

# PETERBOROUGH CITY COUNCIL

## Planning Enforcement Strategy

June 2010



# PETERBOROUGH CITY COUNCIL

## Operations Directorate

### Planning Services

## PLANNING ENFORCEMENT STRATEGY

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# PLANNING ENFORCEMENT STRATEGY

## 1.0 INTRODUCTION

- 1.1 The Town & Country Planning Acts give the Council, as the Local Planning Authority ([LPA](#)), powers for the control of unauthorised [development](#). This document sets out the Council's Strategy for planning enforcement in Peterborough and the approach that the Council will take in investigating and remedying [breaches](#) of planning control. The Strategy was first formally adopted by the Council following Cabinet approval in April 2004.
- 1.2 The Council is firmly committed to the effective and proportionate enforcement of planning control. It views breaches of planning control very seriously and has a specialist planning enforcement team within the Planning Service of the Operations Directorate.
- 1.3 The former Government published "[Enforcing Planning Control - Good Practice Guide for Local Planning Authorities](#)" in July 1997. The Guide suggested that local planning authorities should establish a formal planning enforcement policy which provides a clear statement of the decision making framework for dealing with alleged breaches of planning control, and which explains enforcement procedures and practice. In light of the above guidance, this Strategy has been prepared to outline the approach that will be taken by the Council to remedy unauthorised development, and the procedures that will be followed.
- 1.4 The Implementation Chapter of the Adopted Peterborough Local Plan (First Replacement) 2005 considers planning enforcement at Paragraphs [13.20 - 13.24](#). It highlights objectives for successful enforcement action and commitment to an Enforcement Concordat.



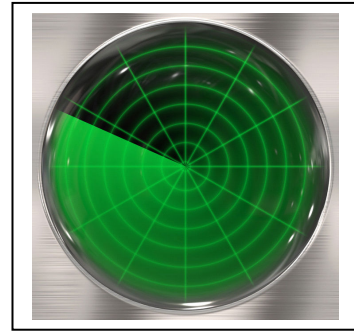
## 2.0 ENFORCEMENT OBJECTIVES

- 2.1 The City Council established the following objectives for the Planning Enforcement Strategy:
- To remedy the undesirable effects of unauthorised [development](#)
  - To strike a balance between protecting amenity and other interests of acknowledged importance throughout the Authority's area, and enabling acceptable development to take place, even though it may initially have been unauthorised.
  - To ensure that the credibility of the planning system is not undermined.
  - To carry out all enforcement duties in accordance with the principles of the Enforcement Concordat, particularly with respect to openness, helpfulness, proportionality and consistency.
  - To be both reactive and pro-active in the investigation of complaints, particularly to ensure the compliance with Conditions imposed on planning permissions

### 3.0 THE PLANNING ENFORCEMENT STRATEGY

#### 3.1 The City Council will:

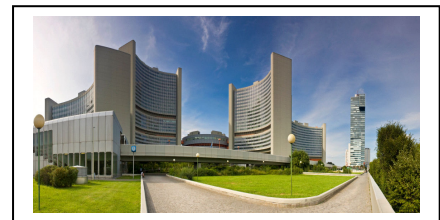
- Investigate all legitimate complaints about [breaches](#) of planning control.
- Prioritise cases in accordance with their urgency and potential harm to the environment.
- Be proactive in initiating investigations where it is clear that a serious breach has occurred.
- Seek compliance with Conditions imposed on planning permissions.
- Keep complainants informed of progress.
- Acknowledge complaints about breaches of planning control within 3 working days.
- For priority cases, undertake a site visit as soon as possible, and not later than within 3 working days, and to advise the complainant of how it intends to deal with the matter. However, it may not at this stage be possible to state precisely what action can be taken.
- For urgent cases, a full response will normally be sent within 15 working days of receiving the complaint.
- For non-urgent cases, a response will be sent within 25 working days.
- Further updates on progress will be sent as appropriate thereafter.
- Treat all complaints in confidence. The identity of the complainant will not be revealed unless directed to do so by a court.
- Enforcement files will not be available for public inspection and any details published on the Council's web site will be redacted to hide information that would enable the complainant to be identified.
- Anonymous and repetitive complaints will not normally be investigated, unless they allege serious breaches of planning control which can be substantiated.
- All complainants will be advised of the outcome of the initial investigation.
- When it is proposed that no action be taken, the reasoning for this course of action will be explained to the complainant.
- Will not issue a formal notice solely to remedy the absence of a valid planning permission or to elicit a planning application fee.



- Notwithstanding the rights of an alleged offender to submit a retrospective planning application, the Council will only invite an application if there is a reasonable prospect that planning permission would be granted.
- Formal action will be proportionate to the breach.
- Follow the principles of the “Enforcement Concordat”.
- Normally suspend enforcement proceedings whilst considering a valid planning application to remedy the matter or where there is an appeal pending, unless the breach is considered to be particularly serious.
- Always consider whether it is expedient to take enforcement action and will normally take enforcement action when it is essential to protect the amenity of the area, public or highway safety, and the integrity of the planning process.
- Any action specified in an Enforcement or related Notice will be proportionate to the breach.
- Will assess retrospective development fairly and in accordance with the Council’s planning policies, i.e. the Council will not resist development solely on the grounds that it has taken place without the benefit of planning consent.

#### 4.0 THE ENFORCEMENT CONCORDAT

4.1 At the invitation of the Parliamentary Secretary, Office of Public Service, the Council has signed up to the **Enforcement Concordat**, which sets out the principles listed in bold below. The Council has adopted a corporate Enforcement Policy which applies these principles when implementing all enforcement policy.



**Standards** Clear standards must be drawn up setting out the level of service and performance the public can expect to receive.

**Openness** The service must provide information in plain language and disseminate the information as widely as possible. All regulatory advice should be clear and confirmed in writing. It should clearly distinguish between legal requirements and best practice.

**Helpfulness** Prevention is better than cure. Planning enforcement staff will seek positive solutions to problems and will identify themselves by name and provide contact details including a telephone number and e-mail address.

