

Colchester Borough Council

Planning Enforcement Policy 2022

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1.0 Introduction and Background

1.1 An effective planning enforcement function is essential to the credibility of any planning service and to any Council. Fair and effective planning enforcement is vital in protecting the quality of life for the people who live, work and visit Colchester; and the quality of the Borough's built and natural environment. A decision about enforcement can have implications for many people, either directly or indirectly. Residents and businesses alike have the right to expect that the Council will maintain the integrity of its planning processes and that enforcement matters will be dealt with fairly, equitably and effectively. This Policy offers guidance on what the Council's statutory obligations are, and what can be done under discretionary powers.

1.2 The National Planning Policy Framework (NPPF) recognises the importance of Planning Enforcement at Paragraph 59;

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

1.3 Planning Practice Guidance (PPG) contains more detail and clarifies that a breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) 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.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

1.4 The Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so. The Council will investigate all reports about alleged breaches of planning control, except those reported anonymously, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action, mindful to the basic principles of enforcement.

2.0 What is a breach of planning control?

2.1 Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 (“the 1990 Act”) as; “carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted’(s.171A).

2.2 Section 55 of the 1990 Act defines development as; “the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land.” This could involve such matters as the unauthorised erection of a building or an extension to a building, a material change of use of land or a building, or the display of unauthorised advertisements.

2.3 Other breaches of planning control may consist of the following:

- Unauthorised works to Listed Buildings - most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively, the Act also gives local planning authorities the power to serve Listed Building Enforcement Notices to which there is a right of appeal.
- Unauthorised works to trees subject of a Tree Preservation Order (TPO) or in a Conservation Area - it is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Where works are proposed to trees in a Conservation Area, the Local Planning Authority should be notified, and permission obtained in advance. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.
- Unauthorised demolition of a building which is located within a Conservation Area - It is a criminal offence to demolish a building, which is located in a Conservation Area, without consent. Breaches of Planning Conditions - A breach of condition notice can be served where there is a failure to comply with any condition imposed on the grant of planning permission. There is no right of appeal against a breach of condition notice.
- Untidy land where it affects the amenity of the area - where land or premises have become an eyesore, the Local Planning Authority has the power to serve a notice under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the condition of land. There is a right of appeal to the Magistrates Court.
- Deliberate concealment of unauthorised building works or changes of use - where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

- Not building in accordance with the approved plans that form part of a planning permission - In some cases this can result in the whole development being deemed as unauthorised.
- Unauthorised engineering operations, such as raising of ground levels or earth bunds - these matters may involve engagement with the Environment Agency.

2.4 Carrying out development without an appropriate planning permission or failing to comply with a condition are not criminal acts. However, other breaches under different sections of the Planning Act and under Listed Building or Advertisement legislation do carry a criminal liability. The following are examples of matters that may be criminal offences:

- unauthorised advertisements
- unauthorised work to an Listed Building (including works not in accordance with a Listed Building Consent)
- unauthorised demolition of an unlisted building in a Conservation Area
- unauthorised works to “protected” trees (including works not in accordance with an approved consent).

2.5 Some common examples of things that we receive, but that are not planning matters and which we subsequently do not investigate include:

- Boundary wall disputes or other land ownership disputes;
- Private covenants;
- Obstructions, parking and traffic;
- Business competition
- Hobbies or activities that take place as part of the residential enjoyment of a person’s home.
- Site security
- General pollution causing fumes, odours and noise nuisances (e.g. bonfires).
- Graffiti and anti-social behaviour
- Dangerous structures
- Sewers, soakaways and most other drainage matters

2.6 Some of these issues can be investigated by other Council Services. However, they are not planning enforcement issues and should not be raised via the enforcement team. Please refer to the Council’s website (www.colchester.gov.uk) for more information.

