

# GLOUCESTER CITY LOCAL ENFORCEMENT PLAN

3<sup>rd</sup> November 2015

## **1.0 PURPOSE, AIMS AND 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, and the built or natural environment.

1.2 These aims mirror current government policy for planning enforcement, which are set out in Paragraph 207 of the National Planning Policy Framework, and state:

***“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”***

1.3 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 decisions are made. These include, but are not exclusive of the following:

- Legislative requirements (eg Planning Acts, Police and Criminal Evidence Act 1984)
- The National Planning Policy Framework, National Planning Policy Guidance and other government guidance, material in any planning (enforcement) decisions
- Gloucester City Local Plan (Second Stage Deposit – 2002), the Local Development Framework, including the emerging ‘Joint Core Strategy’, and any other material planning considerations
- Gloucester City Council Corporate Enforcement Policy

1.4 This Plan supersedes the Council’s Planning Enforcement Policy, approved by Members in May 2007, and updates the Council’s Planning Enforcement Plan, approved by members in September 2013.

1.5 Planning Committee has delegated powers to approve any changes to the Enforcement Plan, without referral to Full Council

- 1.6 This policy is supplemented by a 'Procedure Note' that sets out in more detail the 'day to day' approach to planning enforcement by this Council.

## **2.0 RESOURCES**

- 2.1 This Plan has been drawn up with regard to the availability of resources and the demands on the service.
- 2.2 The team investigates an average of over 300 enquiries every year, and monitors all legal agreements signed under s106 of the Town and Country Planning Act, as well as undertaking other areas of work outlined in this Plan.
- 2.3 The City Council employs one full time Planning Enforcement Officer, and one full time Senior Planning Compliance Officer, based in the Private Sector Housing team, within the City Council's Public Protection service. Officers report to the Development Control Manager for authorisation of planning decisions.
- 2.4 Due to the complex nature of enforcement and the potential legal implications decisions may have, some cases can often take many months to fully investigate and resolve. It is therefore important that a smaller number of investigations are undertaken thoroughly, as opposed to spreading the service too thinly and as a result risk compromising desired outcomes. With this in mind, the team aims to have no more than 120 cases under investigation at any one time. This means that on occasion the investigation of some alleged planning breaches may not get first priority and may be postponed. This decision will be made in accordance with the priority system set out in Appendix 1.
- 2.5 The Council has powers to undertake works to remove breaches, where necessary, commensurate with the budget available.
- 2.6 There is no '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 parts of the council who more regularly work out of hours, to assist as far as possible.
- 2.7 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.

### **3.0 BREACHES OF PLANNING CONTROL**

- 3.1 The Planning Enforcement team will investigate and where necessary enforce against any breaches of the 1990 Town and Country Planning Act (as amended) (hereafter referred to as 'the Act'). The main breaches investigated have been listed in 3.4 accompanied with a brief description what it is and how the breach is addressed.
- 3.2 Before discussing what a breach of planning legislation is, it is valuable to know what **is not** a breach. The following is a list of activities which is commonly mistaken as being planning breaches:
- Operating a business from home where the residential use remains the primary use and there is no significant and adverse impact on residential amenity
  - Obstruction of a highway or Public Right of Way
  - Boundary disputes (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 (civil matter)
  - Where development is 'permitted development', as identified in the Town and Country Planning (General Permitted Development) Order 1995, and any subsequent amendments
- 3.3 Breaches of planning legislation:
- ***Damage or inappropriate alterations to Listed Buildings, Scheduled Ancient Monuments and Protected trees*** – Investigation and further action will be undertaken with the support of Conservation Officers, City Archaeologist and Tree Officer.
  - ***Operational Development*** – Any unauthorised works are undertaken at the owner's risk, and may require demolition, reversal, or alteration.
  - ***Unauthorised uses*** – If, after investigation a use is witnessed, and constitutes a material change of use, and in instances where it is causing harm, we will seek to cease the use.
  - ***Breach of condition(s)*** – Failure to comply with a condition attached to a planning permission, or where development exceeds a condition or an allowance under 'permitted development rights', are considered a breach making a development unlawful. We will seek compliance with conditions where they have been identified and/or referred to the Planning Enforcement team.
  - ***Untidy land/buildings*** – ~~Enforcement~~ Investigations (under s215 of the Act) will only be considered on private land when a significantly detrimental impact on neighbouring properties or visual amenity can be demonstrated.

