



Brentwood Planning Enforcement Plan

This Plan sets out how Brentwood will manage enforcement proactively in a way appropriate to the area of the Borough

December 2018

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1 Introduction

1.1 Brentwood Borough Council has a duty to investigate alleged breaches of planning control and has the statutory powers to remedy such breaches. It is our policy to exercise those powers in a way that ensures that we control development effectively within the resources available to the planning enforcement service.

1.2 Effective enforcement of planning and associated legislation is necessary to protect the amenity and environment of the Borough of Brentwood. Investigation powers are entrusted to Local Planning Authorities (LPA) by Parliament to enable the LPA to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.

1.3 Planning enforcement can be a complex process and the main aims of this document are to make sure:

- that adopted procedures are fair and reasonable;
- that all interested parties are kept informed whenever possible to do so, and
- that the outcome of any action taken is commensurate with the breach of planning control.

1.4 The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with conditions of a valid planning permission) and bring about remedial action where appropriate.

1.5 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop Notice, unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued which requires steps to be taken (and appeal procedures are exhausted or time-barred) it is a criminal offence not to take those required steps.

1.6 Planning Permissions usually have conditions which are necessary to make the development acceptable in planning terms, for example incorporating approved plans or requiring specific works.

1.7 The whole of Brentwood lies within the Metropolitan Green Belt, and large parts of the Borough's countryside are considered to be areas of landscape value and important in terms of nature conservation. Liaison with the County Council and Parish Council is important in bringing possible breaches of planning to notice.

2 Government Guidance

- 2.1 This Enforcement Plan has been prepared having regard to Government policy and guidance on planning enforcement to show how the Council will manage enforcement proactively.
- 2.2 The National Planning Policy Framework (NPPF) prepared in 2018 sets out the following comment on planning enforcement at paragraph 58:
- 2.3 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.
- 2.4 National Planning Practice Guidance (NPPG) is the Government's online reference for national guidance across the range of planning issues and includes a section titled "Ensuring Effective Enforcement". The NPPG states that the preparation and adoption of a local enforcement plan is important because it:
- *allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
 - *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
 - *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
 - *provides greater certainty for all parties engaged in the development process.*
- 2.5 Moreover, the NPPG states that effective enforcement is important to:
- *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
 - *maintain the integrity of the decision-making process;*
 - *help ensure that public acceptance of the decision-making process is maintained*

3 Service Standards

- 3.1 Brentwood Borough Council's existing practices have sought to achieve the principles of good enforcement practice.

Openness

- 3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

Proportionality

- 3.3 We will deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action if appropriate. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any 'undertakings' given, the history and whether time limits are approaching which would confer immunity on unlawful development. We will additionally consider whether any criminal offences have been committed (Listed Buildings and Preserved Trees) and whether it is within the public interest to pursue a prosecution in respect of these offences.

Consistency

- 3.4 We seek to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible a fair and equitable outcome.

Helpfulness

- 3.5 We aim to be polite but firm with the people that are alleged to be in breach of planning control. We will meet if appropriate, both before and during enforcement actions, to try and achieve a satisfactory outcome, and complainants will be informed of the outcome of an investigation in a timely fashion.

Procedures

- 1) Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers the authority must take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as possible to help and advise them.
- 2) The rights of appeal of the developer against any formal notice will be clearly explained.
- 3) Before any formal enforcement action is undertaken, an opportunity will be offered to comply with planning control or to apply for retrospective consent or apply for retrospective consent unless there are extenuating circumstances and/or criminal offences are disclosed.
- 4) Any threat of formal action will be followed up swiftly if there is inadequate evidence of steps being taken to resolve the problems.

4 Identifying Unauthorised Development

4.1 A breach of planning control is defined under Section 171A of the Town and Country Planning Act 1990 (as amended) 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.

The breach of planning control may relate to operational development, such as the construction of a building or extension, or to a material change of use of land or a building.

