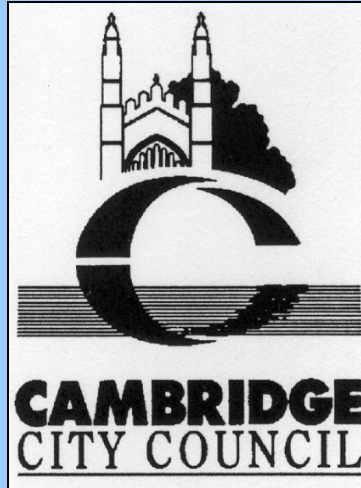


# Planning Investigation Service



Department of Environment and Planning  
Approved December 2000

## ENFORCEMENT POLICY

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**Cambridge City Council  
Planning Investigation Service**

**Enforcement Policy**

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## 1.0 INTRODUCTION

1.1 The Town and Country Planning Acts give discretion to the local planning authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning enforcement service in Cambridge, and the approach that the City Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.

1.2 The City Council is firmly committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and has a specialist enforcement team within the Development Services section of the Environment and Planning Department to investigate and take action against unauthorised development.

1.3 In July 1997, the Department of the Environment, Transport and the Regions (DETR) published a good practice guide on enforcing planning control for local planning authorities (Enforcing Planning Control – Good Practice Guide for Local Planning Authorities – ISBN 011 – 753405 6). The Guide suggested that local planning authorities should establish a formal planning enforcement policy which provides a clear statement of the decision making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practices. In the light of the above guidance, this policy statement has been prepared to outline the approach that will usually be adopted by the Council in resolving how to deal with unauthorised development and sets out the procedures that will be followed.

### 1.4 Cambridge City Council – Enforcement Objectives

- ❖ To promote compliance with planning requirements.
- ❖ To remedy the undesirable effects of unauthorised development.
- ❖ To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system.
- ❖ To strike an acceptable balance between protecting the amenity of the citizens of Cambridge and other interests of acknowledged importance, and allowing development to take place.
- ❖ To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan.

### 1.5 How Enforcement Objectives will be achieved

- ❖ The service will be operated to be pro-active, effective and responsive in the prevention and control of unauthorised development.
- ❖ Effective monitoring procedures will be implemented to ensure development is carried out in accordance with planning approvals.
- ❖ Service delivery will be fair, responsive, helpful and consistent in its approach.

## 1.6 **What is planning enforcement and who does it?**

1.7 Planning enforcement investigates possible breaches of planning control, and aims to resolve breaches using the most appropriate means or action. In Cambridge, the City Council is responsible for enforcing control in all planning matters other than minerals and waste disposal (these are the responsibility of the County Council).

1.8 As well as investigating complaints into possible breaches of planning control, the planning enforcement service is pro-active in:

- ❖ Ensuring compliance when formal enforcement action has been taken.
- ❖ Monitoring planning conditions and planning obligations to ensure they are being carried out as required.
- ❖ Monitoring building regulation applications to ensure that:
  - Development accords with both the planning approval and building regulation plans.
  - Where appropriate, any proposed building regulation application works also has the benefit of planning permission.

## 2.0 **POLICY POSITION**

### 2.1 **Government Policy**

2.2 The Council is mindful that enforcement action is a discretionary power to be taken only when it is expedient to do so, and any action should be commensurate with the seriousness of the breach of control. It should be remembered that it is only an offence to carry out development without planning permission in a few instances. Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out.

2.3 Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits.

### 2.4 **Other Planning Policy Guidance**

2.5 The service deals with around 800 complaints and enquiries a year. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of historic fabric, an important tree or below ground archaeology. Apart from the seriousness of the breach, the following matters are also taken into consideration:

- ❖ The policies of the Cambridgeshire Structure Plan 1995 and the Cambridge Local Plan 1996, which together form the development plan for the City.
- ❖ Relevant statements of planning policy contained in Planning Policy Guidance Notes (in particular PPG1 : General Policy and Principles – Feb 1996, and PPG18 : Enforcing Planning Control – Dec 1991).

- ❖ Guidance contained in Government Circular 10/97 – “Enforcing Planning Control : Legislative Provisions and Procedural Requirements”, and the accompanying document “Enforcing Planning Control : Good Practice Guide for Local Planning Authorities (1997)”.
- ❖ The provisions of the Human Rights Act 1998 when making decisions relating to planning enforcement.
- ❖ The principles of the Enforcement Concordat, drawn up by the Access Business Group, a partnership between central and local government and business. The principles are:
  - ✓ Performance will be measured against **agreed standards**.
  - ✓ There will be **openness** in dealing with business and others.
  - ✓ Enforcers will **be helpful, courteous and efficient**.
  - ✓ Complaints procedures will be **publicised**.
  - ✓ Enforcement decisions will be taken in a **proportionate manner**.
  - ✓ Enforcement officers will strive for high standards of **consistency**.
  - ✓ To take into consideration the **planning history** of the site.
  - ✓ Seek **specialist help** from legal, trees and conservation experts.
  - ✓ To be aware of **relevant appeal decisions and case law decisions**.
  - ✓ To **note information** provided by the owner/occupier or interested parties.