**Complaints about the Service** The City Council has a complaints procedure.

**Proportionality** Action against a [breach](#) of planning control will be proportionate to the breach.

**Consistency** The planning enforcement team will carry out its duties in a fair, equitable and consistent manner. Consistency will be promoted by regular review of previous enforcement cases, and by using the training resources of the Royal Town Planning Institute and the National Association of Planning Enforcement.

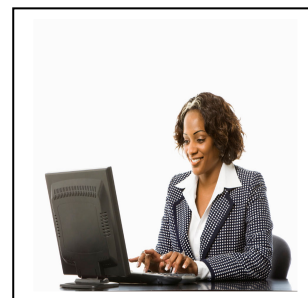
## 5.0 BREACHES OF PLANNING CONTROL

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

- Building work, engineering operations, and [material](#) changes of use are carried out without planning permission.
- [Development](#) has not been carried out in accordance with the approved plans.
- Conditions of planning permissions or the terms of a legal agreement (S106 Obligations) have not been complied with.
- Unauthorised demolition takes place in a conservation area,
- Unauthorised works are carried out to a 'Listed' building, which affect its character or appearance,
- Removal of, or works carried out to, protected trees and hedgerows without consent being granted or proper notification given.
- The display of advertisements that require express consent without that consent having been granted.
- Land or buildings which are derelict, unkempt or overgrown and are adversely affecting public amenity. These are classed as 'untidy sites'.

## 6.0 HOW WILL THE CITY COUNCIL INVESTIGATE COMPLAINTS?

6.1 Most investigations into [breaches](#) of planning control result from complaints from the public, parish councils, community groups or City Councillors. We request that where possible complaints about unauthorised [development](#) are made in writing or by e-mail as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation and a clear line of communication back to the complainant. Complaints can be submitted through the [Council's website](#) which also includes downloadable forms.



6.2 The Council will also be pro-active in initiating investigations where it is clear that a serious breach has occurred and it will ensure compliance with conditions imposed on planning permissions.

6.3 This procedure relates to all complaints, including those received by City Councillors, MPs, parish councils and community groups. Pro-active investigations will follow the same general procedure.

6.4 Complaints will normally be acknowledged in writing, by telephone or via e-mail, within 3 working days.

- 6.5 Complaints will be treated in confidence. Complainants will be treated as 'protected informants' during the investigation of a complaint and their identity will not be revealed unless the courts direct otherwise. This is to ensure the safety of complainants, particularly if investigations lead to recriminations from an alleged offender.
- 6.6 Complainants will be advised that if formal action needs to be taken, the Council will be required to provide evidence of the breach and any harmful effects, so their co-operation and involvement as witnesses may be important in securing a successful outcome.
- 6.7 Complaints will be prioritised (see section 7 below).
- 6.8 Anonymous or vexatious complaints will not normally be investigated, unless they allege breaches of planning control that the Council considers serious.
- 6.9 Development Management case officers in the Council's Planning Service will be responsible for discharging and then monitoring the implementation of planning conditions. Cases will be forwarded to the planning enforcement team where non-compliance occurs.
- 6.10 Complaints that relate to planning breaches on Council owned land and the public highway, will be dealt with by the appropriate land-owning Council service. A remedy using land-ownership powers is generally achieved more quickly and efficiently than when utilising planning powers.

## 7.0 **PRIORITISING COMPLAINTS**

- 7.1 The Council will use the following classification when deciding which cases will be given priority: Very Urgent, Urgent, Non-Urgent and Pro-active Investigations.

### **Very Urgent Complaints – Requiring Immediate Investigation**

- 7.2 The following types of cases are regarded as Very Urgent (no particular order):
- Works to Listed Buildings.
  - Works to protected trees (either those covered by a Tree Preservation Order (TPO) or those within a Conservation Area) and safeguarded hedgerows.
  - Demolition of important unlisted buildings in Conservation Areas.
  - [Development](#) which may have a significant and permanent adverse impact on (or destroy) a site of nature conservation value or the natural environment. Examples of the latter could include unauthorised mineral extraction and tipping of waste near protected sites.
  - Development which results in concerns for public safety.
  - Significant unauthorised building works/structures

## **Urgent Complaints - Investigation to commence and complainant to be informed of progress within 15 working days**

7.3 The following types of cases are regarded as Urgent:

- Operational and building works, changes of use, minerals/waste issues and non-compliance with conditions/obligations that significantly affect residential amenity.
- Operational development within Conservation Areas.
- Where the opportunity to take enforcement action will shortly end due to [immunity rules](#).

## **Non-Urgent Complaints – Investigation to commence and complainant to be informed of progress within 25 working days**

7.4 The following types of cases are regarded as Non Urgent:

- Other changes of use
- Other building works/condition of land/compliance with conditions
- Advertisements and satellite dishes (Conservation Areas to be prioritised)
- Untidy Sites

### **Pro-active Investigations – will have no specific priority but will be undertaken as required.**

7.5 The following types of case will be monitored proactively:

- Checking of planning conditions that have not been discharged, even where a complaint has not been received.

### **Minerals and Waste Sites**

7.6 Government's [Planning Policy Guidance Note 18 \(PPG18\)](#) Enforcing Planning Control makes it clear that there are no separate enforcement powers for unauthorised minerals working. Therefore, complaints regarding these matters will be dealt with in the same way as all other general planning complaints. However, due to the occasionally irremediable nature of minerals working and the potential speed at which damage can be caused, the Council will undertake, as a matter of course, pro-active monitoring of Minerals and Waste planning permissions and conditions. This will involve frequent liaison with local minerals operators to ensure that planning conditions are being complied with, regular site inspections and meetings to discuss matters such as soil handling, archaeology and aftercare (as suggested by [Minerals Planning Guidance Note 7](#)). A schedule for monitoring of minerals and waste sites will be agreed with operators.

## **8.0 ENFORCEMENT INVESTIGATION PROCEDURES**

### **Stage 1 – Acknowledgment**

8.1 On receipt of a complaint, the priority of the case will be assessed in accordance with the details above. The complaint will be acknowledged within 3 working days.



