

Development Management Enforcement Plan

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1.0 INTRODUCTION

Legislative and National Policy Context

1.1 The aim of the planning enforcement function is to discourage unauthorised development and where planning breaches are evidenced, to take proportionate action to remedy any harm to amenity, or the built or natural environment. These aims mirror current Government policy for planning enforcement, which is set out in the National Planning Policy Framework and, in part, states:

Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.

1.2 The planning enforcement function works within a legislative framework. However, there is also policy, guidance and case law which, through their collective interpretation, further shape how the team operate our enforcement activities and make decisions. These include, but are not exclusive of the following:

- Legislative requirements (e.g. Town and Country Planning Act 1990; Planning (Listed Buildings and Conservation Areas) Act 1990; Planning and Compensation Act 1991; Police and Criminal Evidence Act 1984; Human Rights Act 1998; Regulation of Investigative Powers Act 2000 and Criminal Proceedings and Investigations Act 1996).
- National Planning Policy Framework and other government guidance material in any planning (enforcement) decisions.
- The Braintree District Development Plan
- The Government's 'Enforcement Concordat'

1.3 The purpose of the Council's Planning Enforcement service is to investigate alleged breaches of planning control and consider appropriate remedial action to safeguard and protect the stakeholders and environment of Braintree District in support of the extant planning policies of the Council.

This document was approved by planning committee on 22 May 2018 and makes clear what those undertaking unauthorised development and those objecting to it should expect from us and explains how the team will prioritise and undertake investigations. In summary, the Council will place a structured priority on compliance with planning law and the enforcement team will remain impartial throughout any investigation. However, the Council also recognise that many breaches of planning control, although unlawful, do not constitute a criminal offence and so discretion will be exercised where appropriate. The Council will take enforcement action only if it is considered to be reasonable, necessary and expedient to do so. Each breach will be considered individually based on its own circumstances and context.

1.4 In considering any enforcement action, the decisive issue will be whether the breach of planning control would unacceptably affect public amenity, or be contrary to the policies of the Local Plan and National Planning Policy therefore meriting such action in the public interest.

1.5 An investigation cannot be launched unless the team have reasonable grounds to suspect that a breach of planning control has taken, or is taking, place.

1.6 Enforcement action should not to be taken simply because there has been a breach of planning control. In accordance with Government guidance, the team will not take action in respect of a 'trivial' or 'technical' breach of planning control which causes no or little harm. Where there is harm the team will take action to remedy that harm through negotiation and when necessary, formal action. Where formal action is taken the team will justify and record the reasons for doing so. Likewise, where the team do not intend to take action we will record our rationale as to why it is not considered justified and expedient.

1.7 This document is available on the Council's web site at www.braintree.gov.uk/planningenforcement

It can be obtained by contacting the Planning Enforcement Team Leader on 01376 552525, extension 2528 or you can e-mail planning.enforcement@braintree.gov.uk to request a copy. Alternatively, please write to Planning Enforcement, Braintree District Council, Bocking End, Braintree, Essex CM7 9HB

The Governments Enforcement Concordant can be viewed by following this link: <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

2.0 APPROACH – PRINCIPLES AND OBJECTIVES

Principles

2.1 This Plan is based on the following key principles for enforcement:

- All legitimate enquiries regarding alleged breaches of planning control will be assessed and an investigation launched where appropriate;
- Enquiries will be prioritised for investigation, dependent on their gravity, impact upon local amenity and the material planning considerations involved;
- Enquirers' identities will be kept confidential where practical, unless agreements have been obtained allowing personal information to be disclosed or subsequent court action warrants their evidence being made public or the Police request the identity in connection with a criminal investigation e.g. offences under the Harassment Act 1997.
- Enquirers will be informed during key stages of an investigation and of eventual outcomes. There is not an appeal process for enquirers who do not agree with the decision made.
- Enforcement action is discretionary and will only be taken where it is expedient to remedy harm and when it is in the public interest; and
- Enforcement action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.

Objectives

2.2 The Council establishes the following objectives for implementing this Plan:

- To uphold planning law and local planning policy and to ensure that the credibility of the planning system is not undermined;
- To ensure that the undesirable effects of unauthorised development are remedied;
- To ensure the timely and proportionate investigation of justified enquiries;
- To seek an effective resolution to harmful breaches of planning control;
- To strike a measured and appropriate balance between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, in accordance with the principles of the National Planning Policy Framework; and
- To carry out all enforcement duties in accordance with the principles of the Enforcement Concordat (see 1.7), particularly with respect to openness, helpfulness and proportionality.

3.0 RESOURCES

3.1 The Planning Enforcement team forms part of the Council's Development Management Team. The Planning Enforcement team currently investigates between 400-450 cases annually across the district. This number is likely to increase as the drive to meet the housing need set by the Government continues. The Council employs 1.87 full time equivalent Planning Enforcement Officers who report to a Planning Enforcement Team Leader. The Team Leader reports directly to the Development Manager.

