



Service Specific Enforcement Policy

Planning Enforcement

November 2020

To be read in conjunction with the Cheshire
East Council Corporate Enforcement Policy

September 2019

1. Aims of this Policy

1.1 To advise and inform businesses and individuals with regards to:

- the legislative powers available to the Local Planning Authority in relation to the effective enforcement of planning control and how and when those controls will be exercised
- the decision-making process
- priorities
- a framework for measuring the performance of the service

1.2 This policy is to be read in conjunction with the Cheshire East Corporate Enforcement Policy.

2. Introduction

2.1 Cheshire East Borough Council covers an area of 1,116km² and comprises 10 towns, Alsager, Congleton, Crewe, Knutsford, Macclesfield, Middlewich, Nantwich, Poynton, Sandbach, and Wilmslow. It has 76 Conservation Areas and 2,637 listed buildings, 47 of which are of the highest grade (Grade 1). It is essential, in order to maintain the borough as a highly sought-after place to live and work that its' environmental and heritage assets are protected and enhanced through the planning process. Planning enforcement underpins this process and therefore plays a pivotal role in balancing the need to protect the environment from the harmful effects of unauthorised uses and development while promoting growth particularly at a time when there is significant pressure for new residential development.

3. Policy Guidance

3.1 National guidance on planning enforcement is contained in the National Planning Policy Framework (NPPF) www.planningportal.gov.uk/planning/nppf and National Planning Policy Guidance (NPPG) www.planningportal.gov.uk/planning/nppg.

3.2 Local planning policy is contained within the Cheshire East Local Plan Strategy 2010-2030, Supplementary Planning Documents, Neighbourhood Plans, and the legacy Local Plans for the former Congleton, Crewe and Nantwich and Macclesfield Borough Council's.

3.3 Paragraph 58 of the NPPF relates specifically to enforcement of planning control and makes it very clear that the Council's use of its enforcement powers is discretionary.

3.4 Enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits. Legislation provides that planning permission may be granted retrospectively to regularise development which has already been carried out without the necessary permission.

- 3.5 Any development carried out without the necessary planning permission is done so at the developers own risk. However, it does not constitute an offence. It only becomes an offence at a point when the requirements of a Notice have not been complied with.
- 3.6 Planning enforcement aim to deal with all allegations of breaches of planning control expeditiously however some cases take a considerable amount of time to resolve. Cases can be complex and necessitate in-depth investigations over a period of time. Similarly, negotiations can be lengthy. In all cases planning enforcement must gather sufficient detailed evidence prior to considering taking formal enforcement action. There is a right of appeal against most types of notice which suspends the Notice coming into effect until the outcome of the appeal.
- 3.7 Effective enforcement is important to:
- Tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of an area.
 - Have a demonstrably detrimental impact on highway safety e.g. a direct result of significant increase in vehicle movements or the use/creation of a substandard access.
 - Safeguard environmental, ecological and historic assets
 - Maintain the integrity of the decision-making process
 - Help to ensure public acceptance of the decision-making process is maintained.
- 3.8 The volume of complaints in relation to a breach of planning control is not an indicator of harm.
- 3.9 Any action which is taken must be proportionate to the breach which it is seeking to remedy and must also be expedient.
- 3.10 An effective enforcement function is essential to a credible planning service and it is with this in mind that resources must be targeted to dealing with the most serious breaches of planning control where clear and demonstrable harm is being caused.
- 3.11 As a unitary authority the Council also fulfils the role of Minerals and Waste Planning Authority. Alleged breaches of planning control which involve minerals or waste related development are investigated, and if necessary, enforced against by the Minerals and Waste Team in consultation and liaison with the Planning Enforcement Team. Those investigations are also covered by this policy.

4. Breaches of Planning Control

- 4.1 A breach of planning control includes the following:
- Carrying out development without the required permission

- Failing to comply with any condition or limitation subject to which planning permission has been granted
- Carrying out certain material changes of use without planning permission
- Carrying out certain demolition work
- Building or Land whose external condition adversely affects the amenity of the area by virtue of its visual impact as a result of for example a significant lack of maintenance.

4.2 Some breaches of planning control constitute criminal offences and can be subject to legal action and significant fines from the court. Such offences include:-

- Unauthorised work to a listed building
- Unauthorised advertisements
- Unauthorised demolition of certain unlisted buildings in a Conservation Area
- Unauthorised works to trees protected by a Tree Preservation Orders
- Unauthorised works to certain trees within a Conservation Area.