2.6 Parliament has given LPA's the primary responsibility of taking whatever enforcement action may be necessary, in the public interest, in their administrative area. The private citizen cannot initiate planning enforcement action. The Council is aware that the Commissioner for Local Administration (the Local Government Ombudsman) has held, in a number of cases, that there is maladministration if an authority fails to take effective and timely enforcement action where this was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice.

### 3.0 WHAT IS A BREACH OF PLANNING CONTROL?

3.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as:

***“the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.”***

3.2 Breaches of planning control occur in many ways, for example, where:

- ❖ Building work, engineering operations and material changes of use are carried out without planning permission having been granted.
- ❖ Development has planning permission but is not carried out in accordance with the approved plans.
- ❖ Failure to comply with conditions of the terms of a legal agreement (S106 Obligations) attached to a permission or consent.

- ❖ Demolition takes place in conservation areas, without conservation area consent, when it is required.
- ❖ Works carried out to a 'listed' building, which affect the historic character or setting, 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.
- ❖ Advertisements that require express consent under the Advertisement Regulations, which are displayed without consent.
- ❖ Fly Posting
- ❖ Failure to comply with the requirements of a planning legal notice, for example, planning enforcement notice, planning contravention notice, breach of condition notice, stop notice, etc.

3.3 It should be noted that it is not an offence to carry out development without planning permission. An offence will only occur if the development involves unauthorised advertisements, works to protected trees or listed buildings, or if a formal notice has been served but has not been complied with. When development has been undertaken without planning permission, it cannot be assumed that retrospective planning permission will always be granted for that development.

#### 4.0 **WHAT WILL THE COUNCIL'S INITIAL INVESTIGATION INVOLVE?**

##### 4.1 **How to report a suspected breach**

4.2 Most investigations into breaches of planning control result from complaints received from members of the public or from Ward Councillors. The Council can be contacted by letter, telephone, e-mail or in person. The address and telephone numbers of the Planning Enforcement Service are set out at the end of this document, together with office opening hours. It is advisable to make an appointment if the complaint is to be made to the investigation team in person. Written complaints are preferred as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

4.3 We will need the following information:

- ✓ The precise location of the site or property to which the complaint relates.
- ✓ The exact nature of concern, ie. the potential breach of planning control.
- ✓ An indication of any harm caused by the breach.

4.4 In addition, it would be helpful to provide information on the identity of the person/organisation responsible and the date when the breach began.

#### 4.5 **Confidentiality**

4.6 All investigations are carried out on a strictly confidential basis and the investigation team will not reveal the complainant's details. On serious breaches of planning control, which may warrant prosecution, or result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare and involvement in those cases is on a voluntary basis.

#### 4.7 **Anonymous complaints**

4.8 Unless the complainant has a reason for not giving their details, and explains this to the investigating officer, anonymous complaints will not normally be investigated.

#### 4.9 **Informing Complainants**

4.10 The City Council will keep all complainants informed of progress at the following key stages of the process:

- ❖ Acknowledgement of complaints.
- ❖ Report on initial assessment, advising what action will be taken.
- ❖ Issue of enforcement notice, or outcome of other action.
- ❖ Lodging an appeal against a formal notice.
- ❖ The appeal decision
- ❖ Closure of the investigation.

#### 4.11 **Recording Complaints**

4.12 All complaints of potential breaches are entered onto the enforcement computer data base upon receipt, and a unique reference is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged. Complaints are usually acknowledged by telephone or letter within 2 working days, giving the name and telephone number of the investigating officer. Complainants are kept informed throughout the investigation process and are welcome to contact the investigation officer at any time for a progress report.

4.13 The initial investigation usually involves checking the planning and building regulation history of the particular site to establish any relevant development history and whether any conditions have been attached to any approval granted. Sometimes it is also necessary to check other records held by the Council such as council tax or business rates, environmental health records or outside organisations such as the DVLC at Swansea, in order to get a complete picture of events.

4.14 A site inspection may prove necessary to establish further facts and evidence. Investigation Officers identify themselves when on site and explain the reasons for the

inspection. The owner/occupier or people working on the site will be interviewed to obtain factual information and photographs and measurements may also need to be taken. A detailed note is made of the findings in the investigation file, which is used to record all visits and discussions at meetings or on the telephone.

#### **4.15 Right of Entry**

4.16 Investigation officers have the immediate right of entry onto sites under the provisions of S196A and S196B of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty four hours notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

#### **4.17 Obtaining additional information**

4.18 In some circumstances, when it has not been possible to establish the facts through normal investigation, or when the co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice can be served. This requires the recipient to provide information relating to the breach within 21 days from the date of service of the Notice. (See Appendix A).

4.19 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary of events relating to the breach. This is helpful where problems occur in the evenings or at weekends or outside normal working hours. Such help is voluntary, but the evidence may be crucial when assessing whether a breach has occurred and whether further action is considered expedient to remedy the breach.

