

Cheltenham Borough Council

Cabinet – 26 November 2024

Local Planning Enforcement Plan

Accountable member:

Councillor Mike Collins – Cabinet Member for Planning and Building Control

Accountable officer:

Chris Gomm – Head of Development Management, Enforcement and Compliance

Ward(s) affected:

All

Key Decision: Yes

Executive summary:

The government encourages (but does not require) local authorities to produce a Local Planning Enforcement Plan. The purpose of such a plan is to clearly set out, for the benefit of all parties, the council's overall strategy and approach when dealing with potential breaches of planning control, including priorities, timescales and actions.

The current Local Planning Enforcement Plan was published in 2014, some 10 years ago, and as such it has been necessary to produce an entirely new document, rather than simply update the previous version.

The draft plan categorises all breaches of planning control in to one of three 'priorities' and sets target deadlines (for the opening of an investigation) against each category. The draft plan sets out the overarching approach for dealing with breaches of planning control and is clear that resolving matters informally is the preferred approach, with formal action being a last resort.

Sitting alongside the Local Planning Enforcement Plan will be a public-facing summary document in the form of a quick-reference guide, the 'Local Planning Enforcement Guide'. This guide, whilst not altering the policy or approach set out in

the main plan, provides a stronger message in respect of the responsibility of land and building owners to comply with planning requirements and in particular the responsibilities of the owners of listed buildings to properly maintain them. This document has been produced in response to members concerns that the message (of the need to comply) should be stronger.

Recommendations: That Cabinet:

- 1. approves the draft Local Planning Enforcement Plan**
 - 2. approves the public facing draft Local Planning Enforcement Guide**
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1. Implications

1.1 Financial, Property and Asset implications

The Local Enforcement Plan will be delivered within the existing budget.

Signed off by: *Ela Jankowska*, Finance Business Partner,
ela.jankowska@cheltenham.gov.uk

Legal implications

The aim of a local enforcement plan is to provide information on how the Council will approach planning enforcement including what alleged breaches of planning control it will investigate and how it will address those breaches. Although the Council has a discretion as to whether to take formal enforcement action the exercise of that discretion must be both reasonable and rational. Consequently, it is important that decision making in respect of enforcement action is consistent with the local enforcement plan.

Signed off by: *Jeremy Patterson*, Principal Planning Lawyer:
Jeremy.Patterson@onelegal.org.uk

1.2 Environmental and climate change implications

The Local Enforcement Plan doesn't directly materially impact on our Climate Emergency Action Plan, positively or negatively, though there could be some positive potential benefits should enforcement encompass any of the measures outlined in the Climate SPD, especially those associated with enforcement of the commitments made by developers at the planning stage to deliver efficiently insulated buildings with sufficient renewable energy generation and sustainable heating solutions.

Signed off by: *Maizy McCann*, Climate Emergency Officer,
maizy.mccann@cheltenham.gov.uk

1.3 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Working with residents, communities and businesses to help make Cheltenham #netzero by 2030
- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity
- Being a more modern, efficient and financially sustainable council

1.4 Equality, Diversity and Inclusion Implications

No direct implications

1.5 Performance management – monitoring and review

Performance against the target deadlines (for opening an investigation) as set out in the draft Local Planning Enforcement Plan will be monitored and periodically reviewed.

2 Background

2.1 The council's Planning Enforcement function is tasked with ensuring that alleged breaches of planning control are investigated and, where appropriate, taking action 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 planning 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.

2.7 The draft local planning 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 investigate. Useful signposting to third party advice (or bodies) is provided in respect of those non-planning matters.

2.8 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 siting in between.

2.9 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:

- 5 working days for high priority cases (24 hours for **urgent** high priority cases)
- 20 working days for medium priority cases and
- 30 working days for low priority cases.

2.10 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 the following four options;

- do nothing (typically when there is no breach of planning control, or the infringement is of a very minor or trivial nature);
- 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;
- invite a retrospective application to regularise the breach (if considered acceptable) or to render it acceptable through the imposition of planning conditions or;
- 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.

2.11 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.