- **Unauthorised advertisements on privately owned land** - The Council will remove unauthorised posters or placards after giving a minimum 48 hours notice (and 22 days for any other advertising 'display structure') to those responsible, owning the land, or benefiting from the advertisement. Advertising materials will be kept for one month, and at the team's discretion will be available for collection on receipt of a fee. This fee would cover the cost of securing their removal eg officer time and hiring of contractors.
- **Unauthorised advertisements on public land** - will be removed by Council appointed contractors or officers themselves, and disposed of without prior warning, including on Highways land where delegated authority has been given by Gloucestershire Highways under s132 of the 1980 Highways Act (as amended). Where signage is widespread or persistent, the Council will approach the beneficiaries of this 'flyposting' and seek removal within 48 hours, failing which the matter will be referred to Legal Services for prosecution.

3.4 **Referrals** - When receiving a complaint or enquiry, officers will have regard to the most effective and timely powers available to investigate and where necessary pursue further actions to achieve the Council's desired outcome. This will sometimes result in matters being referred to other departments and organisations, either wholly or as part of a joint approach, where needed. Similarly, the planning enforcement team will accept referrals from other departments and organisations in accordance with the areas of work identified above.

3.5 The Planning Enforcement service will work on specific area or subject based projects, such as Conservation Area improvements, commensurate with resources available.

#### **4.0 APPROACHES TO DEALING WITH A PLANNING ENFORCEMENT ENQUIRY**

4.1 Unless an allegation is particularly serious anonymous complaints will not be investigated. Furthermore, enquires will only normally be investigated if received in writing. Complainant details will remain anonymous and will not be made known without their agreement.

4.2 Further details on how to make a planning complaint or enquiry, including basic details required by officers, can be found on the Council's Planning Enforcement webpage.

4.3 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 complaints from the same source may be considered vexatious and not investigated.

- 4.4 Where an officer has a conflict of interest regarding any particular enquiry, the matter will be assigned to another officer to investigate.
- 4.5 The Council will acknowledge the complainant, respond to any requests for an update, and inform them of the outcome of the investigation, in line with Planning Enforcement Customer Charter – see Appendix 4. Anyone not satisfied with the service should initially discuss any concerns with the Private Sector Housing Manager. If still dissatisfied, the Council has a formal complaints procedure which can be found on the Council's website.
- 4.6 Where a serious breach is alleged, officers will investigate immediately, having regard to PACE (Police and Criminal Evidence Act) requirements as necessary. Covert surveillance, where necessary, will only be undertaken following the necessary RIPA (Regulatory Investigatory Powers Act) authorisation.
- 4.7 Before action can be considered, the Council must be able to evidence what the breach is, demonstrate its 'harm', identify what 'remedial' action(s) are required, and be satisfied that these actions are reasonable and proportionate. Each case will be considered on its own merits, and similar breaches in different locations may require different outcomes.
- 4.8 The Council will give those responsible for a breach in planning regulations the opportunity to undertake required actions, or attempt to reach a negotiated solution that suits all parties.
- 4.9 Where a breach has taken place then any 'interested party' has the right to apply for planning permission retrospectively. Such an application will be treated no differently from a planning application where no unauthorised works (or use) has already taken place. For matters requiring immediate attention a planning application should not hold up any urgent action. The Council may decline to determine a planning application where an enforcement notice has already been served and proposals relate to the identified breach.
- 4.10 Alternatively where the person (subject) of an investigation disputes that a breach has or is taking place, they have the opportunity to apply for a Lawful Development Certificate to determine the matter.
- 4.11 **Expediency** - Gloucester City Council is committed to taking a firm line to make those responsible accountable for their actions and for making good any unacceptable harm caused. However the Council will only take enforcement action when it is considered 'expedient' to do so. In considering this, the decisive issue should be whether the breach of control is unacceptably affecting public amenity or the existing use of land and buildings meriting protection in the public interest. For example, where development would receive planning permission, but no application is made, it would not usually be expedient to take further

