



**CHELTENHAM**  
BOROUGH COUNCIL

# Built Environment Local Enforcement Plan (Planning)

January 2014 update



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## 1. Background

- 1.1 Enforcement is discretionary. This means that where it is perceived that an alleged breach of control is taking place without a necessary planning permission, listed building consent or contrary to a condition of a planning permission, the Council is guided by Government policy set out in the National Planning Policy Framework (NPPF) and it is at the discretion of the Council, as to whether or not to take formal enforcement action. Recommended practice is to seek to negotiate with the owner or developer to bring about a voluntarily resolution of the matter.
- 1.2 A glossary of terminology can be found at section 13 of this document.
- 1.3 Three important points have to be made:
  1. It is not an offence to carry out development without first obtaining planning permission, (except in certain cases - see paragraph 5.2.)
  2. The taking of enforcement action / serving a notice is not an instantaneous remedy to unauthorised development.
  3. The taking of formal enforcement proceedings cannot be used to require the submission of a planning application.
- 1.3 Paragraph 207 of the National Planning Policy Framework (March 2012) states:
- 1.4 'Effective enforcement is important as a means of maintaining 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. Local Planning Authorities 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 it is appropriate to do so.'
- 1.5 The purpose of this plan is to set out the Council's approach to the delivery of enforcement services relevant to planning, listed buildings and conservation.

## 2 The Cheltenham context

- 2.1 The planning enforcement & compliance team of the Built Environment Enforcement team in Cheltenham consists of a Senior Enforcement & Compliance Officer and an Enforcement & Compliance Officer.
- 2.2 In order to make the best use of limited resources, it is considered appropriate to focus the work of the team where it can have most beneficial impact.
- 2.3 An essential element of the effective management of planning enforcement is the existence of a clear cross-cutting strategy within the Built Environment Enforcement team to focus on the core outcomes of protecting the environmental amenities of the Borough. The support of other relevant

enforcement areas, while meeting their own objectives, adds greatly to the efficiency of enforcement in this area.

- 2.4 The Council receives on average over 450 planning enforcement complaints every year and enquiries are increasing with the move to planning deregulation.
- 2.5 Because of the often lengthy and complex nature of planning investigations and limited staff resources, it is necessary to give priority to those cases where the greatest harm is being caused.

### **3 What are the priorities?**

- 3.1 The ultimate aim of enforcement is to protect and improve the quality of the Built Environment for Cheltenham's residents, visitors and future generations. To make the most effective use of available resources, the Council will aim to carry out initial investigations within 10 working days of a potential breach being drawn to its attention, including a site visit where necessary. Once initial investigations have taken place, the case will be allocated a priority in accordance with the priority schedule set out in table 1. The priorities take into account the significance and impact of the breach, the level of harm caused and also the need to react expediently. The circumstances of each case will also be relevant to the priority level. 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 planning condition which may not be causing any direct harm and therefore do not require immediate investigation. Examples of priorities can be found as appendix 1 at the end of this document.

**Table 1: Enforcement priorities**

<b><u>Enforcement priorities</u></b>
<p><b>Priority 1:</b></p> <ul style="list-style-type: none"><li>• Unauthorised works of demolition or alteration to a Listed Building or the demolition of a building within a Conservation Area causing immediate or irreparable harm;</li><li>• Unauthorised development which leads to substantial and / or permanent damage to a scheduled ancient monument, SSSI or nature reserves;</li><li>• Works being undertaken in contravention of the requirements of an extant enforcement and / or stop notice;</li><li>• Properties which cause serious concern to public safety / amenity including road safety and flooding;</li><li>• Unauthorised advertisements on Listed Buildings or where public safety is being put at risk;</li><li>• Unauthorised works to a tree subject to a Tree Preservation Order.</li></ul>
<p><b>Priority 2:</b></p> <ul style="list-style-type: none"><li>• Unauthorised building, engineering operations or uses of land;</li><li>• Breach of planning conditions or legal agreements where serious demonstrable harm is being caused to the neighbourhood / amenity;</li><li>• Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action is imminent;</li><li>• Unauthorised householder development.</li></ul>
<p><b>Priority 3:</b></p> <ul style="list-style-type: none"><li>• Minor unauthorised works;</li><li>• Breaches of a technical nature;</li><li>• Other advertisements in the following priority order:<ul style="list-style-type: none"><li>○ advertisements in Conservation Areas;</li><li>○ advertisements with a high visual impact on main arterial routes into the Town;</li><li>○ all other advertisements.</li></ul></li></ul>
<p>This list is not exhaustive. Each case is judged on its own merits and prioritised accordingly.</p>

## **4 Timescales**

- 4.1 Investigating an alleged breach of planning control can take time, particularly given the limited resources available.
- 4.2 Once a case has been registered, initial information gathering will be carried out within 10 working days, this includes a site visit if necessary. Once visited, the case will be dealt with in accordance with its level of priority. The Council aim to respond to complainants within the timescales set out in table 2.
- 4.3 The target for resolving cases is 13 weeks. This is in line with the Development Management performance target and other examples of best practice in planning enforcement. It is suggested that the initial target is that 80% of all cases are resolved within 13 weeks of receipt of the case.