3 Reasons for recommendations

3.1 To ensure that the final published report is approved by the council's executive.

4 Alternative options considered

4.1 Not updating the current 2014 enforcement plan is not considered to be an option given its age and high degree of obsolescence. The draft plan presented to Cabinet is the final iteration of a document that has been revised on a number of occasions following input from various parties (see consultation section below).

5 Consultation and feedback

5.1 A round-table discussion was held with a number of elected members on Wednesday 28 August 2024. Feedback from that discussion (in respect of the content of the draft Local Planning Enforcement Plan) is summarised as follows:

- It was considered that the document flows well, written in plain English with good sign posting;
- Concern that the document may be overambitious in terms of the timescales for opening an investigation. We need to be realistic rather than potentially setting ourselves up to fail.
- General concerns regarding the resourcing of the planning enforcement team. Residents feel they are paying their council tax to receive this service. Reference was made to Birmingham where fees revenue for licencing are used to support enforcement.
- A need for clarity in respect of:
 - advertisements in conservation areas was identified as these appear to fall within two categories (of priority).
 - the definition of amenity.
 - what is meant by 'permitted development'.
 - what is meant by 'untidy land' i.e. s215 notices.
 - what is meant by 'public safety' in the context of advertisements.
- It was highlighted that our approach in dealing with retrospective applications needs careful handling, and we need to be conscious of the public perception.
- The language used was queried in respect of what will or will not be investigated. It was considered that "in scope/out of scope" [of investigation] was preferable to "what will/will not be investigated" – due to perceived harshness.

5.2 The above clarifications have been made to the final document as have some minor revisions to the timescales so that they are more achievable. In respect of the final bulleted point above, it is considered that an alternative form of words will be used with the use of capital letters removed.

5.3 The draft Local Planning Enforcement Plan was reported to the Overview & Scrutiny Committee held on the 9 September 2024. Many of the points raised related to planning enforcement generally, rather than the draft plan and are recorded in the relevant [minutes](#). The relevant points are summarised as follows:

- Planning enforcement should be a potent deterrent and the threat of action significant enough to protect our beloved town. Unfortunately, the

paper is ill-thought through and self-defeating, with the damage amplified by it being shared publicly;

- The document does not cover the responsibility of owners of Cheltenham's listed buildings to maintain their properties, or the council to monitor this and ensure that our cultural inheritance is passed to the next generation; lack of staff should not be the basis for setting strategy;
- The document does not set out a proactive approach, it largely involves waiting for breaches to be report. Our approach should be to actively look for infringements, perhaps through an annual tour of the town;
- It is surprising to learn that planning enforcement is discretionary;
- The decision as to whether or not it is expedient to act seems to rest entirely with officers – Members are not involved (another member raised that should be the case, with members setting policy and officers enforcing it).

Response to Overview & Scrutiny Committee

5.4 Planning enforcement action *is* a deterrent but any action in response is remedial. It is agreed that changes could be made to the system to provide a stronger deterrent, but this is not within the council's control. The planning enforcement system, including what does and does not constitute an offence, operates within a nationally set legal framework which we (the council) are unable to alter. Members concerns are acknowledged however and as referenced above, a public-facing summary document has been produced (the 'Local Planning Enforcement Guide') to sit alongside the full document, which adopts a stronger tone to reflect the concerns raise by the Committee.

5.5 Ensuring that the owners of listed buildings properly maintain their buildings/structure falls outside of the direct scope of Planning enforcement action; poor maintenance of a listed building is not in itself a breach of planning control, however poor maintenance can lead to a breach if remedial work is unauthorised for example. Reference to proper maintenance and the resources available to owners of listed buildings has therefore been included in the public-facing summary guide referenced above.

5.6 It is acknowledged that the draft plan sets out a largely reactive approach; this is because the overwhelming majority of the enforcement teams' workload is responding to and investigating complaints raised by members of the public, this is not likely to change. It is not practicable to patrol the borough on a routine basis in order to identify breaches of planning control; it would also be

of limited value as those breaches would most likely be reported to the team in any case. Increased proactive monitoring of compliance with planning conditions and s106 Agreements is a longer-term intention of the team however, once resources allow.