action. Any requirements or action must be 'proportionate'. While the Council is solely responsible for assessing whether or not it is expedient to pursue further action, the failure to take appropriate planning enforcement action where it is clearly necessary may result in investigation by the Ombudsman, and an award of costs could be made against the Council. Enforcement Notices should only be served on a breach that is not acceptable in planning terms, otherwise the person (subject) of the Notice could appeal. This could also result in an award of costs against the council.

- 4.12 Where a planning breach occurs but the matter is concluded without further action, then a 'contravention' will be recorded in the Land Charges Register, and then declared on any future land search.
- 4.13 Formal action will only be taken with the prior authorisation of the Development Control Manager or the relevant line manager, in line with the Council's Scheme of Delegation. In a similar manner, cases will only be closed with the prior and recorded authorisation of the Development Control Manager, following the recommendation of the case officer, who should be able to evidence and justify their reasons for doing so.

## **5.0 POWERS**

- 5.1 Where further information is required to determine the facts, the Council has the following **investigative powers**:
- **Rights of Entry** – are available to enter land without the owner's permission or prior arrangement, where a breach of planning control is suspected. The exception is for the inside of domestic properties, where 24 hours prior notice must be given. It will be considered an offence if anyone wilfully obstructs any officer trying to freely enter the land. If immediate access is required permission may be given by court injunction
  - **S16 Notice** (of Local Government Act 1992) and **s330 Notice** (of Town and Country Planning Act 1990, as amended) – requires details of ownership and other interests in property
  - **Planning Contravention Notice** – requires further information concerning development undertaken or activities alleged to be taking place on land
  - **PACE interview** – for serious allegations, where an offence has or is suspected to have taken place, an interview under formal caution will normally be undertaken
- 5.2 Where **immediate action** is required, the Council has the following powers:
- **Stop / Temporary Stop Notice** – requiring an immediate cessation of development or any use of land or a building, to remove serious threat or harm. The maximum length of time that a Temporary Stop Notice will have effect is for

a period of 28 days. During this period the Local Planning Authority must decide whether or not it is appropriate to take other enforcement action.

- An **Injunction** may be sought in the County or High Court for extremely serious planning breaches (actual or expected).

5.3 In many cases action is required to remove a breach, or otherwise make it acceptable in planning terms. Where required actions have not been undertaken, the Council may serve any of the following **Notices**, where it is expedient to do so. The type of notice served will depend on the nature of the breach:

- **Enforcement Notice** – the most commonly used notice, to address unauthorised operational development or an unauthorised material change of use.
- **Listed Building Enforcement Notice** – Served when there has been unauthorised and inappropriate alterations to a Listed Building or structure.
- **Breach of Conditions Notice** – where conditions of a planning approval are not being fully complied with
- **s215 Notice** – Untidy land or buildings adversely affecting the amenity of a neighbourhood
- **s225 Notices** - requiring removal of posters, placards and ‘advertisement displays’ from private land
- **Planning Enforcement Order** – where the Council believes there has been a ‘concealed’ breach that would otherwise be immune from enforcement action due to the passage of time.

5.4 **Consequences of non compliance with a Notice** – Where the requirements of a Notice have not been fully complied with, in the timescales given, (and unless successfully appealed against) those responsible for the breach will be considered to be committing an offence.