4.20 If there is no breach, for example, if the development falls within 'permitted development' under the GPDO (See Appendix A) or the development has become lawful due to the passage of time (See Appendix A) then a full explanation will be given to the complainant and the file will be closed.

4.21 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council however, need to ensure that full and proper consideration is given to the matter and this can often take several weeks, occasionally months, prior to resolving whether a breach of planning control has occurred and determining what further action is merited.

4.22 When there is enough evidence to establish whether a breach has taken place, the investigation officer will normally discuss the case with the Principal Planning Officer to agree an appropriate course of action. The investigation officer will contact the complainant to inform them of the outcome of the investigation and what action the Council propose to take and why.

### **5.0 PERFORMANCE STANDARDS**

5.1 Some complaints will be more urgent than others and these will need to be given a higher priority. The performance standards for the service will be set to reflect this.

Performance standards and priorities will be reviewed regularly as will the level of resources required to undertake other enforcement-related tasks. From time to time, questionnaires will be sent to those persons who have made a complaint or enquiry into an alleged breach of planning control, with a view to appraising the enforcement service that is provided and to make improvements or adjustments to current procedures.

## 5.2 Overall priorities – enforcement complaint investigations:

- Works to listed buildings, below ground archaeology and works to protected trees that cause immediate and irreversible harm.
- Councillor enquiries.
- Operational development/building works where ongoing severe neighbour/neighbourhood distress is being caused.
- Breaches of planning control that will be immune from enforcement within six months.
- Changes of use affecting residential amenity.
- Other development (building works/changes of use/condition of land). Building work affecting a Conservation Area will be given higher priority.
- Advertisements and satellite dishes.

5.3 On receipt of a complaint, it is prioritised and a preliminary investigation is undertaken to establish if a breach of planning has or is likely to have occurred.

## 5.4 Complaints classified as ‘Immediate’ – investigation within one working day

- Works to listed buildings.
- Works to protected trees.
- Demolition of important unlisted buildings in conservation areas.
- Significant unauthorised building works.

## 5.5 Complaints classified as ‘Urgent’ - investigation within five working days

- MP/Councillor complaints.
- Operational/building works/change of use/compliance with conditions/obligations affecting residential amenity where ongoing severe neighbour district being caused.
- Operational development within conservation areas.
- Where immunity rules will shortly apply.

## 5.6 Complaints classified as ‘Non-Urgent’ – investigation within 15 working days

- Other changes of use.
- Other building works/condition of land/compliance with conditions.
- Advertisements and satellite dishes (conservation areas to be prioritised).