- 4.4 Other measures include the number of cases resolved relating to amenity, heritage and environmental safety.
- 4.5 The resolution of a case means that:
- The case has been investigated and there is no breach of planning control; or
  - There is a breach of control which has been remedied, either by the submission of an application, or the works or use has ceased; or
  - There is a breach of control, but it is not considered expedient to pursue the matter further; or
  - An enforcement notice has been served and complied with.

**Table 2: Target timescales for responses**

<b><u>Target timescales for responses</u></b>
<b>Priority 1</b> – 10 working days
<b>Priority 2</b> – 20 working days
<b>Priority 3</b> – 30 working days

## **5 Breaches of planning control**

- 5.1 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.
- 5.2 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.
- 5.3 Breaches of control can be reported to the Council either by telephone, letter, e-mail or in person. The Council aim to acknowledge receipt of a complaint within 3 working days. The acknowledgement will be sent 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 within the Built Environment team's remit or there is considered to be no breach of control, the complainant will be notified in accordance with the timescales set out in table 2. If the reported breach relates to a function or activity enforced by another Council service the complaint will be forwarded to the relevant department.

## 6 Cases which will not be investigated

- Neighbour disputes - Unless clear planning issues are identified
- Anonymous complaints - Unless what is alleged is priority level 1 in nature (see table 1 for priorities);
- Trade complaints - Unless clear planning issues are identified;
- Business uses from residential properties where no evidence is provided - In line with Public Protection procedures, a log sheet is sent out to record times, dates and activities prior to the case being formally investigated. Once the log sheet is returned, the case will be investigated.

## 7 Enforcement Outcomes

- 7.1 Following the initial investigation, the findings will be assessed and a view taken as to how the investigation will proceed. The outcomes of an investigation are detailed below:

### No further action

- 7.2 The Council may, following initial investigation decide that there has been no breach of control or that the breach is minor or insignificant in nature and that it is not expedient to take formal enforcement action, or that there is insufficient evidence to pursue the matter.
- 7.3 Just because a building, extension, structure, use or advert is in breach of control this is not, in itself, a reason to take enforcement action. Even when it is technically possible to take action the Council is required to first decide if formal action would be “proportional and expedient”. In cases where it has been established that a breach of control has occurred an assessment of expediency will be undertaken to determine whether it is proportional to take enforcement action. The Council will not take action against breaches of planning control which do not cause material planning harm.
- 7.4 It is key to decide as quickly as possible whether enforcement action is proportional and then to clearly document, in an open and transparent manner, the decision reached and why. Formal action is a last resort and those responsible will normally be given the opportunity to remedy the breach. However, when the breach is causing serious harm or nuisance, formal action will not be delayed by protracted negotiation or a request for the submission of a planning application when it is obvious a refusal is likely to result.

### Further investigation required

- 7.5 It may be necessary to carry out further investigations to determine whether a breach of control has occurred. This may involve additional site inspections, research, seeking advice from other services or agencies or obtaining further information from the complainant, site owner or other parties. In certain cases, the Council may request the person reporting the suspected breach of 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 control is unwilling or unable to assist, it may be that the Council is unable to pursue the investigation due to insufficient evidence being available.

- 7.6 Where it appears to the Council that a breach of control may have occurred, it will consider serving a Planning Contravention Notice or Requisition for Information to obtain information relating to site ownership and the suspected breach.

#### Negotiate a solution

- 7.7 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 suggest the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development. However, such 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 time, the Council will consider whether or not it is expedient to take formal enforcement action.

#### Retrospective application for planning permission

- 7.8 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, a retrospective planning application may be a solution. In such circumstances the enforcement officer will discuss the case with the Development Management team and where appropriate the property owner will also be advised to submit a retrospective application for planning permission. If a retrospective application is not submitted within 28 days of a request to do so, or the application remains invalid for two calendar months, the Council will consider whether or not it is expedient to take formal enforcement action.

#### Formal enforcement action

- 7.9 Where it has been established that a breach of control has occurred, the Council will consider using statutory notices to take action to remedy the breach. The issue of the notices listed in table 3 below is discretionary, such notices will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of control and in accordance with the Enforcement Concordat.
- 7.10 The complainant will be notified of the Council's decision, whatever it may be. If the decision is to take formal enforcement action, the complainant will be notified upon the service of the notice.

## **8 Monitoring of conditions**

- 8.1 As well as investigating alleged breaches of 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 conditions imposed.