Furthermore, any contravention of the limitations on, or conditions belonging to permitted development rights, under the Town and Country Planning (General Permitted Development) Order 2015 (and subsequent amendments) (the GDPO), constitutes a breach of planning control against which enforcement action may be taken.

4.2 Other matters which also constitute a breach of planning control are:

works being 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 without consent being granted or proper notification given;

the display of advertisements, which require consent under the advertisement regulations and that consent has not been gained;

failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory planning notice

4.3 Development Management Officers already monitor the implementation of planning permissions by focusing upon achieving quality development in accordance with policy. The Council regards planning enforcement action as a last resort, following advice and guidance. It strives to promote its pre-application advice service, which should result in better quality and more lawful development.

4.5 To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found [here](#).

4.6 It is strongly encouraged that the online form is used in the first instance as this is the most efficient use of resources available. Complaints made by letter, phone or email are logged onto the web form. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.

4.7 Anonymous complaints about a third party will not usually be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the Council. If a member of the public wishes to remain anonymous then they must go through either their local Ward Member or Parish Council to submit the online form on their behalf.

4.7 The planning history of a site is always investigated to establish any planning permissions or permitted development.

4.8 An assessment is then made into the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.

4.9 The Council does not investigate highway matters, boundary wall or other land disputes and activities incidental to residential use of a dwelling, including stationing of a caravan or trailer within its grounds as these issues do not constitute planning matters. Any potential breaches of other legislation will be passed on to the appropriate investigative authority.

4.10 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.

4.11 The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control, where there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by negotiation. Such breaches include temporary structures, flyposting, untidy sites, changes in surfaces, unobtrusive and minor changes of use or extensions. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the local planning authority are set out in Appendix 1 Enforcement Toolkit.

5 Enforcement Priorities

Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

Table 1: Enforcement Priorities

Priority	Considerations	Action/ investigation
High	<ul style="list-style-type: none"> • Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a conservation area or the openness of the Green Belt • Unauthorised works to a Listed Building • Irreversible harm to amenity of a Conservation Area • Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area 	24 hours
Medium	<ul style="list-style-type: none"> • Development prior to compliance with and discharging of conditions on a planning approval • Breach which results in serious demonstrable harm to amenity of neighbourhood • Unauthorised development in a designated area • Source of significant public complaint • Unauthorised advertisements that have a detrimental impact on highway safety 	5 working days
Low	<ul style="list-style-type: none"> • Unauthorised development which is not the source of significant public complaint • Erection of unauthorised advertisements 	15 working days.

5.1 All communication will be in plain language. All decisions and use of investigatory powers will be recorded.

- 5.2 Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. Complainants will be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation. Complainants will always be informed of the outcome of an investigation in a timely fashion.

Site Visits

- 5.3 Planning and Listed Building legislation gives authorised Officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. Because of the nature of enforcement work it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours notice will be given if access is required to a dwellinghouse.
- 5.4 On site visits Investigating Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where she/he considers an offence has occurred, interview an alleged contravener 'under caution' (PACE) where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.
- 5.5 After the first site visit (and also during the investigation process) the Investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.
- 5.6 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 where necessary.

6 Response Procedures

- 6.1 The officer will inform the owner and occupier of the site, when appropriate, and the complainants to advise on one of the following:

No further action (with properly recorded reasons), as:

- There is no breach, or
- It would not be expedient to pursue the case.

Further investigation required:

- This often involves the serving of a Planning Contravention Notice

Negotiate a solution:

- This depends on context and the intent of the owner.

Retrospective application for planning permission:

- The Council will identify if the unauthorised development meets the requirements of the relevant planning policy(ies). If the development appears acceptable the owner of the property may be requested to submit a planning application in order to rectify the breach.

