

**PLANNING ENFORCEMENT  
POLICY, PRACTICE and GUIDANCE**



MALDON DISTRICT  
COUNCIL

December 2016

**APPENDIX 2**

**Maldon District Council  
Planning Policy Enforcement Guidance**

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### 1.0 INTRODUCTION

- 1.1. The Town and Country Planning Acts give discretion to the Local Planning Authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning enforcement service in Maldon District Council, and the approach that the District Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.
- 1.2. Paragraph 207 of the National Planning Policy Framework (NPPF) states that:
- “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 the alleged cases of unauthorised development and take action where it is appropriate to do so.”***
- 1.3. In the light of the above Framework, this policy statement has been prepared to outline the approach that will usually be adopted by the Council in resolving how will deal with unauthorised development and sets out the procedures that will expect to follow. This guide will enable us to work in a proportionate way according to the breach or offence committed.
- 1.4. This policy and guidance is in accordance with the National Planning Policy Framework (NPPF) by establishing a formal planning enforcement policy which provides a clear statement of the decision making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practices.

### **Maldon District Council – Enforcement Objectives**

- 1.5. The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and has an enforcement team within the Development Management section of the Planning and Regulatory Services to investigate and take action against unauthorised development. The service seeks to achieve the following objectives:
- 1.6. These objectives are:
- To promote compliance with planning requirements
  - To remedy the undesirable effects of unauthorised development

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- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system
- To strike an acceptable balance between protecting the amenity of the citizens of Maldon and other interests of acknowledged importance, and allowing development to take place
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan

### **Expediency and the Public Interest**

- 1.7. In considering whether to take any enforcement action, the determining issue for the Council will be whether the breach of planning control causes significant harm and it is in the public interest to take enforcement action.
- 1.8. Severe harm to public amenity will normally arise through those breaches of planning control which involve unauthorised works to a Listed Building, unauthorised works within a Conservation Area and unauthorised development which is contrary to Development Plan Policies. Action can also be taken to require owners to improve the appearance and condition of land and property, in the interests of local amenity.

### **The Council's Enforcement Objectives**

- 1.9. An owner or occupier of land can, without a specific planning permission or certificate of lawful use, be at a disadvantage if they subsequently intend to dispose of their interest in the land in question, and have no evidence of any permission having been granted for development. The Council appreciates that some developments have occurred over time and have gone unnoticed, but it has to investigate when complaints are made, or consider through their own investigations that matters need to be formalised.
- 1.10. The Council will be responsive to all potential enforcement matters and will pursue the following key objectives:
  - Respond to complaints about potential unauthorised development
  - Ensure that development is carried out in accordance with planning approvals
  - Be fair and take action that is proportionate to the breach or offence, in a responsive, helpful and consistent manner

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### 2.0 POLICY POSITION National Policy

- 2.1. The Council is mindful that enforcement action is a discretionary power but it is important that Local Authorities develop their own policy on enforcement matters. The Council will take action when it is expedient to do so, and any action will be commensurate with the seriousness of the breach of control.
- 2.2. It is only an offence to carry out development without planning permission in ~~a few~~ certain instances. Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out.
- 2.3. Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits. However, it is important that the Council responds to complaints and seeks to remedy breaches of planning control.

### Other Planning Policy Guidance

- 2.4. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of an historic fabric or structure, an important tree or belowground archaeology. Apart from the seriousness of the breach, the following matters have to be taken into consideration:
  - The Adopted Maldon District Replacement Local Plan (2005) remains the current adopted Local Plan.
  - The Maldon District Local Development Plan is the emerging Plan for the District and will constitute the new up to date statutory Development Plan for the District once adopted.
  - Through the Localism Act 2011, the Government has introduced a new tier of planning at the neighborhood level. Local communities will be able to prepare a Neighborhood Development Plan for their area which sets out specific planning policies.
  - Although they are not part of our statutory development plan, supplementary planning guidance documents (SPDs) (such as planning frameworks and briefs and conservation area appraisal and management strategies) play an important role in our planning decisions.
  - The National Planning Policy Framework (NPPF) was published on 27 March 2012. Amongst other things, the new guidance replaces many existing Planning Policy Statements (PPSs), Planning Policy Guidance notes (PPGs) and Circulars. The guidance is a material consideration in planning decisions.

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- The Planning Practice Guidance was first published on 6<sup>th</sup> March 2014. It was a result of a commitment to reform the Planning system to make it simpler, clearer and easier for people to use, allowing local communities to shape where development should go and not go.
- The provisions of the Human Rights Act 1998 when making decisions relating to planning enforcement.
- The principles of the Enforcement Concordat; Good Practice Guide for Small Businesses 1998 are proposed to continue to be applied. These principles include:
  - There will be openness in dealing with business and others.
  - Enforcers will be helpful, courteous and efficient.
  - Complaints procedures will be publicised.
  - Enforcement decisions will be taken in a proportionate manner.
  - Enforcement officers will strive for high standards of consistency.
  - To take into consideration the planning history of the site
  - To seek specialist help from legal, trees and conservation experts.
  - To be aware of relevant appeal decisions and case law decisions.
  - To note information provided by the owner/occupier or interested parties.

2.5 Government has given Councils the primary responsibility of taking whatever enforcement action may be necessary, in the public interest, within their administrative area. A private individual cannot initiate planning enforcement action, so they often look to the Council to act to remedy any concerns that they may raise.

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### 3.0 ESTABLISHING A BREACH OF PLANNING CONTROL

3.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as:

***“the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.”***

3.2 A breach of planning control is normally a form of development (a building/engineering operation, use or other activity) that is unauthorised, in that it does not have the benefit of planning permission or other required consent. It includes development not carried out in accordance with a planning permission, and any breach of condition. The fact that something is unauthorised does not, in itself, amount to an offence.