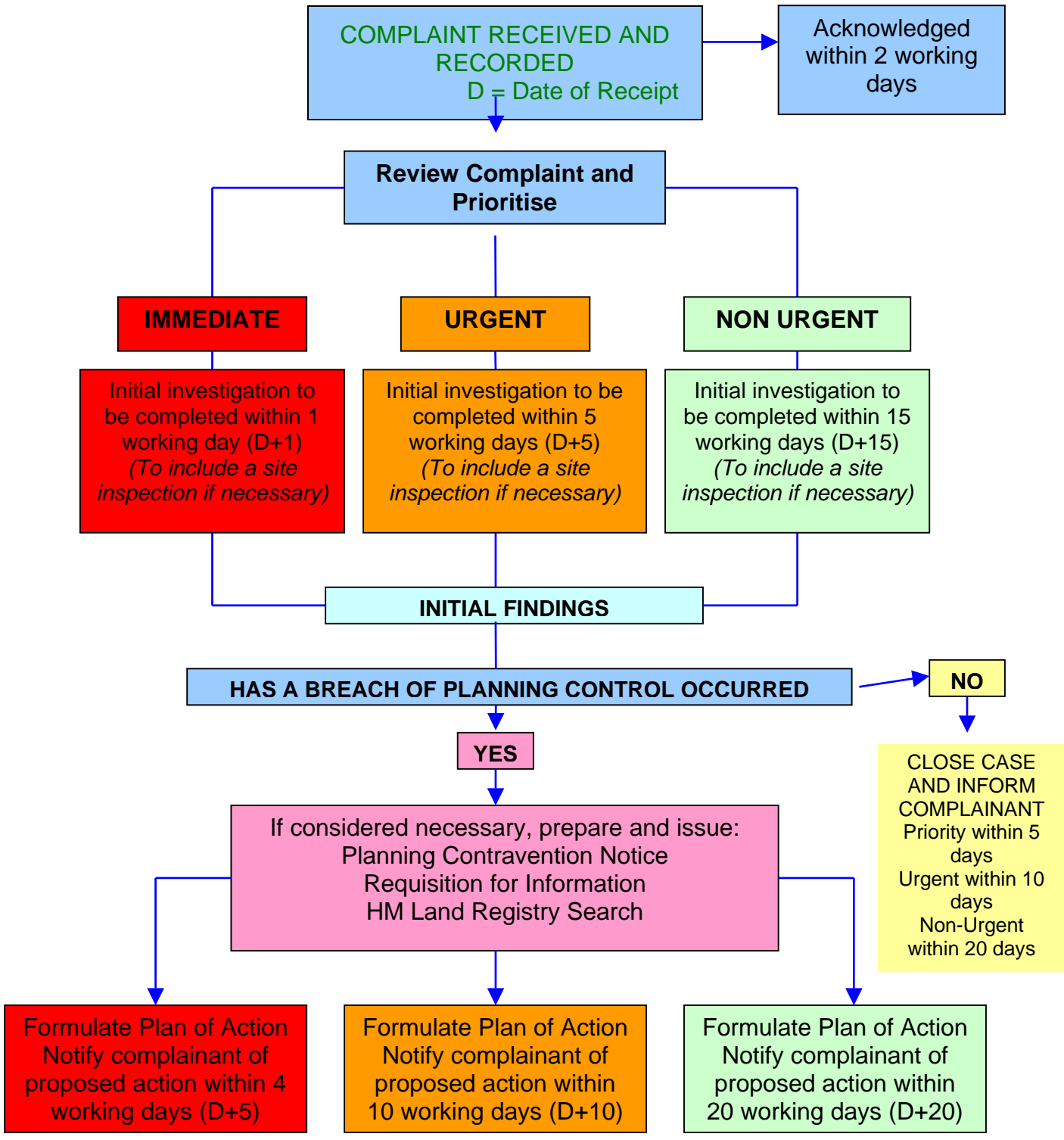
**5.7 Planning Advice and Enquiries**

5.8 For general planning enquiries and advice that do not constitute a complaint into a breach of planning control, the matter will be looked into within 10 working days.

**5.9 Initial Investigation Flow Chart**

5.10 The following flow chart shows the procedure followed when investigating complaints. How complaints are pursued within specific time scales is shown at Appendix C.

**INITIAL COMPLAINT INVESTIGATION**



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## **6.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?**

- 6.1 The majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action, in accordance with national advice, only takes place when it is expedient and where other means to resolve the problem have failed. The Council will take effective enforcement action when it is essential to protect the amenity of the area, the public or highway safety, and to maintain the integrity of the development control process within the City. The impact of some developments are more harmful than others and therefore action will be in the public interest and commensurate with the breach of planning control.
- 6.2 The Head of Development Services will normally decide whether formal notices are justified in accordance with agreed policies. Some notices, such as Planning Contravention Notices (PCNs) and Breach of Condition Notices (BCNs) can be issued by specific officers who have authority to do so, delegated to them under the Council's Standing Orders (Appendix A). Such action would be warranted where further investigation to obtain the facts of a case is required, or where a planning condition has been breached. In other cases, where the breach is more serious and an enforcement notice is considered necessary, the issue is reported to the Council's Planning Committee for formal authorisation. In an emergency, authorisation for urgent action can be obtained under the Council's Urgent Action procedure. In such cases the Head of Development Services and chair and spokesperson of the Planning Committee have delegated authority to authorise emergency action such as the serving of a Stop Notice, an Enforcement Notice or seek injunctive proceedings, the matter being reported to the next Planning Committee for endorsement by Committee Members. When appropriate, legal advice from the Council's Head of Legal Services, will be sought.
- 6.3 When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:
- ❖ If the breach is minor with no significant effects – no further action required.
  - ❖ If the development is such that it is in line with relevant local plan policies – the Council will usually invite a 'retrospective' application for planning permission or advertisement consent.
  - ❖ If the breach is immune from enforcement action due to the passage of time – an application for a Certificate of Lawfulness will be invited.

- ❖ If permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed voluntarily. A suitable period of time is allowed, depending on what needs to be done. For example, tenants must be allowed time to find somewhere else to live.
- ❖ As a last resort, formal notices can be issued, such as a Breach of Condition notice or Enforcement Notice, if it is considered expedient having regard to the development plan policies and other material considerations. This is a discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable.
- ❖ In extreme cases, the Council can serve a notice to require any relevant activity to cease (a Stop Notice) and there is provision to obtain a planning enforcement injunction to restrain an actual or apprehended breach of planning control.
- ❖ When a Breach of Condition Notice has been served and has not been complied with, the person who has been served with the notice can be prosecuted in the Magistrates Court.
- ❖ When an Enforcement Notice takes effect but is not complied with, any owner/occupier or person who has control of, or has an interest in the land, can be prosecuted in the Magistrates Court.
- ❖ Where appropriate, and if other means have not secured a cessation of the breach being enforced against it, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land.
- ❖ When it is considered expedient not to pursue enforcement action against a breach of planning control, the Head of Development Services will decide and may report this to the Planning Committee to endorse the decision to take no further action.

6.4 It must be remembered that a robust case supported by evidence needs to be made to ensure any subsequent appeal and prosecution can be supported.

#### 6.5 **Flow Chart – Breach of Planning Control Confirmed**

6.6 Once a breach has been established, further investigation may be required and a time-table to be followed to resolve the breach according to its priority classification.