5.5 Compliance with an Enforcement Notice will not discharge it; its provisions will remain in force and will be valid should the unauthorised use or specified development re-occur. Notices will be registered against the land, and will be identified as part of any ‘land search’.

5.6 The Council has powers to take **direct action** to address a breach in planning control, in the following circumstances:

- For serious breaches requiring *immediate action*, where the landowner or other relevant party refuses to undertake emergency works (eg works to preserve a listed building)
- Direct action to remove unauthorised *advertisements and signage* will be undertaken as set out in Section 3 above.
- Where the requirements of a Notice have not been complied with and action is appropriate and necessary.

Taking direct action does not preclude the City Council from prosecuting those responsible, where it is appropriate to do so.

- 5.7 Works may be undertaken by officers or specialised contractors, according to the nature of the works, and commensurate with the budget available. Those responsible for the breach will be invoiced and recovery proceedings undertaken where necessary. Officer time will be included within any costs calculation, based on a 'charge out rate' provided by Finance. Until paid, the costs will be placed as a charge on the land and will be subject to inflation.
- 5.8 The Council's appointed legal representative will lead on planning prosecutions:
- Where an offence is considered to have been committed, the Council will decide whether to pursue prosecution of those responsible. This decision will be based on the 'evidence' and 'public interest' tests.
  - A 'Simple Caution' may be 'offered', but does not preclude the Council pursuing prosecution if not accepted
  - Prosecution should be considered even when the requisite works or the breach is removed prior to court action.
  - Costs will be sought where successful prosecutions are brought, or where the Council considers unnecessary appeals have been made.
  - Where a breach in planning control results in significant financial or material gain, the Council will consider recovery action under the Proceeds of Crime Act, in conjunction with the planning prosecution.
- 5.9 In some instances planning enforcement action may not be taken because, due to the passage of time, the breach of planning has become immune from enforcement action. The time for breaches to be immune from enforcement action will often be 4 years. This includes operational development (the carrying out of unauthorised building, engineering, mining or other operations), or change of use to use as a single dwellinghouse, or breach of a condition preventing change in use of any building to use as a single dwellinghouse. For all other breaches it must have taken place more than 10 years ago for it to be immune from enforcement action.
- 5.10 Where planning permission has been given, or even not needed, other consents might be required under different regimes. It is the owner's/developer's responsibility to ensure all requisite consents are in place.

## **6.0 MONITORING**

- 6.1 ***Planning Conditions*** – The Council does not have a Conditions Monitoring Officer, however discharge of conditions will be overseen by the assigned planning officer as part of a 'total case management' approach. Non compliance of conditions will only be referred to the enforcement team if developers or



owners are not responding to approaches made by the planning officer, or the breach occurs some time following the completion of the development and it has been brought to our attention.

- 6.2 **Legal Agreements** - Where planning obligations are not being met legal action will be considered if negotiations or identified dispute procedures do not result in agreement and the requisite actions. Where a financial contribution is not paid then the Council's debtor system will be used to recover funds owed.

## **7.0 INFORMATION, REPORTING AND PUBLICITY**

- 7.1 The enforcement team will keep full and up to date records of all investigations undertaken, to inform and justify any future action, and to compile evidence as necessary eg for prosecutions.
- 7.2 Further information on the planning enforcement function is provided on the Council's website, and is updated regularly. This will include an electronic Planning Register, displaying details of all Notices. Copies of all notices served after December 2011 are also available to view on public access or can alternatively be provided on request. As a public document, completed s106 Agreements are also available to the public, on request.
- 7.3 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. The Council will work with appropriate media to publicise the team's work and positive outcomes, including details of impending court cases and their outcome.
- 7.4 Every six months officers will report to Planning Committee on the general performance of the service, including details of all Notices pending or in effect, and any other specific cases that are of interest.