3.3 This contrasts with other elements of planning law, where certain works and activities are in fact offences that can be prosecuted in the courts. These include:

- Unauthorised works to listed buildings
- Unauthorised works to or the removal of protected trees
- Unauthorised advertisements

3.4 Underpinning all of this is a large body of case law. There is a range of powers available to Local Planning Authorities to take enforcement action to deal with breaches of planning control and these are contained in the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act, 1991), the Planning (Listed Buildings and Conservation Areas) Act 1990 and related Regulations

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### 4.0 THE COUNCIL'S INITIAL INVESTIGATION

#### How to report a suspected breach

4.1 Most investigations into breaches of planning control result from complaints received from members of the public or from Ward Councillors. The Council can be contacted by letter, ~~using the on-line form telephone, email or email in person.~~ It is essential that complainants submit details in writing as this ~~Written complaints are preferred as this~~ avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

4.2 Complaints should be addressed to ~~the Group Manager~~ Enforcement, Planning and Regulatory Services Directorate, Maldon District Council, Princes Road, Maldon, Essex, CM9 5DL (or as stated on the Council's web site) who will then ensure it is dealt with by the appropriate investigating officer(s).

4.3 The Council will need the following information before any investigation will take place:

- The precise location of the site or property to which the complaint relate.
- The exact nature of concern, i.e. the potential breach of planning control.
- An indication of any harm caused by the breach.

4.3.4 The following information will assist the Council in investigating the alleged breach:

- When the breach occurred.
- Any information on the identity of the person(s)/organisation responsible, if known.

Comment [ML1]: Has been split to make clearer what information is essential.

#### Confidentiality

4.4.5 All investigations are carried out in strictly confidential basis and the investigation team will not reveal the complainants' details. On serious breaches of planning control, which may warrant prosecution, or result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare and involvement in those cases is on a voluntary basis.

#### Anonymous Complaints

4.5.6 Anonymous complaints will not normally be investigated.

#### Recording Complaints

4.6.7 All complaints of potential breaches are entered onto the enforcement records system upon receipt, and a unique reference is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged. ~~Complaints will usually be acknowledged by email or letter within 5 working days, giving the~~

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~~name and telephone number of the investigating officer. Complainants are kept informed throughout the investigation process and are welcome to contact the investigation officer at any time for a progress update.~~

Comment [ML2]: This is explained at 4.9 so deleted so it doesn't repeat itself.

4.74.8 The initial investigation will usually involve checking the planning and any building regulation history of the particular site to establish any relevant development history and whether any conditions have been attached to any approval granted. Sometimes it is also necessary to check other records held by the Council such as council tax or business rates, environmental health records or outside organisations ~~such as the DVLC at Swansea,~~ in order to get a complete understanding of events.

4.84.9 A site inspection may prove necessary to establish further facts and evidence. Investigation Officers identify themselves when on site and explain the reasons for the visit. The owner/occupier or people working on the site will be interviewed to obtain factual information and photographs and measurements may also need to be taken. A detailed note is made of the findings in the investigation file, which is used to record all visits and discussions at meetings or on the telephone.

### Informing Complainants

4.94.10 Following an initial acknowledgement the Council will keep all complainants informed of progress at the following key stages of the process including, where relevant:

- The initial assessment, advising what action will be taken
- Any Issue of enforcement notice, or outcome of other action
- If an appeal has been lodged against a formal notice
- Closure of the investigation

### Rights of Entry

4.104.11 Investigation officers have the immediate right of entry onto sites under the provisions of S196A, S196B and 196C of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty four hours' notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

### Obtaining additional information

4.144.12 In some circumstances, when it has not been possible to establish the facts through normal investigation, or when the co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information relating to the breach within 21 days from the date of service of the Notice.

4.124.13 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary of events relating to the breach. This is helpful where problems occur in the evenings or at weekends or outside normal working hours. Such help is voluntary, but the evidence may be crucial when assessing

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whether a breach has occurred and whether further action is considered expedient to remedy the breach.

- | 4.134.14 If there is no breach of planning control evident, then an explanation will be given to the complainant and the file will be closed.
- | 4.144.15 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council however, needs to ensure that full and proper consideration is given to the matter and this can often take several weeks, occasionally months, prior to resolving whether a breach of planning control has occurred and determining what further action is merited.
- | 4.154.16 When there is enough evidence to establish whether a breach has taken place, the investigation officer will advise on the most appropriate course of action or, no further action, in some cases. The investigation officer will contact the complainant to inform them of the outcome.

## 5.0 PRIORITIES FOR ACTION

5.1 Some complaints will be more urgent than others and these will need to be given a higher priority including:

- Works to listed buildings, below ground archaeology and works to protected trees that cause immediate and irreversible harm, including any advertisement that may be affixed to them or other operational development such as builders storage, temporary buildings or parking areas that may be positioned next to them and likely to cause harm
- Councillor, MP enquiries and formal Parish Council complaints where there appears to be a serious breach or an offence.
- Operational development/building works where substantial and ongoing loss of amenity is likely to occur
- Fly posting which appears to be intensive and is likely to cause an amenity or public safety issue
- Breaches of planning control that are likely to be immune from enforcement within six months
- Changes of use affecting residential amenity
- Other development (e. g building works/changes of use and untidy condition of land/buildings)
- Building works affecting the character and appearance of a Conservation Area.
- Other advertisements and satellite dishes attached to protected trees or listed buildings

5.2 On receipt of a complaint, it will be prioritised, as discussed below, and a preliminary investigation will be undertaken to establish whether a breach of planning control has, or is likely to, have occurred.

