

PLANNING ENFORCEMENT STRATEGY

Introduction

The Town & Country Planning Acts give discretion to the Local Planning Authority in the exercise of its powers for controlling unauthorised development.

The Council is firmly committed to the effective enforcement of planning control. The Council views breaches of planning control very seriously and has a dedicated enforcement team within Development Management.

The National Planning Policy Framework (March 2013) states, at paragraph 207, that “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.” This document sets out the strategy and the approach the Council will take in investigating and remedying breaches of planning control. This Strategy was formally adopted by the Council following approval on 9 September 2014. The Strategy only relates to enforcement activity that falls outside the South Downs National Park.

Planning Enforcement

Planning Enforcement plays an important role in monitoring development and investigating potential breaches of planning control. The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action.

The Council, as the local planning authority, has powers to investigate unauthorised developments and take appropriate remedial action where necessary. Breaches of planning control can take a number of forms, including unauthorised changes of use of land or buildings, work being carried out without the benefit of planning permission and breaches of conditions attached to planning permissions.

When the Council investigates a breach, an assessment is made to determine what action, if any, is necessary. In many cases where a breach has taken place, there is no adverse effect on the character of the surrounding area, or on residential amenity. In these circumstances the Council will normally avoid taking enforcement action simply to regularise a development.

Our Objectives

The Council has established the following objectives:-

- To remedy the undesirable effects of unauthorised development
- To strike a balance between protecting amenity/ environment and other interests of acknowledged importance, and enabling acceptable development to take place

- To ensure that the credibility of the planning system is not undermined
- To carry out all duties in accordance with the principles of the Enforcement Concordat¹, particularly with respect to openness, helpfulness, proportionality and consistency
- To be pro-active in regard to the monitoring of development to ensure compliance with conditions imposed on Planning Permissions and to be reactive in the investigation of complaints
- To work with other agencies and organisations, both internally and externally to deliver acceptable outcomes

Principles

1. All written complaints, from a named person(s) regarding breaches of planning control will be acknowledged and investigated; and complainants notified of the action taken.
2. Complaints will be prioritised, depending on their urgency and potential environmental/amenity harm.
3. The identity of complainants will be kept confidential, unless subsequent Court action warrants their evidence being made public. Complainants will be kept informed of the progress of investigations and of the eventual outcomes.
4. Action is discretionary and will only be taken where it is both expedient to remedy harm and in the public interest.
5. Action will be proportionate to the breach and may be held in abeyance whilst planning applications or appeals are determined provided there is a reasonable prospect that planning permission will be granted.

Priorities

The Council receives approximately 600 complaints each year regarding alleged breaches of planning control and will give priority to those cases where greatest harm is caused. However, even if low priority, cases will be given attention and brought to a conclusion.

Complaints will be investigated in accordance with the following:

1. High Priority

These will normally be subject to a site inspection within 2 working days:

- a) Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area)
- b) Unauthorised works to trees covered by a tree preservation order (TPO) or in a Conservation area

¹ In March 1998 the Local Government Association published the central and local government Enforcement Concordat on Good Enforcement that sets out the best practice to achieve higher levels of voluntary compliance.

- c) Any unauthorised development/activity which causes clear, immediate and continuous harm or danger to the locality including the living conditions of adjoining residents

2. Medium Priority

These will normally be subject to a site inspection within 10 working days:

- a) Unauthorised development that will be immune from enforcement action within 6 months²
- b) Operational development/changes of use and non-compliance with conditions likely to cause neighbourhood distress or adverse harm to a Conservation Area or the appearance of nationally statutorily protected landscapes

3. Low Priority

The lowest priority will be given to cases resulting in little or no harm and will normally be subject to a site inspection within 20 days:

- a) Means of enclosure; advertisements, flag poles and satellite dishes
- b) Householder development
- c) Works likely to be permitted development

Making a complaint

Complaints about alleged breaches of control should be made in writing using the on-line e-form which can be found at:

<http://www.chichester.gov.uk/planningenforcement#enforcement>

Telephone calls are exceptionally accepted for Priority 1 cases. Anonymous complaints will not be entertained except in exceptional circumstances.