6.7 The flow chart below shows the procedure and time-table to be followed once a breach has been established.

**BREACH OF PLANNING CONTROL ESTABLISHED**

CAN THE UNAUTHORISED DEVELOPMENT  
BE MADE ACCEPTABLE BY THE GRANT OF  
CONDITIONAL PLANNING PERMISSION

**YES**

**NO**

**Open negotiations to remedy breach**  
*(negotiations will not preclude formal action from being considered or taken)*

**Invite retrospective planning application**  
*(to be submitted within 28 days – each application to be considered on its merits)*

**Negotiations fail to remedy breach**

**IS IT EXPEDIENT TO INITIATE ENFORCEMENT ACTION?**

**Planning application refused or not submitted**

**OBTAIN AUTHORITY TO INITIATE ENFORCEMENT ACTION**  
**PLANNING COMMITTEE CHAIR/SPOKES DELEGATED**  
*(type of authority will depend on urgency and nature of case)*

**YES**

**NO**

**CLOSE CASE**  
*(where necessary seek Planning Committee approval to close case)*  
**NOTIFY COMPLAINANT**

**D = Date complaint received or logged OR from date planning application refused or from 28 day period if application not submitted**

**IMMEDIATE CASES**

**URGENT CASES**

**NON URGENT CASES**

**Obtain authority within 3 working days from Plan of Action date (D+8) OR next available Committee Date**

**Obtain authority within 3 working days from Plan of Action date (D+13) OR next available Committee Date**

**Obtain authority within 3 working days from Plan of Action date (D+23) OR next available Committee Date**

**Notice issued within 2 working days from Chair/Delegated authority (D+10) or 7 days from Committee authorisation**

**Notice issued within 5 working days from Chair/Delegated authority (D+18) or 14 days from Committee authorisation**

**Notice issued within 10 working days from Chair/Delegated authority (D+33) or 28 days from Committee**

**INFORM COMPLAINANT AND WARD COUNCILLOR OF ACTION**

## 7.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

- 7.1 An offence occurs when an owner/occupier fails to comply with the requirements of an enforcement notice.
- 7.2 The Council will take firm action when the terms of an enforcement notice have not been complied with. Such action may involve:
- ❖ Prosecution of the parties concerned in the local courts.
  - ❖ The issue of an injunction through the High Court.
  - ❖ Direct, or 'default' action.
- 7.3 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. 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. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.
- 7.4 The Council will not necessarily withdraw from taking action in the courts once this has commenced, and this may apply even where the breach of planning control may be rectified before the case is heard.
- 7.5 In the case of a persistent offence against an unauthorised activity, an injunction may be sought through the County Court or High Court (See Appendix A). More severe penalties may be imposed in these circumstances if the offence continues.
- 7.6 In exceptional circumstances, the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise for example when the breach of planning control has not been remedied, despite the imposition of fines by the Courts. In such cases, the Council will seek to recover its costs, possibly in the form of a charge on the land, which is recoverable at the time of sale of the land or property.
- 7.7 If an enforcement notice is served against a development, which is subject to a planning or listed building appeal which is currently under consideration by the Office of the Deputy Prime Minister (Planning Inspectorate), the outcome of such an appeal may be awaited before taking further action to secure compliance with an enforcement notice. When an appeal has been dismissed, compliance with the requirements of an enforcement notice will then be rigorously pursued.
- 7.8 When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity. Even though an enforcement notice has been discharged, the record will remain in the Land Charges Register unless specifically requested to be removed by the owner/occupier.

## 8.0 ENFORCEMENT APPEALS

8.1 S174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal against an enforcement notice. A booklet published by the Department of the Environment entitled "Enforcement Notice Appeals – a guide to procedure" will be enclosed with all enforcement notices issued.

8.2 An appeal must be made before the notice takes effect (normally 28 days after the date of issue of the notice). An appeal cannot be entertained if it is made after the date the notice takes effect.

8.3 An owner, occupier or any other person, who has an interest in the land, even if a copy of the notice has not been issued on that person, may make an appeal.

### 8.4 Grounds of Appeal

#### 8.5 **Ground A – that planning permission ought to be granted (or a condition or limitation be discharged)**

8.6 This is the 'deemed application' for planning permission and requires payment of a fee both to the Council and the Planning Inspectorate. The Council will ensure that the reasons for issuing the notice are well founded and in accordance with the development plan (where appropriate). The Council will then be able to argue on the planning merits of the case that planning permission should not be granted, or that permission should only be granted subject to conditions.

#### 8.7 **Ground B – that as a matter of fact the alleged unauthorised development has not taken place**

8.8 The Council will, by thorough investigation into the breach of planning control and through collection of appropriate evidence, ensure that the matter alleged in the notice has occurred and has, in fact, taken place.