4.3 Matters which **DO NOT** constitute a breach of planning control include:

- Development which is Permitted Development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015. Please follow the link to:
https://www.cheshireeast.gov.uk/planning/view_a_planning_application/do_i_need_planning_permission/planning-permission.aspx
- Boundary and trespass issues are a civil matter and residents should seek their own legal advice.
- Loss of aspect or view
- Obstruction of a Public Right of Way (PROW) should be reported to Cheshire East Public Rights of Way via the link below.
https://www.cheshireeast.gov.uk/leisure_culture_and_tourism/public_rights_of_way/contact_public_rights_of_way.aspx
- Activity taking place on a highway in the form of vehicles associated with new developments, or house renovations, where there are no parking restrictions.
- Activity taking place on a highway where there are parking restrictions please follow the link to:
https://www.cheshireeast.gov.uk/car_parks_and_parking/penalty_charges/parking_contraventions/parking_contraventions.aspx or the following link to report a parking infringement at
https://www.cheshireeast.gov.uk/car_parks_and_parking/report-illegal-parking.aspx
- Obstruction of the highway by a vehicle is a police matter please contact Cheshire Constabulary on 101 non-emergency call.
- Works to trees not protected by a Tree Preservation Order or outside a Conservation Area.
- Planting of shrubs/trees.

- Storage of a caravan on a driveway (even if prohibited by a covenant) – this is a civil matter, please seek your own independent legal advice.
- *Re-roofing properties (unless a listed building).
- Standard television aerials
- Solar panels on houses (unless in a Conservation Area or Listed Building)
- Flying the national flag of any country
- Restrictive covenants in deeds - these are a civil matter and you should seek your own independent legal advice.
- Loss of property value.
- Competition between businesses.
- *Internal works (unless a listed building).

*Building Regulation approval may be required for some works. Please follow this link to access interactive guidance which provides information on the requirements and process.

<http://www.civacance.co.uk/services/building-regulations/building-regulations-information-for-homeowners.aspx>

Planning enforcement has no control over these matters and has no power to intervene.

5. Legislative Framework

5.1 Local Planning Authorities have powers contained within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control to remedy proven breaches by statutory means.

5.2 The following sets out the legislative framework applicable to breaches of planning control (this list is not exhaustive and is subject to change by parliament):

- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- The Town and Country Planning (Trees) Regulations 1990 (as amended)
- The Tree Preservation England
- The Town and Country Planning (General Permitted Development) Order 2015 (as amended)
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- Part 1 of the Wildlife and Countryside Act 1981 (as amended) section 25 – Role of Local Authorities.
- The Human Rights Act 1998
- Caravan Sites Act 1960 and 1968

6. How to Report an Alleged Breach of Planning Control

- 6.1 Alleged breaches of planning control can be reported to the Council using the online enforcement enquiry form located at www.cheshireeast.gov.uk/planning/planning_enforcement.aspx or by telephoning the Councils Contact Centre on 0300 123 5014. Full details of the allegation must be provided along with full contact details including an email address (where applicable) this allows the Local Planning Authority (LPA) to target its limited resources and contact the complainant more readily. If the site of the alleged breach has no specific address a photograph or map showing the location should be included with the online form to avoid delay in an investigation.
- 6.2 A complainant's details will be kept confidential (subject to any request from the Information Commissioners or the Courts).
- 6.3 A reported breach will be acknowledged within 3 working days and will be investigated in accordance with the timescales set out in this plan.
- 6.4 **Anonymous Complaints** – It may not be possible to investigate such a complaint due to the limited information provided and as a result of anonymity officers are unable to make contact to obtain any additional information that may be necessary. In certain cases, it may be possible to identify both the breach of planning control and the level of harm it is causing from an initial site inspection, e.g. an unauthorised building or extension. However, in other circumstances it will not be possible to identify the breach or seek to remedy it without evidence being provided by the complainant (e.g. allegations concerning running a business from a residential property, hours of operation). Without this evidence formal enforcement action will fail at appeal or in the courts and therefore will not be commenced. In these circumstances, the Council will undertake a desk top analysis in the first instance. If it is considered necessary one site visit will be carried out and if it is not possible to identify a breach of planning control from this visit the investigation will not be progressed any further. Complainants will be notified of this procedure when contacting the Council.
- 6.5 **Additional Investigations Required** - It may be necessary to carry out further investigations after the initial site inspection to determine whether or not a breach of planning control has occurred. This may involve additional site inspections, research, seeking advice from other services/agencies or seeking further information from the complainant, site owner or other parties.