3.2 Due to the complex nature of enforcement and the potential legal implications it may have, cases can often take many months to fully investigate and resolve. It is therefore important that there is a system for prioritising investigations. The team aims to have no more than 150 cases under investigation at any one time. This means that, on occasions, the investigation of some alleged planning breaches may need to be programmed to reflect the peaks and troughs in the resources available within the team. This decision will be made in accordance with the priority system set out in Section 6.0 below.

3.3 There is no dedicated 'out of hours service' to investigate planning breaches that are alleged to be taking place and require investigation outside of normal working hours. Notwithstanding the above, officers will make best efforts to be flexible, according to the requirements of an investigation. The Planning Enforcement team will also seek support from other Council teams to assist where appropriate.

3.5 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and intimidation. Where appropriate, the Council will use legal action and any other means available to prevent or respond to abuse, harassment or assault on its officers. Officers reserve the right to conclude any communication where persons are discourteous or use threatening, abusive or insulting words or language.

4.0 BREACHES OF PLANNING CONTROL

4.1 The Planning Enforcement team will investigate and where justified, necessary and expedient, enforce against any breaches of planning legislation.

4.2 However, before discussing what a breach of planning legislation is, it is helpful to understand **what is not a breach**. The following are examples of activities which are not breaches:

- Operating a business from home where the residential use remains the primary use and there is not significant and adverse impact upon the

amenity of neighbouring residents. For example:

1. A tradesperson who parks their work vehicle on their driveway at home or other business vehicles on the public highway
2. The use of a room in a house by an occupier to carry out a business with no employees or extensive deliveries to the property in relation to that business.
3. Certain cases will be investigated to assess, if as a matter of fact and degree, the activity appears to have changed the character or use of the dwelling to a mixed use.

- Parking of a caravan within the curtilage of a residential property, provided it is not used as a completely separate residence.
- Obstruction of a highway or public right of way, or parking of commercial vehicles on the highway in residential areas or on grass verges. Such activity may however breach Highways Legislation for which Essex County Highways are responsible.
- Boundary disputes (these are a civil matter).
- Adverts which have deemed consent in accordance with the Town and Country Planning (Control of Advertisement) Regulations 2007 (as amended).
- Breaches of restrictions imposed by deeds and covenants (these are a civil matter).
- Development, such as small house extensions, which are 'permitted development', as defined in the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
- Hobbies or activities within the curtilage of a dwelling are likely to be incidental to the enjoyment of the dwelling and therefore would not require planning permission. For example, a householder repairing the family car at their property would not require planning permission, but a householder advertising and running a car repair business from home would usually require planning permission.
- Clearing land of undergrowth, bushes and trees provided they are not protected trees and are not within a conservation area or protected by a planning condition.
- Outdoor lighting or CCTV fixed to existing buildings (other than a listed building)
- Works conducted by external services to the power, water, gas and communication networks.

Breaches of Planning Legislation

4.3 Building Works, Change of Use or failure to comply with Planning Conditions.

Local Planning Authorities are primarily concerned with ‘development’, which is defined in the Town & Country Planning Act as follows:

Development, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

For the purposes of this Act “building operations” includes—

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

‘Development’ is **not**:

- works which affect only the interior of the building;
- works which do not materially affect the external appearance of the building.

If there is no ‘development’ there is no breach of planning control and no further action is available to the Local Planning Authority under its planning powers. *(Please note the section below which relates specifically to works affecting listed buildings)*

4.4 Development Requiring Planning Permission

There are two main types:

- Deemed permission permitted under the GPDO, known as “Permitted Development”. Some permissions under the GPDO are subject to limitations and conditions. Provided the development falls within the terms of the GPDO, planning permission is not required from the Local Planning Authority and there is no further action that the enforcement team can take.
- Express permission (full or outline) granted following the submission of

a planning application to the Local Planning Authority. Conditions can be expressly imposed by the Local Planning Authority or Planning Inspectorate on Appeal.

4.5 In summary, a breach of planning control may result from:

- Carrying out work either without planning permission or in a way that is different to that which has been granted planning permission.
- Carrying out work without compliance with planning conditions attached to a planning permission, or not in accordance with the limitations and conditions set out in the GPDO.
- Changing the use of land or property without planning permission or without compliance with the limitations and conditions set out in the GPDO or Town and Country Planning (Use Classes) Order 2015

Carrying out Unauthorised Development is not a criminal offence.

4.6 Listed Buildings

Works to a listed building that are not considered like for like repairs will require listed building consent. Where works have been carried out without consent a criminal offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to commence criminal proceedings and/or serve a Listed Building Enforcement Notice. Professional advice should be sought prior to carrying out any works to a listed building.

4.7 Advertisements

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of some classes of advertisements and signs without the need to get consent from the Local Planning Authority. Where an advertisement is being displayed without the appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to 'amenity' or 'public safety' the team will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time formal prosecution proceedings will be considered.