### 5.3 Complaints classified as 'Immediate' – investigation within 1-2 working days

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology and flood defence or drainage works

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### 5.4 Complaints classified as 'Urgent' - investigation within 15 working days

- Councillor or MP complaints and formal Parish Council complaints where there appears to be a serious breach or an offence.
- Operational/building works/change of use/compliance with conditions/ obligations affecting residential amenity where ongoing severe neighbour disturbance is being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken

### 5.5 Complaints classified as 'Non-Urgent' – investigation within 25 working days

- Other changes of use
- Other building works/condition of land/compliance with conditions
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

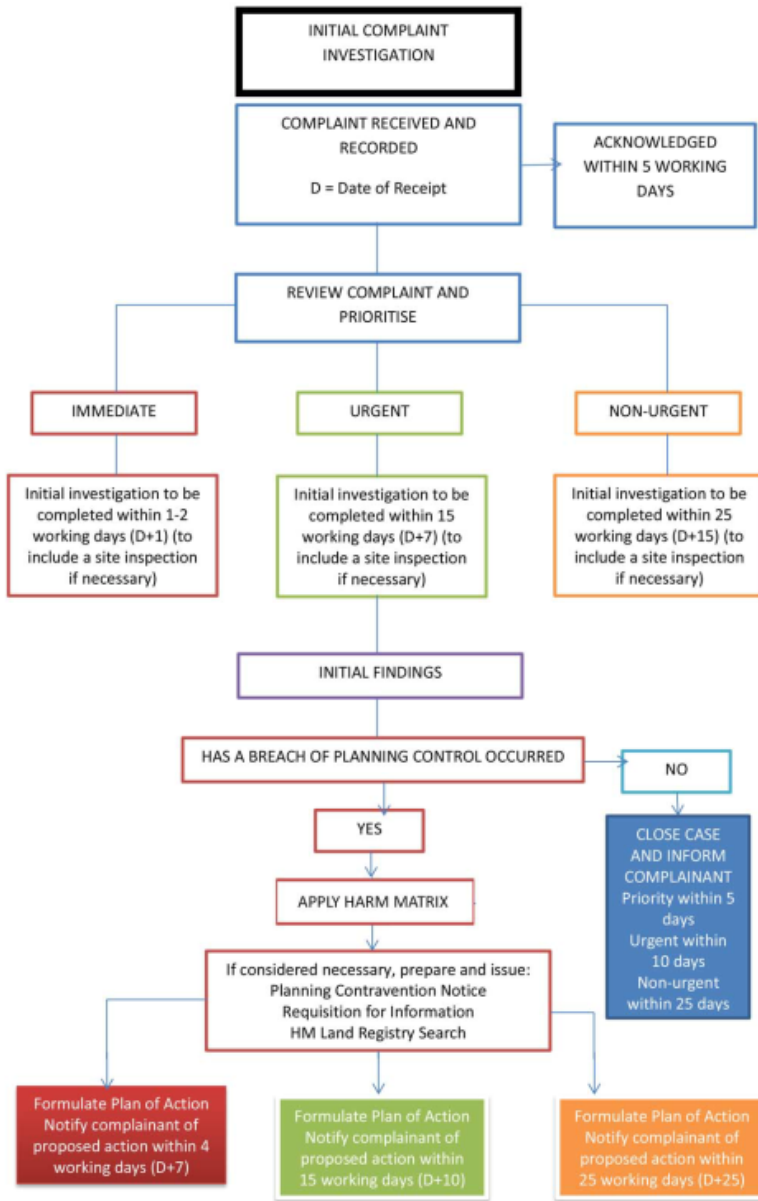
#### ~~Planning Advice and Enquiries~~

~~5.6. For general planning enquiries and advice that do not constitute a complaint into a breach of planning control, the matter will be looked into within 10 working days.~~

#### Initial Investigation Flow Chart

5.6. The following flow chart shows the procedure followed when investigating complaints.

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Comment [ML3]: Amended flow chart inserted that includes application of the harm matrix.

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### 6.0 ASSESSING THE COMPLAINT

- 6.1 An important element of the Council's Enforcement Policy is a prioritisation or ~~—~~ **Harm Assessment Matrix**. A number of local authorities have adopted an approach which attracts scores depending on the nature and location of an alleged breach of planning control. ~~and~~ Maldon Council first adopted this approach in April 2014. Following an initial site visit by an officer, an assessment of the breach is carried out in order to determine what level of officer time will be dedicated to investigating the breach further.
- 6.2 The matrix sets out a minimum score which needs to be achieved in order to ~~prompt justification for~~ justify further investigations. A score below ~~the designated minimum~~ 5 would normally result in no further action by the Planning Enforcement Team ~~in respect of the breach, although a other than an invitation to submit a retrospective application would normally be invited~~ in an attempt remedy/regularise the breach ~~and it will be expected that this is sum bitter in a short period of time.~~
- 6.3 ~~As detailed in the next section~~ Scores are based on ~~(i)~~ matters of fact i.e. does it relate to a listed building or ~~whether if~~ the site is in a conservation area, ~~plus and, (ii)~~ ~~to~~ matters of judgement i.e. whether the breach would result in irreversible harm or ~~whether or if the development, if~~ permission was granted, would the development result in an undesirable precedent.

HARM ASSESSMENT CRITERIA (see APPENDIX 1)

1. IS THE BREACH?

For **operational development** - are the works ongoing, stopped, complete or stable?

For **change of use** - is the use intensifying, is there an increase in activity, is there a change in appearance/ activity. Is residential occupation involved?

2. HIGHWAY SAFETY

YES = New/alterd access to a highway, significant increase in use of access, creates on street stopping and or parking

3. OTHER SAFETY ISSUES

YES = Hazardous materials stored, potential fire risk, interference with safety of other uses/users

4. CAUSING STATUTORY NUISANCE

YES = Where dust, vibration, smell, fumes, light creating adverse physical effect upon health, and or where Environmental Health are taking action

5. COMPLAINANT

Self-explanatory

6. AGE OF BREACH

Self-explanatory taking into account the '4 year' or the '10 year' rule.

7. DEGREE OF HARM

Is the harm widespread or localised?

Widespread\_– more than 10 residential properties directly affected, major policy breach i.e. dwelling in countryside or commercial operation in countryside, can be seen over several tens of metres, pollution is air borne and carried over neighbourhood.

Local\_– this is where there is harm but only to immediate neighbours affected.

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### 8. IRREVERSIBLE HARM

YES = effectively a planning judgement as to whether retention of operational works or change of use can be permitted without causing permanent damage to the environment or living conditions. Would an application be refused planning permission?