#### 8.9 **Ground C – that the development (if it has taken place) does not constitute a breach of planning control**

8.10 Enforcement action will only be taken when it appears to the Council that there may have been a breach of planning control. Before taking action, the Council will ask:

*Does the alleged breach constitute development?*

*If it does constitute development, does it need planning permission?*

*Has planning permission been granted?*

8.11 **Ground D – that the time limit for taking enforcement action has passed**

8.12 When there is any doubt about when the breach of control first took place, before taking enforcement action, the Council will initiate a thorough investigation to establish when the breach first occurred. This investigation will include the service of a Planning Contravention Notice, a Requisition for Information and an HM Land Registry search. Evidence may also be sought from neighbours, previous owners and any other person with personal knowledge of the history of the site. This will ensure from the evidence available that the development has not achieved immunity from enforcement action due to the passage of time.

8.13 The immunity from taking enforcement action will be four years in respect of unauthorised building works or for the making of a material change of use of any building for use as a dwelling house, or non-compliance with an occupancy condition which prohibits the use of a building as a dwelling house.

8.14 In all other cases, the period from immunity will be ten years.

8.15 **Ground E – that copies of the notice were not properly served**

8.16 The Council will take all reasonable steps to issue a copy of the enforcement notice on every person with an interest in the land as required by the legislation based on the information obtained by a Requisition for Information, a Planning Contravention Notice or HM Land Registry search or by such other means necessary.

8.17 Notices will be issued by Recorded Delivery mail or by hand.

8.18 **Ground F – that the steps required by the notice exceed what is necessary to remedy any injury to amenity**

8.19 The Council will ensure that the steps required to be taken are both necessary and the minimum required in order to remedy the breach of planning control. The steps will be stated clearly so that there is no doubt about what has to be done.

8.20 **Ground G – that the period for compliance is too short**

8.21 The period for compliance will be a reasonable period having regard to the particular circumstances of the case and the actual or potential harm being caused to the amenity of the area by the unauthorised development.

8.22 When particular personal family hardship will result in order to comply with an enforcement notice, the Council will ensure an adequate period for compliance is granted.

### 8.23 **An appeal made under Ground A**

8.24 This ground of appeal relates solely to the planning merits of the case. If an appeal is successful under this ground, planning permission can be granted for the development enforced against.

### 8.25 **An appeal made under Grounds B, C, D and E**

8.26 An appeal made under any or all of Grounds B, C, D and/or E are grounds often referred to as the 'legal grounds' of appeal.

### 8.27 **An appeal made under Grounds F and G**

8.28 An appeal made under either Grounds F and/or G are not concerned with the planning merits of the case or legal issues but regards to the requirements of the Notice itself.

### 8.29 **Appeal Methods**

8.30 An appellant may elect an appeal to heard at a public inquiry, an informal hearing or by way of an exchange of written statements.

8.31 It is the Planning Inspectorate who will make the final decision as to the appropriate method of appeal.

8.32 Unless complex planning issues or legal issues are involved, the Council will normally request enforcement appeals to be dealt with by way of a exchange of written statements.

### 8.33 **Award of Costs**

8.34 Unlike a planning appeal, costs can be awarded against both parties whichever method of appeal is used if either the Council or the appellant is found to have acted unreasonably in accordance with statutory procedures.

8.35 When it appears to the Council that an appeal has been made simply to delay or prolong the requirements of a notice taking effect, or if Ground A has been cited where the development is clearly contrary to planning policy, or some other ground is cited which clearly has no chance of success, the Council will apply for an award of costs against the appellant.

## 9.0 **OTHER PLANNING ENFORCEMENT POWERS**

9.01 Some breaches of planning control are the subject of separate legislative codes.

9.02 These include:

Listed Buildings

Works within a conservation area

Advertisements

Trees

Condition of land or buildings affecting the amenity of an area

Where the legislative requirements are the same, this enforcement policy will form the basis for any action taken by the Council on these matters.

### 9.03 **Listed Buildings**

9.04 The Council attaches particular importance in ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 and/or a term of imprisonment of up to two years. There is no time limit upon the City Council to pursue listed building enforcement action.

9.05 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is an offence, where a penalty of up to £20,000 may be imposed.

### 9.06 **Advertisements**

9.07 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended). Advertisements are divided into three main groups:

Those advertisements that are expressly excluded from local planning authority control.

Those that have 'deemed consent' so that the local planning authority's consent is not required provided the advertisement is displayed under certain rules.

Those advertisements that require the local planning authority's consent.

9.08 The rules are complicated and seek to control amongst other things, the height, size and illumination of the advertisement.

9.09 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended).

Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent required and if refused, there will be a right of appeal. The continued display of an advert after consent has been refused, and any subsequent appeal dismissed, may well result in prosecution. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty of a continuing offence.

9.10 Any form of fly-posting (displaying an advertisement without consent) is an offence which is immediately open to prosecution, or to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser, the Council must give 48 hours before obliteration or removal takes place.

#### 9.11 **Trees**

9.12 Under Section 198 of the Town and Country Planning Act 1990, the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it. The offence is liable on summary conviction to a fine of up to £20,000.

9.13 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, the same penalties apply.

