

REPORT TO: PLANNING MEMBER WORKING GROUP
Date of meeting: 22 March 2016
Report of: Assistant Director City Development
Title: Proposed City Development Enforcement Plan

1 WHAT IS THIS REPORT ABOUT?

- 1.1 To inform members of the preparation of an Enforcement Plan which will provide a framework within which the Council exercises its enforcement function under the Town and Country Planning Act and associated legislation.

2 ADVICE SOUGHT

- 2.1 Members are asked to endorse the Plan which is appended to this report.

3 BACKGROUND

- 3.1 The planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.
- 3.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development carried out without the requisite consent from the Council.
- 3.3 This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which suggests that Planning Authorities should prepare a plan that sets out their approach to the enforcement function.
- 3.4 The plan seeks to make the Council's approach to enforcement more transparent and explains how people can report breaches of planning control. It also explains that enforcement is discretionary and importantly, explains the test of expediency which is often misunderstood by the public.
- 3.5 By adopting an Enforcement Plan the Council will gain access to the Planning Enforcement Fund which is a central Government funded initiative to assist Council's to take out injunctions where serious and repeated breaches of planning control occur. The plan should also help the Council to deal more effectively with any complaints that arise about planning enforcement. Specifically it will be of assistance in cases where complainants are dissatisfied because enforcement action has not been taken because of expediency and/or proportionality issues.

Assistant Director City Development

Exeter City Council

City Development Enforcement Plan

Introduction

This plan explains how Exeter City Council carries out its planning enforcement activities. Planning enforcement is the process by which the Council responds to allegations of breaches of planning control. The National Planning Policy Framework 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.

Planning laws are designed to control the development and use of land and buildings in the public interest. The Council expects landowners and developers to comply with planning laws and not carry out development until the necessary planning permission has been obtained. In the event of unauthorised development, the Council has a range of enforcement powers that derive from the laws passed by Parliament which are exercised in accordance with Government circulars, guidance and Council policy.

The Council's priorities are to protect amenity and public safety, safeguard the natural and built environment and uphold local planning policy in the quickest and most effective way.

How to report a breach

The Council strongly encourages residents to communicate with each other and developers to try and resolve a breach of planning control informally. They can also approach their local Councillors to help achieve an informal solution. If the suspected breach cannot be resolved informally, it can be reported in confidence in one of the following ways:

- By email: planning@exeter.gov.uk
- By telephone: 01392 265223
- In person at the Civic Centre.
- By contacting your local Councillor: www.exeter.gov.uk/councillors
- In writing to City Development, Civic Centre, Paris Street, Exeter, EX1 1NN.

Information we will require

- An accurate description of the location or address for the site.
- A detailed description of the activities taking place that cause concern, including what harm the breach is causing and/or how it affects the complainant.
- Names, addresses and phone numbers (if known) of those persons responsible for the alleged breach or the land owners.
- The dates and times when the alleged breach took place including when it first started. Keeping a diary of your observations would help us.
- Any other information or evidence that may be able to assist, e.g. a planning application number; any previous problems/breaches.
- Your name, address, phone number and e-mail address (please note: anonymous complaints will not normally be investigated unless they relate to matters causing serious harm to public safety, or irreversible harm to the environment).

What we will do

We will:

- Investigate all alleged breaches of planning control reported to the council;
- Keep your personal details confidential at all times, unless required to disclose as part of court proceedings;
- Keep you informed of the progress of the case, if you request this, and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved;
- Actively pursue your complaint to what the Council considers to be a satisfactory conclusion;
- In cases where there may be a technical breach of planning control but the harm caused is insufficient to warrant formal action notify you of the reason for not taking formal action and close the case;
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

Enforcement is discretionary

Enforcement powers are discretionary and the Council is not required to take action just because there has been a breach of planning control. Enforcement action should be taken where there is significant harm. The key test is whether the breach of planning control would unacceptably affect public amenity. To help decide this, we would consider if planning permission would have been granted for the development had it been the subject of a planning application. The starting point is the Council's development plan policies. If the development accords with these, we would normally be expected to grant planning permission unless other material considerations, notably Government policy, indicate otherwise.

Enforcement action should always be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a short-term, trivial or technical breach of control which causes no harm to amenity.

Enforcement principles

The Council's approach reflects the principles of the Government's Enforcement Concordat:

- **Proportionality** – any action that is taken will relate to the seriousness of the breach.
- **Consistency** – Officers act in a similar way when faced with similar circumstances. The Council will also work with other services and authorities to ensure that consistency is maintained at a local and national level as far as possible.
- **Transparency** – the Council will try to help people understand what the law requires of them and make clear what needs to be done to achieve compliance. The Council will also make clear what people should do if they are not happy about any action that has been taken, or a decision not to take action.
- **Targeting** – our enforcement efforts will be directed against those whose activities pose the most serious risks or create the most danger to the public interest and those who have a history of non-compliance.
- **Openness** – while respecting confidentiality.

The Council's constitution delegates powers to take any enforcement action to the Assistant Director City Development, including the issue of Enforcement Notices, Stop Notices, Urgent Works Notices, and commencement of Injunctions. Prosecution or other formal legal proceedings are only taken with the agreement of the Corporate Manager Legal Services and the Councillor responsible for City Development (the *Portfolio Holder*).

The expediency test

The Council will have regard to the *proportionality* of a proposed action to the breach of planning control, and the extent of evidence and public interest in pursuing an action. There may also be considerations of risk assessments of the consequences, human rights and equalities. The test is whether the unauthorised activities are causing harm having regard to

development plan policies and other material considerations. This is often referred to as an **expediency** test.