2.7 The Council’s resources are limited and it is therefore necessary to target available resources to have maximum effect. Attention will be focussed where there is the most harm in planning terms (i.e. to heritage assets, public amenity or the wider environment). Consequently, enforcement actions will not be influenced by who is complaining or how vociferously the complainants are. This will help create an efficient yet effective Planning Enforcement process (see para. 5.7 below)

3.0 Reporting an Alleged Breach

- 3.1 Anyone can report an alleged breach of planning control if they are concerned that one may have occurred. The simplest way to make a complaint is by using the online complaint form on the Council's website [Planning enforcement complaint form \(snapsurveys.com\)](https://snapsurveys.com)
- 3.2 Only in cases of "emergency", such as where listed buildings are being demolished or trees are being removed, will complaints be dealt with by telephone. We can then attend the site before irreversible works are undertaken. Complainants will need to be in possession of as much relevant information as possible such as who, what, and where.
- 3.3 If your complaint involves a business operating from a residential property or other change of use, please complete the observation log for a 14-day period before submitting your complaint. Failure to do this could delay the investigation.
- 3.4 All complaints will be treated confidentially, however, complainants will be asked to identify themselves and provide an address and phone number so that they can be kept informed of progress. This information also assists Officers if they require further clarification from you about the complaint. The Council will use its discretion as to whether it will investigate anonymous complaints.
- 3.5 In all circumstances, as much information as possible should be provided to assist us investigate quickly, including information:
- about the nature of the complaint
 - the name and address of the alleged contravener
 - the location of the site
 - what has happened; for how long, or is happening now
 - an explanation of the harm that it is causing to you or to others
 - if you have observed works being carried out, a description of the people carrying out unauthorised works and/or any names on commercial vehicles etc
- 3.6 The Council is committed to the following timescales if you have made a complaint or reported something to us;
- We will let you know we have received your complaint within three working days of receiving it.
 - We will investigate all complaints by looking at the site and planning history and carrying out a site inspection if required. If there are planning enforcement issues, we will try to settle any disputes by coming to an agreement and without taking formal action, unless the matter is causing significant harm. If we need to take formal enforcement action, this may eventually result in the person concerned being prosecuted.
 - We will aim to make a decision within 8 weeks to take enforcement action, to negotiate an acceptable outcome, to invite a planning application or to close the case.
 - We will contact you when the case is closed, explaining why. We will not contact you between times unless we require further information.

- It is important to note that enforcement procedures can be extremely lengthy, and we cannot commit to resolve everything quickly, as much as we would like to.

4.0 If the Complaint is about you?

- 4.1 If you are visited or contacted by the Councils Enforcement Team they will explain that it is in response to an enquiry received by us concerning a potential breach of planning control. This is the first stage of an investigation into the alleged breach.
- 4.2 If no breach of planning control is identified the case will be closed and you will be notified.
- 4.3 If more information is required we will contact you and we may serve a Planning Contravention Notice (PCN) which is a legal document requiring you to answer a range of questions and return to us within 21 days.
- 4.4 Further details about the enforcement process if you are contacted by an Officer is available here

[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/enforcement-and-post-permission-matters)

5.0 When is Enforcement Action Taken?

- 5.1 Enforcement action is discretionary. Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what, if any, action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the Council's discretion to use enforcement powers.
- 5.2 In accordance with section 172 of the 1990 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (e.g. amenity, design).
- 5.3 If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, it is unlikely we would take formal enforcement action. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.
- 5.4 In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken. An expediency test will usually involve the Planning Enforcement Officer assessing:
- Whether the breach is in accordance with the policies of the Local Plan.
 - The breach against any other material planning considerations.
 - Whether had a planning application been submitted before the development occurred, permission would likely to have been granted.
 - Whether the breach unacceptably affects public amenity.
 - Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
 - Whether action would be proportionate with the breach to which it relates.
 - Whether action would be in the public interest.
- 5.5 Planning Enforcement operates to protect the public interest. Therefore, whether or not breaches of planning control occurred in innocence or intentionally, the Council will have regard to the actual observed "harm" when deciding whether or not to take enforcement action. Similarly, it does not matter who has made the complaint, or who is alleged to have breached planning controls. All cases will be prioritised in terms of their perceived planning importance from the information supplied.
- 5.6 In planning terms harm could include (but is not exclusive to) the effect on residential amenities such as light and privacy, highway safety, impacts on the character of an area or wider environment, or conflicts with the policies in the Development Plan. Harm may also occur through unauthorised adverts or work to Listed Buildings. Consequently, the Council will set out to take full account of the "harm" being experienced by complainants, or to the environment itself. The assessment of harm does not include private interests, such as loss of value to property, competition, loss of views, trespass or breaches of covenants.
- 5.7 In 2014, the Council introduced a new harm assessment procedure in relation to the handling of alleged breaches of planning control. It assesses the planning harm caused by the breach and provides a process for prioritising workload.