4.8 Works to trees subject to Tree Preservation Orders or within a Conservation Area

The Council has the statutory power to make Tree Preservation Orders (TPO) to protect individual or groups of trees. Similar protection applies to trees within Conservation Areas. It is a criminal offence to cut down, top, lop, uproot, wilfully destroy or damage a protected tree in a manner likely to destroy it, without the Council's consent. If work is undertaken without consent the team will assess the nature of the works and whether it is in the public interest to prosecute. Advice

should be sought from the Council's Landscapes Team as to whether a tree is protected or within a conservation area.

4.9 Unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area and the team sometimes receive enquiries relating to such matters. Where the condition of land or buildings is causing significant harm to public amenity, consideration will be given to serving a notice under the Section 215 of the Town and Country Planning 1990. Such a notice it will specify measures to improve the appearance of the land or buildings. If those measures are not taken within a specified time an offence has been committed.

5.0 HOW TO REPORT A POTENTIAL BREACH OF PLANNING CONTROL

5.1 Anyone who reasonably believes that a breach of planning control has occurred can raise an enquiry with the Planning Enforcement Team.

5.2 Reports of a potential breach can be made by the following means:

- By completing the online enquiry form on the Council's website: www.braintree.gov.uk/planningenforcement
- By writing to the Planning Enforcement Team Causeway House Braintree Essex CM7 9HB
- By emailing a completed enquiry form to planning.enforcement@braintree.gov.uk

5.3 The following information will be required:

- The full address or location of the site where the breach is taking place.
- The nature of the alleged breach and the harm being caused.
- Times, dates and any relevant information.
- The name (if known) and status (owner/tenant/occupier/contractor/worker) of the person(s) involved.
- The date when activities first began and if they are on-going.
- If the enquiry relates to a change of use, the previous use of the

- Whether you have any legal interest in the land or property
- How the alleged breach is affecting you
- Your full name, postal address and contact details, including telephone number **must** be included with your enquiry and where possible an email address. Where an email address is provided the team will generally use this to update you at key stages.

5.4 Malicious complaints and anonymous allegations:

- To avoid the potential misuse of powers, where it is considered that an enquiry is not motivated by planning concerns it will not be investigated.
- Anonymous enquiries are not normally investigated, however if the matter raised constitutes a criminal offence, such as works to protected trees or listed buildings the Team Leader may direct that an investigation is conducted. The team must have reasonable grounds to suspect that an offence is being, or has been, committed in order to pursue a line of enquiry.
- Repeated enquiries which have previously been investigated and resolved will not be entertained. Unless, there has been a significant change to the circumstances since the finalisation of the previous investigation.

5.5 The Council will seek to maintain the confidentiality of persons reporting breaches at all times. The Council will not usually reveal the identity of the enquirer to the perpetrator of an alleged breach. The Council may be asked to reveal the identity under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or legitimately by the Police. However, any decision made to reveal this information under the above legislation would need to show that the public interest in disclosure outweighed the risk in withholding the information. If formal legal action is taken, the identity of a person reporting the breach may be required to be disclosed during court proceedings. It should be noted that in the majority of cases the land owner will be able to figure out who is responsible for making the enquiry, this will not be routinely confirmed.

5.6 The substance and dates pertaining to the enquiry are not confidential. In some cases it may be necessary to rely on evidence from enquirers in order to take action and it will need to be considered whether you are willing to actively assist the Council by collecting evidence and potentially acting as a witness at an appeal or in Court. The investigating officer will explain what may be required in these cases. Once a breach of control is suspected, you may be invited to make a note of your observations and keep a log of any relevant activities.

5.7 If you also raise your concerns with your local District Councillor or your Town or Parish Council please advise them of any contact you may have had with

the Planning Enforcement team, including the Council's reference number.

5.8 The Town and Parish Councils are not the responsible authority for taking planning enforcement action, the responsibility lies with the Local Planning Authority. Your local District Councillor or Town or Parish Councillor may be willing to pass on your concerns to the Enforcement Team, but it is by no means certain that they will do so unless you specifically agree this with them.

5.9 If an enquiry is received from a District Councillor or Town or Parish Council on your behalf the team will respond to them. If they provide us with your contact details the team will update you. Ultimately, it will be your responsibility to ensure that your concerns are made known to the Council's Planning Enforcement team.

5.10 The priority the team give to an investigation does not change because the team receive it from a District Councillor or a Town/Parish Council (it is the scale of harm which determines the priority (*see below*)).

6.0 HOW THE TEAM PRIORITISE INVESTIGATIONS INTO ALLEGED BREACHES OF PLANNING CONTROL

6.1 The Council receive around 400-450 enquiries of alleged breaches of planning control per calendar year. Cases reported may or may not require a site inspection and may be referred to other departments or agencies as appropriate. Due to the often lengthy and complex nature of planning investigations and staff resources available, priority will be given to those cases where the greatest harm is being caused.

6.2 When enquiries are first received each case will be assigned a priority dependent upon the nature of the alleged breach. This initial assessment will be dependent upon the information provided at the time and the harm that is identified, such as possible harm to the environment or public and/or planning significance. It is therefore very important that you tell us what impact the development is having on you or the environment.

