

Cheltenham Borough Council

Cabinet – 11th February 2014

Protocol for Unauthorised Windows / Doors / Satellite Dishes Listed Buildings

Accountable member	Cabinet Member Built Environment, Councillor Andrew Mckinlay
Accountable officer	Mark Nelson, Built Environment Enforcement Manager
Ward(s) affected	All
Key Decision	No
Executive summary	There are some 2600 listed buildings in Cheltenham, many of which have had work carried out to them in the past without listed building consent. Although this is a criminal offence, it has been increasingly difficult to carry out formal enforcement action in a consistent and transparent way, given the number of historic contraventions and available resources. The enforcement protocol for unauthorised windows, external doors and satellite dishes in relation to listed buildings aims to address this issue, while promoting full co-operation between owners of listed buildings and the Council.
Recommendations	That the enforcement protocol for unauthorised windows, external doors and satellite dishes in relation to listed buildings be adopted and the operative date referred to in the protocol be the date of Cabinet approval (11th February 2014)
Financial implications	None Contact officer: nina.philippidis@cheltenham.gov.uk Tel: 01242 264121

Legal implications	<ul style="list-style-type: none"> • Under Sections 7 to 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990, unless authorised it is an offence to execute any works for the demolition of a listed building or alter or extend a listed building in a manner which would affect its character as a building of special architectural or historic interest. A listed building enforcement notice under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 may also be served, in addition to any prosecution, to ensure appropriate remedial works are undertaken. • Any enforcement action will be carried out in a way which complies with the Council's Corporate Enforcement Policy and Listed Building Prosecution Policy Guidance <p>Contact officer: Laura.Greenman@teWKesbury.gov.uk</p> <p>Tel: 01684 272695</p>
HR implications (including learning and organisational development)	None
Key risks	See template
Corporate and community plan Implications	This policy, if adopted, will contribute positively to the community objective of 'Enhancing and Protecting our Environment'. It will help maintain and improve the quality of Cheltenham's historic built environment.
Environmental and climate change implications	None
Property/Asset Implications	None

1. Background

- 1.1** Almost all works to a listed building need to be authorised by a grant of listed building consent, whether or not they need or have been granted planning permission.
- 1.2** The exact number of unauthorised alterations which have taken place without listed building consent, in terms of replacement windows external doors and satellite dishes, is difficult to assess accurately. This is due to a number of factors which are as follows –
- The large quantity of listed buildings
 - Some replacement unauthorised windows and doors or satellite dishes, are likely to be in positions where they can't be seen
 - The planning history of all listed buildings would have to be checked
 - The date of listing of buildings and the date when unauthorised works were carried out would need to be checked and cross referenced

The Council's professional estimate is that in the region of 20% of listed buildings in the Borough (around 520) have had unauthorised works carried out to them.

- 1.3** The number of contraventions and resources available mean that it is difficult to enforce in a consistent and transparent manner. Formal enforcement action and /or prosecution is extremely resource intensive and often involves appeals and court appearance.
- 1.4** Enforcement of Listed Building contraventions is discretionary, but it is also a criminal offence. If all alleged contraventions involving listed buildings were to be enforced in an equitable and consistent manner, then when prioritising work loads, other areas of planning enforcement work would be delayed considerably. This would include, for example, investigation into planning condition compliance, planning infringements and section 215 notices to tidy land/buildings.
- 1.5** The historic environment is of value to this and future generations. It provides a central part of our cultural heritage and our sense of national identity. Its presence adds to the quality of our lives by enhancing the familiar and cherished local distinctiveness and the character of our town. The historic environment is of immense importance for leisure and tourism. These sentiments are reinforced by Government policies as well as national legislation, the emerging policies in the JCS and the adopted Local Plan.
- 1.6** In Cheltenham the backbone of the historic environment is the town's listed buildings. The appearance and the historic character of these buildings can be fundamentally harmed by the removal of original doors and windows and the installation of new doors and windows and satellite dishes.
- 1.7** The protocol, which forms appendix 2, and the letters and leaflet referred to in the protocol are designed to provide an equitable, transparent and consistent approach to enforcement of unauthorised windows, doors and satellite dishes relating to listed buildings.
- 1.8** The adoption of the protocol will provide a less draconian approach to immediate prosecution or enforcement action, which in many cases will allow owners time to plan works to address contraventions to listed building legislation. The protocol promotes co-operation between the Council and owners of listed buildings where such contraventions have occurred and will offer a fair and effective approach to enforcement, maximising compliance over the longer term.

2. Reasons for recommendations

2.1 To comply with the Council's Enforcement Policy to address contraventions in a consistent, transparent and proportionate way, while being less resource intensive than the issue of formal notices and / or taking a prosecution. The approach promotes full co-operation between the Council and the owners of listed buildings where contraventions have occurred.

3. Consultation and feedback

3.1 Conservation and Heritage Section

4. Performance management –monitoring and review

4.1 The success of the protocol and its impact in relation to staffing resource will be monitored

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Enforcement Protocol
Background information	<ol style="list-style-type: none">1. Listed Building Prosecution Guidance2. Corporate Enforcement Policy

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	Enquiries resulting from the adoption of this protocol results in a peak of demand for the Enforcement and Conservation Team Services	Mark Nelson		3	4	12	Accept	Manage priorities during initial period of public response		Mark Nelson	
2	If the protocol is not adopted it will be very difficult to apply a consistent and transparent approach to enforcement of individual cases which could lead to criticism of the Council	Mark Nelson		3	5	15	Reduce	Adopt Protocol		Mark Nelson	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

Guidance

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

Risk ref

If the risk is already recorded, note either the corporate risk register or TEN reference

Risk Description

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

Risk owner

Please identify the lead officer who has identified the risk and will be responsible for it.

Risk score

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

Control

Either: Reduce / Accept / Transfer to 3rd party / Close

Action

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring

or new controls or actions may also be needed.

Responsible officer

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

Transferred to risk register

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on