#### 9.14 **Land or buildings that adversely affect the amenity of an area**

9.15 Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be cleaned up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period. The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

## APPENDIX A

### GLOSSARY OF TERMS

The following is a brief explanation of some of the more technical terms used throughout this policy document

#### **Breach of Condition Notice (BCN)**

The power to serve a BCN is contained in Section 187A of the Town and Country Planning Act 1990. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no right of appeal against the serving of a BCN. Failure to comply with a BCN constitutes a criminal offence.

#### **Breach of Planning Control**

This is a term used when development has taken place that requires specific planning permission and no such permission has been granted. The term will also apply to failure to comply with a planning condition or limitation; carrying out works to a listed building; the display of illegal advertisements; unauthorised works to protected trees and trees within conservation areas and the condition of land or buildings which affect the amenity of an area.

#### **Certificate of Lawfulness**

Under Section 191 of the Town and Country Planning Act, application can be made to a local planning authority for a Certificate of Lawfulness in order to confirm whether an alleged breach of planning control is now lawful for planning purposes and therefore immune from enforcement action because of the time that has elapsed since the breach first took place. For a use to become immune from enforcement action and become lawful for planning purposes the following timescales apply:

- Erection of buildings and other works 4 years
- 
- Changes of use of a building to a single dwelling house 4 years
- Changes of use of buildings or land other than a dwelling house 10 years
- Non compliance with a condition relating to the occupation of a building as a dwelling house 4 years
- Non compliance with a condition other than occupation of a building as a dwelling house 10 years

(There are exceptions and questions of interpretation that should first be discussed with the Planning Authority)

## **Default Powers (or Direct Action)**

Under Section 178 of the Town and Country Planning Act, local planning authorities have the right to enter land or property and carry out works which the owner or occupier has failed to comply with any steps required to be taken in an effective enforcement notice. The costs are recovered from the landowner. The costs can be made as a charge on the land, to be recovered at the time of a future sale of the land or property, if the costs cannot be recovered at the time works are carried out in default.

## **Development Orders**

The Town and Country Planning (General Permitted Development) Order 1995 grants 'deemed consent' for certain forms of development without the need to specifically apply for planning permission.

The Town and Country Planning (Use Classes) Order 1987 groups common uses together in a number of classes and confirms that changes occurring within the same Class would not normally require the submission of a planning application.

## **Enforcement Notice**

The power granted to local planning authorities to issue and serve an enforcement notice is conferred under Section 172 of the Town and Country Planning Act 1990. The Notice must clearly state:

- ✓ The alleged breach of planning control.
- ✓ The steps required to remedy the breach.
- ✓ The reasons why an enforcement notice has been served.
- ✓ The time available to comply with the steps.

The notice has to be served on anyone having an interest in the land.

There is a right of appeal against the notice provided the appeal is lodged with the Planning Inspectorate before the date the notice takes effect. Once an appeal has been lodged, the enforcement notice no longer has any effect until such time as the appeal has been determined.

## **Injunctions**

When the City Council consider it necessary or expedient for a breach of planning control to be restrained because it is causing serious harm to the amenity of an area, application can be made to the county court or high court for an injunction, whether or not they have exercised or are proposing to exercise any other powers of enforcement. The court may grant an injunction and failure to abide with the terms

of the injunction constitutes contempt of court. An injunction may be issued against a person whose identity is unknown but who is able to be identified by other means.

### **Local Planning Authority**

Cambridge City Council is the local planning authority for most matters relating to the control of development within the City boundary except for the extraction of minerals and the deposit or waste, which is the responsibility of the County Council. Outside the City Boundary, the local planning authority will be the District Council for the area concerned, for example, South Cambridgeshire District Council and East Cambridgeshire District Council.

### **Planning Contravention Notice (PCN)**

The power to issue a Planning Contravention Notice (PCN) is conferred by Section 171 of the Town and Country Planning Act 1990. A PCN can be served when the City Council wishes to find out from the owner or occupier of the land when the suspected breach has occurred and additional information relating to the breach to enable a more detailed assessment to be made. A PCN is only served if a suspected breach has occurred and invites the owner or occupier of the land to make representations or submit a planning application. Serving a PCN cannot rectify a breach if it has occurred. Failure to respond to a PCN within a specified time limit constitutes an offence and the recipient of the notice becomes liable to prosecution proceedings being taken.

### **Requisition for Information**

A Requisition for Information will be served by the City Council in order to establish the names and addresses of all persons who have an interest in land. A Notice is served when the Council intend to initiate formal enforcement action.