5.7 It is considered that the full Local Planning Enforcement Plan (in its revised form) together with the more focussed Local Planning Enforcement Guide, together address the concerns raised by members. The full document comprehensively sets out how the council will approach planning enforcement going forward within the confines of the national system/framework. The quick-reference guide provides members of the public and other users of the service with a summary of our approach with an emphasis on prevention as well as the repercussions of non-compliance.

6 Key risks

6.1 The risks associated with adopting the draft local planning enforcement plan are limited. Key risks relate to a failure to approve the plan and instead continuing to implement the extant 2014 version of the plan.

6.2 Continuing to implement the 2014 version is problematic in a number of areas; timescale targets (in the 2014 version) largely relate to response times and those timescales that *do* relate to the opening of an investigation are universal (i.e. are irrespective of the level of harm), with no reference to prioritisation. The timescales set out in the 2014 version are no longer fit for purpose and in practice are not being followed, for good reason; the new plan resolves this contradiction by bringing documentation in line with practice and goes further by re-categorising some breaches. A key risk in failing to approve the new draft plan is that the mismatch between published documentation and practice will continue which is unhelpful in a practical sense and also undermines transparency.

Report author:

Chris Gomm, Head of Development Management, Enforcement and Compliance.
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Appendices:

- i. Risk Assessment
- ii. Equality Impact Assessment – Screening – (to be included in all Cabinet and Council reports)
- iii. Local Planning Enforcement Plan (cabinet draft)

- iv. Local Planning Enforcement Guide (the public-facing, focussed version of the above).

Background information:

[Overview and Scrutiny Committee – 9th September 2024](#)

Agenda item 8: Draft Local Enforcement Plan

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
1	That the plan is not approved and the council continues to implement the 2014 version.	Chris Gomm	4	3	12	Accept the risk	Views of cabinet to be taken on board and if necessary the document revised accordingly, before returning to Cabinet for approval.	Chris Gomm	Next Cabinet meeting.

Appendix 2: Equality Impact Assessment (Screening)

1. Identify the policy, project, function or service change

a. Person responsible for this Equality Impact Assessment

Officer responsible: Chris Gomm	Service Area: Planning
Title: Head of Development Management, Enforcement and Compliance.	Date of assessment: 29 August 2024
Signature: Chris Gomm	

b. Is this a policy, function, strategy, service change or project?

Strategy

If other, please specify:

c. Name of the policy, function, strategy, service change or project

Local Planning Enforcement Plan

Is this new or existing?

Already exists and is being reviewed

Please specify reason for change or development of policy, function, strategy, service change or project. The current document is out of date.

d. What are the aims, objectives and intended outcomes and who is likely to benefit from it?

Aims:

To provide an updated strategy guiding how the Planning Enforcement Team deal with complaints regarding potential breaches of planning control - including time scales and priorities.

Objectives:

To ensure that investigations into breaches of planning control are prioritised appropriately having regard to scale of harm and to ensure subsequent action is proportionate.

Outcomes:	Consistency in approach in how breaches of planning control are dealt with by CBC. Wider transparency and understanding of the CBC enforcement process. Proportionate and appropriate resolution of breaches of planning control.
Benefits:	As above.

e. What are the expected impacts?

Are there any aspects, including how it is delivered or accessed, that could have an impact on the lives of people, including employees and customers.

Yes

Do you expect the impacts to be positive or negative?

Positive

Please provide an explanation for your answer:

The strategy / approach set out in the draft enforcement plan will have a positive impact in the sense that there will be increased clarity and transparency in how the council will deal with an individual's report of a breach. It will also refocus our enforcement and compliance efforts on the resolution of harm, which can only have a positive impact for all of those subject to that harm.

If your answer to question e identified potential positive or negative impacts, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

f. Identify next steps as appropriate

Stage Two required	Yes
Owner of Stage Two assessment	Chris Gomm
Completion date for Stage Two assessment	30 August 2024

Please move on to Stage 2 if required ([intranet link](#)).