The Council will not rectify all breaches of planning control. Action will only be taken where there is an unacceptable effect on the built and natural environment and public amenity. The Council is required by policies and legislation set by Central Government to decide the appropriateness of formal action.

Our priorities

It is not possible to investigate every complaint or carry out all investigations with equal priority and intensity. The ability to investigate a complaint and the level of resource and time spent on an investigation will depend on the number of current investigations and their scale of priority and the level of resource available.

Our resource is directed to breaches that cause the greater harm to the environment or to residential amenity. For example, the potential risk of permanent damage to a historic listed building will have a greater priority than a new shed in a residential garden.

In many cases, it is not possible to assess the priority that should be afforded to a case without first conducting an initial investigation or site visit. However, once that initial assessment has been made, cases will be prioritised in accordance with the following guidelines:

Priority 1

When irreversible and serious damage to the environment or public amenity would result.

Examples include:

- Unauthorised development affecting a listed building or a tree protected by a Tree Preservation Order likely to lead to substantial and/or permanent damage.
- Unauthorised demolition or development within a conservation area likely to lead to substantial and/or permanent damage to historic assets.
- Unauthorised development that may represent a physical danger to members of the public.
- Unauthorised operational development and/or material changes of use likely to cause severe permanent damage to the environment or amenity.
- Breaches of planning control which would otherwise be likely to acquire immunity from enforcement action due to the passage of time.
- Any breaches of planning control which would lead to serious traffic hazards, contamination or pollution being created.
- Unauthorised development which brings the planning system into serious disrepute.

Priority 2

Less immediate yet still serious and harmful breaches of planning control. These may include:

- Any continued/renewed breach of planning control where formal enforcement action has been authorised/taken.
- Breaches of either listed building or conservation area control not included in Priority 1.
- Unauthorised operational development and/or material changes of use causing material harm to the environment or amenity.
- Non-compliance with certain planning conditions (particularly pre-commencement conditions resulting in significant harm to amenity).
- Any other unauthorised development/change of use of land or buildings or breach of planning conditions resulting in significant harm to amenity.

Priority 3

Breaches which do not fall within Priority 1 or Priority 2 that are likely to remain stable and are unlikely to give rise to any severe or lasting harm to amenity and will not increase/accumulate over time, or may be easily remedied by taking relatively simple steps. Such breaches may include:

- Development (e.g., the erection of fences, walls, etc.) not deemed to be causing significant harm to amenity.

- Non-compliance with other planning conditions.
- The unauthorised display of advertisements unless they are causing significant harm to amenity.
- Untidy sites.

Priority 4

- Any breach of planning control falling within Priority 3 where little or no public interest has been generated and, therefore, does not warrant active investigation with the current level of resources.
- Anonymous complaints where no significant harm to public amenity has been established.

Enforcement tools

If negotiation does not secure compliance that the Council considers to be acceptable, it has the discretionary power to take formal action against a breach of planning control. The nature of the breach will inform the route that the Council chooses to pursue. The formal tools available include:

Type of enforcement action	Purpose
Planning Contravention Notice	Requires persons to divulge information in respect of land and activities. This is often the first step to determine if there is a breach of control and to inform the appropriate course of action.
Breach of Condition Notice	To secure compliance with conditions specified within a planning permission.
Enforcement Notice	To require steps to remedy the situation.
Completion Notice	A completion notice may be served if the Council considers that development (which has started within the statutory time limit for the commencement of development) will not be completed within a reasonable period. The notice must be referred to the Secretary of State for confirmation. There is a right to appeal this notice.
Stop Notice / Temporary Stop Notice	To require the unauthorised activities to cease.
Section 215 Notice	To secure the proper maintenance of land and buildings.
Injunction	To prevent unauthorised development and only used in a very limited number of specific circumstances. Can also be used to positively require something to happen.
Prosecution	Failure to comply with a notice is a criminal offence. To secure compliance with any formal enforcement notice and / or to bring the offence before the court for its consideration and, if convicted, sentence.
Urgent Works Notice	A direct way of securing repairs urgently necessary for the preservation of a listed building.
Direct action	In special circumstances and as a last resort, to make sure an enforcement notice is complied with, the Council will carry out the required steps in default of the owner or occupier's action. Costs incurred are recoverable from the owner or a charge is registered on the property with the Land

	Registry. Before taking direct action, the Council will consider the overall costs of carrying out the action and the prospects of recovering these costs, and any risks to the health and safety of Council employees, contractors, and the owner or occupier(s) of the property.
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Confidentiality

All complaints are dealt with in the strictest confidence and details of the complainants will not be made known without their agreement. Anonymous complaints will not usually be investigated unless they relate to a matter of public safety or irreversible public harm. However, the substance of the complaints themselves is not confidential. In some cases, it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. We frequently ask complainants to keep diaries of breaches of planning control.

Please be aware that we cannot prevent someone correctly guessing who made the complaint against them.

How long will the investigation take?

An enforcement investigation can be a lengthy and complex process. The time taken to determine each case will vary depending on the site, the people involved and the type of breach.

On receipt of a complaint, we will:

- allocate an investigating officer and decide on the priority to be given to the matter within 2 working days; and,
- if requested, provide an update to the complainant at key stages in the investigation and when significant progress has been made, such as after an initial site visit, when any action is decided upon and on any significant information from the site owner/occupier.

Public Engagement

A draft of this plan was circulated for comment to local developer agents, amenity societies and resident's associations. Information on the responses received and amendments made is available from the City Development service. The plan was agreed by the Council's Planning Member Working Group on xx month 2016.