## Stage 2 - Initial desktop investigation

8.2 Once the complaint is acknowledged and prioritised a desktop investigation will take place. This will involve:



- Checking the planning/enforcement/building control history for the site including conditional requirements of planning permissions and Section 106 obligations.
- Checking site constraints by reference to existing map and computer based records.
- Identifying main planning policy considerations relevant to the alleged unauthorised [development](#).
- Checking relevant legislation (does the alleged [breach](#) constitute “development”? Could it be “permitted development”? What needs to be checked and measured on site?)

## Stage 3 - Initial site visit

8.3 The Council’s planning enforcement team will visit the site to which the alleged breach relates. This will involve:



- A considerate and sensitive approach, recognising that there may be no breach or that the breach is unintentional.
- Enforcement officers will identify themselves when on site and explain the reason for the visit. (If it is suspected that an offence has been committed the investigating officer must have regard to the provisions of [Section 66 and 67\(9\) of the Police and Criminal Evidence Act 1984](#) in relation to cautioning suspected offenders).
- Obtaining the identity of the owner/occupier/person responsible for the activity/development taking place and interviewing them if possible.
- Recording names and addresses of all persons who have an ownership or tenancy interest in the land/property.
- Taking and recording any necessary measurements and taking photographs.
- Recording a brief site description including a description of the alleged unauthorised development.
- Identify neighbouring properties likely to be affected by the activities/development.
- If a breach of control has clearly taken place then (depending on the nature of the breach) the owner/occupier/person responsible will be contacted straight away and advised to stop work until the matter is resolved. They will be advised that any further activity/development carried out would be entirely at their own risk and may be subject to enforcement action.

## Stage 4 - Action following the initial site visit

8.4 Following the initial site visit the planning enforcement team will:

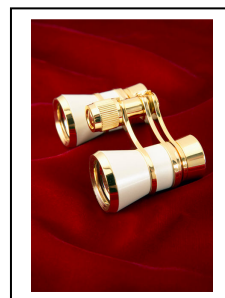
- Advise the owner/occupier/person responsible for the alleged unauthorised development of the Council’s intended action or options available to resolve the matter, or seek further information to determine whether a breach has occurred.
- Advise complainant in writing of the initial findings and proposed action (if any).

- Where appropriate, ask the complainant to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal enforcement action.

### Stage 5 - Further investigation/obtaining information

8.5 Depending upon the outcome of Stage 4, it may be necessary for the Council to:

- Monitor activity on site to collect further information or evidence about the alleged [breach](#).
- Carry out covert surveillance strictly in accordance with the provisions of the [Regulation of Investigatory Powers Act \(RIPA\)](#).
- Serve a Planning Contravention Notice ([PCN](#)). This requires the recipient to provide information relating to the alleged breach within 21 days.
- Carry out a Land Registry search to establish ownership of the land (if registered).
- Consult the parish council, City Council Ward Members, neighbouring residents and other agencies.
- Consult neighbours if appropriate.
- Serve a notice to identify owner, occupiers and any other persons with an interest in the land. (Section 330 Notice)
- Liaise with other Council services and external agencies



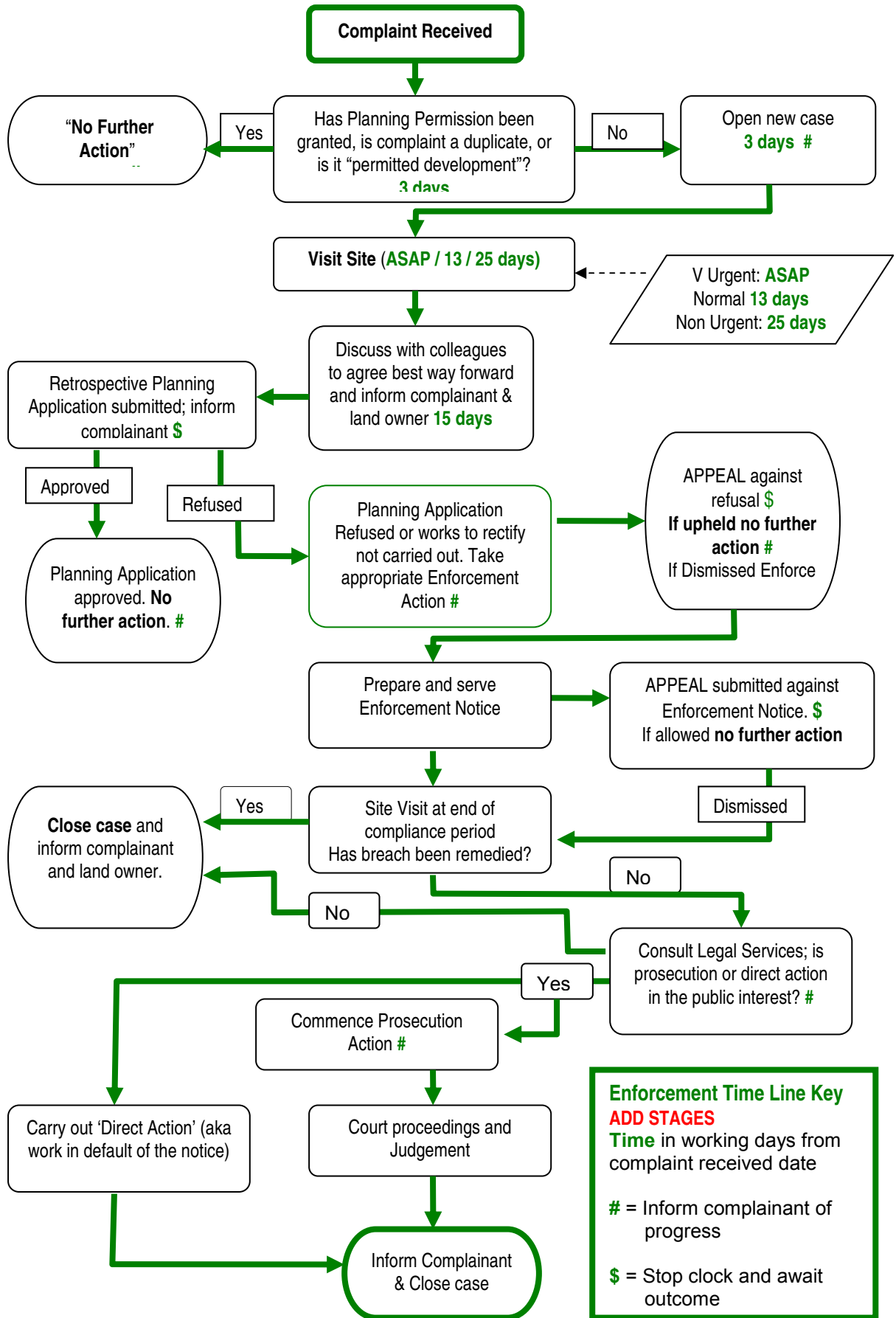
### Stage 6 – Action following investigation