### 9. FLOOD RISK

Development within its respective Flood Risk Zone [graded 1 (low risk to 3 high risk)]

### 10. BREACH OF PLANNING CONDITION , ANY ARTICLE 4 DIRECTIONS,OR LIMITATIONS IMPOSED BY PERMITTED DEVELOPMENT RIGHTS

This will be a matter of fact and thus either yes or no

### 11. AFFECT ON THE CHARACTER OR APPEARANCE OF A CONSERVATION AREA

This will be a matter of fact and degree and a matter of either yes or no

### 12. LISTED BUILDING OR AFFECTING THE SETTING

This will be a matter of fact and degree and a matter of either yes or no

### 13. SPECIAL AREAS

This relates to whether the breach lies within a specific special project area such a the Maldon central regeneration area and is part of a specific proactive enforcement project

### 14. SENSITIVE AREAS

This will be a matter of fact and thus either yes or no. These special areas include:

AONB, SSSI, Ramsar Convention Site, Area of Archaeological Importance, Scheduled Ancient Monument

### 15. UNDESIRABLE PRECEDENT

A matter of judgement i.e. if similar work or a change of use has occurred would this undermine an important planning principle for the area or cumulatively cause harmful change to character of the area?

#### Review against matrix

~~An Enforcement Harm Assessment Form will normally be completed by an officer who has seen the development. Only complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of the Council's Actions.~~

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### 7.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?

- 7.1. The majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action only takes place when it is expedient and where other means to resolve the problem have failed. **It is a last resort.** The Council will take effective enforcement action when it is essential to protect the amenity of the area, the public or highway safety, and to maintain the integrity of the development management process within the District. The impact of some developments are more harmful than others and therefore action will be in the public interest and commensurate with the breach of planning control.
- 7.2. Authorised officers will normally decide whether formal notices are justified in accordance with agreed policies and action will be approved under the powers delegated to The Director of Planning and Regulatory Services or through the relevant committee/councillor involvement according to the Council's Constitution at the time.
- 7.3. When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:
- If the breach is minor with no significant effects – no further action required
  - If the development is such that it is in line with relevant local plan policies – the Council will usually invite a 'retrospective' application for planning permission
  - If the breach is likely to be immune from enforcement action due to the passage of time – an application for a Certificate of Lawfulness will be invited if permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed. A suitable period of time is allowed, depending on what needs to be done. For example, tenants must be allowed reasonable time to find somewhere else to live
  - As a last resort, formal notices can be issued, such as a Breach of Condition Notice or Enforcement Notice, if it is considered expedient having regard to the development plan policies and other material considerations. This is a discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable
  - In extreme cases, the Council can serve a notice to require any relevant activity to cease (a Stop Notice or Temporary Stop Notice) and there is provision to obtain a planning enforcement injunction to restrain an actual or apprehended breach of planning control

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- When a Breach of Condition Notice has been served and has not been complied with, the person who has been served with the notice can be prosecuted in the Magistrates Court
- When an Enforcement Notice takes effect but is not complied with, any owner/occupier or person who has control of, or has an interest in the land, can be prosecuted in the Magistrates Court
- Where appropriate, and if other means have not secured a cessation of the breach being enforced against it, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land
- When it is considered expedient not to pursue enforcement action against a breach of planning control, so no further action will be taken

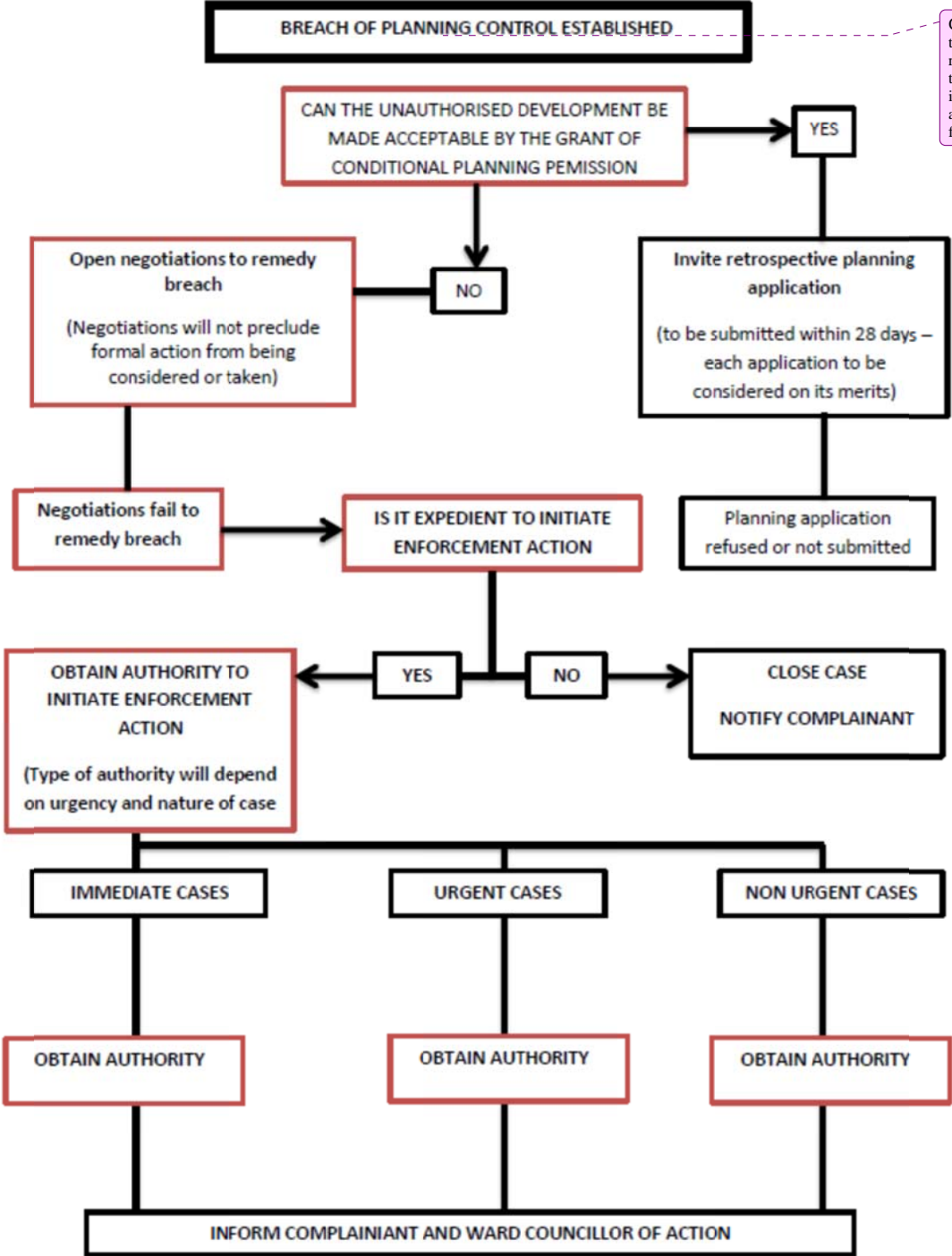
7.4. A robust case supported by evidence needs to be made to ensure any subsequent appeal and prosecution can be supported.