### **Standing Orders**

Standing Orders grants delegated powers approved by the Council's Planning Committee to the Director of Environment and Planning and the Head of Development Services to serve certain notices and initiate prosecution proceedings. Delegated authority is granted to serve:

- Planning Contravention Notices
- Breach of Condition Notice
- Notice of Intended Entry
- Waste Land Notice (S215)
- Requisitions for Information
- Proceedings in respect of protected trees or hedgerows and trees in conservation areas
- Listed Building Enforcement Notice
- Notice requiring urgent works to unoccupied listed buildings
- Discontinuance Notice in respect of unauthorised advertisements

- Prosecution proceedings for non compliance with a Planning Contravention Notice
- Prosecution proceedings for unauthorised works to a listed building
- Prosecution proceedings in respect of illegal fly-posting

Specific authority has to be sought from the Council's Planning Committee to serve:

- Enforcement Notice (Operational Development)
- Enforcement Notice (Material Change of Use)
- Enforcement Notice (Failure to comply with a condition)
- Prosecution proceedings for non compliance with any Enforcement Notice
- Stop Notice
- Injunctive Proceedings

### **Stop Notices**

The power to issue a Stop Notice is conferred under Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an enforcement notice and has the general effect of requiring a breach of planning control to cease almost immediately. The issue of a Stop Notice is usually made when a breach is causing harm to the amenity of an area. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal on legal grounds.

### **Contact Details**

The Planning Enforcement Service forms part of the Development Control Service within the Environment and Planning Department.

### **Contact Address**

**Planning Investigation Service  
Environment and Planning  
Cambridge City Council  
The Guildhall  
Cambridge  
CB2 3QJ**

### **Direct Line to Investigation Officers**

**01223 457162  
01223 457163**

### **Department Fax**

**01223 457109**

**Web Site**

[www.cambridge.gov.uk/planning/planhome.htm](http://www.cambridge.gov.uk/planning/planhome.htm)

**Opening Hours**

<b>Mondays to Thursdays</b>	<b>0900 to 1700</b>
<b>Fridays</b>	<b>0900 to 1630</b>

**Emergency Contact**

In very urgent cases, the planning enforcement service will respond to out-of-hours calls:

**01223 358962**

## APPENDIX B

### RELEVANT LEGISLATION

The Town and Country Planning Act 1990 (as amended)  
Planning (Listed Buildings and Conservation Areas) Act 1990  
Planning and Compensation Act 1991  
Human Rights Act 1998  
Town and Country Planning Appeals (Written Representations Procedure)  
Regulations 1987  
Town and Country Planning (Use Classes) Order 1987  
Town and Country Planning (Control of Advertisements) Regulations 1990  
Town and Country Planning General Regulations 1992  
Town and Country Planning (Special Enforcement Notices) Regulations 1992  
Town and Country Planning (Enforcement) (Inquiries Procedures) Rules 1992  
Town and Country Planning (Enforcement Notices and Appeals) (Amendment)  
Regulations 1992  
Town and Country Planning (General Permitted Development) Order 1995  
Town and Country Planning (General Development Procedure) Order 1995  
Town and Country Planning (Trees) Regulations 1999  
Town and Country Planning (Inquiries Procedure)(England) Rules 2000  
Town and Country Planning Appeals (Determination by Inspectors) (Inquiries  
Procedure) Rules 2000  
Town and Country Planning (General Development Procedure) Order 2000  
Town and Country Planning (Appeals) (Written Representations Procedures)  
Regulations 2000

### DETR CIRCULARS

Circular 10/95 Planning Controls over Demolition  
Circular 1097 Enforcing Planning Control : Legislative Provisions and Procedural  
Requirements – Enforcing Planning Control : Good Practice Guide for Local Planning  
Authorities

### PLANNING POLICY GUIDANCE NOTES

PPG1 General Policy and Principles  
PPG18 Enforcing Planning Control (1992)  
PPG19 Outdoor Advertising Control (1992)

**APPENDIX C**

**Complaint Investigation – Target Dates**

**D = DATE COMPLAINT RECEIVED AND LOGGED**

**IMMEDIATE CASES**

D + 1 Complete Initial Investigation

D + 2 Complaint acknowledged

D + 5 Decision to be made on proposed course of action. Complainant informed

D + 8 Obtain chair's/delegated authority to issue notice

D + 10 Issue and serve Notice. Inform complainant

Committee Date

Ratify Chair's action to issue notice. Obtain Committee's authorisation to issue non delegated notice

Ctte + 7 Issue and serve Notice after Committee authorisation. Complainant informed

**URGENT CASES**

D + 2 Complaint acknowledged

D + 5 Complete initial investigation

D + 10 Decision to be made on proposed course of action. Complainant informed

D + 13 Obtain chair's/delegated authority to issue notice

D + 18 Issue and serve Notice. Inform complainant

Committee Date

Ratify Chair's action to issue notice. Obtain Committee's authorisation to issue non delegated notice

Ctte + 14 Issue and serve Notice after Committee authorisation. Complainant informed

**NON URGENT CASES**

D + 2 Complaint acknowledged

D + 15 Complete initial investigation

D + 20 Decision to be made on proposed course of action. Complainant informed

D + 23 Obtain chair's/delegated authority to issue notice

D + 33 Issue and serve Notice. Inform complainant

Committee Date

Ratify Chair's action to issue notice. Obtain Committee's authorisation to issue non delegated notice

Ctte + 28 Issue and serve Notice after Committee authorisation. Complainant informed