



UTTLESFORD DISTRICT COUNCIL

PLANNING SERVICES

Enforcement Policy

Adopted by Cabinet 18th October 2017

1.0 INTRODUCTION

- 1.01 This document sets out the Planning Enforcement Policy of the Council. It should be read in conjunction with the Council's Enforcement Policy, National Planning Policy Framework and the National Planning Policy Guidance.
- 1.02 The Council is firmly committed to effective, appropriate and proportionate enforcement of planning control and monitoring of development.
- 1.03 The enforcement team works closely with planning officers, building control officers and the specialist team of officers dealing with conservation of the natural and built environment, and landscape and tree matters.
- 1.04 There is also close coordination and assistance from other council services, such as legal, environmental health, housing, finance, council tax and business rates as well as from officers working for organisations such as the Environment Agency and Essex County Council etc.
- 1.05 The aims of the Council's Planning Enforcement Team are:
- To be effective and responsive in the prevention, intervention and control of unauthorised development to maintain the credibility of the planning system
 - To correct the undesirable effects of unauthorised development
 - To ensure development is carried out in accordance with planning approvals where possible and appropriate
 - To promote a service which is fair, responsive, helpful and consistent in its approach
- 1.06 When considering what enforcement action to take it is important to note that planning authorities have powers, but in most cases, other than very specialist areas, there is no statutory duty to enforce planning legislation. The planning enforcement system is not designed to seek retribution but is instead intended to mitigate harm. Thus, in all cases, regard must be paid to whether it is expedient to take action and to then reach a balanced view on what action it is appropriate

to take. In some cases the referral will be passed to another authority (e.g. Essex County Council) for them to take appropriate action. Therefore, in responding to any breach of planning control made the strategy will generally be to take one of the following courses of action:

- i. Establish that the complaint is not a breach, and that no action can be taken.
- ii. Take no further action in cases where the planning breach is of a minor or technical nature, or where the works or use, are acceptable without the need to impose any conditions.
- iii. Seek to rectify any breach through negotiation.
- iv. Inviting a listed building consent application or retrospective planning or advert consent application, if the breach that has occurred could be regularised. The legislation specifically provides that such retrospective applications can be made to regularise development already carried out. Alternatively, the owner may be invited to apply for a Certificate of Lawful Use or Lawful Development Certificate. If such applications are refused or not received within a reasonable timescale, the expedience for taking formal action (including issuing an Enforcement Notice, Breach of Condition Notice etc) will be considered.
- v. Immediate enforcement action to resolve breaches of planning control which require very urgent action and are causing significant damage to interests of acknowledged importance (this can include issuing a summons for a prosecution, a stop notice or an injunction).

1.07 This enforcement policy is based not only on the Council's Corporate Enforcement Policy but specifically on Central Government Guidance in the following documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Best Practice Guidance – Section 215 Notices. ODPM January 2005.

All decisions on whether it is expedient to take enforcement action will have regard to the policies of:

- Central Government Guidance.
- Planning Policy Guidance Notes/Planning Policy Statements.
- Uttlesford District Council Local Plan/Local Development Framework.
- All other saved Supplementary Planning Guidance and draft or adopted Supplementary Documents (SPD's) and other Development Plan Documents (DPD's).

2.0 WHAT IS A BREACH OF PLANNING CONTROL?

2.01 A breach of planning control is defined in the Town and Country Planning Act as:

“the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted” (Section 171A).

2.02 In addition to the above and for the purposes of this policy the Council considers that breaches of planning control can include:

- Building work, engineering operations and material changes of use carried out without planning permission.
- Development that has planning permission but is not carried out in accordance with the approved plans.
- Non-compliance with conditions or the terms of planning obligations (Section 106 obligations) attached to permissions.
- Works carried out to a listed building, which affect its special architectural or historic character, without listed building consent being granted.

- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
- Display of advertisements (including fly posters) which need express consent, under the Advertisements Regulations and are displayed without consent being granted.
- The state of land or a building adversely affecting the amenity of the neighbourhood under (Section 215 of the Town and Country Planning Act).

2.03 The Council does not have the remit to investigate civil matters such as beaches of the Party Wall Act, trespass or land grabbing, breaches of covenants, or activities that are occurring on the public highway.

