



Colchester Borough Council

Planning Enforcement Policy (2014)



Adopted by the Planning Committee on 2 October 2014

This policy sets out how the Planning Enforcement Team will investigate alleged breaches of planning control and unauthorised development (i.e. development that has occurred without the appropriate planning permission). It sets out when action will be taken, and what action we may take to remedy any breaches of planning control.

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1: 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.

1.2 To achieve this, planning enforcement must be actively managed, draw on good practices and work with other services. This Policy offers guidance on what the Council's statutory obligations are, and what we can do under discretionary powers. It is also necessary to explain how the service operates in practice, setting out transparently how the demands on the priorities for action are balanced against the available resources. The benefit of having this Policy will be to:

- Make clear the Council's ethos towards tackling breaches of planning control
- Set out what action will be taken by the Planning Service to investigate an alleged breach of planning control
- Explain the scope of planning enforcement
- Openly define priorities
- Set measurable standards for service delivery
- Explain how the service operates and investigations are carried out
- Explain enforcement procedures and enforcement actions

2: What Is Planning Enforcement?

- 2.1 In most cases people seek planning permission through the correct procedures prior to undertaking development. However, some developments take place without the necessary planning permission. Sometimes this may be in all innocence, whilst in some cases it is more deliberate. Either way, any “development” (as defined by s55 of the Town and Country Planning Act 1990) that does not have the necessary permission in place is a breach of planning control (as defined in s171A of the same Act). If someone is in doubt as to whether or not they need permission then they would be advised to seek an answer to this prior to undertaking works, and there are various web-based resources available to help (or you can contact the Council).
- 2.2 Additionally, where planning applications are approved, this is often with detailed conditions attached. If the conditions are not met, then this may also constitute a breach of planning control that may result in enforcement action being taken (and in some cases may also invalidate the permission). It is beneficial to all parties if any failure to comply with a condition is addressed at an early stage.
- 2.3 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).
- 2.4 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
- 2.5 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.

3: The Principles of “Good” Planning Enforcement

- 3.1 The Government previously set out principles of good enforcement in consultation with business, local authorities and other interested parties. Essentially these embrace openness about expectations, transparency about decision making, helpfulness, consistency in approach and proportionality in the action taken when considered against the harm caused. Colchester Borough Council is committed to these good practice principles and embraces the following objectives:
- To publish clear standards of service and performance
 - To provide information and advice in plain language and discuss problems with anyone experiencing difficulties resulting in enforcement investigations.
 - To keep personal details of complainants confidential
 - To ensure that our decision making processes will be transparent and promote confidence in the service.
 - To work with all parties to resolve investigations without formal action if possible.
 - To take appropriate action when it is expedient to do so.
 - To carry out duties in a fair, equitable and consistent manner.
 - To assign a named officer to deal with the investigation and explain how you can contact the officer
 - To give explanations for the actions we may or may not take and any rights of appeal.
 - To provide an effective and timely service complaints procedure.
- 3.2 The Council also operates within the requirements of the relevant legislation, planning policies and guidance. When investigating alleged breaches of planning control consideration will always be given to the objectives of the Council’s adopted planning policies and any resultant harm caused. However, a consistent approach does not mean uniformity and each case will be considered on its own merit, based on the particular circumstances.
- 3.3 The Council’s Officers will carry out enforcement work to the highest professional standards with due regard for courtesy, responsiveness and openness. This policy sets performance standards, the results of which will be published. Transparency of our decision-making is essential so that all involved in the enforcement process understand and have confidence in the basis on which the service is provided.
- 3.4 The Council’s resources are not limitless. It is 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.

4. Reporting an Alleged Breach of Planning Control: What Happens Next?

- 4.1 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 (www.colchester.gov.uk). Alternatively you can report an alleged breach of planning control via email, using the email address planning.enforcement@colchester.gov.uk or via Customer Services. (additional information can be found in [Appendix B](#)).
- 4.2 Whilst treated confidentially, 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 your complaint.
- 4.3 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
- 4.4 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.
- 4.5 The Council will use its discretion as to whether it will investigate anonymous complaints. Any complaints where there is evidence that the complainant is motivated by non-planning concerns may not be investigated.
- 4.6 Once received, reports of alleged breaches of planning control will be investigated (all other complaints will be re-directed to the most appropriate Council department or outside agency). All enforcement complaints will be acknowledged within 3 working days of receipt and the complainant will be given the name and contact details of the Enforcement Officer, who will investigate the complaint.