### **Flow Chart – Breach of Planning Control Confirmed**

7.5. Once a breach has been established, further investigation may be required and a time-table to be followed to resolve the breach according to its priority classification.

~~7.6. The flow chart below shows the procedure and time table to be followed once a breach has been established.~~

**ENFORCEMENT PROCEDURES FLOW CHART**



Comment [ML4]: Was an addition to the original policy. However, agreed to be removed as it is an internal process rather than being something that needs to be included within the formal adopted policy; also limits flexibility that might be required for individual cases.

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### 8.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

- 8.1 An offence occurs when an owner/occupier fails to comply with the requirement of an enforcement notice.
- 8.2 The Council will take action when the terms of an enforcement notice have not been complied with. Such action may involve:
- Prosecution of the parties concerned in the local courts
  - The issue of an injunction through the court system
  - Direct, or 'default' action
- 8.3 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the courts. If someone is found guilty of failing to comply with the terms of an enforcement notice, a maximum fine of £20,000 may be imposed by the court. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.
- 8.4 The Council will not necessarily withdraw from taking action in the courts once this has commenced, and this may apply even where the breach of planning control may be rectified before the case is heard.
- 8.5 In the case of a persistent offence against an unauthorised activity, an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.
- 8.6 In exceptional circumstances, the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise for example when the breach of planning control has not been remedied, despite the imposition of fines by the Courts or for continued breaches of planning control. In such cases, the Council will seek to recover its costs, in the form of a charge on the land for example, or by other means.
- 8.7 If an enforcement notice is served against a development, which is subject to a planning or listed building appeal which is currently under consideration by the Planning Inspectorate, the outcome of such an appeal may be awaited before taking further action to secure compliance with an enforcement notice. When an appeal has been dismissed, compliance with the requirements of an enforcement notice will then be pursued.
- 8.8 When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity. ~~Even though an enforcement notice has been discharged, the record will remain in the Land Charges Register unless specifically requested to be removed by the owner/occupier.~~

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### 9.0 ENFORCEMENT APPEALS

- 9.1 S174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal against an enforcement notice. The Planning Portal (web site) provides a link to relevant information.
- 9.2 An appeal must be made before the notice takes effect (normally 28 days after the date of issue of the notice). An appeal cannot be entertained if it is made after the date the notice takes effect.
- 9.3 An owner, occupier or any other person, who has an interest in the land, even if a copy of the notice has not been issued on that person, may make an appeal.

#### **Grounds of Appeal**

##### **Ground A – that planning permission ought to be granted (or a condition or Limitation be discharged)**

- 9.4 This is the 'deemed application' seeking planning permission and requires payment of a fee both to the Council and the Planning Inspectorate. The Council will ensure that the reasons for issuing the notice are well founded and in accordance with the development plan (where appropriate). The Council will then be able to argue on the planning merits of the case that planning permission should not be granted, or that permission should only be granted subject to conditions.

##### **Ground B – that as a matter of fact the alleged unauthorised development has not taken place**

- 9.5 The Council will, by investigating the breach of planning control and through collection of appropriate evidence, ensure that the matter alleged in the notice has occurred and has, in fact, taken place.

##### **Ground C – that the development (if it has taken place) does not constitute a breach of planning control**

- 9.6 Enforcement action will only be taken when it appears to the Council that there may have been a breach of planning control. Before taking action, the Council will consider:
- Whether the alleged breach constitute development
  - If it does constitute development, does it need planning permission
  - Whether planning permission been granted

##### **Ground D – that the time limit for taking enforcement action has passed**

- 9.7 When there is any doubt about when the breach of control first took place, before taking enforcement action, the Council will initiate an investigation to establish when the breach first occurred. This investigation may include the service of a Planning Contravention Notice, a Requisition for Information and an HM Land Registry search. Evidence may also be sought from neighbours, previous owners and any other person with personal knowledge of the history of the site. This will ensure from the evidence available that the development has not achieved immunity from enforcement action due to the passage of time.

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9.8 The immunity from taking enforcement action will be four years in respect of unauthorised building works or for the making of a material change of use of any building for use as a dwelling house, or non-compliance with a planning condition which prohibits the use of a building as a dwelling house.

9.9 In all other cases, the period from immunity will be ten years.

### **Ground E – that copies of the notice were not properly served**

9.10 The Council will take all reasonable steps to issue a copy of the enforcement notice on every person with an interest in the land as required by the legislation based on the information obtained by a Requisition for Information, a Planning Contravention Notice or HM Land Registry search or by such other means necessary.

9.11 Notices will be issued by Recorded Delivery mail or by hand.

### **Ground F – that the steps required by the notice exceed what is necessary to remedy any injury to amenity**

9.12 The Council will ensure that the steps required to be taken are both necessary and the minimum required in order to remedy the breach of planning control. The steps will be stated clearly so that there is no doubt about what has to be done.