Contact: Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY. TEL: 01243 534734
<http://www.chichester.gov.uk/>

² The Planning and Compensation Act 1991 introduced time limits within which a LPA can take planning enforcement action against breaches of planning control.

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed

- four years for the change of use of a building, or part of a building, to use as a single dwelling house.

Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken

- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

To assist the Council in providing an early resolution to the issues raised it is important that the complainant provides as much information as possible about the alleged breach of control. For example a description of the problem identified, dates and times of the activities carried out and the names and address of those involved. Once a breach of control is confirmed, a complainant may be asked to keep a record of any relevant activities. All complaints will be dealt with confidentially and there is no public right to access information about complainants.

A complaint will be acknowledged within 5 working days.

The initial complaint investigation process is shown in a flow diagram at **Appendix 1** attached to this Strategy.

What is a breach of planning control?

Most building, engineering work and changes in the use of land and buildings needs planning permission from the Council. Sometimes development is carried out without planning permission or does not properly follow the detailed plans/and or planning conditions which have been approved by the Council. Such actions are referred to as a 'breach of planning control' and can include the following:

- Building work
- Changes of use of land or buildings, e.g. mobile homes or new business uses
- Non-compliance with planning conditions
- Display of advertisements
- Work to protected trees, listed buildings and demolition in a Conservation Area

Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken. However, assessment of complaints would not include:

- Loss of value to a neighbouring property
- Competition to another business
- Loss of an individual's view or trespass onto someone else's land
- It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved

Enforcement Action

The Council will usually attempt to remedy unauthorised breaches through negotiation, rather than immediate statutory action. This may involve the submission of a retrospective application or a requirement to take steps to ameliorate specific problems with a development. In cases where the breach is serious and has a detrimental impact on the character or amenity of an area or building, the Council can serve an Enforcement Notice. Where the breach is particularly severe a Stop Notice may be served in conjunction with the Enforcement Notice, requiring immediate cessation of the unauthorised activities.

Failure to comply with these Notices constitutes a criminal offence, and the Council can take direct action to secure compliance.

In deciding whether to take action the Council will have regard to the development plan and other material considerations including national policy and Government Circulars. Any action taken will be proportionate with the breach of planning control and will pursue the minimum remedy necessary to mitigate the harm caused by the development.

If unauthorised development complies with Development Plan policies, is not harmful or any harm can be controlled by condition, the Council will allow a period of 28 days for the submission of a retrospective planning application to try to regularise the position. In other circumstances, the Council will proceed to issue an enforcement notice. When applications are being considered the developer may be advised to stop work. Enforcement action will not normally be taken whilst applications are under consideration.

Deciding when to take action

In considering whether to take action the Council will not give weight to the fact that development has commenced. Where an application is submitted retrospectively a decision on whether to proceed with enforcement prior to the determination of the application will be made. Unauthorised developments are treated on their merits in the same way as proposed developments.

Decisions not to take action will be made by a 'designated officer' as agreed through the Council's scheme of delegation. Reasons for not taking action will be recorded in writing. In accordance with the adopted delegation arrangements any recommendation to commence prosecution proceedings must be referred to the Head of Service. In exceptional cases where significant expenditure could be incurred or a decision overturns a previous decision of the Council the matter will be reported to the Planning Committee.

In considering whether to take action, the Council will not give weight to non-planning considerations. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.

In using the regulatory powers provided by the planning system the Council will have regard to the Council's obligations and powers under other legislation and also the statutory powers carried by other organisations.

A flow diagram of the steps taken after a breach of planning control has been established is attached at **Appendix 2** to this Strategy.

Types of Action

The main forms of enforcement action taken by the Council are as follows:

- Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice

The Council will ensure that any enforcement action taken is proportionate to the impact of the breach of planning control.