In certain circumstances, e.g. where the allegation relates to a material change of use, it may be necessary for the complainant to keep a diary of activity, including dates, times, duration and nature of suspected breach, over a period of not less than three weeks to assist the Council in their investigations. If the complainant is unwilling to assist, they may be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.

6.6 Expedient/Proportionate

Enforcement action will only be taken when the Council is satisfied that it can demonstrate that the proposed action is both expedient, i.e. necessary to remedy demonstrable harm, and proportionate, i.e. the remedy it is seeking does not exceed what is reasonably required in order to remove/reduce the level of harm being caused. Where no material harm can be demonstrated enforcement action will not be taken.

In some circumstances, and in order to be proportionate, action may only be taken against certain breaches of planning control and may not include all of the development that has taken place without the benefit of planning permission.

6.7 Where resources permit the Council will undertake pro-active monitoring of compliance with planning conditions. Resources will be targeted to development sites in accordance with the designated hierarchy.

- Major development sites
- Development sites with significant ecological or heritage assets
- Other development

7. Priorities

7.1 Priority 1 – High - Site visit within one working day

- Unauthorised works to listed buildings
- Unauthorised demolition in a Conservation Area
- Development causing immediate and irreparable harm to an area of land which has special protection.
- Development causing serious danger to the public (This does not include unsafe working practices or parking of operatives or delivery vehicles on the highway. These are matters that the Council cannot control and should be reported directly to the Health and Safety Executive or the police respectively.)
- Unauthorised works to, or affecting, trees covered by a Tree Preservation Order, or in a Conservation Area.

7.2 Priority 2 – Medium – Site visit within 5 working days

- Building work that is already in progress
- Development which is potentially immune from enforcement action within 6 months (following a period of 4 years in relation to building works already undertaken and 10 years in relation to a material change of use).
- Development causing serious harm to its surroundings or the environment
- Breaches of Condition/non-compliance with approved plans which is considered by officers of the Council to be causing serious harm

- Development which represents a clear breach of planning policy and is unlikely to be granted planning permission.

7.3 Priority 3 – Low – Site visit within 15 working days

- Other building work which is complete, e.g. an extension which already has a roof on it.
- Development not causing significant harm to its surroundings or the environment - where the breach is technical in nature or is a minor deviation from a planning permission.
- Advertisements.
- Breaches of condition/non-compliance with approved plans causing no significant harm to, or no harm to, the character or appearance of an area e.g. where a window has not been glazed with obscure glass and the development is not yet occupied.
- *Development which is likely to be permitted development, - the erection of sheds, outbuildings, porches, rear single storey extensions. (See link below)
- *Minor domestic development e.g. fences, satellite dishes (see link below)
- Untidy Land, i.e. where land is having an adverse impact on the appearance of an area. (This does not extend to land which is merely overgrown).

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https://www.cheshireeast.gov.uk/planning/view_a_planning_application/do_i_need_planning_permission/planning-permission.aspx.

NB It will be officers of the Council's discretion which priority a case is allocated and whether or not a site visit is required.

8. Targets

8.1 The LPA aim to achieve an "identified action" in relation to alleged breaches of planning control within 8 weeks of receiving the enquiry or where a complainant is requested to keep a diary of activity receipt of that diary. Identified actions are:

- **No Breach**
If, following an initial investigation it is evident that there has been no breach of planning control the case will be closed.
- **Action Not Expedient**
In some instances, a breach of planning control may be identified but it may be considered to be minor, insignificant in nature or causing no material harm in planning terms. Alternatively, there may be insufficient evidence to pursue the matter. In such cases enforcement action would not be expedient and the case will be closed however the developer would be invited to submit a retrospective application to regularise the development.
- **Breach ceased voluntarily**

Where it has been established that a breach of planning control has occurred, the Council will, where appropriate, attempt to negotiate a solution to remedy that breach without recourse to enforcement action. Such negotiations may involve the reduction/cessation of an unauthorised use or activity or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where a breach of planning control causes serious harm to amenity or an historical or ecological asset.

- **Planning application requested***

In circumstances where a breach of planning control has occurred, and it is considered that the development could be made acceptable by the imposition of conditions a retrospective planning application would be invited within a specified timescale. In such circumstances it will be made clear that the invitation is made without prejudice to any final decision the Council may make in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take enforcement action.

*Where an application has been requested the time period for submission will normally be 4 weeks from the date of the request.