- 4.7 The Council receives a large number of complaints each year. Often the complainant is in possession of vital information which will help progress the investigation as quickly and efficiently as possible. This is why as much information as possible should be given to us to help initial investigations. Delays will result if it is a complex task to actually determine the nature and extent of a breach, locate the correct site, or even determine whether there has been a breach of control.
- 4.8 In view of limited resources, it is also necessary to give priority to cases where there is the greatest harm in planning terms. Although there are currently no national performance indicators for planning enforcement we do set local standards for measuring delivery of the enforcement service.

The Planning Service commits towards achieving the following:

- acknowledging all enforcement complaints within 3 working days of receipt;
- First site visit, depending on the priority of the complaint:
 - **High Priority**; 100% of the first site visits occur within 1 working day from receipt of complaint;
 - **Medium Priority**: 90% of the first site visits take place within 10 working days of receipt of complaint; and
 - **Low Priority**; 75% of first site visits are carried out within 15 working days of receipt of complaint.
- resolving 80% of enforcement complaints within 3 months of receipt
- notifying all parties to a complaint of the Council's decision (whether or not to enforce) within 10 working days of making the decision.

5. What is “Harm”, How is it Assessed and When is it Expedient to Take Action?

- 5.1 Planning Enforcement operates to protect the public interest. Therefore, whether or not breaches of planning control occurred in innocence or intentionally, when deciding whether or not to take enforcement action the Council will have regard to the actual observed “harm”. 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.
- 5.2 In planning terms harm could include (but are 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, noise nuisance 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.
- 5.3 It is important to understand that enforcement action is not taken simply because a breach has occurred. Each case is individually assessed to determine what harm is being caused. When a breach is identified, the law requires the Council to consider whether it is “expedient” to take enforcement action. This decision is based on the level of resulting harm and is a matter of exercising discretion. The Council follows tests set in legislation, its adopted planning policies and current Government advice.
- 5.4 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.
- 5.5 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.
- 5.6 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.

6. Conducting Site Visits

- 6.1 Planning legislation gives authorised Officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations. These rights are not necessarily exercised, but 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
- 6.2 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.
- 6.3 Whenever possible, a person involved in an alleged breach of planning control will have the allegation explained to them and asked to explain what has happened. Information obtained, including details of conversations and observations at site visits, 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.
- 6.4 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. Resolving a Breach through Negotiation

- 7.1 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 may 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. All persons who have been involved in the complaint will be notified of the decision within 10 working days of it being made.
- 7.2 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.
- 7.3 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.
- 7.4 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.

8: Taking Formal Enforcement Action

- 8.1 If the negotiated approach fails or is not feasible, it may be necessary to take formal enforcement action. 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. Failure to return a notice on time or giving false or misleading information are criminal offences and will usually be pursued through the Court.
- 8.2 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 Appendix C.
- 8.3 Once a decision to take enforcement action has been made all parties will be notified within 10 working days. The Council maintains a public register of all enforcement notices and stop notices that have been served.
- 8.4 Failure to comply with the requirements of any notice within the specified period is a criminal offence. Offenders are generally warned of the consequences and allowed a final period to comply with a notice, although the Council will not hesitate in prosecution proceedings where this is considered appropriate. 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.
- 8.5 When prosecuting, the Council will generally seek an order to cover its costs and minimise the cost to the residents of Colchester. Publicity will be sought on prosecutions to advise the public of the Council's actions and to deter others.
- 8.6 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.