8.6 Once the investigative stages are complete the Council will follow one of the following courses of action and will advise the complainant of the decision:

- If a complaint relates to a non-planning matter, no action will be taken. Such non-planning matters include disputes over land ownership and boundaries; restrictive covenants and legal agreements; moral and ethical concerns; and competition and private interests.
- In cases where a non-planning related complaint can be dealt with by another City Council service or another agency then relevant information will be passed to the appropriate organisation.
- If a complaint relates to an activity, building or operational works that constitutes '[permitted development](#)' or is lawful, no further action can be taken.
- If the complaint relates to a very minor [breach](#) and formal action would not be justified, then no further action will be taken.
- If investigations indicate that a [material](#) breach of planning control has occurred then the Council will either invite a planning application to regularise the development (and impose appropriate planning conditions) or commence formal enforcement action.



## Enforcement Timeline Flowchart



**Enforcement Time Line Key**

**ADD STAGES**

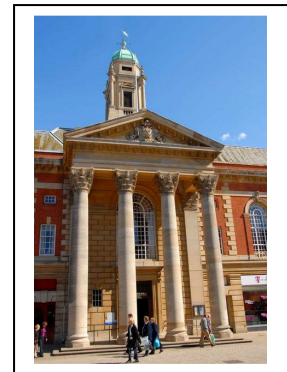
**Time** in working days from complaint received date

**#** = Inform complainant of progress

**\$** = Stop clock and await outcome

## 9.0 ENFORCEMENT DECISION MAKING

- 9.1 All decisions in respect of whether enforcement action is taken, and the type of any such action, are delegated by the City Council's constitution to the Head of Planning. A copy of the relevant delegated powers document may be viewed at [\(add link once approved\)](#) However, in certain circumstances, matters will be referred to the Planning & Environmental Protection Committee for a decision. The Committee will consider enforcement issues as a quasi-judicial body and make decisions based on the evidence and information submitted. Should an enforcement complaint be referred to the Committee for a decision, both the complainant and the alleged offender will be advised and given the opportunity to submit comments, for inclusion in the relevant Committee report. Neither party will be given the right to address the Committee in person.



## 10.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED, AND WHAT ACTION MIGHT BE TAKEN?

- 10.1 When a [breach](#) of planning control is identified **any action taken will be proportionate to the nature and seriousness of the breach**. Regard will be given to the following:
- Saved policies contained in the [Cambridgeshire and Peterborough Structure Plan \(2003\)](#).
  - Saved policies contained in the [Peterborough Local Plan \(First Replacement\) 2005](#)
  - Policies contained in the emerging [Development Plan](#) Documents for Peterborough
  - Policies contained in the [Cambridgeshire Aggregates \(Minerals\) Local Plan \(1991\)](#).
  - Policies contained in the [Cambridgeshire and Peterborough Waste Local Plan 2003](#).
  - Relevant planning policy contained in Circulars, Planning Policy Statements and Planning Policy Guidance Notes (in particular [PPS1: General Policy and Principles](#) and [PPG18: Enforcing Planning Control](#)).
  - Peterborough City Council Policies, including Supplementary Planning Guidance, the Residential Design Guide and the Trees and Woodland Strategy.
  - The provisions of the [Human Rights Act 1998](#).
  - The Planning history of the site
- 10.2 Many breaches of planning control can be resolved informally by negotiation, as advocated in the Governments [Planning Policy Guidance 18: Enforcing Planning Control](#) (December 1991). Formal action, in accordance with national advice, only takes place where it is expedient and where other means to resolve the problem have failed. The City Council will take enforcement action, including the service of an [Enforcement Notice](#), when it is necessary to protect the amenity of the area, public, or highway safety, and to maintain the integrity of the [development](#) management

process within its administrative area. The impact of some developments are more harmful than others and therefore action taken will be in the public interest and will be commensurate with the [breach](#) of planning control. It would not normally be expedient for the Council to take formal enforcement action against a trivial or technical breach of control that causes little or no harm to the amenity of the local area or to neighbours, for example where a new fence is marginally above the height allowed under [permitted development](#) rights.

10.3 When it is clear that there is a [breach](#) of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. This may be:

- If the breach is minor with no significant effects – that no formal enforcement action will be taken.
- If the development is in line with the relevant [Development Plan](#) policies and other [material](#) considerations but needs to have conditions imposed to control its impact either now or in the future, the Council will seek to regularise the unauthorised development by asking for a “retrospective” application for planning permission or advertisement consent.
- If the breach is [immune](#) from enforcement action due to the passage of time (four years for physical development and ten years for most changes of use and breaches of planning condition) an application for a [Certificate of Lawful Development](#) may be invited. Such an application would need to be supported by appropriate documentary evidence to prove immunity.
- If permission is unlikely to be granted - the Council will ask for the use to cease, or the unauthorised development to be removed. Depending upon the nature of the breach, the Council will follow one of the following options:
  - (1) Set a timescale for the person in breach to voluntarily comply. This will not exceed 2 months.
  - (2) Serve a formal Notice (Enforcement, Section 215 or Breach of Condition) setting a period for compliance not less than 28 days, no greater than 6 months, and normally 2 months.
  - (3) Serve a Stop Notice or Temporary Stop Notice in the most serious cases requiring the work/use to stop immediately.