- **Relevant Notice issued**

Where it has been established that a breach of planning control has occurred the Council will consider using the discretionary use of its powers to take action to remedy that breach. These powers are listed in Table 1 below. The use of these powers is discretionary, and they will only be used when it is considered expedient to do so. Any action must be proportionate to the breach it is seeking to remedy.

There are rights of appeal to the Secretary of State against an Enforcement Notice/Listed Building/Conservation Area Enforcement Notice. In the case of a Breach of Condition Notice or a Temporary Stop Notice there is no right of appeal to the Secretary of State and they may only be challenged by an application for Judicial Review to the High Court. In the case of a S215 Notice (Notice Requiring the Proper Maintenance of Land) the appeal is made through the Magistrates Court.

Where it appears to the Council that a breach of planning control may have occurred it will consider the serving of a Planning Contravention Notice (PCN) or a Requisition for Information (RFI) to obtain information relating the suspected breach of planning control or site ownership details. There is a legal requirement for the recipient of a PCN or RFI to respond within the prescribed timescales.

- **Legal proceedings requested**

Where there is evidence that a Notice has not been complied with the Council may seek to prosecute any person/s responsible for that offence. Cases are normally

heard in the Magistrates Court however certain proceedings may be taken to the Crown Court, County Court or High Court.

In such instances, instructions will be sent to the Council's legal services with regards to those proceedings. In order for any case to proceed there must be sufficient evidence to support the allegation and it must be in the public interest to proceed with the matter.

If the Council considers it expedient and proportionate to seek an injunction it will do so through either the County of High Court. Injunctions are only sought in exceptional cases.

9. In relation to minerals and waste planning permissions all mineral and landfill sites will be visited annually (or more frequently where deemed appropriate) to check compliance with any attached conditions. Under the Town and Country Planning (Fees for Applications and Deemed Applications (Amendment) (England) Regulations 2006, sites will have an agreed number of chargeable visits during the financial year (April to March) with a minimum of two and a maximum of eight.
10. Site visits are charged as follows:
- Where the site is an active site, or partly an active site and partly an inactive site, the fee payable shall be £288
 - Where the site is inactive the fee payable shall be £96.

11. Enforcement Proceedings - Table 1

Type of Enforcement Action	Description
Enforcement Notice/Listed Building/Conservation Area Enforcement Notice	<p>Where a breach of planning control is resulting in demonstrable harm or conflicts with planning policies and where the harm or conflict could not be overcome by the imposition of conditions on a grant of planning permission.</p> <p>The Enforcement Notice will specify the reason(s) for its issue, the steps required to remedy the breach, the date it takes effect and the time period(s) for compliance.</p>
Stop Notice	<p>Where a breach of planning control is causing serious harm to public amenity and the environment and in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry period of the related Enforcement Notice.</p> <p>The Stop Notice will refer to the Enforcement</p>

Type of Enforcement Action	Description
	<p>Notice to which it relates, specify the activity or activities which are required to cease and the date it takes effect.</p> <p>(A Stop Notice cannot be used to prevent the use of a building as a dwelling).</p>
Temporary Stop Notice	<p>This differs from the normal Stop Notice in that Temporary Stop Notice does not have to wait for an Enforcement Notice to be issued. In addition, the effect of a Temporary Stop Notice will be immediate.</p> <p>The Temporary Stop Notice will set out the activity that the Council believes to be in breach of planning control. It will also set out the Council's reasons for issuing the Temporary Stop Notice. A Temporary Stop Notice lasts for a maximum of 28 days.</p>
Breach of Condition Notice	<p>Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation under the Town and Country Planning (General Permitted Development) Order 2015.</p> <p>The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.</p>
Section 215 (Untidy Land) Notice	<p>In instances where the amenity of an area is adversely affected by the condition of land or buildings a Notice can be issued which requires specified steps to be taken to address the adverse condition of the land and/or buildings within a prescribed timescale.</p>
Prosecution	<p>The Council will consider commencing prosecution proceedings in the Courts against any person/s who has/have failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.</p> <p>The Council will also consider commencing prosecution in the Courts where unauthorised</p>