Formal enforcement action, as a last resort:

- If planning permission is unlikely to be forthcoming and an application is not being sought, letters and notices will be served to set out the reasons for this by identifying the harm, the policy context and other material planning considerations.
- Where it is considered that **serious harm** would result and the unauthorised development could NOT be made acceptable by the granting of planning permission, the owner will be advised that the breach of planning control should cease. The owner will receive an explanation in writing why this course of action is justified by identifying the harm, the policy context and other material planning considerations together with a time frame in which the breach will cease.
- Action will only be taken in accordance with the authority delegated to the Head of Planning and in accordance with the Council's approved priorities.

How we decide if an investigation is 'complete'

- 6.2 We consider our investigations to be "complete" when one of the following points has been reached:

- The investigation identifies that no breach in planning control has occurred.
- An alleged breach of planning has been identified but then resolved by negotiation.

- A planning application or other form of application has been submitted and approved following the investigation.
- A breach in planning control has been identified and an application requested but not submitted. A report has been prepared and is on an agenda for the delegated officer to confirm that it is not expedient to take formal enforcement action in this case at this time.
- A breach in planning control has been identified. Authority to take formal enforcement action and/or issue a notice has been given. The matter is then passed to legal advisors to process.

7 Improving Planning Enforcement

- 7.1 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers.
- 7.2 In order to maintain public confidence in the planning process, national planning practice guidance asks local planning authorities to consider a pro-active approach to enforcement. The Council will therefore identify a sample of planning applications and/or developments and check for compliance.

Appendix 1: Planning Enforcement Toolkit

The main options to tackle possible breaches of Planning Control are:

No formal action

Early engagement is important, and the landowner may take immediate action when advised of the issue. Where a breach of planning control is on council owned land, or on land where a covenant controls the issue, such breaches are most effectively addressed through estate management or landlord control.

PPG (paragraph 011) states that 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;
- In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

An outstanding breach of control may affect the sale and marketing of a property and nothing in this plan should be taken as condoning a clear and wilful breach. However, the balance of public interest varies from case to case.

Retrospective Planning Application

PPG paragraphs 012 and 013 advise that where the LPA consider that an application is the appropriate way forward to regularise the situation, the owner and occupier should be invited to submit an application under Section 73A of the Act without delay. It cannot be assumed that permission will be granted – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

Planning Contravention Notice:

This can often be the first formal step in formally resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may give notice of a date and time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the authority. An opportunity to make such representations must be made. It is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information. Paragraphs 015 and 016 of PPG refer.

Section 330 of the Town and Country Planning Act 1990

This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. For both of these cases 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. Conviction carries a fine at Level 3 on the Standard Scale, currently a maximum fine not exceeding £1000.

Rights of Entry

The Act specifies the purposes for which entry to land including buildings may be authorised, namely:

- to ascertain whether there is or has been any breach of planning control
- to determine whether any of the LPA's powers should be exercised
- to determine how such power should be exercised, and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action.

A record should be made of the inspection with appropriate photographs

Entry to a dwellinghouse cannot be demanded as of right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates for a warrant to allow entry. Paragraphs 052-055 PPG refer. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

Breach of Condition Notice

This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition, but may be served in addition to an enforcement notice, perhaps as an alternative to a stop notice. It can only be challenged by judicial review. Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with any conditions and any specified steps will be in breach of the notice and guilty of an offence. Paragraphs 046-049 of PPG refer.

Enforcement Notice

Effective enforcement is important. Development becomes immune from enforcement if no action is taken within four years of substantial completion of building operations or ten years of a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know 17

- Exactly what, in the LPA's view, constitutes the breach of planning control; and
- What steps the LPA require to be taken to remedy the breach.

An enforcement notice may “under enforce”, by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect: however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. Paragraphs 018-023 of PPG refer.

Planning Enforcement Order

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. Paragraphs 024-027 PPG refer.

Enforcement on Crown Land

There are restrictions in Section 296A and 296B of the Act on serving enforcement notices, stop notices, revocation order and discontinuance orders on the Crown. An LPA can only enter Crown land for any purposes connected with the making or enforcing an order under the Act with the consent of the relevant Crown body. Consent is also required before bringing legal proceedings in the courts. The Crown is immune from prosecution under these provisions.