5.8 The harm assessment is carried out when a breach of planning control has occurred, usually during the first site inspection. The scheme grades the “harm” against a series of scored planning criteria. The higher the score the more important it will be for officers to resolve the matter. Resolution may be through negotiation or by taking formal action. However, where no breach is found or a breach is considered to cause limited harm, the case may be closed with no further action deemed necessary.

6.0 When is it not appropriate to take Enforcement Action?

6.1 The Council will not condone wilful breaches of planning control. However, we will not consider taking formal enforcement action without first considering all the relevant planning circumstances of each case. We must investigate all complaints very carefully and allow enough time for the person concerned to carry out our instructions or appeal against our assessment.

6.2 Enforcement action should, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case and what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- the Council consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

6.3 The Council cannot take enforcement action if the person has specific planning permission, or does not need planning permission, to carry out the work or change how a building is used.

6.4 Enforcement action cannot be taken against unauthorised developments that have been in place for four or more years, as these are considered to be ‘established’. Likewise, unauthorised ‘changes of use’ that have existed for a continuous period of over 10 years, are also considered to be ‘established’.

6.5 The Council cannot take enforcement action against things which do not fall within planning laws. These may include civil matters, such as boundary or ownership disputes, Party Wall Act issues and covenant issues. In these instances you are advised to seek legal advice.

6.6 Work inside a property which normally concerns Building Regulations rather than Planning.

6.7 Pollution and noise control which would normally fall under Environmental protection.

6.8 The Council may decide not to take enforcement action despite there being a breach because it is not considered expedient to do so.

7.0 Conducting Site Visits

- 7.1 Planning legislation gives authorised Officers rights to enter land and buildings, at any reasonable hour, to carry out investigations. Because of the nature of enforcement work it may be prudent not to give advance notice of an intended visit. Where access to a dwellinghouse is involved 24 hours notice must be given.
- 7.2 On site visits, Enforcement Officers will have regard various legislation including the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE). Unreasonable refusal of entry to an officer investigating a complaint may result in legal action being taken.
- 7.3 Whenever possible, a person involved in an alleged breach of planning control will have the allegation explained to them and be asked to explain what has happened. Information obtained, including details of conversations and observations at site visits, including photos, plans, documents or other information will be carefully considered to determine whether a breach has occurred and what action should be taken. Sometimes it may also be necessary to carry out additional investigations after the site visit.
- 7.4 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action.
- 7.5 Sometimes it will be necessary to take photos on a site visit . Photographic evidence that identifies an individual is regarded as personal data. Although, it is preferable to obtain the consent of the individual concerned before obtaining or using their personal data, it is recognised that this is not always possible. The Information Commissioner's Office has identified six situations where the consent of the subject can be dispensed with. In this context, there are two categories which the Council may wish to rely upon, namely:-
- 1) Legal Obligation basis
Under this category, the Council can rely upon the fact that it has a statutory obligation to ensure that illegal practices pertaining to animals within the borough are prevented and therefore the use of the personal data of the person responsible is necessary in order to provide evidence to substantiate the Council's case.
 - 2) Public Task
Where the Council is carrying out a task in the public interest or its official functions, personal data can be used. Again, the Council can argue that it is in the public interest to prevent what is perceived to be animal cruelty or neglect and the Council has an official duty to prevent such practices within its jurisdiction.
- In these instances the use of photographic evidence would be justified.
- 7.6 After the initial site visit, dealing with an enforcement complaint can become a lengthy and complex process. Various investigations may need to be carried out which could include inspection of the Council's records, interviews with the

alleged contraveners, complainants, and neighbours and liaison with other agencies.