10.4 The decision to serve a formal Notice is discretionary and is made on a case-by-case basis. This decision must be taken only after proper consideration of the relevant facts and the planning merits of the case. The Council must be able to justify taking formal action, and be sure that the steps specified in the Notice and the period for compliance within each step is reasonable. Where necessary, the Council can serve a notice to require any relevant activity to cease, either temporarily (a Temporary Stop Notice) to prevent damage occurring whilst the situation is investigated and resolved, or permanently (a Stop Notice). The requirements of both types of Stop Notice should “*prohibit only what it is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area*”. Stop Notices are particularly useful if the continuation of unauthorised works will result in the further loss of environmental features. There is also provision, if the circumstances warrant

it, to obtain a planning enforcement [injunction](#) to restrain an actual or anticipated breach of planning control.

- 10.5 Other planning enforcement powers relating to ‘Listed’ buildings, trees, advertisements and untidy land are listed later, in section [16.0](#).

## 11.0 MEDIATION

- 11.1 In certain circumstances, where a complaint relates primarily to a neighbour dispute, which cannot be resolved through the planning process, both parties will be encouraged to resolve the issue amicably through “Peterborough Mediation”. This is a free and confidential service, independent of the Council, which tries to solve problems between individuals and helps people to find ways of talking to each other. Details of “Peterborough Mediation” are listed at Paragraph 20.2



## 12.0 ENFORCEMENT ACTION

- 12.1 The [Town and Country Planning Act 1990](#) (as amended) defines taking [enforcement action](#) as either the issue of an Enforcement Notice or the service of a [Breach](#) of Condition Notice.

### Enforcement Notice

- 12.2 The Notice shall: -
- State the nature of the alleged breach as either [development](#) without planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.
  - Identify the land to which the notice relates.
  - Clearly state the matters that appear to constitute a breach of planning control.
  - State the Council’s reasons for issuing the Notice, including any relevant policy of the [Development Plan](#).
  - Specify the calendar date on which the notice will take effect (not less than 28 days after service to allow for an appeal).
  - Specify the steps which the Council require to be taken or the activities which the Council require to cease in order to remedy the [breach](#) or any injury to amenity it has caused.
  - State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the impact of the breach (where appropriate different periods may be given for each step).

- 12.3 The steps to be taken will be expressed in plain language so that anyone required to implement them will understand. This will also make checking for compliance easier and ensure a successful prosecution if the Notice is not complied with. The Enforcement [Notice](#) may require the restoration of the land to its condition before the unlawful [development](#) took place; the demolition or alteration of any building or works; the discontinuance of the use of the land; or the carrying out of any building works or other operations. The purpose of these requirements will be to:
- a) Remedy the breach by making the development comply with the terms (including any conditions or limitations) of any planning permission granted in respect of the land (whether that permission has been granted by the Council following a planning application, or by the General Permitted Development Order under “[permitted development rights](#)”); or
  - b) Remedy the breach by discontinuing any unauthorised use of the land, or by restoring the land to its condition before the breach took place; or
  - c) Remedy any injury to amenity that has been caused by the [breach](#).

#### **Breach of Condition Notice**

- 12.4 The [Breach of Condition Notice \(BCN\)](#) is an alternative to an [Enforcement Notice](#) for remedying a breach of planning control arising from failure to comply with any condition or limitation subject to which planning permission has been granted. There is no right of appeal, and the threat of prosecution may be sufficient in itself to secure compliance with the condition or limitation. The BCN may be served alone or in addition to an Enforcement Notice.
- 12.5 A BCN will not be appropriate in all cases where a condition (or conditions) has not been complied with. In deciding whether to serve a BCN the Council will consider whether prosecution is likely to secure compliance with the condition(s) in the particular circumstances of the case. If not, then an Enforcement Notice may be preferable. The BCN shall: -
- Specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). Thus the BCN may be mandatory (requiring something to be done) or prohibitory (requiring something to stop). It can only seek to secure full compliance with the condition(s).
  - Specify a period for compliance, which will not be less than 28 days.

### **13.0 APPEALS**

- 13.1 Section 174 of the Town & Country Planning Act 1990 (as amended) provides a right of appeal to the Secretary of State against an Enforcement Notice. The appeal needs to be lodged before the Notice takes effect. Details of how to appeal will be included with the Enforcement Notice. There are a number of possible grounds of appeal, including legal grounds, concerning the validity of the Notice, grounds relating to over-enforcement (for example, that the time for compliance is too short or the works to be undertaken are more than is necessary) and relating to the “deemed” application (ie. that permission ought to be granted for the [development](#) that has already been carried out). There is

a fee payable for Enforcement Notice appeals which relate to a 'deemed application'. Further advice is available at the [Directgov web site](http://www.direct.gov.uk/en/HomeAndCommunity/Planning/PlanningAppeals/DG_10022615). ([http://www.direct.gov.uk/en/HomeAndCommunity/Planning/PlanningAppeals/DG\\_10022615](http://www.direct.gov.uk/en/HomeAndCommunity/Planning/PlanningAppeals/DG_10022615))

- 13.2 There is no right of appeal to the Secretary of State against a BCN. The applicant can submit an appeal against a planning condition when the planning permission is first issued, or can submit a subsequent application to remove or vary the condition.

#### **14.0 PROSECUTION**

- 14.1 In certain circumstances, the Council can immediately instigate prosecution proceedings, without first having to serve a Notice. Further information in respect of these powers is listed at [Section 16](#). These instances include:-

- Unauthorised display of an advertisement.
- Unauthorised works to a Listed Building.
- Damage to a tree covered by a Tree Preservation Order or within a Conservation Area.
- Damage to safeguarded hedgerows.

#### **15.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE**

- 15.1 As soon as the compliance period for an Enforcement Notice or a [BCN](#) has passed, Council officers will carry out further investigations to confirm whether the [breach](#) is continuing. Further negotiations may be necessary to ensure full compliance with the Notice. If there are grounds to suspect that a criminal offence has been committed, any evidence gathered from a site inspection may have to be carried out under caution. Any interviews would then be carried out in accordance with the provisions of the Police & Criminal Evidence Act 1984([PACE](#)).