### **Ground G – that the period for compliance is too short**

9.13 The period for compliance will be a reasonable period having regard to the particular circumstances of the case and the actual or potential harm being caused to the amenity of the area by the unauthorised development.

9.14 When particular personal family hardship will result in order to comply with an enforcement notice, the Council will ensure an adequate period for compliance is granted.

### **An appeal made under Ground A**

9.15 This ground of appeal relates solely to the planning merits of the case. If an appeal is successful under this ground, planning permission can be granted for the development enforced against.

### **An appeal made under Grounds B, C, D and E**

9.16 An appeal made under any or all of Grounds B, C, D and/or E are grounds often referred to as the 'legal grounds' of appeal.

### **An appeal made under Grounds F and G**

9.17 An appeal made under either Grounds F and/or G are not concerned with the planning merits of the case or legal issues but regards to the requirements of the Notice itself.

## **APPENDIX 2**

### **Appeal Methods**

- 9.18 An appellant may elect an appeal to be heard at a public inquiry, an informal hearing or by way of an exchange of written statements.
- 9.19 It is the Planning Inspectorate who will make the final decision as to the appropriate method of appeal.
- 9.20 Unless complex planning issues or legal issues are involved, the Council will normally request enforcement appeals to be dealt with by way of an exchange of written statements.

### **Award of Costs**

- 9.21 Costs can be awarded against both parties whichever method of appeal is used if either the Council or the appellant is found to have acted unreasonably in accordance with statutory procedures.
- 9.22 When it appears to the Council that an appeal has been made simply to delay or prolong the requirements of a notice taking effect, or if Ground A has been cited where the development is clearly contrary to planning policy, or some other ground is cited which clearly has no chance of success, the Council will apply for an award of costs against the appellant.

## APPENDIX 2

### 10.0 OTHER PLANNING ENFORCEMENT POWERS

10.1 Some breaches of planning control are the subject of separate legislative codes.

10.2 These include:

- Listed Buildings
- Advertisements
- Trees
- Condition of land or buildings affecting the amenity of an area

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

#### Listed Buildings

10.4 The Council attaches particular importance in ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 and/or a term of imprisonment of up to two years. There is no time limit upon the District Council to pursue listed building enforcement action.

10.5 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is an offence, where a penalty of up to £20,000 may be imposed.

#### Advertisements

10.6 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) [and the Anti-Social Behaviour Act 2003 \(part C\) Penalty Notices for Graffiti and Fly Posting.](#)

10.7 Advertisements are divided into three main groups:

- Those advertisements that are expressly excluded from local planning authority control
- Those that have 'deemed consent' so that the local planning authority's consent is not required provided the advertisement is displayed under certain rules
- Those advertisements that require the local planning authority's consent

10.8 The rules are complicated and seek to control amongst other things, the height, size and illumination of the advertisement.

## APPENDIX 2

10.9 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended).

10.10 The Council can issue a Fixed Penalty Notice in relation to the display of an advertisement to any person that there is reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed under the Anti-social, Crime and Behaviour Act 2014; this is discussed further below.

Comment [ML5]: Added paragraph to explain fixed penalty notices.

10.11 Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent required and if refused, there will be a right of appeal. The continued display of an advert after consent has been refused, and any subsequent appeal dismissed, may well result in prosecution. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty of a continuing offence.

10.12 Any display of an advertisement without consent is an offence which is immediately open to prosecution, or in some cases to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser, the Council must give 48 hours before obliteration or removal takes place, where the regulations apply.

10.13 Some advertisement may be displayed on highway land in which case there are powers that Essex County Council (ECC) has to remove these directly. The Council will seek ECC to remove these where complaints are received but in some cases, such as fly posting joint action may be necessary.

### **Action available to Councils either as the Local Planning Authority (LPA) and / or the Highway Authority**

10.14 The Council could take a number of actions including:-

1. Remove the signs directly (with or without an attempt to attempt to recover the costs)
2. Proceed to prosecute in the magistrates court
3. Where the signs are on highway land or fixtures seek Essex County Council to take direct action using their highways powers.
4. Possible use of ~~an anti-social behaviour order (ASBO)~~ a Fixed Penalty Notice under the Anti-social, Crime and Behaviour Act 2014.
5. Do nothing (depending on the scale of the matter)

Comment [ML6]: Changed to take into account FPN

10.15 The only two reasons local authorities can take into account in dealing with advertisements under the Advertisement Regulations are public safety and amenity.

10.16 Failure to comply with these conditions will allow the LPA to immediately serve a removal notice giving a reasonable time for such signs to be removed otherwise the LPA could undertake the work and recover the costs.

## APPENDIX 2

10.17 **Removal (as the Local Planning Authority):** Local planning authorities have specific powers to deal with unauthorised advertisements under planning legislation and allows local planning authorities to remove and dispose of any display structure which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to signs in a building to which the public have no right of access. Where possible, the owners / advertisers should be notified before removal.

10.18 **Prosecution (as the Local Planning Authority):** The local planning authority is empowered to prosecute those who display advertisement signs without consent including the beneficiary of such advertisement signs. The fine for displaying without consent is up to £1,000 (level 3 of the standard scale) and £100 per day as fine if after conviction, the advertisement continues to be displayed. A person shall be deemed to have display an advertisement if is:

- (a) The owner of the property or the occupier of the land on which the advertisement is displayed
- (a) The advertisement gives publicity to his goods, trade, business or other concerns

10.19 Notices should be served on both the owner / occupiers of land on which the advertisement is displayed as well as the beneficiaries of the advertisement unless:

- (a) They have no knowledge of the advertisement displayed
- (b) They have not given consent to the advertisement displayed

10.20 The local planning authorities do not need to give notice of removal if the advertisements are displayed on land or properties belonging to the Council.

10.21 **Removal (by the Highway Authority).** The Highway Act 1980 makes provisions for Highway Authorities to remove advertisement signs, painting, etc. affixed to the surface of Highway or any other structure in the Highway. Illegal signs can be removed without giving notice to the perpetrators.