8.0 Resolving a Breach through Negotiation

- 8.1 Where breaches occur, it does not automatically follow that formal action will be required. While breaches of planning control are not condoned, an enforcement notice will not normally be issued solely to regularise development which is likely to be acceptable on its planning merits. In such circumstances the Council will request an owner or occupier to seek retrospective planning permission. Where officers conclude that it is not expedient to take action the case will be closed even if the owner/occupier does not agree to submit an application to regularise the work.
- 8.2 Action taken, whether informal or formal, will be proportionate to the breach. Consequently, a technical breach of planning control, or one that causes little or no real harm is unlikely to warrant any significant action. Even when some harm is observed, there may still be solutions that would reduce this harm or remove it altogether. Therefore, in appropriate cases we will work with owners to regularise or remedy unauthorised works. A consideration will be whether we believe that co-operation will be forthcoming and that a solution could be achieved.
- 8.3 Informal resolution may involve the reduction or cessation of an unauthorised use, or the modification or removal of unauthorised operational development. Officers will have regard to the specific circumstances of each case and seek to put a reasonable timescale in place.
- 8.4 Where we are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, we will proceed with formal enforcement action where it is expedient to do so.

9.0 Taking Formal Enforcement Action

- 9.1 If the negotiated approach fails or is not feasible, it may be necessary to take formal enforcement action. The Council has a range of formal powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. More details about these are contained in the Appendix.
- 9.2 The first step is usually to serve a statutory notice requiring information about the land, the people who have interests in it, and the alleged contravention to be provided. This and other formal notices (see Appendix C) may be used to establish the facts before deciding whether to take action. They are also used to obtain information required to ensure a notice is properly drawn up and served.
- 9.3 Failure to comply with the requirements of any notice within the specified period is a criminal offence and will usually be pursued through the Court. After any final compliance period the Council will consider bringing a prosecution in each case. In commencing any legal proceedings we need to be satisfied that there is sufficient

evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

9.4 A variety of enforcement options exist, and the method chosen will reflect the type of development, degree of harm and individual circumstances. The scope of individual enforcement powers are covered in more detail in the Appendix and using the following links taken from Planning Practice Guidance Paragraph: 007 Reference ID: 17b-007-20140306;

- [No formal action](#)
- [Retrospective planning application](#)
- [Planning contravention notice](#)
- [Enforcement Notice](#)
- [Planning Enforcement Order](#)
- [Stop Notice](#)
- [Temporary Stop Notice](#)
- [Breach of Condition Notice](#)
- [Injunction](#)
- [Rights of entry](#)
- [Enforcement on crown land](#)
- [Listed Building enforcement](#)
- [Enforcement of hazardous substances control](#)
- [Unauthorised advertisements](#)
- [Enforcement and protected trees](#)

9.5 Unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area constitute offences in their own right and criminal proceedings may be initiated immediately. Each case will be considered on its merits and specialised advice obtained. Prosecution may not result in the harm to a heritage asset being remedied and it may be more appropriate to serve a Listed Building Enforcement Notice either instead of, or in addition to, prosecuting.

9.6 If an Enforcement Notice is served there is often a right of appeal. Appeals are handled by the Planning Inspectorate (PINS). Although it is frustrating, during the appeal process, the Notice is not in effect and the breach may continue. Complainants and other local residents may make representations to the Planning Inspectorate, but if they choose to do so, their identity will no longer be kept confidential. An appeal may result in the notice being upheld, dismissed or varied.

9.7 The Council maintains a public register of all enforcement notices and stop notices that have been served. These will appear in the land charge if the property is sold. Publicity will also be sought on prosecutions to advise the public of the Council's actions and to deter others.

10.0 Monitoring and Reviewing Enforcement Practice

- 10.1 This Policy is a transparent statement of what the Service intends to deliver and what customers can expect. The Policy will be kept under review and revised when necessary.
- 10.2 A monthly report will be presented to the Planning Portfolio Holder which provides details of;
- the workload of the team (incidence of complaints and referrals)
 - staffing levels and the pressures on the service
 - the number of outstanding cases
 - any enforcement appeals and their outcome
 - individual reporting of cases where further action is required or has been taken
 - any national legislative changes.

