

LEICESTER CITY COUNCIL

Planning Enforcement Policy & Procedure

(Approved 12 June 2013)

1.0 Introduction

- 1.1 Leicester City Council's General Enforcement Policy states that all services within the council should produce service-specific enforcement policies and procedures for their area of responsibility, which comply with the General Policy. These documents should set out clear standards and procedures for the administration of enforcement. Heads of Service are responsible for ensuring that these policies and procedures are monitored and complied with.
- 1.2 Effective enforcement is necessary to protect the integrity of the planning system. It aims to ensure development proceeds in accordance with approved plans and complies with planning conditions and/ or Section 106 Agreements.
- 1.3 The National Planning Policy Framework states that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and the Council should act proportionately in responding to suspected breaches of planning control.
- 1.4 The planning system is designed to achieve a balance between the rights of landowners to enjoy their property, protecting the amenity of neighbours and the general public. The enforcement of planning control focuses on proportionate resolution rather than punishing those who have acted in breach, sometimes unknowingly. It is expected that land owners and developers will observe the spirit of planning legislation and refrain from development until the necessary planning permissions have been obtained.
- 1.5 This document sets out the City Council's policies and procedures for the enforcement of planning legislation. The aim of our planning enforcement policy is to deal with suspected breaches of planning control in an effective, proportionate, consistent and helpful manner.
- 1.6 The key objectives of the enforcement policy are to:
 - provide an accessible service that maintains public confidence in the planning system;
 - provide a service that is both reactive and proactive in its commitment to remedy undesirable effects of unauthorised development;
 - provide a service response that is prioritised according to the harm or the potential harm caused by the breach;
 - provide a development monitoring service that is prioritised according to the scale and complexity of the development permitted;
 - achieve a balance between protecting amenity and other interests and allowing acceptable development to remain, or to continue, in the absence of permission;

- seek resolution of planning breaches through informal and formal action including prosecution of offenders to uphold the integrity of the planning system;
- monitor performance of the service.

2.0 Enforcement Powers

2.1 The Town and Country Planning Act 1990 sets out the statutory powers available to the Council to enforce planning legislation. The following comprise a breach of planning control under planning legislation:

- carrying out development that is operational development (the carrying out of building or other operations) and changes of use without the required planning permission;
- failing to comply with any condition or limitation subject to which planning permission has been granted;
- illegal advertisements;
- unauthorised works to listed buildings or works to protected trees.
- unauthorised works in conservation areas.

2.2 In investigating alleged breaches, officers will comply with the provisions of the Police and Criminal Evidence Act 1984, Data Protection Act 1998, Regulation of Investigatory Powers Act 2000, Human Rights Act 1998 and Equalities Act 2010

2.3 The City Council as a local planning authority has a general discretion to take enforcement action where it has a significant harmful impact, is expedient and is in the public interest.

3.0 Procedures and policies for reporting complaints

3.1 Members of the public have an important role in reporting suspected breaches of planning control. Any concerns can be raised with the City Council by telephone, in person at the council offices, in writing, by email or via your local councillor.

3.2 The following information would be helpful and should be provided when reporting a suspected breach:

- The address of the property concerned;
- Details of the suspected breach of planning control;
- Relevant dates, including dates when the works, use or activity started, finished (if relevant), or whether or not works are still on-going;
- The name, telephone number, and address of the person reporting the breach (so that we can seek further information from them if needed and update them in writing);
- Information on how the suspected breach harms the person reporting it, or why it is of concern to them;

- The email address of the person reporting the breach if the complaint is submitted electronically;
- Photographs, plans, maps or any other information that may help officers assess the suspected breach.

- 3.3 Information received by the planning service is checked to ensure that it has necessary details to investigate the alleged breach. If it does then it will be recorded as a case and an acknowledgement will be sent to the complainant.
- 3.4 Should the reported breach not fall within the remit of the planning legislation, it will be forwarded onto the relevant Council department and/or external service.
- 3.5 It is not the function of the planning authority to become involved in private neighbour disputes where no planning issue is evident. Additionally, it is not the Council's role to mediate in private legal disputes such as boundary disputes or damage to private property. Such cases will not be investigated by Planning Service as they are civil matters and the customers will be advised accordingly.