3.0 PROCEDURES FOR DEALING WITH PLANNING ENFORCEMENT CASES

3.01 Most investigations result from requests to investigate from the public, councillors or parish and town councils. All these individuals and groups have a role to play in planning enforcement, as they are the local 'eyes and ears' of the Council in the community. Their contribution towards planning enforcement is greatly appreciated by the Council.

3.02 The enforcement team can be contacted by letter, telephone, website or e-mail. Written enquiries are preferred and in all cases we need the following information:

- The precise location of the site or property to which the referral relates.
- The exact nature of concern, i.e. the potential breach of planning control.
- The date the unauthorised development or works began and a note of whether and when they continue.
- An indication of any harm caused.

- Where it is known, details of the identity of the person / organisation responsible.
- 3.03 Unless the person who requested the investigation has a reason for not giving their details, and explains this, anonymous requests to investigate will not be investigated, unless there is justification for this and it will be considered on a case by case basis. Anonymous evidence usually carries little weight in Court, and without robust, reliable evidence, most formal enforcement action is likely to fail. If the person still wishes to remain anonymous they will be referred to their Ward Member or the Parish Council who can submit the referral on their behalf. Therefore the person who requests the investigation should give details of name, address, email address and telephone number.
- 3.04 All investigations are carried out on a strictly confidential basis and person who requests the investigation details will not be revealed by the enforcement team. However, there may be occasions where it is not possible to proceed without disclosing a person's identity. We will always seek their permission before making his/her details available to anyone else to give the person the opportunity to consider his/her position.
- 3.05 All referrals will be acknowledged within 5 working days in writing from the date the referral is received. All enquiries about possible breaches of planning controls including breaches of planning conditions will be entered on the database upon receipt, and a unique reference number will be created so that the progress of each investigation received can be monitored. If the referral leads to formal action then it will form part of the Council's online enforcement register.
- 3.06 Due to the level and nature of cases being investigated by the Planning Enforcement Team it is necessary for all workloads to be prioritised. In nearly all cases a site visit will be carried out by a Planning Enforcement Officer in order to establish what development if any is occurring, the level of activity and if the works constitute a breach of planning regulations. It is not normal

practice for the case officer to attend the person who requests the investigation's property unless it is absolutely necessary and this will be at the discretion of the case officer.

- 3.07 Site visits and action will be prioritised according to the harm to amenity likely to be caused and to the degree of departure from development plan policies represented by the alleged breach. Regard will be had for the fact that enforcement action is discretionary, and formal action will only be taken where the breach would warrant a refusal of permission that could be supported on appeal.
- 3.08 The Council has thus adopted the following standard for prioritising response to referrals:

Planning Enforcement Priorities and Targets

Top Priority - A

Unauthorised work causing significant damage to listed buildings, felling of protected trees/hedgerows, works to ancient monuments/site of special scientific interest (SSSI) likely to cause irreversible harm to the natural or historic environment. Developments affecting the highway to the extent that it causes immediate danger to life.

Target: Initial investigation and site visit to control the situation carried out within one working day.

High Priority - B

Unauthorised developments causing significant harm to the quality of life of local residents, causing or potentially causing significant harm to the landscape or the quality of conservation areas etc, or harm to listed buildings causing lesser harm than top priority cases.

Target: Initial investigation and site visit will be carried out within five working days of the referral being lodged.

Medium Priority - C

Unauthorised developments which cause limited harm (*e.g. works not in general public view, advertisements*). Minor householder developments, minor works (*e.g. sheds, fences, extensions*), satellite dishes which appear to cause no harm to interest of planning importance.

Target: Initial investigation and site visit will be carried out within 10 working days of the referral being lodged.

Other Priority - D

Referrals with limited or vague information but which warrant an investigation by an officer.

Target: Initial investigation and site visit will be carried out as resources allow.

