



GREATER CAMBRIDGE SHARED PLANNING SERVICE

JOINT PLANNING COMPLIANCE POLICY

CAMBRIDGE CITY COUNCIL AND SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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1 INTRODUCTION

1.1 Planning plays an important role in managing development to ensure a high-quality environment, facilitating a better pattern of land use, and securing the efficient use of resources. These outcomes support several objectives of both Cambridge City Council and South Cambridgeshire District Council, a partnership forming the Greater Cambridge Shared Planning service (GCSP).

1.2 The planning regime can only achieve these objectives if it operates an effective planning compliance service. As part of our commitment to the delivery of an efficient and effective planning compliance regime, GSCP has drafted this policy.

1.3 This policy has been formulated to allow consistent and effective management of the rising demand for investigations, and to help everyone understand the basis upon which decisions surrounding planning compliance and any subsequent action taken are made.

1.4 This policy also sets out how the service will prioritise and respond to planning breaches, and contains information for all those involved in, or affected by the compliance process. The policy is available for officers and members involved in the decision-making process and will allow resources to be more clearly focused on corporate priorities.

1.5 Government guidance encourages Councils to publish a local planning compliance policy and set out how they are going to manage this proactively, in a way that is appropriate for their area.

2 LEGISLATION AND GUIDANCE

2.1 The Town & Country Planning Act 1990 as amended (parts VII and VIII) and the Planning (Listed Building and Conservation Areas) Act 1990, provide the principal legislative basis for planning compliance.

2.2 The National Planning Policy Framework (NPPF), Planning Practice Guidance and case law is clear that the use of powers to enforce compliance is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. In determining whether to take action, the Local Planning Authority (LPA) would also expect to consider all material planning considerations, including the policies in the adopted local “development” plan for the area, and any associated supplementary planning guidance.

Effective enforcement is important to:

- tackle breaches of planning control which have an unacceptable impact on the amenity of the area or are otherwise seriously contrary to planning policy
- maintain the integrity of the decision-making process
- help ensure that public acceptance of the decision-making process is maintained.

2.3 The powers available to Local Planning Authorities are outlined in **Appendix A**.

3 BREACH OF PLANNING CONTROL

3.1 A breach of planning control is not a criminal offence, except in limited cases such as unauthorised work to a listed building, tree works and advertisements. Any action taken against a breach is at the discretion of the LPA, there is no duty to act.

3.2 When a breach is identified that cannot be resolved informally, councils are required to make a judgement as to whether it is appropriate (expedient) to take formal action. This is done through consideration of Local and National Planning Policies, the level of harm caused by the breach, the “fall-back” position (how the breach compares to what would have been allowed anyway, e.g. under permitted development) or whether the breach would set a precedent for further development.

3.3 Where action is not taken, this decision must be transparent and consistent. It is important to strike a balance between protecting the amenity and other interests and enabling acceptable development to take place, even if initially unauthorised.

3.4 Where action is taken, this must be prompt and effective and commensurate with the breach to which it relates to. The system is designed to mitigate harm rather than to punish contraveners.

3.5 What is considered a breach of planning control:

- Development such as building work or alterations has been carried out without planning permission where it was required – details of all planning permissions, the approved plans and the conditions which apply to them can be found online on the GCSP Public Access database.
- The conditions that were attached to the granting of the planning permission have not been complied with.

- Work or demolition has occurred to a listed building or a building in a conservation area without the necessary permissions and/or consents.
- Unauthorised work has been undertaken to a tree or trees protected by a Tree Preservation Order (TPO).
- Unauthorised works to a tree or trees in a conservation area, or work to any rural agricultural hedgerow has been carried out without consent.
- Engineering operations, such as the significant raising or lowering of ground levels or land, or the formation of earth bunds has been undertaken without permission.
- The use of land or a building has changed without the appropriate permissions, such as short-term visitor accommodation
- Unauthorised display of an advertisement such as a sign.
- The land is in such a condition that it adversely impacting on the wider area.
- Development has occurred in an area which is subject to an Article 4 Direction that restricts permitted development rights. Further details are available on the Planning Portal website.