- 15.2 When the Council believes that an Enforcement Notice has been fully complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the [development](#) or activity. However, compliance with an Enforcement Notice does not discharge it. The Notice will remain as a charge on the land to prevent any re-occurrence of the breach.

- 15.3 An offence occurs if an owner/occupier fails to comply with all the requirements of an Enforcement Notice or [BCN](#). It is only at this time that a breach of planning control becomes a criminal offence. The Council will take firm action where the requirements of an Enforcement Notice have not been complied with. Such action may involve:

- Prosecution of the parties concerned in the local Courts (depending upon the availability, nature and strength of evidence).
- The issue of an [injunction](#) through the High Court.
- [Direct, or 'default' action](#) by the Council. The Council will then seek to recover the costs of such action from the party responsible for the breach.



- 15.4 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. If someone is found guilty of failing to comply with the terms of an Enforcement Notice, a maximum fine of £20,000 may be imposed by the Magistrates Court. For cases which are decided by the Crown Court there is an unlimited fine. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.
- 15.5 Failure to comply with a [BCN](#) carries a maximum penalty, on summary conviction of this offence, of a ["level 3" fine](#) on the standard scale, currently £1,000, as provided by the Criminal Justice Act 1991. A person may be convicted of a second, or subsequent, offence where the person responsible has been prosecuted and fined but still fails to comply with the notice. It is a defence for anyone charged with this offence to prove that he or she had a reasonable excuse for failing to comply with the requirement of a notice.
- 15.6 Any prosecution action will be taken in accordance with the provisions of the Code for Crown Prosecutors. This Code, produced by the Crown Prosecution Service, seeks to ensure that prosecutions are carried out in the interests of justice and not solely for the purpose of achieving a conviction.
- 15.7 The City Council will not necessarily withdraw from taking action in the Courts once it has commenced, even where the breach of planning control may be rectified before the case is heard, particularly where the Council has incurred significant costs.
- 15.8 In the case of a persistent offence involving an unauthorised activity, an [injunction](#) may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.
- 15.9 In exceptional circumstances the Council will consider taking [direct or default action](#) to remedy a [breach](#) of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise, for example, when the breach of planning control has not been remedied, despite the imposition of successive fines by the Courts. In such cases the Council will seek to recover its costs, possibly in the form of a charge on the land, which is recoverable at the time of any future sale of the land or property.
- 15.10 If an [Enforcement Notice](#) is served against a [development](#), and an appeal is subsequently lodged with the Secretary of State (for example, on an application for planning permission or 'Listed' building consent), the outcome of the appeal will normally be awaited prior to the taking of further action to secure compliance with the Enforcement Notice.
- 15.11 Where the Secretary of State has previously considered the matter at appeal and found in favour of the Council, compliance with the requirements of the Notice will be rigorously pursued.
- 15.12 If a Breach of Condition Notice ([BCN](#)) has not been complied with or a breach re-occurs the party responsible will be asked to state what steps have occurred to secure compliance with the conditions specified in the Notice. If

no reasonable explanation is forthcoming the Council will normally pursue a prosecution.

## 16.0 OTHER PLANNING ENFORCEMENT POWERS

16.1 Some [breaches](#) of planning control are the subject of separate legislation. These include:

- Listed buildings
- Advertisements/signage
- Trees
- Land adversely affecting public amenity.

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

### Listed Buildings

16.3 The Council attaches particular importance to ensuring that any alterations to Listed Buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#).



16.4 It is an outright offence [under Section 9 of the Act](#) to carry out unauthorised works to a Listed Building that would affect its character. The owner of a Listed Building, those who have an interest in the property or who have carried out the works, may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine and/or a term of imprisonment of up to two years. There is no time limit upon the City Council to pursue Listed Building enforcement action.

16.5 A Listed [Building Enforcement Notice](#) may be served requiring remedial works to the building within a certain time period. There is a right of appeal to the Secretary of State, but failure to comply with the Notice is an offence, which is liable to a fine.

### Advertisements

16.6 The display of advertisements/signs is controlled under the [Town and Country Planning \(Control of Advertisements\) Regulations 1992 \(as amended\)](#). They are divided into three main groups:

- Those that are 'expressly' excluded from planning control.
- Those which have 'deemed consent' whereby the Council's consent is not required provided the advertisement falls within certain categories: and
- Those for which the Council's consent is always needed.

16.7 The Advertisement Regulations are complicated and seek to control, amongst other things the height, size and illumination of advertisements.

16.8 Anyone who displays an advertisement, without the necessary consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Council may not initially consider it necessary to prosecute.. Instead, it may invite the advertiser to apply for the consent needed, and, if refused, there will be a right of appeal to the Secretary of State. Displays of an advertisement after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution. The fine on conviction shall not exceed level 4 on the standard scale and in the case of a continuing offence one-tenth of level 4 for each day during which the offence continues after conviction.

16.9 Any form of [fly posting](#) (that is, displaying an advertisement without landowners consent) is an offence, which is immediately open to prosecution or to the removal or obliteration if the Council decides to take such action. If the advertisement identifies the advertiser the Council must give 2 days' notice before obliteration or removal takes place.

### Trees

16.10 Under [Section 198 of the Town and Country Planning Act 1990](#) the Council has the right to make provision for the preservation of trees in its area by issuing a Tree Preservation Order.



Any [unauthorised works to such protected trees is an offence under Section 210 of the Act](#). It is an offence to cut down, uproot, or wilfully destroy a protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. The offence is liable, on summary conviction, to a fine of up to £20,000 and on indictment to a further fine. Most established trees (except fruit trees) in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act and the same penalties for offences apply. If any person contravenes the provisions of a *tree preservation order* [[tree preservation regulations](#)] otherwise than as mentioned above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

16.11 Consent is not required for the following works to trees that are the subject of a Tree Preservation Order: -

- Works to trees that are dying or dead or have become dangerous.
- Works to trees authorised by the grant of planning permission.
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade.