- 3.09 In individual cases officers exercise their professional judgement in assessing the levels of priority.
- 3.10 When Enforcement and other Officers visit a site they will identify themselves and explain the reason for their visit.
- 3.11 The owner/occupier or people working on site may be interviewed to obtain factual information, and photographs and measurements may be taken if required. A detailed note will be made on the investigation file, which is used to record all visits and discussions at meetings or over the phone. If necessary the owner/occupier or people working on the site may be cautioned by the officer if it appears to him or her that a criminal offence is taking place.
- 3.12 It should be noted that under the various Planning Acts, enforcement and planning officers have the right of entry onto all non-residential land and buildings. They have further powers to enter residential property, and can apply for a warrant from the Magistrates' Court to gain access if initial attempts to gain entry (on the giving of twenty-four hours notice) are unsuccessful. Warrants can also be obtained where it might be necessary to

not alert the owner/occupier that a site visit is going to occur in order to avoid developments being concealed to officers.

3.13 In more complex or controversial cases or where it has not been possible to establish the facts through normal investigation, or where co-operation from the owner/occupier is not forthcoming, a formal planning contravention notice (under Section 171C of the Act), can be served relating to any breach of planning control alleged by the Council. This requires the recipient to provide specific information. Failure to respond satisfactorily to a notice within the required timescale is a criminal offence.

3.14 Once the initial site visit report is written by the enforcement officer, a decision will be made by the appropriate delegated officer about which of the five courses of action to pursue (see paragraph 1.06 above). This may involve consultation with other specialist officers such as in listed building, landscape or tree matters. The Council will then aim to keep person who requests the investigation, local ward members and parish and town council's informed of progress at the following key stages:

- When any enforcement or other notice is issued.
- When any appeal has been lodged with the Planning Inspectorate.
- When the matter is to proceed to the Magistrates Court or High Court.
- On the final closure of the matter.

3.15 It must be noted that the vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier or by the submission of a retrospective application for consideration. Legislation and central government guidance requires that all formal action must be commensurate with the risk or harm associated with the breach, and formal action is not always appropriate. The Council will, however, take effective enforcement action when it is essential to protect the amenity of the area, public, and to maintain the integrity of the development control process within the district.

- 3.16 With respect to monitored sites officers will make visits at appropriate intervals with particular attention being given to setting out, site levels, submission of details required by condition and compliance with the relevant conditions. Any oral agreement made with the site operators / developer regarding compliance will be followed up in writing and will set out agreed actions and an appropriate timescale.
- 3.17 Decisions about the issue of any enforcement or other notice or the pursuit of other legal actions will generally be taken by the Development Manager, and where necessary in consultation with the Council's legal department, the Chairman of Planning Committee or the Vice Chairman in the case of an emergency, in accordance with the Council's constitution scheme of delegation. Local district councillors will be informed where such action is authorised. More complex or controversial cases may be referred to the Planning Committee.
- 3.18 If an enforcement or stop notice is issued the Council must be able to justify such action in the event of an appeal to the Planning Inspectorate. Appeals need to be made before the date on which the notice takes effect; this date must be at least 28 days from the date on which the notice is served. Appeals can be lodged on a number of grounds and the appellant can request that his/her appeal is dealt with by a written procedure, or ask for an informal hearing or public inquiry, although the decision as to which procedure is followed is made by the planning inspectorate, it should be noted that the appellants preferred option may not be followed.
- 3.19 A criminal offence occurs where an owner/occupier fails to comply with the requirements of a valid notice. The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. The investigation into non-compliance with the requirements of any enforcement notice will be carried out having regard to the Codes of Practice to the Police and Criminal Investigation Act 1984, the Criminal Procedure and Investigation Act 1996, the Human Rights Act 1998,

the Codes of Practice to the Regulation of Investigatory Powers Act 2000 and the Home Office Guide to Prosecution.

- 3.20 The Council will also consider taking direct or default action to remedy a breach of planning control when it has been established that the requirements of an enforcement notice or a S215 notice have not been complied with. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work.
- 3.21 In such cases the Council will seek to recover its costs, possibly in a form of a charge on the land which may be enforced by an application to the court for an Order for Sale.
- 3.22 The options of compulsory purchase or the service of a discontinuance notice will also be considered if all other remedies fail to remedy a breach causing serious harm to an area.
- 3.23 The Council, when prosecuting for an offence can consider making a confiscation order to recoup money that has been gained from a criminal lifestyle under the Proceeds of Crime Act 2002.