10.22 **Prosecution (by the Highway Authority).** Prosecution under the Highway Act 1980 attracts a fine of up to £1000.

10.23 **Anti – social behaviour orders (ASBOs).** This was new measure introduced in 1999. Graffiti and fly-posting are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of impending action. This type of action is considered more appropriate where there is an extensive problem of illegal fly posting.

### Trees

10.24 Under Section 198 of the Town and Country Planning Act 1990, the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it. The offence is liable on summary conviction to a fine of up to £20,000.

## APPENDIX 2

10.25 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, the same penalties apply.

### **Land or buildings that adversely affect the amenity of an area**

10.26 Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be cleaned up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period.

10.27 The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

### **Proceeds of Crime Act - POCA**

10.28 The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

10.29 During the enforcement process the authority seeks full recovery of costs, where possible. Consideration will be given ~~for the~~to the appropriateness and expediency of the use of POCA powers, including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle. This will both ~~to~~ help cover the costs of enforcement and ~~to~~ ensure an effective disincentive to ongoing breaches of planning control.

Comment [ML7]: New section

## APPENDIX 2

### 11.0 ENFORCEMENT POLICY FOR MALDON DISTRICT COUNCIL

11.1 Taking into account updated national policy guidance, local pressures and resources available the following policies will be applied across the district:

#### POLICY ENF1

The Council is committed to a planning enforcement function prioritised in the following order:

##### **Category 1. Immediate – investigation expected within 1-2 working days**

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology, flood defence and drainage
- Advertisements that may cause immediate harm such as 'A' boards affecting pedestrian safety, advertisements including fly posting which are intensive in scale or are affixed to trees and/or listed buildings

##### **Category 2. Complaints classified as 'Urgent' - investigation within 15 working days**

- ~~Councillors, formal Parish Council and MP complaints where there appears to be a serious breach or an offence.~~
- Operational/ building works/ change of use/ compliance with conditions/ obligations affecting residential amenity where ongoing severe neighbour district being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken including mobile homes/ caravans

##### **Category 3. Complaints classified as 'Non-Urgent' – investigation within 25 working days**

- Other changes of use

## APPENDIX 2

- Other building works/condition of land
- Compliance with conditions unless significant harm is likely e.g. flood [defence or contaminated land issues](#)
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

### POLICY ENF2

Complainants shall receive an email or letter of acknowledgement that the complaint is being investigated normally within 5 working days of receipt. They will receive updates based on the priority category of the investigation informing them what action the council intends to take or to close the case.

### POLICY ENF3

Formal enforcement action to remedy a breach of planning control will only take place when it is considered expedient and in the public interest to do so.

### POLICY ENF4

If there is severe harm to public amenity as a result of the failure to comply with planning conditions or unauthorised development, the Council will consider the use of stop notices, breach of condition notices, temporary stop notices and injunctions to speed up the effectiveness of the enforcement process.

### POLICY ENF5

When investigating alleged breaches of planning control involving small business uses, the Council will take a positive approach towards the continuation of the activity and it being regularised by the grant of planning permission. If, however, there is a sustainable planning objection, the Council will endeavour to assist possible relocation to alternative premises. Provided there is not a severe impact on local amenity, the Council will seek to ensure that reasonable time is given to comply with enforcement action taken against business use activities.

### POLICY ENF6

The Council will pursue, whenever possible, legal proceedings and/or the taking of direct action in the event of failure to comply with formal enforcement and related planning notices. [The Council will consider the Proceeds of Crime Act for prosecutions.](#)

### POLICY ENF7

The Council will seek to address certain enforcement matters through other appropriate enforcement agencies such as the County Highway Authority (Essex County Council), Natural England and The Environment Agency where they have more immediate or effective enforcement powers.

**APPENDIX 1**

The following is a brief explanation of some of the more technical terms used throughout this policy document

**Breach of Condition Notice (BCN)**

The power to serve a BCN is contained in Section 187A of the Town and Country Planning Act 1990. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no right of appeal against the serving of a BCN. Failure to comply with a BCN constitutes a criminal offence.

**Breach of Planning Control**

This is a term used when development has taken place that requires specific planning permission and no such permission has been granted. The term will also apply to failure to comply with a planning condition or limitation; carrying out works to a listed building; the display of illegal advertisements; unauthorised works to protected trees and trees within conservation areas and the condition of land or buildings which affect the amenity of an area.

**Certificate of Lawfulness**

Under Section 191 of the Town and Country Planning Act, application can be made to a local planning authority for a Certificate of Lawfulness in order to confirm whether an alleged breach of planning control is now lawful for planning purposes and therefore immune from enforcement action because of the time that has elapsed since the breach first took place. For a use to become immune from enforcement action and become lawful for planning purposes the following timescales apply:

- Erection of buildings and other works. 4 years
- Changes of use of a building to a single dwelling house. 4 years
- Changes of use of buildings or land other than a dwelling house. 10 years
- Non compliance with a condition relating to the occupation of a building as a dwelling house 4 years
- Non compliance with a condition other than occupation of a building as a dwelling house 10 years

(There may be exceptions and questions of interpretation that should first be discussed with the Planning Authority)

## GLOSSARY OF TERMS

### Default Powers (or Direct Action)

Under Section 178 of the Town and Country Planning Act, local planning authorities have the right to enter land or property and carry out works which the owner or occupier has failed to comply with any steps required to be taken in an effective enforcement notice. The costs are recovered from the landowner. The costs can be made as a charge on the land, to be recovered at the time of a future sale of the land or property, if the costs cannot be recovered at the time works are carried out in default.

### Development Orders

The Town and Country Planning (General Permitted Development) Order 1995 grants 'deemed consent' for certain forms of development without the need to specifically apply for planning permission.

The Town and Country Planning (Use Classes) Order 1987 groups common uses together in a number of classes and confirms that changes occurring within the same Class would not normally require the submission of a planning application.