Where the condition of a building or land seriously detracts from or affects the character of an area and remedial works are not undertaken within a specified period a notice may be served under the provisions of S215 of the Act.

Not all breaches of planning control will result in significant harm being identified. In these cases officers may decide that no further action should be taken. If, at any stage, it becomes clear that there has been no breach of planning control, or the development has been altered to no longer require permission, the process will be discontinued and interested parties informed of the situation.

Appeals against the issue of an Enforcement Notice

There is a right of appeal to the Secretary of State against an enforcement notice and appeals are processed in accordance with procedures administered by the Planning Inspectorate. The actions required by an enforcement notice, along with the compliance period, are held in abeyance pending the determination of an appeal. If the appeal is allowed, the Enforcement Notice is quashed and the investigation closed. If the appeal is dismissed and the Enforcement Notice is upheld, the compliance period on the Notice commences on the date of the appeal decision letter. The Council will then use all appropriate means to secure compliance with the Notice.

Prosecutions

An offence occurs where a developer fails to comply with the requirements of a notice or carries out work to a protected tree or listed building without consent. It is also an offence to display an advertisement without consent. Where these matters cannot be resolved by any other means, the Council will take prosecution action in the local courts. The Council will also seek to prosecute any failure to return formal legal documents where required by law to do so or deliberately providing any false information, where such a prosecution would be in the public interest.

Injunctions

In exceptional cases, the Council may seek an injunction through the Courts. An injunction may be sought at any stage of the planning enforcement process, either as the Council's preferred remedy or in addition to some other formal enforcement action. Unlike an enforcement notice or a stop notice, injunctive proceedings are "personal" in that the Council seeks to obtain an order from the Court to restrain a person, or a number of people from carrying on the breach. The Council will therefore have to weigh the public interest against the private interest of the person or people whom the Council seek to restrain.

The Court has the discretion to commit a person to prison who refuses or neglects to do something required by a Court Order.

Direct Action

The Council can decide to take direct action to secure compliance with the requirements of an outstanding enforcement notice where the person responsible fails to do so. Such

action will only be taken after consideration of the 'public interest' in pursuing the matter and contact with the owner/occupier of the land. The Council will seek to recover its costs for example, by placing a charge on the land.

Proactive Enforcement

Conditions compliance

Conditions are often imposed to regulate certain aspects of an approved scheme and are an essential element in the process. Were it not for the conditions, it is probable that planning permission would have been refused.

The Council will carry out compliance checks on major application sites and selected developments both in terms of imposed planning conditions and the physical features of the development itself (i.e. siting). Priorities will be determined by the Enforcement Manager or their assistant. This approach will be based on a risk assessment, where sensitive developments and sites will be judged to be a higher risk.

A developer is at risk of the Council issuing a Breach of Condition Notice for failure to adhere to approved details. However, some minor changes are acceptable and can be dealt with through a further planning application.

The Council will seek to develop close contacts with major developers to facilitate mutually beneficial checking of conditions and other aspects of individual developments to resolve matters as quickly as possible. For large scale schemes, the Council will expect developers to set up and manage suitable liaison arrangements with the local community to enable community concerns to be addressed throughout the construction process.

Targeted pro-active projects

The Council will undertake pro-active projects where resources allow. Such projects could include illegal advertisements in a specific area, untidy sites or checking occupancy conditions (agricultural/holiday).

Review of conditions

The practical issues involved in enforcing conditions and agreements and the issues that can arise from unclear information on approved plans will be shared with Planning Services to ensure that robust and sound controls are applied to new development.