However, the Council encourages all owners of trees covered by a Preservation Order to consult the Council before undertaking works on the tree(s).

## Hedgerows

- 16.12 [Section 97 of the Environment Act 1997](#) and section 5 of The Hedgerows Regulations 1997 makes the removal of certain Hedgerows without the Council's consent an offence (subject to a number of exceptions).

### Land Adversely Affecting the Amenity of the Neighbourhood - Untidy Sites

- 16.13 Under [Section 215 of the Town and Country Planning Act 1990](#), the Council may take steps to require land to be tidied up when its condition adversely affects the amenity of the area. The Council may serve a Notice on the owner and occupier of the land requiring steps to be taken within a specified period. The Notice becomes effective after 28 days.
- 16.14 There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the Notice has no effect pending the outcome of the appeal, but once the Notice does take effect it is an offence not to carry out the steps required. If the Notice is not complied with the Council may prosecute the owner for the offence of non-compliance, or enter the land to carry out the required works and recover all associated costs from the owner. If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. The Council also has powers under Environmental Health legislation to resolve untidy site problems. The Planning Enforcement section will liaise with other Council services to ensure that the most appropriate and effective remedy is sought.

## 17.0 ENFORCEMENT SERVICE OBJECTIVES AND PERFORMANCE STANDARDS

- 17.1 The objectives of the Council's Planning Enforcement service are:

- To provide an excellent enforcement service to the local community.
- To provide a decision making process that is open, transparent and is seen to be fair and just.
- To provide a service that is accessible and meets the needs of users.
- To have effective and efficient enforcement of planning objectives.



- 17.2 The Planning Enforcement service has the following local performance indicators:

- 80% of enforcement complaints acknowledged within 3 working days.
- 80% of enforcement complaints visited within 10 working days of acknowledgement.
- Percentage of enforcement complaints which result in the serving of an [enforcement notice](#).
- Percentage of enforcement complaints resolved by negotiation.

- Percentage of enforcement complaints found not to be a [breach](#) of planning control.

17.3 In order to achieve the above objectives and performance targets the Council's Planning Enforcement service will:

- Adhere to this Enforcement Strategy.
- Prepare guidance leaflets for users of the service including minority groups.
- Pro-actively sample planning permissions to ensure that the [development](#) fully complies with the approval.

## 18.0 HOW TO COMPLAIN ABOUT THE ENFORCEMENT SERVICE



18.1 Peterborough City Council is committed to listening to the views of its customers in order to improve the services it provides. Complaints are a simple means for customers to voice their concerns about the council and are an important indicator of where services may not be delivering best performance. The effective resolution of complaints should improve the confidence of customers and identify service improvements.

18.2 Complaints regarding the planning enforcement service may be made via post, email or phone and should be addressed as follows:

Central Complaints  
Strategic Resources  
Bayard Place,  
Broadway,  
Peterborough,  
PE1 1FB

Telephone 01733 296331

Contact Email [complain@peterborough.gov.uk](mailto:complain@peterborough.gov.uk)

Contact Fax 01733 345090

Further information is available on the link to our web page  
[http://www.peterborough.gov.uk/services\\_a-z.aspx?ServID=43](http://www.peterborough.gov.uk/services_a-z.aspx?ServID=43)

## 19.0 REVIEW

19.1 This Strategy will be reviewed whenever there is a significant change in legislation, national or local policy, or otherwise every 2 years.

## 20.0 CONTACT DETAILS

The contact details for the Planning Enforcement service, The Peterborough Mediation Service and the Local Government Ombudsman are provided below:

## 20.1 The Council's Planning Enforcement service:

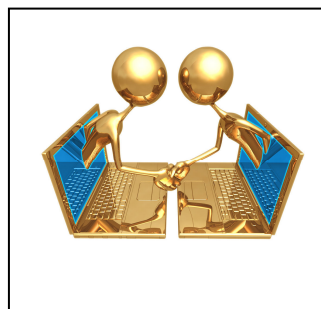
E-mail: [enforcement@peterborough.gov.uk](mailto:enforcement@peterborough.gov.uk)  
Telephone: 01733-453495.  
Fax: 01733-890348

Mail: Planning Enforcement,  
Planning Delivery Services  
Operations Directorate  
Stuart House East Wing  
City Road  
Peterborough  
PE1 5DD

## 20.2 The Peterborough Mediation Service:

Mail: The Peterborough Mediation Service  
80a Lincoln Road,  
Peterborough,  
PE1 2SN

Telephone and fax: 01733-566536



## 20.3 Local Government Ombudsman:

If you have a problem with a council service, you should first complain to the council. But if you are still not satisfied, the Local Government Ombudsman may be able to help. You may use any of the following ways to contact the LGO Advice Team:

Telephone: 0300 061 0614.  
*Internet Web page* <http://www.lgo.org.uk/>  
Mail: Local Government Ombudsman  
2 The Oaks  
Westwood Way  
Westwood Business  
Park Coventry  
CV4 8JB

## 21.0 GLOSSARY OF TERMS

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

A notice served by the Local Planning Authority ([LPA](#)) when there has been a failure to comply with any condition or limitation imposed on a grant of planning permission (e.g. failure to carry out landscaping, not keeping to agreed opening hours).

### **Building Operations**

Demolition of buildings, rebuilding, structural alterations of, or additions to buildings, and other operations normally undertaken by a builder.



### **Breach of Planning Control**

Where development which requires planning permission has taken place, but this permission has not been obtained or the conditions of the permission have not been complied with.

### **Certificate of Lawful Development (CLD)**

Enables local planning authorities, *when the appropriate conditions are satisfied in each case*, to grant a certificate stating that:

- (a) an *existing* use of land, or some operational development, or some activity in breach of a planning condition, is [Lawful](#); or
- (b) a *proposed* use of buildings or other land, or some operations *proposed* to be carried out in, on, over or under land, would be [Lawful](#).

### **Development**

The carrying out of building and other operational works in, on, over or under land or a [material](#) change in the use of a building or other land.