Confidentiality

- 3.6 The details of the complainant are normally treated as confidential; however, in some circumstances this may not be possible particularly when matters progress to court and the complainant is required to give evidence and/or details of the complaint must be disclosed.

Abusive or unreasonable complainants

- 3.7 Members of staff will not tolerate any insulting, threatening words or behaviour at any time, either in person or via any other means. Any abusive telephone calls will be terminated.
- 3.8 In cases where a complainant acts unreasonably, or takes up a disproportionate amount of staff time, officers may decide to communicate with them in writing only.

4.0 Procedures and policies for investigating complaints

Priorities

- 4.1 Complaints are categorised as Urgent, High, Medium or Low priority depending upon the severity of the harm being caused. Breaches that are likely to result in permanent, irreversible harm to the environment such as the removal of protected trees, listed buildings and buildings in conservation areas are given an urgent priority. The High priority category is for breaches that require immediate attention; for example excessively large house extensions affecting light and outlook, unauthorised development with significant threat to public safety (such as development in a flood risk area) or uses causing serious harm through noise, smell and congestion for which planning permission is unlikely to be granted. Breaches related to developments which

are likely to be granted planning permission subject to conditions will be given a medium/low priority.

- 4.2 Appendix A lists criteria for prioritising planning contraventions approved by Planning and Development Control Committee on 3 March 2009. The City Council has a duty to investigate all allegations of planning breaches. However there is no obligation to take enforcement action, especially against technical breaches of control where the City Council considers harm is of a minor nature. The City Council's enforcement resources will be directed towards breaches causing the greatest harm or having the potential to cause significant harm.

Investigative tools

- 4.3 Planning legislation provides the City Council with a wide range of tools to investigate suspected breaches of planning control. These include Rights of Entry, Planning Contravention Notices, and Requisitions for Information. The Council may use technical equipment to monitor sites, but where these tools do not provide evidence of a breach the Council may require the assistance of local residents or other agencies in monitoring or corroborating the activities on-site.

Further investigation

- 4.4 In some cases it may not be possible for the Council to confirm that the alleged breach is taking place. In such cases, complainants will be asked to assist in providing evidence that could be used at both the appeal stage and at any subsequent legal proceedings. A lack of sufficient evidence may result in no action being taken.
- 4.5 If the initial investigation indicates that there has been a possible breach of planning control, the case officer will carry out further research to ascertain the facts to reach a conclusion.
- 4.6 Some developments benefit from a general planning permission granted by law as "Permitted Development". Where development complies with these requirements, it does not constitute a breach of planning control.
- 4.7 Enforcement action cannot be taken against developments which are immune under planning legislation due to specific time limits which are:
- ***4 years for unauthorised operational development or change of use of a building to use as a single dwelling house ;***
 - ***10 years for a material change of use of land and buildings or a breach of a condition imposed on a planning permission.***

5.0 Procedures and policies for taking action if a breach of planning control has occurred

No Breach

- 5.1 Some developments do not require planning permission or may be immune from enforcement (refer to paragraphs 4.6 and 4.7). In those cases there will be no breach of planning control and no action can be taken.
- 5.2 Where a breach of planning control is identified, the following sequence will normally be followed.

Informal negotiation

- 5.3 Where a breach of control has been identified that is causing an unacceptable impact on amenity of occupiers of properties in the vicinity, the Council will usually pursue informal negotiations to resolve the issue in the first instance. If they are not successful the Council will consider formal enforcement action.
- 5.4 It may not be appropriate to negotiate if urgent action is needed to resolve a breach that would otherwise lead to a significant loss of amenity, highway safety or substantial damage to the environment.
- 5.5 The Council will not engage in protracted negotiations that hamper or delay enforcement action if voluntary measures appear unlikely to resolve the breach of planning control.