Section 215 Notice

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area. Best Practice Guidance is on the Council's web site.

Stop Notice

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. Paragraphs 028 – 035 PPG refer.

Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the environment in the surrounding area. Paragraphs 036-045 PPG refer.

Listed Building Enforcement

PPG paragraph 057 notes that the Listed Building Enforcement provisions are in sections 38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the enforcement provisions relating to the demolition of an unlisted building in a conservation area ("relevant demolition") are in the Act. Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is time limit in which such an enforcement notice can be served.

There are five important differences between planning enforcement and listed building and conservation area enforcement, namely:

- There are no application fees for listed building consent or relevant demolition;
- There is no time-limit for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;
- Carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;
- Carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990; and
- Listed Building Consent and planning permission for relevant demolition are not granted retrospectively.

A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, there is no maximum fine, and the court will have regard to the financial benefit accruing to the offender from the development.

Injunction

This may be done in the most serious cases generally where irreparable harm is being done or is apprehended, or where and where other actions have been or would be ineffective. Section 187B of the Act applies where the LPA consider it expedient to restrain actual or apprehended breaches of planning control. Section 44A Planning 19

(Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. The Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify to the best of their ability the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- Photographic evidence of the persons concerned;
- Affidavit evidence by the LPA officers
- Reference to chattels (e.g. registered vehicles) known to belong to, or be used by, that person
- Other relevant evidence (such as a name by which the person is commonly known).

There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

Prosecution

Certain elements of planning law create separate criminal offences under the Listed Buildings and Conservations Areas Act 1990 and the Town and Country Planning Act 1990. These offences relate to works carried out to listed buildings without consent and works carried out to, including the destruction of, trees subject of a tree protection order or trees within a conservation area. Allegations of such offences should be treated with caution and should always be visited using an evidence gathering approach in the first instance. Officers attending such allegations should be fully conversant with the requirements of the Police and Criminal Evidence Act and the need to caution those suspected of involvement in such offences. A thorough investigation should be conducted on site. Prosecutions will only be undertaken when sufficient evidence has been gathered to support such action AND it is within the public interest to do so.

Unauthorised Advertisements:

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

Direct Action or "Default" Action:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme case. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement 20 and Section 106 Agreements.) The expenses reasonably incurred may be removed from the person who is the owner of the land.

Other than advertisements and Untidy Land notices, direct action is seen as a draconian power and normally a course of last resort. The Council's decision may be challenged by Judicial Review. There may be violence or threats of a breach of the peace and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the cases of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to the recovery.

The Good Practice Guide for Enforcing Planning Control (paragraph 10.5) lists the following practical matters to be considered when planning default action:

- Exactly what must be done (including any necessary operational development on the land) in order to carry out the required steps in the enforcement notice

- What is the best time of day to carry out the operation and how long is it likely to take

- Who is best equipped to carry out the operation – Council staff or a private contractor

- Whether any special powers of entry are needed

- Whether other local authority services (e.g. Social Services) need to be involved

- If chattels (e.g. caravans, cars, working equipment) are to be removed from the land, where can they be stored securely until the owner can retrieve them

- If a breach of the peace or any more serious disturbance is anticipated, it may be advisable to seek an injunction as a precaution and to encourage any necessary police presence

There are also powers in Section 219 of the Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier.

In recovering reasonable expenses under these provisions the LPA may include such sums as appear reasonable in respect of establishment charges. Any chattels removed may be sold unless their owner claims them within three days and the balance of the proceeds after deducting expenses is then paid to the owner. Unpaid expenses become a charge on the land and an application may be made to the Court for an order for sale.

The Proceeds of Crime Act 2002 provides for confiscation orders where a defendant is convicted in the Crown Court for sentence and the prosecution ask for an order in respect of the conduct or lifestyle of the defendant benefitting from criminal activity. Breaches of enforcement notices which prohibit the carrying on of a use which generate an income can come within these provisions.

