-has-contacted-me>

Local Government & Social Care Ombudsman – Planning Enforcement Complaints:

<https://www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control/planning-enforcement>



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