Type of Enforcement Action	Description
	<p>works have been carried out to trees protected by a Tree Preservation Order or trees in a Conservation Area, as well as unauthorised works to a listed building, unauthorised demolition in a Conservation Area, unauthorised advertisements or where the recipient of a Planning Contravention Notice, Requisition for Information of S330 Notice has failed to provide the requested information within the prescribed timescale.</p> <p>Before commencing any legal proceedings, the Council will need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.</p>
Simple Caution	<p>Where appropriate, consideration will be given to offering a simple caution to a person rather than pursuing a prosecution through the Courts. A caution will only be considered in instances where the Council is satisfied that there is sufficient evidence to offer a realistic prospect of conviction and the offender admits their guilt.</p>
Injunction	<p>Where a Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to secure compliance the Council will consider applying to the Court for an Injunction. Such action will only normally be considered if the breach is particularly serious and is causing or is likely to cause exceptional or irreparable harm.</p> <p>In exceptional circumstances, and where there is substantive evidence of an apprehended breach of planning control the Council may seek a pre-emptive injunction.</p>
Direct Action	<p>Where any steps required by an Enforcement Notice have not been met within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a S215 (Untidy Land) Notice have not been met within the prescribed timescale the Council will consider whether it is expedient to exercise its' powers under S178 and 219 of the Town and</p>

Type of Enforcement Action	Description
	Country Planning Act 1990 (as amended) to; (a) Enter the land and take the steps; and (b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

12.0 Reporting

- 12.1 A regular report on the performance of the planning enforcement service will be presented to the Strategic Planning Board (or any equivalent) for information, subsequently a copy of this report will go to both Northern and Southern Planning Committees.
- 12.2 Ward Members will be notified within 5 working days of the issue of an Enforcement Notice, Breach of Condition Notice, S215 Notice, Temporary Stop Notice or Stop Notice in their ward.

13.0 Appeals

- 13.1 There is a statutory right to appeal against the Council's decision to issue an Enforcement Notice and S215 Notice. Guidance on how and where to make that appeal will be attached to any Notice issued. These guidance notes also provide details of the grounds on which an appeal may be lodged. That appeal must be submitted before the Notice takes effect.
- 13.2 Where an appeal is lodged against a Notice it will be suspended from coming into effect until the outcome of the appeal is known. If the appeal is dismissed the Notice will come into effect on the date of the Inspectors decision.
- 13.3 There is no right to appeal against the Council's decision to issue a Breach of Condition Notice.
- 13.4 Appeals against a S215 (Untidy Land) Notice are heard in the Magistrates Court.
- 13.5 The Council maintains an Enforcement Register for Notices. Viewing of this can be done by arrangement with either the Northern Office, based at the Town Hall, Macclesfield or the Southern Office at the Municipal Buildings. Please contact 0300 123 5014.

14.0 Works in Default

- 14.1 The Council has the power to carry out works in default of certain Notices and recover all of its reasonable costs from the any person/s who own the land at the time of the works. It is not necessary for the Council to have exhausted all other avenues, e.g. prosecution before a decision is made to carry out works in default.

- 14.2 Where it is considered to be reasonable and proportionate the Council will carry out works in default and will seek to recover all of its costs either directly from the owner/occupier or by placing a registered charge on the land. Ultimately the Council may seek to use its powers to force the sale of land to recover its costs.

15.0 Verbal/Physical Abuse Towards Officers

- 15.1 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and, where appropriate, will use legal action to prevent abuse, harassment or assaults on Officers. To obstruct an officer in carrying out their duties is an offence and legal action may be taken against any person/s doing so.
- 15.2 Officers are entitled to, if subjected to verbal abuse either in person or on the telephone, terminate the meeting or telephone call.

16.0 Rights of Entry

- 16.1 Officers have the right to enter land or adjoining land, at any reasonable time to investigate an alleged breach of planning control with the exception of a dwelling house where 24 hours notice is required should access be denied.
- 16.2 To deny an officer access in any other circumstance could be considered to constitute an offence of obstruction for which the Council could seek to prosecute any person(s) obstructing an officer.
- 16.3 If access is denied to a dwelling house after 24 hours notice has been given that may also constitute obstruction.
- 16.4 In circumstances where access has been denied or there is reasonable prospect that it will be denied the Council can apply to the Magistrates Court for a Warrant of Entry.

17.0 Complaints and Compliments about the service

- 17.1 In accordance with the Council's Compliments and Complaints procedure persons wishing to submit a compliment or make a complaint about the planning enforcement service should do so in writing to:

Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ.

- 17.2 Alternatively, you can telephone 0300 123 5500 or complete the "Contact Form" at www.cheshireeast.gov.uk

17.3 If the complainant is not satisfied with the Council's response, then they may complain to the Local Government Ombudsman. Advice about the type of complaint the Local Government Ombudsman can investigate as well as application forms for such complaints can be found at the following web site, www.lgo.org.uk. Applications forms for such complaints an also be made available on request at Cheshire East Borough Council offices.