## **APPENDIX A - Priorities for Action**

The use of a priority system allows officers to recognise and react to the most serious cases as they are received. The priority rating should be reviewed following assessment of the case, and this will allow officers to maintain focus in the right areas during especially busy periods. The Senior Planning Compliance Officer will review with the enforcement officer the priority rating as part of regular enforcement case reviews.

Cases will be prioritised as follows:

### Level 1 - High Priority

Breaches that may result in irreversible damage or loss, or where works are under way and an immediate approach will bring a halt to works, preventing unnecessary cost and wasted time to the developer. A site visit and investigations will be commenced as soon as possible:-

- Breaches of Listed Building control where demolition or alterations are taking place.
- Unauthorised works to or works affecting Scheduled Monuments.
- Breaches of planning control in a Conservation Area where immediate, irreparable damage would be caused.
- Works to trees protected by a Tree Preservation Order and works to trees in Conservation Areas where trees are likely to be lost or seriously injured.
- Breaches of control or conditions causing serious irreversible damage to the environment e.g. protected species are on site.
- Breaches of planning control or conditions that may damage a site in an area of archaeological interest
- Breaches where development is currently taking place and an immediate approach could avoid unnecessary works being carried out
- Unauthorised changes of use, likely to result in serious loss of amenity to local residents.
- Flyposting and any other highly visible advertisement breaches where a delay in action would be seriously detrimental to highway safety or visual amenity.

### Level 2 - Medium Priority

A site visit and investigations will usually be commenced within 5 working days for:-

- Breaches of planning control that involve building works likely to be contrary to that set out in the development plan or other material planning guidance.
- Breaches of planning control or conditions that result in harm or loss of amenity, or nuisance to a neighbourhood.
- Other unauthorised uses

- New breaches that undermine initiatives undertaken (eg Eastgate Street improvements scheme)

### Level 3 - Lower Priority

A site visit and investigations will be commenced within 10 working days for:-

- Development involving small domestic structures such as sheds or fences.
- Other breaches of advertisement control.
- Other breaches in planning regulations where the impact is not likely to significantly affect others, and a delay would not prejudice the council's ability to resolve the matter
- Land or properties left in such a poor state (e.g. through fly tipping / overgrown vegetation) where they result in loss of amenity, or nuisance to a neighbourhood.
- 'Pro-active' project work

## **APPENDIX B – Planning Enforcement Customer Service Standards**

1. We will investigate all complaints, as long as they are not anonymous or vexatious, and they have been received in writing, by email, or as a FOCUS enquiry. Other complaints will be investigated at the discretion of the Senior Planning Compliance Officer.
2. Complainants should provide as much information as possible including their contact details, and how the alleged breach affects them, and other information as set out on the Council's planning enforcement webpage.
3. Where the complaint does not relate to planning, either wholly or in part, we will refer the matter to the relevant department with your details, asking them to update you. We will retain and investigate any part of the enquiry relating to planning.
4. We will acknowledge all complaints within 5 days of receipt, naming the assigned officer undertaking the investigation, and their contact details.
5. We will ensure that complainant details remain anonymous.
6. Apart from acknowledging the complaint, and advising on its outcome, we will only update complainants on request.
7. We will only seek or take action where a breach is proven, demonstrable harm is caused, and where it is expedient and legally possible to do so.
8. Any actions sought or taken will be reasonable and proportionate to the proven breach, in accordance with government advice.
9. We will seek the co-operation of responsible persons through negotiation. We will, however, take a firm line where co-operation or agreement is not forthcoming, and the nature of the breach merits it, including where necessary prosecution.
10. We will inform complainants of the outcome of any investigation, with reasons.
11. Where the subject of any complaint is aware of the investigation, we will inform them of the outcome, with reasons.
12. We welcome feedback on our performance, and an opportunity to comment on-line is available through the City Council's planning enforcement website.
13. Should you not be satisfied with the handling of your complaint, in the first instance please contact the City Council's Private Sector Housing Manager. If you remain dissatisfied, the City Council's complaints procedure is accessible on the Council's website.