6.3 All cases will be kept under review which could result in the priority assigned to the investigation changing, for example after an initial site visit has been carried out and the officer has had the opportunity of assessing the alleged breach.

6.4 Allegations relating to potential breaches of planning control will be investigated and will be categorised as follows:

High Priority Alleged breaches causing irreparable harm to the natural or built environment, or public safety. For example:

- Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building

within a Conservation Area) or any other development that has the potential to cause irreversible demonstrable harm;

- Breaches of conditions attached to a Listed Building Consent;
- Unauthorised works to protected trees covered by a Tree Preservation Order or in a Conservation Area.

Medium Priority Alleged breaches which cause clear and continuous harm or danger to the public, the built or natural environment or where there is a risk of material harm to the environment and/or harm to residential amenity. For example:

- Unauthorised development or breaches of a condition which results in serious demonstrable harm to the amenity of an area;
- Where works, or uses, have the potential to cause material long term damage to the environment.

Low Priority Breaches of planning control causing limited, or no material harm to the environment, or the amenity of residents. For example:

- Unauthorised uses or development, which would be likely to receive planning permission;
- The display of unauthorised advertisements where there are no highway safety implications; or
- Cases involving a technical breach of planning control, or where it is likely that development falls under 'permitted development'.

7.0 HOW THE TEAM INVESTIGATE ALLEGED BREACHES OF PLANNING CONTROL

7.1 Where an officer has a conflict of interest regarding any particular enquiry, the matter will be assigned to another officer to investigate.

7.2 Where an enquiry is made using the online facility you will receive an immediate electronic acknowledgment. Where a letter is received, it will be acknowledged as soon as practicable, the inclusion of a telephone number or email address will greatly assist.

7.3 When an enquiry is received, the team will endeavour to commence the investigation or seek to make contact with the person responsible for the activities within the following timescales:

- High Priority cases – usually within 1 working day,
- Medium Priority cases – usually within 5 working days.
- Low Priority cases – usually within 20 working days.

7.4 The team will investigate by looking at records and visiting the site. The team may also need to seek further information from the enquirer or the person carrying out the unauthorised activity.

7.5 Firstly, the team have to establish whether a breach of planning control has occurred as defined in the legislation and detailed in Paragraph 4.3 above. If there is no 'development' or no 'condition' being breached then there is no breach of planning control and no further action can be taken under the planning legislation, the team will therefore close the file. Enquirers will be updated accordingly.

7.6 In order to establish that there has been a breach of planning control, the following are things which need to be considered:

- Is the development 'permitted development'.
- Is the development time-barred from enforcement (see 7.22)
- Has permission already been given (most planning permissions can be taken up at any time within 3 years from the date permission was granted and once partially put into action, there is no time limit on final completion).
- Where planning permission has not been granted, are the activities generally acceptable in planning terms
- What is the most appropriate action to take where the activities or development are undesirable but only a minor/technical breach in planning terms.

7.7 A similar process will be followed in respect of alleged breaches of planning control relating to advertisements, works to listed buildings and works to protected trees.

7.8 If there is a breach of planning control, the planning service will consider what action to take. In deciding whether to take enforcement action, the Council will have regard to the Local Plan and to any other material considerations, including national policies as expressed through the National Planning Policy Framework and associated guidance. The scale of impact of the breach will also be a factor in determining whether enforcement action is expedient.

Planning 'Expediency' and 'Harm'

7.9 Even when it is technically possible to take enforcement action, the Council is required first to decide whether such formal action would be 'expedient'. Enforcement action is a discretionary power and the relevant planning circumstances of each case must be considered in the first instance.

7.10 The 'expediency' test is therefore whether the unauthorised activities are causing harm having regard to the policies and other material planning considerations. In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, the natural environment, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will also be proportionate to the breach of planning control to which it relates. This approach

to enforcement reflects that set out in the National Planning Policy Framework and associated guidance.

7.11 Formal action will only be taken where there is material harm in planning terms. Harm takes many different forms. It includes the impact on visual or residential amenity, on highway safety, on the amenity of the public in general, the occupiers and users of surrounding land and buildings or the environment in general. Harm may occur through damage to the area's historic buildings and environment, for example, unauthorised work to listed buildings, or if the conditions attached to the consent are not complied with. Harm can also occur where the development undermines the policies of our Local Plan, or could set a precedent which, if repeated, would undermine the policies of the Local Plan.

7.12 The planning system operates in the public interest, rather than the private interest of individuals, so there are certain issues that the team cannot take into account. For example:

- loss of value to property;
- competition with other businesses;
- rights to a view;
- trespass; or
- breaches of covenants.

7.13 In deciding whether or not to pursue enforcement action the planning service will also make an assessment of the evidence available to support such action and any claim that the development is immune from enforcement.

7.14 The main issue will be whether, if left un-addressed, the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This may involve Human Rights considerations on the part of the landowner, resident and/or operator. Any action taken will be confined to what is necessary and proportionate in the circumstances of the case.

7.15 Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In accordance with the Human Rights Act 1998, if there is any question of enforcement action interfering with these rights the Council will consider in each case whether the wider impact of the breach overrides the owner's right to the peaceful enjoyment of their property.