- 8.7 If an Enforcement Notice is served there is often a right of appeal. Appeals are handled by the Planning Inspectorate (PINS) 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. Monitoring and Reviewing Enforcement Practice

- 9.1 This Policy is a transparent statement of what the service intends to deliver and what customers can expect from us. It will be reviewed each year unless more urgent procedural issues arise. Annual performance will be scrutinised with the end of each financial year.
- 9.2 A quarterly report will be presented to the Council's Planning Committee summarising:
- Performance against targets;
 - The investigation activity undertaken by enforcement officers in the preceding quarter;
 - Progress on any Formal Action;
 - Successfully concluded actions; and
 - An analysis of enforcement related appeal decisions.
- 9.3 The comprehensive performance management of the enforcement team will require managers to regularly analyse:
- the workload of the team (incidence of complaints and referrals)
 - how the prioritisation categories have worked in practice
 - the number of complaints requiring no further action
 - the number of cases moving to formal action: planning contravention notice, breach of condition notice, enforcement notices, etc
 - the number of appeals and their outcome
 - the number of prosecutions instituted and their outcome
 - customer feedback and complaints about the service
 - staffing levels and the pressures on the service
 - achievement of performance standards
- 9.4 This will enable the Policy to be revised and refined, staff managed and developed and procedures improved to provide a more efficient and effective enforcement service.
- 9.5 This process will also consider the implications of any new legislative requirements.

10: Complaining About the Planning Enforcement Service Quality

- 10.1 The Council is committed to providing a high quality service where constructive criticism is welcomed. This will help us make improvements to our planning enforcement procedures. Sometimes things can go wrong, in which event we request that complaints about the Service should be addressed to the Planning Enforcement manager and be made in writing (email planning.services@colchester.gov.uk).
- 10.2 A service complaint will be investigated and a response made in writing within 10 working days. If considered to be well founded, the response will explain what lessons have been learned. Complaints will be dealt with thoroughly, fairly and as confidentially as possible. If you are dissatisfied with the handling of your complaint the process for escalating the matter will be set out in the response letter.
- 10.3 If the investigation of your complaint is likely to take more than 10 working days to complete, you will be advised in writing within the initial 10 working days. That letter will set out the likely timetable for resolution.
- 10.4 If the Council's own complaints process has been followed and you remain dissatisfied you can complain to the Local Government "Ombudsman". The Ombudsman will not investigate complaints until you have allowed the Council to deal with your complaint through its internal complaints procedure.

Appendix A: Legislation, National Policy Framework and Practice Advice

Primary legislation

The Town and Country Planning Act 1990 (as amended)

The Planning Listed Buildings and Conservation Areas Act 1990

The Human Rights Act 1998 (HRA)

The Regulation of Investigatory Powers Act 2000 (RIPA)

The Police and Criminal Evidence Act 1984 (PACE)

The Localism Act 2011

Secondary legislation

The Town and Country Planning Use Classes Order 1987 (as amended)

The Town and Country Planning Control of Advertisement Regulations 2007

The Town and Country Planning General Permitted Development Order 1995 (as amended)

The Town and Country Planning Development Management Procedure Order 2010 (as amended)

National Policy Advice

The National Planning Policy Framework (NPPF)

The Planning Practice Guidance
(<http://planningguidance.planningportal.gov.uk>)

Appendix B: Useful Contacts and Further Information

Our website:

www.colchester.gov.uk/planning

Reporting an enforcement complaint:

<http://www.colchester.gov.uk/article/13555/Enforcement>

Planning enforcement email address:

planning.enforcement@colchester.gov.uk

Department for Communities and Local Government

(The Government Department with overall responsibility for planning)

www.gov.uk

Office of Public Sector Information

(Official government website offering online access to legislation and circulars)

www.opsi.gov.uk/

Planning Aid

(Provides free, independent, and professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees.)

Phone: 0870 240 7552

www.planningaid.rtpi.org.uk/

Planning Portal

(The Government's online planning resource where you can learn about the planning system and research the latest government policy.)

www.planningportal.gov.uk

Appendix C: Enforcement Tool Kit

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.

S330 Town and Country Planning Act 1990 – 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) – 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.

[For all these notices 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.]

Enforcement Notice – 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.

Breach of Condition Notice (BCN) – 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.

Stop Notice – 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 – 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.

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 tided. 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.

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.