This reporting will allow prioritisation to be reviewed and the Policy updated if required

11.0 Customer Satisfaction

- 11.1 Please be aware that if you do not agree with a planning decision there is no third party right of appeal.
- 11.2 Making a complaint through the Council's complaint procedure will not alter the outcome of the planning decision.
- 11.3 The Local Government and Social Care Ombudsman (LGO) may consider your complaint, but this is usually only after you have exhausted the Council's complaint procedure.
- 11.4 The LGO provides an independent assessment of your complaint and if fault is found the Local Government and Social Care Ombudsman will advise on a suitable remedy, but please note the remedy will not affect the planning decision.

Appendix 1 – Glossary and Further Information

This is a summary of the various tools available to investigate complaints and deal with breaches of planning control. The local planning authority must assess, in each case, which tool or mix of tools is best suited to dealing with the particular breach of planning control to achieve a satisfactory, lasting and cost effective remedy. Any enforcement action should be commensurate with the breach of control to which it relates. The Council has a range of formal powers under the Town and Country Planning Act 1990 (the Act) that it can use to remedy breaches of planning control. The more common forms of enforcement action are:

Request for Information (RFI) - S330 of the Act – can be used to obtain information mainly relating to the ownership and occupation of the land.

S16 Local Government (Miscellaneous Provisions) Act 1976 – can be used to obtain very basic information about the ownership and other interests in the land.

Planning Contravention Notice (PCN) – Section 171(c) of the Act – this is the main method for local planning authorities to obtain information (possibly including a formal meeting) about suspected unauthorised development. It allows specific information to be requested related to breaches which may be taking place and those involved. It is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply.

Breach of Condition Notice (BCN) – S187(a) – used as an alternative to an enforcement notice where planning conditions have not been complied with. Although it can be quicker because there is no right of appeal, it is not appropriate in all cases.

S215 Notice – when the amenity of the area is adversely affected by the condition of the land or buildings this notice can require the land to be tidied. The recipient may challenge the notice in the Magistrate's court. Failure to comply with the notice is an offence. The Council may also use default powers.

Enforcement Notice – S172 of the Act - this is served when the authority is satisfied that there has been a breach of planning control and that it is expedient to take action. An enforcement notice requires remedial steps to be taken within a specified period. Failure to comply with a notice is a criminal offence.

Listed Building Enforcement Notice – this may be served if unauthorised works have been or are being carried out to a listed building. Similarly a **Conservation Area Enforcement Notice** may be served where development (including demolition) has been carried out without the necessary Conservation Area Consent.

Stop Notice - S183 of the Act – when the effects of unauthorised activity are seriously detrimental or causing irreparable harm and immediate action is justified, this notice may be served in addition to an Enforcement Notice. The effect is to require immediate or almost immediate compliance with the Enforcement Notice irrespective of whether an appeal is lodged. Due to the serious implications of these notices they are only served after a cost/benefit analysis has been carried out to determine that the action is proportionate to the harm caused.

Temporary Stop Notice – s 171(e) can require a breach to cease with immediate effect. It only lasts for 28 days and is intended to safeguard amenity for a temporary period either while negotiations are carried out, or while a more permanent method of control is put in place.

Injunction – the authority can apply to the County Court or High Court for an injunction in respect of an actual or apprehended breach of planning or listed building control, even when the identity of the person is unknown. An injunction can be sought whether or not other enforcement action(s) have been taken.

Default powers – the Council may enter land to take the necessary steps to secure compliance with an enforcement notice that has not been complied with. The costs of the work are charged to the landowner.

Unauthorised works to protected trees – It is a criminal offence to: - cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area - wilfully damage, top or lop a tree protected by a Tree Preservation Order/in a Conservation Area in a way that is likely to destroy it. If any of these are carried out the Council will consider whether or not to prosecute.

Advertisements – it is an offence for any person to display an unauthorised advertisement. If the advertisement is not removed on request the Council will consider whether or not to prosecute. Control of works to Listed Buildings – it is an offence to demolish a listed building or carry out works/alterations which affect its special character without the authority's prior consent.

Conservation Areas - it is an offence to demolish unlisted buildings in Conservation Areas without a prior consent

Retrospective Planning Applications - A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application ([section 73A of the Town and Country Planning Act 1990](#)) without delay. It is important to note that:

- although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way;
- an enforcement notice may also be issued in relation to other elements of the development.

Further Information

[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](#)