7.16 Circumstances may also arise where there are conflicting priorities between the amenity and environmental aspects of a breach of planning control. In reaching a decision on expediency the Council will balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm, but whose progress might be delayed as a result. Due regard will be given to the conflicting priorities when making decisions on whether or not it is expedient to take enforcement action.

7.17 In summary, the Council will only take enforcement action when it is considered expedient, justified and necessary to do so, even if there is a clear breach of planning control:

- Enforcement action **will not** be taken if the breach of planning control does not unacceptably affect public amenity, materially compromise planning policy or the existing use of land and buildings meriting protection is not in the public interest.
- Enforcement action **will not** be instigated solely to overcome a trivial or technical breach of planning control, which causes no significant harm to amenity in the locality of the site, or materially conflict with planning policy.

In these circumstances the team will close the case file and notify the relevant parties involved in the investigation. The team will also, without prejudice to the outcome, advise the owner/operator that they can make an application to seek regularisation and gain authorisation. The person making the enquiry has no right of appeal against a decision which has been reached, however comments and objections will be recorded and held on file.

Staged Approach to Enforcement

7.18 The team will give those responsible for a breach of planning control the opportunity to undertake required actions, or attempt to reach a negotiated solution that suits all parties. Where it proves necessary to resolve a significant breach of planning control, and in accordance with the Council's scheme of delegation, officers will consider whether it is appropriate to issue a statutory notice, prosecute and/or carry out works in default. The choice of action in each case will be:

- No further action - no breach has occurred.
- No further action – the breach is immune from any planning enforcement action, the work or use is "lawful" (see Paragraphs 7.22 - 7.27 below).
- No further action - not expedient to take action. It is a trivial or technical breach or there is no significant harm to amenity or the environment.
- Regularisation - cessation of use/works, retrospective application, discharge of conditions.
- Advice – Where a breach is of a minor or trivial nature advice will be given advising the person responsible of this fact.

- Warning – A formal written warning may be issued highlighting the breach and advising of what action is required to remedy the situation.
- Formal action - enforcement or other formal notice, simple caution, prosecution, injunction, works in default.

7.19 Where a breach of planning control has been identified, unless circumstances require immediate action, a staged and considered approach to formal enforcement action will always be adopted:

Step 1

- Give advice e.g. informal email, letter or verbal communication.
- Caution the offender where it relates to a criminal investigation
- Seek to negotiate, allowing an opportunity for cessation of works/use or reinstatement of land.
- Encourage a retrospective planning application or to seek pre-application advice to ascertain if an application is likely to be given support at officer level.

Step 2

- Formal letters, written warnings.
- Recorded interview under the codes of the Police & Criminal Evidence Act
- Issue a formal notice to obtain more information.
- Request a regularising application

Step 3

- Where a breach of planning control has been identified and no action has been taken to address the breach it will be necessary to consider formal action in the form of an Enforcement Notice and Stop, or Temporary Stop Notice. Where formal action is taken then every effort will be made to explain to the recipients what is required of them, the consequences of non-compliance and the available rights of appeal.
- Where an enforcement notice has not been complied with this will include consideration of prosecution proceedings or direct action.
- Submit a case file for prosecution through the Courts.

In High Priority cases, Steps 1 and 2 may be omitted.

Retrospective Planning Applications

7.20 An investigation will first establish whether a planning permission or consent is required and whether it is likely that a permission or consent would be granted. Planning legislation allows for retrospective applications to be made and unauthorised developments can be regularised through a retrospective application. Where necessary the Local Planning Authority can impose conditions to make the development acceptable.

7.21 Where it is assessed that planning permission may be granted for the development, the person responsible could be asked to submit a retrospective planning application.

- Where a breach has taken place and a retrospective planning application submitted it will usually be treated in the same manner as any other planning application.
- For matters requiring immediate attention a planning application should not hold up any urgent action.
- The Council can decline to determine an application where an enforcement notice has been served, as long as the notice is served before the application is received.

Immunity and Lawful Development

7.22 There may also be cases where it will be too late for the Planning Authority to take any further action. A breach of planning control becomes immune from enforcement action if no action has been taken within certain time limits set out in the Town and Country Planning Act, namely:

- Four years from the substantial completion of operational development and from the change of use of any building to a single dwelling-house, including use as flats (subject to the use as a dwelling house not being considered to constitute concealment)
- Ten years for all other breaches (i.e. change of use or breach of a planning condition).

In essence if operational development i.e. building works took place more than 4 years ago or a change of use of land or buildings took place more than 10 years ago, then such development would become 'lawful' and immune from any planning enforcement. The planning merits do not fall to be considered in such cases.

7.23 The reasons for the time limits are that if a building has been in situ for more than 4 years without giving cause for concern, or a use continued for 10 years, then it is unlikely that such development has caused any harm.