PLANNING ENFORCEMENT DECISIONS BY AN OFFICER

Published pursuant to S.I 2014/2095

Case Ref:	
Site:	Decision By:
Ward:	Parish Council:
Decision:	
Reasons/Delegated Report:	
Alternative options considered and rejected when making the decision	

DETAILS OF ANY CONFLICT OF INTERESTS OR DISPENSATIONS GIVEN

The openness of Local Government Bodies Regulations 2014 S.I 2014/2095 require the following to be declared:

- A record of any conflict of interest declared by any member who is consulted by the officer which relates to this decision.
- In respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's Head of Paid Service

Details of any conflict of interest:

Signed:	Date:
Contact Officer	Date decision published on website:
Implementation date:	Copy to Ward Councillors if required:

Appendix 3: Tree Protection Enforcement

Good Planning

Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

Tree Protection

Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage.

Trees may be protected by legislation enshrined in the Town and Country Planning Acts 1990-2012, by being subject to a tree preservation order (TPO) or being situated within a conservation area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission.

In certain circumstances trees may be protected by conditions attached to a planning permission.

Compliance

Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as B.S. 3998, and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the tree itself and of the protected tree stock of the Borough. Compliance should be the starting point of any enforcement policy.

Specific Tree Protection

a) Where trees are protected by a TPO, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

b) Where trees are protected by inclusion in a conservation area six weeks' notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six-week period, the Authority is required to consider the need to make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks the works may go ahead as notified.

c) Trees retained under planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

d) Offences under 1 and 2 above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

Secondly, anyone who carries out works on a tree that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

e) Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that:

- 1) The defendant has carried out, or caused, or permitted works on the tree
- 2) The tree was protected
- 3) The tree works were carried out without the Authority’s consent
- 4) The works were not exempt works

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities that the exemption applies.

f) Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council’s Arboriculture Officer will also make a site visit.

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council’s offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to.

In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

g) Time scale: Initial investigation as outlined above will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

Table 1: Tree Protection Enforcement Timescales

Response Level	Response Criteria	Response Time
1	Ongoing works likely to have a significant impact on public amenity	Within 2 working days
2	Completed works likely to have a Significant impact on public amenity And ongoing works of lower amenity impact	Within 8 working days
3	Other works including longstanding issues	Within 20 working days

h) Possible actions by authority: The Council has a range of possible courses of action available to deal with the cases of unauthorised works on protected trees. These include the following:

- 1) Initiate a prosecution (which may be for destroying the tree or for lesser works to it).
- 2) Administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence.
- 3) Require the planting of a replacement tree for each tree destroyed, under Section 206 of the Town and Country Planning Act 1990.
- 4) Serve a replanting direction under Section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.

- 5) Informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs.

Decisions as to what action to take will be taken in the public interest, ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually.

Prosecutions will be considered against the tests of evidential value and public interest, these will be dealt with by the councils legal advisors.

Cautions may be used in accordance with home office guidance.

i) Replanting: In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a tree replacement notice [TRN] may be considered. A TRN may also be considered when the automatic legal duty is to replant on the death or removal of a protected tree. Any replacement tree is subject to the same protection as the original tree that was lost.

Appendix 4: Untidy Land Notices Section 215

7.3 From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health but they will be an eyesore, which means it is detrimental to the local amenity.

7.4 Under Section 215 of the Town and County Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up. The power is exercisable if it appears that 'the amenity of a part of [the local planning authority's] area, or adjoining area, is adversely affected by the condition of land in their area' (Section 215(1)). The notice 'shall require such steps for remedying the condition of the land as maybe specified in the notice to be taken within such period.

7.5 There is a right to appeal to the Magistrate's Court on any of the following grounds:

- (i) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (ii) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III [the requirement to have planning permission];
- (iii) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (iv) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonable be allowed.

7.6 If the notice is not complied with, the local planning authority is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying our works under an enforcement notice. The Council may also prosecute for non-compliance.

To find out more about the Best Practice Guidance, please visit the Council's website https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf

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