3.24 Enforcement Notices

It should be noted that in the majority of cases it is not an offence to carry out development without planning permission. An offence in law only occurs if the Council has taken formal civil action (e.g., by serving a notice) and the recipients have failed to comply. It is thus necessary for the Council to first issue a formal enforcement notice. The recipient of a notice has a right of appeal to the Secretary of State against the issue of the Notice or its terms, and to make an application for costs in the course of doing so. An appellant who acts unreasonably may have a costs order made against them; the Council can also be subject to a costs award. It must be appreciated that if an appeal is made, this inevitably leads to delays in bringing a matter to Court.

If someone is found guilty of failing to comply with the terms of an enforcement notice a maximum fine of £20,000 may be imposed by the Magistrates' Court and an unlimited fine can be imposed if the matter goes to the Crown Court.

3.25 Stop Notices

A stop notice can be served at the same time as an enforcement notice in appropriate cases as explained in the chapter "Ensuring effective enforcement" in the NPPG. In particular a cost/benefit assessment needs to be carried out to ensure that the requirements do not prohibit anything more than is essential to safeguard amenity or public safety in the neighbourhood or prevent serious or irreversible harm to the environment in the surrounding area and to mitigate against any possible compensation claim.

3.26 Temporary Stop Notices

In exceptional cases where an enforcement notice has not been or cannot be served immediately a temporary stop notice can be served which can prohibit any activity, which is in breach of planning control for a period for up to 28 days. This provides an opportunity for the Council to serve an enforcement notice before the 28 days or the specified time has lapsed.

3.27 Injunctions

In certain exceptional cases the Council will seek to obtain an injunction using powers laid out in Section 187B of the Town and Country Planning Act 1990.

Such applications are made to the county or high court, and it is for the court to decide what is appropriate to restrain any breach of planning controls.

Failure to comply with such an Injunction can result in an unlimited fine or imprisonment. An Injunction can be issued against a person whose identity is unknown.

In the case of unauthorised advertisements, works to protected trees, hedgerows or listed buildings it is possible to proceed directly to the Courts with a prosecution case. Specific details are set out below:

3.28 Untidy land

If the state of land or a building is harming the amenity of the surrounding area the Council can take action under S215 of the Town and Country Planning Act 1990 to make the person with a legal interest in the land bring it up to a level where the harm has been remedied. Works can involve clearing the land or carrying out works to the exterior of a building. The Council will only serve a S215 notice as a last resort and will encourage the land owners to carry out the works without the need for issuing the notice. There is a right of appeal under several grounds to the Magistrates Court.

It is an offence under S216 of the Town and Country Planning Act 1990 not to comply with the requirements of the notice within the time frame. The person with a legal interest in the land “shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale”. Pursuant to S219 the Council can also carry out default action and put a charge on the land to re-coup the costs of the default action.

3.29 Breach of condition notices

Where a breach of a planning condition(s) attached to an approved planning permission has occurred the Council can issue a breach of condition notice. The notice will require the person with a legal interest in the land to ensure the condition(s) is complied with. It is an offence not to comply with the requirements of the notice and the person that commits the offence “shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”. The only way to challenge a Breach of Condition Notice is to judicially review it in the High Court.

3.30 High Hedges

The planning service is responsible for dealing with referrals under the Anti-Social Behaviour Act 2003 regarding high hedges. Where appropriate, remedial notices can be issued, requiring a hedge to be reduced in height or to be managed in accordance with a long term maintenance plan. The Council will obtain specialist arboricultural advice before issuing any remedial notice.

Development that constitutes a Criminal Offence

(a) Listed Buildings

A person is guilty of an offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 if unauthorised works to a listed building which would affect the character of the listed building as a building of special architectural or historic interest are carried out without the Council's consent or if works are carried out without complying with a condition attached to a consent. There is no time limit on bringing a prosecution, although this would only be against those who carried out the work or who caused it to be carried out.

Thus those who have a legal interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether listed building consent is later obtained or the unauthorised works are later made satisfactory. The current owner of a listed building may be served with a listed building enforcement notice even if they were not responsible for the works being carried out. A person found guilty of an offence may be liable to a fine of up to £20,000 or six months imprisonment, or both, for each separate offence. On indictment the potential penalties are an unlimited fine, imprisonment of up to two years or both.