7.24 In cases where the development may be immune from planning enforcement action the team may suggest, but cannot require, an application for a Lawful Development Certificate for an existing use, operation or activity, including those in breach of a planning condition. With such an application, the onus is on the applicant to demonstrate through the submission of evidence such as sworn statements, photographs, receipts etc. that the development is lawful. The test is 'on the balance of probability'. The planning merits of the case do not fall to be considered.

Formal Enforcement Action

7.25 Whilst the team will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set by the investigating officer, commensurate with the priority accorded to the case.

7.26 Where an informal approach fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds or to compel it to stop (bearing in mind the statutory time limits for taking enforcement action). The team will not allow prolonged negotiation to delay essential enforcement action and will use the powers available where it is expedient to do so.

7.27 In considering formal enforcement action, the team will have regard to the particular circumstances of each case and the degree of harm or potential harm resulting from the breach of planning control and will use enforcement powers commensurate with the seriousness of the breach.

7.28 Having decided to pursue formal enforcement action, the following powers are available, although not all of these will be appropriate in every case:

- To serve statutory notices (including: Planning Contravention Notices; Enforcement Notices; Listed Building Enforcement Notices; Stop Notices; Temporary Stop Notices; Breach of Condition Notices; Untidy Sites Notices; Hedgerow Retention/Replacement Notices, High Hedges Remedial Notices);
- To issue Simple Cautions;
- To prosecute (including prosecution for: non-compliance with a statutory notice; unauthorised display of an advertisement; unauthorised works to a listed building; non-compliance with a requirement to replace a protected tree or for unauthorised work to a protected tree);
- To take direct action; or
- To apply for an Injunction.

Further details of the available enforcement remedies are shown in Appendix 1.

7.29. The Council has delegated authority for the service of Enforcement Notices to the Development Manager. Accordingly, enforcement action does not require the endorsement of the Planning Committee, however, on occasions this may be sought.

Appeals against Enforcement Notices

7.30 Appeals may be lodged against enforcement notices to the Secretary of

State. When appeals are lodged, each case will be reassessed having regard to the grounds of appeal and any subsequent change in circumstances.

7.31 In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account. It will however, be expected that on the planning merits that led to the enforcement action, cases will be defended by the Council at appeal.

8.0 MONITORING CONDITIONS AND AGREEMENTS

Planning Conditions

8.1 Non-compliance with conditions will be referred to the Planning Enforcement team if developers or owners are not responding to approaches made by the Planning Officer, or the breach occurs following the completion of the development and it has been subsequently brought to our attention.

Legal Agreements

8.2 Where planning obligations, known as Section 106 agreements, are not being met, legal action will be taken if negotiations or identified dispute procedures do not result in agreement. The Council's legal team may enforce any non-compliance matters.

9.0 INFORMATION, REPORTING AND PUBLICITY

Keeping enquirers informed

9.1 Planning issues can create frustration and it is in everybody's interest for matters to be resolved as quickly as possible. A timescale target for resolving cases is not appropriate but the team will endeavour to provide updates to enquirers at key stages of the process and once a final determination has been made.

9.2 In many cases due to protracted negotiations, inability to access property or make contact with the owner, there is nothing to report. It may seem in such cases, that no action is being undertaken, but this is not the case.

9.3 At key stages of our investigation the team may update the person(s) who have drawn the matter to our attention. The team will provide an update at the conclusion of our investigation, this will often be the only means of update made.

Recording Alleged Breaches of Planning Control

9.4 The Planning Enforcement team keeps up to date records of all investigations undertaken, to inform and justify any future action, and to compile evidence as necessary e.g. for prosecutions.

9.5 All enquiries and allegations received, subject to the anonymity clarification, will be recorded onto the Council's Enforcement databases. The database will be updated as necessary during the course of an investigation. When a breach has occurred this will be recorded on the relevant database and the information retained.

Repeated Enquiries

9.6 Where an alleged breach has been investigated and concluded, any enquiry relating to the same site, which is not materially different to the previous allegation or does not raise any new issues, will not be investigated. In addition, regular unfounded enquiries from the same source may be considered vexatious and will not be investigated.

Enforcement Register

9.7 Every local planning authority must keep an Enforcement Register. Details of Enforcement Notices, Stop Notices and Breach of Condition Notices issued are entered into the register. Folders are available whereby the past 5 years can be viewed during office hours at the Council Offices Causeway House Braintree Essex CM7 9HB. Older documents can be viewed by appointment only.

9.8. Where an enforcement case has been raised some detail can be viewed on the Council's Website, if a notice has been issued against a property in the past 10 years it will be available to the public to view. The public access facility can be searched using this link www.braintree.gov.uk/publicaccess

Communication with the Media

9.9 Good publicity is important in deterring others from committing serious planning breaches, and reassuring members of the public of the Council's commitment to enforcing against serious breaches in planning regulations. Where appropriate, the team will work with the media to publicise the Planning Enforcement team's work and positive outcomes. This could include details of impending court cases and their outcome.

Comments and Complaints

9.10 The Council is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the service should first discuss any concerns with the Planning Enforcement Team Leader.