### **Development Plan**

A series of policy documents that guide the control of development, which in Peterborough this include the following:

- the Cambridgeshire and Peterborough Structure Plan (2003).
- the Peterborough Local Plan (First Replacement) 2005
- the emerging Development Plan Documents for Peterborough
- the Cambridgeshire Aggregates (Minerals) Local Plan (1991).
- the Cambridgeshire Waste Local Plan 2003.

### **Direct or Default Action**

Direct, or 'default' action by the Council involves employing contractors to undertake all works necessary to resolve the [breach](#) of planning control. (Examples include demolition of unauthorised buildings/wall or fences and removal of all the resulting material to a suitable waste site, the replanting of dead or diseased landscaping and the removal or obliteration of unauthorised adverts) The council will seek to recover the cost of such works from the land owner.

### **Enforcement Notice**

A notice served by the [LPA](#) to remedy an alleged [breach](#) of planning control by requiring a use to stop or building works to be removed.

### **General Permitted Development Order (GPDO)**

A national government document that sets out various categories of [development](#) which do not require planning permission (e.g. many alterations and extensions to dwellings,).

### **Injunction**

An order issued in the County Court or High Court to restrain any actual or expected [breach](#) of planning control.

### **Immune from enforcement action**

We do not have the power to take enforcement action against a developer or land owner when:

- An unauthorised building or operational development has been substantially completed for four years or more.

- An unauthorised change of use from a building to a dwelling-house has been in place for four years or more. (excludes caravans)
- An unauthorised change of use to a building or piece of land was made ten years ago or more.
- Conditions of a planning permission were [breached](#) ten years ago or more.

### **Lawful**

In this context Lawful means the development or use of land specified is immune from enforcement action and/or a specific grant of planning permission is not required.

### **Local Planning Authority (LPA)**

A statutory function of Peterborough City Council to exercise the planning functions for its local administrative area. As Peterborough is a unitary authority, it is responsible for both district and county functions.

### **Material (or Relevant) Planning Considerations**

Considerations which can be taken into account when deciding whether enforcement action is justified. These include central government policy and advice (e.g. Circulars, Planning Policy Guidance Notes, Planning Policy Statements), the [Development](#) Plan (e.g. Structure and Local Plans), supplementary planning guidance (e.g. conservation area appraisals, car parking standards) and replies to consultations with neighbours and Parish Councils.

Most objections which relate to the use of land can be a planning consideration, though they must be relevant to the [breach](#) of control being considered (e.g. the identity of the person contravening or the knowledge that they have deliberately flouted the law is not relevant).

Other issues which cannot be taken into account include [breach](#) of restrictive covenants on property deeds, loss of a private view, devaluation of property, matters controlled by other legislation (e.g. fire prevention) and religious or moral issues.

### **Permitted Development**

[Development](#) which is expressly allowed by virtue of a Government Order, the most common of which are the General Permitted Development Order and Use Classes Order.

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

A notice served by the [LPA](#) when it suspects there has been a [breach](#) of planning control and information is required about activities on the land or the nature of the occupier's interests in the land.

### **Relevant Planning Considerations**

See [Material](#) Planning Considerations.

### **Requisition for Information**

This is a request for information made to a suspected offender to obtain details of land/building ownership.

### **Stop Notice**

A notice served in conjunction with an [enforcement notice](#) to require unauthorised activities to cease with almost immediate effect.



**Temporary Stop Notice**

A notice which can be served quickly to stop suspected [breaches](#) from carrying on giving the planning authority time to consider all the relevant issues.

**Town and Country Planning Act 1990**

This is the primary piece of planning legislation and includes sections on Control over [Development](#) and Development Plans.

**Use Classes Order**

Lists certain changes of use which do not usually require planning permission (e.g. change of use from a restaurant to a shop, or from light industrial to offices).

**Wildlife and countryside Act 1981**

This piece of legislation may be relevant where wildlife becomes endangered through development proposals which have not had regard to certain species on the site e.g. bats, barn owls or where mitigation procedures have not been followed. It is English Nature who would normally take remediation action in association with this legislation rather than the local authority.

The City Council will:

- Investigate all legitimate complaints about [breaches](#) of planning control.
- Prioritise cases in accordance with their urgency and potential harm to the environment.
- Be proactive in initiating investigations where it is clear that a serious breach has occurred.
- Seek compliance with Conditions imposed on planning permissions.
- Keep complainants informed of progress.
- Acknowledge complaints about breaches of planning control within 3 working days.
- For priority cases, undertake a site visit as soon as possible, and not later than within 3 working days, and to advise the complainant of how it intends to deal with the matter. However, it may not at this stage be possible to state precisely what action can be taken.
- For urgent cases, a full response will normally be sent within 15 working days of receiving the complaint.
- For non-urgent cases, a response will be sent within 25 working days.
- Further updates on progress will be sent as appropriate thereafter.
- Treat all complaints in confidence. The identity of the complainant will not be revealed unless directed to do so by a court.
- Enforcement files will not be available for public inspection and any details published on the Council's web site will be redacted to hide information that would enable the complainant to be identified.
- Anonymous and repetitive complaints will not normally be investigated, unless they allege serious breaches of planning control which can be substantiated.
- All complainants will be advised of the outcome of the initial investigation.
- When it is proposed that no action be taken, the reasoning for this course of action will be explained to the complainant.
- Will not issue a formal notice solely to remedy the absence of a valid planning permission or to elicit a planning application fee.
- Notwithstanding the rights of an alleged offender to submit a retrospective planning application, the Council will only invite an application if there is a reasonable prospect that planning permission would be granted.
- Formal action will be proportionate to the breach.

- Follow the principles of the “Enforcement Concordat”.
- Normally suspend enforcement proceedings whilst considering a valid planning application to remedy the matter or where there is an appeal pending, unless the breach is considered to be particularly serious.
- Always consider whether it is expedient to take enforcement action and will normally take enforcement action when it is essential to protect the amenity of the area, public or highway safety, and the integrity of the planning process.
- Any action specified in an Enforcement or related Notice will be proportionate to the breach.
- Will assess retrospective development fairly and in accordance with the Council’s planning policies, i.e. the Council will not resist development solely on the grounds that it has taken place without the benefit of planning consent.