## **9 Engaging with the customer**



- 9.1 One of the customer's key concerns in relation to enforcement is to be kept informed of case progress, especially as enforcement cases can be lengthy. The complainant will be updated as to case progress by the enforcement officer.
- 9.2 A second concern relates to the understanding of the process, procedures and remit of enforcement – matching delivery with expectations. To address this issue, a general statement is available on the Council's website ([About planning enforcement - Planning enforcement - Cheltenham Borough Council](#)) on the enforcement and compliance process, this is highlighted to complainants.

## 10 Legislative framework

- 10.1 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.
- 10.2 The following sets out the legislative framework applicable to breaches of 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
  - The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
  - The Town and Country Planning (Use Classes) Order 1987 (as amended)

## 11 Useful Links

National Planning Policy Framework (NPPF) - [www.gov.uk](http://www.gov.uk)

Cheltenham Borough Council website - <http://www.cheltenham.gov.uk>

Statutory instruments / Acts – [www.legislation.gov.uk](http://www.legislation.gov.uk)

## 12 Useful contact details

<b><u>Name</u></b>	<b><u>Address</u></b>	<b><u>Telephone number &amp; email address</u></b>
Planning Enforcement and Compliance department	Built Environment Municipal Offices Promenade Cheltenham GL50 9SA	<a href="mailto:planningenforcement@cheltenham.gov.uk">planningenforcement@cheltenham.gov.uk</a>  01242 774986 / 774987
Trees department	Built Environment Municipal Offices Promenade Cheltenham GL50 9SA	<a href="mailto:trees@cheltenham.gov.uk">trees@cheltenham.gov.uk</a>  01242 775161 / 264262
Built Environment reception	Built Environment Municipal Offices Promenade Cheltenham GL50 9SA	<a href="mailto:builtenvironment@cheltenham.gov.uk">builtenvironment@cheltenham.gov.uk</a>  01242 264328 / 264170

## 13 Glossary

**TPO – Tree Preservation Order** - A TPO makes it an offence to cut down, top, lop, uproot, wilfully damage or destroy any protected tree without first having obtained permission from the Local Authority.

**RFI – Requisition for Information** – This is an information gathering document which requires the recipient to identify any person with an interest in a property / land. It is a prosecutable offence not to return an RFI within the timeframe specified. There is no right to appeal this notice.

**PCN – Planning Contravention Notice** – A PCN is normally served at the initial investigation stage where it appears to the local planning authority that a breach of planning control might have occurred. This notice requests the information the Council would need to correctly serve a statutory notice. Failure to respond to a PCN within 21 days is a summary offence, and a person guilty of the offence may be liable to a fine. There is no right to appeal this notice.

**Enforcement Notice** - This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

**Listed Building Enforcement Notice** – As above, but only issued in relation to a listed building.

**Breach of Condition Notice** - This notice can be used where conditions imposed on a planning permission have not been complied with. There is no right to appeal this notice.

**Stop Notice** - The notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the Council may be liable to pay compensation if it is later decided that the issue of the notice was not appropriate. There is a right to appeal this notice.

**Temporary Stop Notice** - These take effect immediately upon issue and last for up to 28 days. A Temporary Stop Notice will only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area. There is no right to appeal this notice.

**S.215 Notice** - This notice can be used in relation to untidy land or buildings where the condition of the land or buildings adversely affects the amenity of an area. There is a right to appeal this notice.

**Completion Notice** - A Completion Notice may be served if the Local Planning Authority is of the opinion that development (which has started within the statutory time limit for the commencement of development) will not be completed within a reasonable period. The Local Planning Authority must refer the Notice to the Secretary of State for confirmation. There is a right to appeal this notice.

**NPPF – National Planning Policy Framework** - The National Planning Policy Framework sets out Government's planning policies for England and how these are expected to be applied.

### Priority 1

- Demolition of a Listed Building;
- Replacement windows in a Listed building;
- Material works to interior of a Listed Building e.g. plastering
- Dentil / Corbel course loose;
- Render loose where there is a risk of it falling off;
- Works to exterior of a Listed Building e.g. replacement roof.
- Banner / advert attached to first floor balcony / railings of Listed Building;
- Banner / advert attached adjacent to highway furniture at major junctions / roundabouts.
- Untidy gardens / condition of building where significant harm is being caused to amenity.

### Priority 2

- Extension being constructed without planning permission;
- Land being used for car sales;
- Change in land levels.

### Priority 3

- Satellite dish in a conservation area;
- Extension not being constructed as per approved plans;
- Erection of fence / structure in excess of permitted development restrictions;
- Other external paraphernalia falling outside of permitted development;
- Impermeable hardstanding.

Note: This list is not exhaustive; each case will be considered individually and allocated the necessary priority level.