9.11 If still dissatisfied, the Council has a formal complaints procedure, details of which can be found on the Council's website at www.braintree.gov.uk

Monitoring and Review

9.13 All outstanding cases will be reviewed at regular intervals with the objective of determining whether it is expedient to continue with the investigation or action. The factors to be taken into account when such decisions are taken will include:

- The extent of harm caused to local amenity or acknowledged planning interests;
- The impact on Local Plan and Policies;
- The existence of other remedial powers; and
- The threat to the integrity of the development control system.

9.14 This Plan and its standards will be reviewed every 5 years, the next scheduled date for review is on or before 22 May 2023.

10.0 WHAT HAPPENS IF YOU ARE THE SUBJECT OF AN ENFORCEMENT CASE

10.1 The team recognise that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, the team encourage you to respond positively and provide the information which the team need to resolve the matter. Don't delay. It is in the interests of all parties if an identified breach can be addressed at an early stage.

10.2 The Local Planning Authority will assess and investigate legitimate enquiries alleging a breach of planning control, even if they prove to be unfounded. If you are contacted about an alleged breach you are entitled to know what the allegation is and to have the opportunity to discuss your position. However, the team do not disclose the identity of the complainant to you. It may be that the matter can be resolved quickly if there is no breach. In other cases a resolution may be negotiated, however this does not mean that you can delay any response or action. The team expect you to respond within the timescales communicated to you and will pursue prosecutions for failure to respond to formal notices.

10.3 The team will not allow long drawn out negotiations to divert the service from taking appropriate action. In many cases, particularly where the works are likely to be acceptable, the team may invite you to submit a retrospective planning application without prejudice to any decision the Council may take. In cases where planning permission has been obtained and the deviation from the approved plans is very minor, you may be entitled to apply to revise the approved plan.

10.4 You should be aware that development which requires, but does not have planning permission, is unauthorised. If you subsequently wish to sell a property which has been subject to a formal notice, you may find the sale is delayed or lost as a result once potential purchasers carry out land searches.

10.5 The Planning Enforcement team will advise the Council's Land Charges team of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding.

10.6 You should be aware that Planning Enforcement Officers have legal rights of entry to land and property in order to investigate alleged breaches of planning control or compliance with enforcement notices. The enforcement officers will make themselves known to the landowner/developer when they enter a site. It is not always appropriate or possible to give advance warning of a site visit. In some cases a letter or email will be sent to alert you to an alleged breach of planning control as soon as the team are made aware of it and asking you to contact the officer dealing with the case.

10.7 An enforcement officer's visit may be unaccompanied; you do not have to be present. If it is necessary to enter your house, (as opposed to the garden) you are entitled to 24 hours' notice. If you actively prevent an enforcement officer from entering onto your land the team may obtain a warrant to enter the site. Once the team have secured a warrant, any obstruction to access the site will be considered a criminal offence.

10.8 The Council will use the information obtained to make an assessment and decide what further action needs to be taken. Allowing the enforcement officer to make a site visit and take photographs will help to reduce delays and any potential inconvenience.

10.9 You may be served with a Planning Contravention Notice or a Requisition for Information Notice, both of which require information concerning the alleged development. These notices are used to establish the facts of what has occurred and the details of those with an interest in the land, so that the team may determine whether a breach has taken place and who is responsible.

10.10 If there is a breach, the team will contact you to explain what the breach is and what needs to be done to resolve it. The team will follow the approach detailed in Section 7.

10.11 Planning Enforcement Officers will be happy to explain the different notices, and to help you understand the implications. However, Planning Enforcement Officers will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own

independent professional advice, you can also seek advice via 'Planning Aid', which is a voluntary service offering free independent, professional advice: www.rtpi.org.uk/planning-aid/.

APPENDIX 1

SCHEDULE OF PRINCIPAL ENFORCEMENT TOOLS AND POWERS

Planning Contravention Notice (PCN)

The power to issue a PCN lies in Section 171C of the Town and Country Planning Act 1990, as amended. This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool. The notice requires details and information on an alleged breach of planning control to be submitted to the Local Planning Authority to clarify whether a breach has occurred. Failure to respond within 21 days, or submission of false or misleading information may result in prosecution and a potential fine.

Breach of Condition Notice (BCN)

The power to issue a BCN lies in Section 187A of the Town and Country Planning Act 1990, as amended. This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A BCN cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice. There is no right of appeal against a notice. Failure to comply with a BCN is an offence liable to prosecution and a fine of up to £1,000.

Enforcement Notice

The power to issue an enforcement notice lies in Section 172 of the Town and Country Planning Act 1990, as amended. The Local Planning Authority may issue a notice where it considers there has been a breach of planning control and it is expedient to do so i.e. the development is likely to be unacceptable in policy terms, or could not be made acceptable by the imposition of appropriate planning conditions. An Enforcement Notice requires rectification of the breach within a specified timescale and must specify:

- the land to which the notice relates;
- the reasons why it is expedient to take such action;
- the breach of planning control complained of;
- the steps required to remedy the breach;
- the date on which the notice comes into effect; and
- the period for compliance.