### Enforcement Notice

The power granted to local planning authorities to issue and serve an enforcement notice is conferred under Section 172 of the Town and Country Planning Act 1990. The Notice must clearly state:

- The alleged breach of planning control
- The steps required to remedy the breach
- The reasons why an enforcement notice has been served
- The time available to comply with the steps

The notice has to be served on anyone having an interest in the land.

There is a right of appeal against the notice provided the appeal is lodged with the Planning Inspectorate before the date the notice takes effect. Once an appeal has been lodged, the enforcement notice no longer has any effect until such time as the appeal has been determined.

### Fixed Penalty Notice

Under the Anti- social, Crime and Behaviour Act 2014 authorised enforcement officers of the District Council can issue a Fixed Penalty Notice for a number of offences. This includes fly-tipping, graffiti and fly posting.

### Injunctions

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## **APPENDIX 2**

When the Council consider it necessary or expedient for a breach of planning control to be restrained because it is causing serious harm to the amenity of an area, application can be made to the county court or high court for an injunction, whether or not they have exercised or are proposing to exercise any other powers of enforcement.

Such cases are rare but could be used for example when it is believed there is good evidence that works are likely to occur to protected trees or listed buildings which will result in irretrievable harm.

An injunction may be issued against a person whose identity is unknown but who is able to be identified by other means.

### **Local Planning Authority**

Maldon District Council is the local planning authority for most matters relating to the control of development within the administrative boundary except for the extraction of minerals and the deposit or waste, which is the responsibility of Essex County Council.

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

The power to issue a Planning Contravention Notice (PCN) is conferred by Section 171 of the Town and Country Planning Act 1990. A PCN can be served when the Council wishes to find out from the owner or occupier of the land when the suspected breach has occurred and additional information relating to the breach to enable a more detailed assessment to be made. A PCN is only served if a suspected breach has occurred and invites the owner or occupier of the land to make representations or submit a planning application.

Serving a PCN cannot rectify a breach if it has occurred. Failure to respond to a PCN within a specified time limit constitutes an offence and the recipient of the notice becomes liable to prosecution proceedings being taken.

### **Requisition for Information**

A Requisition for Information will be served by the Council in order to establish the names and addresses of all persons who have an interest in land. A Notice is served when the Council intends to initiate formal enforcement action.

### **Standing Orders**

Standing Orders made under the Council's Constitution grants certain delegated powers approved by the Council to allow the Director of Planning and Regulatory Services and other officers to serve certain notices and initiate prosecution proceedings which are updated from time to time.

### **Stop Notices**

The power to issue a Stop Notice is conferred under Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an enforcement notice and has the general effect of requiring a breach of planning control to cease almost immediately.

## APPENDIX 2

The issue of a Stop Notice is usually made when a breach is causing harm to the amenity of an area. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal on legal grounds.

### Proceeds of Crime Act - POCA

The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

Confiscation orders under POCA are frequently used against fraudsters and drug-dealers to deprive criminals of the financial gain they have received from their criminal conduct. Less frequently used though, is the power to obtain confiscation orders against people who commit crimes under legislation administered by local authorities.

For POCA to apply there must have been a successful prosecution for the offence and the prosecutor must have asked for the confiscation order during the proceedings, or the court otherwise believes it was appropriate to make it. The order will not be made unless the defendant has benefited from the criminal conduct.

The confiscation order must be made in the Crown Court. Before making the order the Court must consider, on the balance of probabilities, whether the defendant has a criminal lifestyle or has benefited from the particular criminal conduct. The term 'criminal lifestyle' comes directly from the legislation. The key tests for deciding if an individual has a criminal lifestyle or has benefited from particular criminal conduct are found in section 75(2) and will frequently mean "an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence" (section 75(2)(c)). The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed by the Court.

APPENDIX 2

**APPENDIX 2**

**ENFORCEMENT HARM ASSESSMENT FORM**

**TO SHOULD BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT**

- All complaints arising from all retrospective refusals of planning permission will automatically receive a full investigation so it is not necessary to mark the harm score
- All Category 1 complaints under ENF1 will be investigated
- Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based
- Where there is no breach of planning control found the file will be closed accordingly.

POINTS ALLOCATION	SCORE
Is the breach	<u>Ongoing Development Worsening</u> (1)
	<u>Recently Commenced</u> (1)
	Stable (0)
** Highway safety issue	Yes (2)
	<u>No</u> (0)
**Other safety issue (e.g. <u>contaminated land</u> )	Yes ( <del>4</del> 2)
	<u>No</u> (0)
**Causing a Statutory Nuisance	Yes ( <del>4</del> 2)
	<u>No</u> (0)
Complainant <u>where full information has been provided as referred to in section 4</u>	<u>Immediate neighbour</u> (2)
	Members, <del>immediate neighbour</del> , MP, MDC Officer, Parish Council (1)
	<u>Other neighbour or member of public</u> (1)
	Anonymous, Malicious (0)
Age of breach	Within 6 months of immunity (2)
	<u>Less than 1 month</u> (1) <u>Less than 1 Year</u> (1)
	More than 1 year old (0)
Degree of Harm	Widespread (2)
	Local (1)
	None (0)
Irreversible Harm	Yes (3)
	No (0)
Breach of condition or Article 4	Yes <del>9</del> (1)
	<u>No</u> (0)
** Flood risk	Zone 3 (2)
	Zone 2 (1)
	Zone 1 (0)
**Conservation Area (or adjacent to )	Yes (2)
	No (0)
**Listed Building	Yes ( <del>3</del> 2)

**APPENDIX 2**

(or affecting character or setting of )	<u>No (0)</u>	
Special <del>exercise</del> operations or tasks (Please provide details)	Yes (1)	
	No (0)	
**Sensitive site (please provide details)	Yes (1)	
	No (0)	
Undesirable precedent (please provide details)	Yes (1)	
	No (0)	
<b>TOTAL POINTS (HARM SCORE)</b>		

**Only Complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/ likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of our actions.**

Note: \*\* These areas are likely to need specialist input from other agencies/organisations and therefore the time periods referred to in this document may be affected if any responses from the agencies/organisations are delayed.