In addition, the Council may consider it expedient to issue a listed building enforcement notice, to require remedial works to be carried out. The decision whether to prosecute and or issue an enforcement notice will be based on guidance in the government's document "Best Practice Guidance – Listed Buildings Prosecutions" December 2006.

(b) Advertisements

Anyone who displays an advertisement without the appropriate consent is open to a prosecution in the magistrates' court for an offence under Section 224(3) of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Council may not initially consider it necessary to prosecute for an advertisement offence. The maximum fine on conviction is currently £2,500 with an additional daily fine of one-tenth of the maximum penalty if the offence continues after conviction.

Any form of fly posting (that is, displaying an advertisement on land without the consent of the owner) is an offence. The Council has powers to remove such advertisements, but if the advertisement identifies the advertiser, the Council must give 2 days notice before removal.

In addition to those powers above, in certain circumstances, advertisement discontinuance notices can be issued against advertisements that are being displayed with the benefit of express or deemed consent and which are considered to now have a detrimental impact on the amenity of the area in which they are displayed. These notices can be the subject of appeal and compensation claims.

(c) Trees and Hedgerows

The enforcement team works closely with the Council's specialist tree officer on all arboricultural matters. The tree officer should be consulted for advice before any works are carried out to all protected trees, hedgerows and to all trees in a conservation area.

Unauthorised works to trees protected by a tree preservation order can result in fines up to £20,000. Notices can also be served by the Council requiring the replacement of protected trees that have been felled.

Formal notice must be given to the Council before works are carried out to most trees in a conservation area, and before any works are carried out to the majority of hedgerows in the countryside. In these cases the Council has powers to serve notices requiring replacement trees or hedgerows. In particular, the Council has power to issue a hedgerow retention notice. The Council can prosecute persons who remove hedgerows or in any other way fail to comply with any retention notice.

(d) Other Matters

As noted above, the Authority will work with the Police and other agencies such as Essex County Council, English Heritage, the “Environment Agency” and “Natural England”, where for example there is damage to wildlife and habitats protected by the Wildlife and Countryside Act 1981, as amended; works to protected Ancient Monuments or offences under the Dealing in Cultural Objects (Offences) Act 2003.

4.0 SPECIFIC PRIORITIES

- 4.01 Airport related parking – Due to the location of London Stansted airport within the District there is considerable pressure for well located and convenient parking. This has led to a number of unauthorised sites being developed in the vicinity of the airport. These sites range in size from a few cars to hundreds of cars and can have a serious impact on the appearance and quality of the landscape, the condition of the rural roads and general character of the area. The Council will consider referrals regarding such breaches of planning control in accordance with the priorities listed above depending on the size, scale and harm caused by the parking.
- 4.02 Harm to heritage assets- The district has a significant number of heritage assets including listed buildings, ancient monuments and landscapes. Unauthorised and harmful development can have a detrimental impact on the

character and setting of these assets. The Council will consider using a range of tools to ensure suitable restoration of the buildings. This will include advice and guidance, support for grants, repairs notices and direct action as appropriate.

5.0 REVIEW AND AUDIT

- 5.01 It is anticipated that this policy will be reviewed on an annual basis or sooner if there is a significant change in legislation, national or local policy. At appropriate intervals during the year reports will also be made to the Planning Committee. The status of this policy is guidance and if there is a conflict between this policy and national legislation or policy, then the national legislation or policy will prevail.

6.0 EQUAL OPPORTUNITIES

- 6.01 The Council will ensure that all persons involved in enforcement and compliance matters, including both formal and informal action and advisory visits, whether as the person who requests to investigate, witnesses, developers or landowners, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, religious beliefs or any disability.

7.0 CONTACT DETAILS

- 7.01 If you need this document in large print, braille, audiotape or other format please contact us. Copies of this document can be obtained from the Council's website.

Uttlesford District Council
London Road
Saffron Walden
Essex
CB11 4ER
Telephone: 01799 510510

Fax: 01799 510550

E-mail: enforcement@uttlesford.gov.uk

www.uttlesford.gov.uk