Publicity

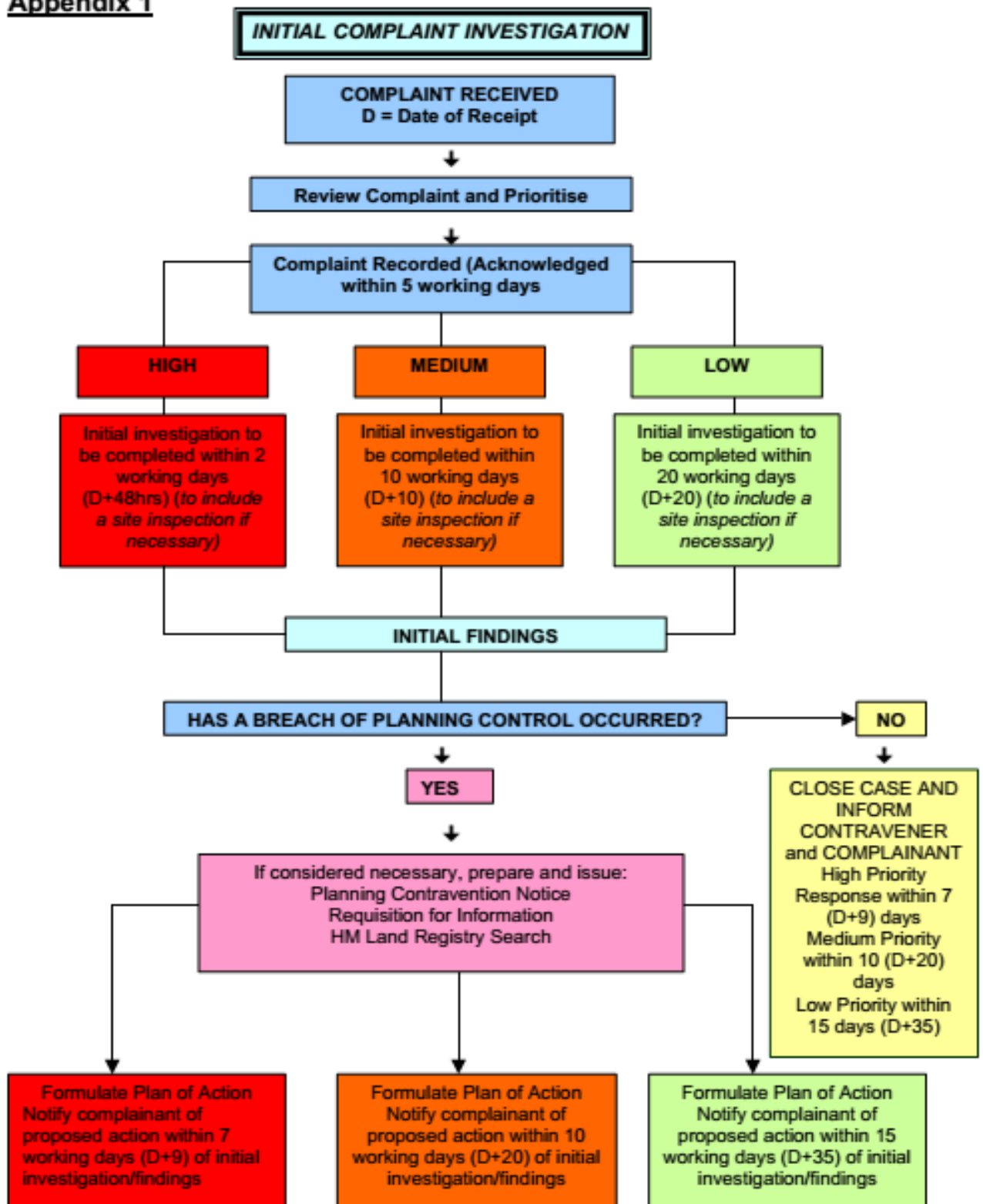
The Council will take a proactive stance in publicising successful action as part of its strategy for improving public awareness of the importance of managing development.

Performance

The Council will maintain accurate records of enforcement investigations and report performance figures to the Planning Committee on a quarterly basis to ensure that standards of customer care are adhered to and that enforcement meets the standards of service delivery set out in this document.

(Latest version 18.4.17)

Appendix 1



Appendix 2

BREACH OF PLANNING CONTROL ESTABLISHED