Formal Action

- 5.6 Where a breach of planning control has been identified and where informal negotiations have failed or are unlikely to be effective, the Council will consider statutory action. This can consist of one or more of the following:
 - Service of a Planning Contravention Notice to find out more about the breach and identify interests in the land;
 - Service of a notice under Section 330 Town and Country Planning Act 1990 or Section 16 of Local Government (Miscellaneous Provisions) Act 1976 to identify all interested parties in the land;
 - Service of a Breach of Condition Notice, when conditions imposed on a planning permission are not being complied with;
 - Service of an Enforcement Notice;
 - Service of Discontinuance notice against an advertisement that has deemed consent;
 - Service of a notice under Section 215 of the Act in cases of untidy sites
 - Service of a Temporary Stop Notice, followed by a permanent Stop Notice, when it is considered essential that the unauthorised use or development cease immediately, rather than waiting for compliance with an Enforcement Notice or the outcome of any appeal against an Enforcement Notice;
 - Service of a Listed Building Enforcement Notice – this is the equivalent enforcement notice available under the listed building legislation;
 - Prosecution proceedings
 - An application to the courts for an Injunction to restrain a breach of planning control.

- Direct Action (with costs recovery) in the event of non-compliance with Enforcement and untidy land notices.
- 5.8 Where statutory notices have been served they are required to be complied with within the specified time limits. Failure to comply with the notice/s within the required timescales is a criminal offence that may result in prosecution.
- 5.9 Where it is considered that the development subject of a breach may be acceptable, a retrospective application will be invited. Should no application be received, the Council will consider if any action should be taken. This may result in the service of a statutory notice/s (Enforcement Notice) where requirements/conditions are considered necessary to make the use/operational development acceptable. However, if it is decided that there is no need to impose such requirements, a decision can be taken to take NO ACTION.
- 5.10 Decisions to take a formal action or to take 'NO ACTION' will be taken by reporting the matter to the Planning and Development Control Committee or by officers through Delegated Powers. The scheme of delegation identifies the appropriate officers authorised to carry out investigations, make decisions on the behalf of the Council and to issue statutory notices.

Right of Appeal

- 5.11 Enforcement Notices, Advertisement Discontinuance Notices and the notices served under S215 (untidy land notices) carry a right of appeal. Whilst an appeal is being considered, the breach can normally continue unless the Council has served a Temporary Stop Notice or Stop Notice. Information on rights of appeal is provided with the statutory notice.

Breaches on Council Land

- 5.11 Where a breach of planning control has occurred on land owned by the City Council, this will be dealt with by the City Council as land owner. Breaches which occur on highway land (such as car repairs, car sales) cannot be dealt with under planning legislation and will be referred to the relevant service to pursue appropriate action.

6.0 Prosecutions Policy

Not complying with formal notices

- 6.1 Where there is a failure by those served with a formal notice to comply with its requirements, the Council will consider prosecution.
- 6.2 If the officers in the planning service consider that there is sufficient evidence and that it is in the public interest to prosecute, the file will be referred to Legal Services for consideration of prosecution. No negotiations or fresh planning applications to retain the development will be entertained in cases where an Enforcement Notice/Stop Notice is being breached and/or an offence is being committed.
- 6.3 The offences that can lead to prosecution action include:
- Failure to comply with an Enforcement Notice;

- Failure to comply with a Breach of Condition Notice;
- Failure to comply with a Temporary Stop Notice or Stop Notice
- Failure to correctly complete and return a Planning Contravention Notice, Section 330 Notice and Notice under Section 16 of Local Government (Miscellaneous Provisions) Act 1976;
- Illegal display of an advertisement;
- Unauthorised works to a listed building;
- Unauthorised works in a conservation area;
- Unauthorised works to protected trees by means of Tree Preservation Order or trees in conservation areas.

6.4 The decision to prosecute lies with the City Barrister and Head of Standards. Any such decision will be subject to two tests: the evidence test - is the available evidence strong enough for there to be a realistic prospect of conviction, and the public interest test - is it in the public interest to prosecute.

6.5 The Council will comply with all legislation that protects the rights of persons subject to legal action, which controls how evidence against offenders may be obtained and preserves the confidentiality of personal information.

6.6 Where prosecution action is successful, the Council will publicise the information in order to inform the general public of outcome of investigations and to serve as a deterrent to future potential breaches.