There is a right of appeal. An appeal may be made to the Secretary of State before the notice is due to come into effect, usually not less than 28 days after the date of

issue. An appeal will suspend the notice until the appeal is determined.

Failure to comply with an Enforcement Notice within the time specified is a criminal offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Listed Building Enforcement Notices are similar to Enforcement Notices, but used where works have been carried out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such consent.

Stop Notice

The power to issue a stop notice lies in Section 183 of the Town and Country Planning Act 1990, as amended. A Stop Notice may be issued to support an Enforcement Notice. It has the effect of requiring a breach of planning control to cease. A Stop Notice is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the Enforcement Notice. It cannot be used to prohibit the use of any building as a dwelling house nor require the cessation of any activity which has been carried out for a period of more than four years prior to the service of the notice. Compensation may be payable by the Local Planning Authority if the Enforcement Notice to which the Stop Notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Temporary Stop Notice

The power to issue a Temporary Stop Notice lies in Section 171E – 171H of the Town and Country Planning Act 1990, as amended. It does not have to be accompanied by an Enforcement Notice. A Temporary Stop Notice can require the immediate cessation of a breach of planning control for a period of up to 28 days. During this 28 day period an Enforcement and Stop Notice can be served. There is no right of appeal. Failure to comply is an offence subject to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Injunction

The power to seek an injunction is conferred by Section 187B of the Town and Country Planning Act 1990, as amended. Where the Local Planning Authority considers that a serious actual or intended breach of planning control is likely to take place it may seek an injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction. The granting of an injunction is at the Court's discretion. The Injunction is generally sought where an operator continues to ignore an Enforcement or Stop

Notice, or where there are irreversible consequences i.e. the threatened demolition of a listed building. Failure to comply with an Injunction constitutes a contempt of court and may lead to imprisonment.

Direct Action

The power for a local planning authority to take direct action to address noncompliance with an Enforcement Notice lies in Section 178 of the Town and Country Planning Act 1990, as amended. If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the Local Planning Authority may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

Section 215 Notice

Under Section 215 of the Town and Country Planning Act 1990, as amended, a Local Planning Authority can serve a '215 Notice'. This can require land to be cleared and tidied up when its condition adversely affects the amenity of the area. The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works shall be completed. Appeals are made to the Magistrates' Court. Failure to comply is an offence subject to prosecution and a fine of up to £1,000 or daily penalties if the nuisance persists. The Local Planning Authority may resort to direct action and seek to recover the costs of remedial works from the land owner. This may be done by registering a charge on the land at HM Land Registry, so that costs are recovered when the property is sold.

Unauthorised Advertisements

Advertisements which are displayed in breach of the Town and Country Planning (Control of Advertisements) Regulations 2007 constitute an offence and render those responsible and the owner of the land liable to immediate prosecution and a potential fine.

Where an advertisement is displayed with deemed consent under the Regulations, the Local Planning Authority can require its removal by issuing a Discontinuance Notice. Such a notice can only be issued to remedy a substantial injury to an amenity in the locality or a danger to members of the public. This requirement is more stringent than the normal power to control advertisements.

Simple Cautions

A Simple Caution may be offered as an alternative to prosecution when there is an admission. A Simple Caution may be offered if the offence is:

- the first; of a minor or technical nature, or;
- not sufficiently serious to proceed to court;
- admitted by the offender

Community Protection Notice

A Community Protection Notice (CPN) under Section 43 Anti-Social Behaviour, Crime & Policing Act 2014 is intended to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. It may be considered as an alternative to a Section 215 Notice. A written warning must be issued before a CPN can be used. There is a right of appeal to a Magistrates Court within 21 days of issue. Failure to comply with the requirements of a CPN can result in a fine or the issue of a Penalty Notice.

Prosecution

Decisions to prosecute will be made in conjunction with the Council's legal advisors who will advise on the quality and adequacy of evidence and other legal issues that might be raised. The team can commence court proceedings where a formal notice has been breached. In some instances the team can also commence legal proceedings for unauthorised works without the need to have first served an enforcement notice, for example: unauthorised works to a listed building, damage to a protected tree or an unauthorised advertisement, this is because these are criminal offences.

In deciding whether to prosecute, the Code for Crown Prosecutors will be applied. The Code is a public document issued by the Director of Public Prosecutions which sets out general principles to follow when deciding whether or not to prosecute.

The team will apply two tests in cases where a prosecution appears likely, in consultation with our legal advisors:

The **evidential test**: is there admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction?

The **public interest test**: is a prosecution in the public interest?

As a general rule, prosecutions will not be instituted without due warning being given to the persons suspected of committing the offence.

Rights of Entry

Enforcement officers are able to exercise powers of entry contained within sections 196A, 196B and 196C of the Town and Country Planning Act 1990, as amended by the Planning Compensation Act 1991 in order to investigate breaches of planning control. Consideration is always given to article 8 of Human Rights Act 1990 (The right to respect for private and family life) prior to exercising any powers of entry.

Appendix 2 Planning Enforcement - Streamlined Process Chart