7.0 Targets for action

7.1 The planning service aims to achieve the following targets. The Service will set performance targets depending upon the priorities and resources available to deliver the planning enforcement service:

Action	Target time
Register and acknowledge all written complaints	3 working days
Carry out initial site visit	24 hours for urgent
	10 working days for others
Initial response to complainant setting out progress/ informing about a decision in cases where there is 'No Breach'	15 working days
Notify complainant that Enforcement Notice has been served or decision that 'No Action' will be taken	Within 10 working days from the decision on the case

8.0 **Equality Policies**

- 8.1 Officers will investigate all complaints and allegations in a professional and fair manner regardless of age, colour, disability, ethnic or national origin, gender, marital status, race, religion and religious belief, sexuality of involved parties.
- 8.2 Alleged offenders will be given adequate and fair opportunity to give their side of events during the course of investigations.

9.0 **Contacts**

In writing:

Compliance and Monitoring Team
Planning, Transportation & Economic Development
Leicester City Council
2nd Floor, City Hall
115 Charles Street
Leicester
LE1 1FZ

Email: planning@leicester.gov.uk

Telephone: 0116 454 1000

Glossary of Terms to Enforcement Procedure

Enforcement Notice – It requires certain remedial measures to be taken to remedy planning breach/es within a specified period by those have an interest in the land (i.e. owner, tenant, lenders, leaseholder) in to which the notice relates. Recipients may appeal to the Planning Inspectorate, effectively suspending the enforcement notice until it is determined. Enforcement notices are entered on the Land Charges Register and so run with the land, remaining effective even once complied with. Non-compliance constitutes a criminal offence for which recipients may be prosecuted.

Listed Building Enforcement Notice – this is the equivalent notice available under the listed building legislation, action is not subject to a limitation period.

Breach of Condition Notice – available in the event of non-compliance with a condition. There is no right of appeal. The penalty for non-compliance is less than in respect of other notices. It is not entered on the Land Charges Register.

Stop Notice – requires cessation within three days of specified activities causing serious harm to local amenity such that the City Council considers such activities should not be allowed to continue while the period for compliance expires or an appeal is pending. If a statement of special reasons is attached, the notice may come into effect within less than 3 days. Further, the duty to comply is universal and not limited to recipients. It can only be served with or after (but before the effective date) an enforcement notice. It cannot prohibit the use of a building as a dwelling nor the carrying out of any activity that is not operational development if it has been carried out for more than 4 years before service. The City Council would be liable to compensate owners or occupiers for losses directly attributable to the Stop Notice if the contravention alleged was not a planning breach.

Temporary Stop Notice – this is effective immediately and does not require the prior service of an enforcement notice. It can only be effective for a maximum of 28 days (and cannot be renewed).

Court Injunction – can be used to restrain potential breaches as well as actual breaches. Non-compliance, as contempt of court, may result in imprisonment.

Untidy Land (s.215) Notice – includes buildings as well as land. The City Council need to show that amenity is adversely affected by the state of the land or premises. Appeals are to the Magistrate's Court and not to the Secretary of State. Non-compliance constitutes a criminal offence for which recipients may be prosecuted.

Advertisements -

Discontinuance Notice – where an advertisement(s) benefits from “deemed consent” the City Council can serve a notice discontinuing that consent to remedy a ‘substantial injury’ to amenity or where danger is caused to members of the public. The ‘effective date’, for the notice being 8 weeks after the date of service, the statutory period during which the recipient may register an appeal to the Planning Inspectorate.

Prosecution – is an immediate deterrent option in the cases of unauthorised works to Listed Buildings, unauthorised works in a conservation area, unauthorised advertisements, trees subject to Tree Preservation Orders (TPO), non-compliance with a temporary stop notice, stop notice, enforcement notice, and breach of condition notice. Defendants may thus be deterred from continued non-compliance, as well as punished for proven breaches.

Direct Action (with costs recovery) – unlike prosecution, exercising default powers secures actual resolution. These may need in the event of non-compliance with enforcement and untidy land notices but not breach of condition notices; and additionally allow for costs to be recovered from offenders.