3.5 What is *not* considered a breach of planning control:

The following lists examples where a breach has either *not* occurred or is outside the timescale for action:

- Building work or extensions that don't require planning permission. National Legislation allows for a range of building works which can be undertaken without formal planning permission – this is known as Permitted Development. More information on whether planning permission is required can be found on the Planning Portal website.
- Changes in the use of land or buildings which are permitted or not so significant that they comprise a material change of use.
- The display of advertisements which do not require consent - the regulations relating to advertisements allow the advertiser to display certain types of advertisements without the need for any consent.
- Where the development has been carried out some time ago and the lapse in time means that the breach of planning is immune

from action.

- Issues relating to waste disposal, burning, including bonfires and tipping which are the responsibility of Environmental Health at either South Cambridgeshire District Council or Cambridge City Council.
- Issues relating to the adopted highway (including advertisements displayed within the Highway or on street furniture, or illegally parked cars) – these should be referred to Cambridgeshire County Council which is the Highways Authority.
- Problems relating to noise and disturbance; smell nuisance and light pollution which are investigated by Environmental Health at either South Cambridgeshire District Council or Cambridge City Council.
- If buildings or extensions have been constructed inadequately or there are concerns regarding potentially dangerous structures, this should be reported to the 3C Shared Services Building Control team.
- Problems relating to covenants or other legal restrictions on a specific piece of land or building are civil and/or legal matters.
- Neighbour disputes concerning antisocial behaviour are a police matter.
- Boundary or land ownership disputes are civil matters.
- Work to trees that are **not** covered by a tree protection order or are not in a conservation area.
- Suspected future breaches (things you believe *might* happen).
- Trade or competition complaints.
- Some works undertaken by Councils and Statutory Undertakers under permitted development. Details are provided in the GPDO.

4 THE ROLE OF THE OWNER, OCCUPIER, USER OF LAND AND/OR BUILDINGS

4.1 GCSP recognise that some breaches of planning control may not be intentional. All those who are responsible and involved in any alleged or identified breach of planning control are nevertheless expected to engage constructively with

the Compliance Team to resolve issues at the earliest opportunity. Failure to engage early with the compliance team on notification of a potential breach of planning is likely to reduce opportunities for agreeing informal resolution of the breach. Where it appears that the breach could be made acceptable and the person responsible for the breach is engaging constructively with the compliance team, a retrospective planning application will be invited with the expectation that this course of action is taken quickly and as soon as practicable. If a planning application has been submitted but is not yet valid (e.g., because of a lack of information) the applicant will be expected to provide this information without delay as this will not normally be used as a reason to delay formal action.

4.2 In cases where it is believed that an alleged breach is lawful for various reasons, including the passage of time, the onus will be on the perpetrator to provide the Compliance Team with sufficient evidence to demonstrate this is the case, the burden of proof if on the perpetrator.

4.3 Owners and occupiers of Listed Buildings will be expected to maintain these in good order and to ensure the necessary consents are obtained before undertaking any works to them.

4.4 Owners and occupiers of land will be expected to check the status of any tree before undertaking any works to it. Ignorance of the existence of a Tree Preservation Order, or the location within a Conservation Area will not be treated as a legitimate excuse for having contravened planning controls.

5 SERVICE STANDARDS AND PRIORITIES

5.1 Officers receive a high number of complaints relating to allegations of breaches of planning control. It is appreciated when a breach of planning control occurs, people may suffer and want the matter dealt with swiftly. It is important that those breaches of planning control considered more serious than others are dealt with more urgently.

5.2 GCSP aim is to carry out an initial site visit, if required and considered urgent, within 5 working days of notification of a potential breach. When an investigation is considered necessary, cases will be dealt with on a priority basis as follows:

- **High priority cases** are for work which is irreversible or irreplaceable and these will be immediately investigated within 5 working days of receipt—examples include damage or loss of Listed Buildings or protected trees
- **Medium priority cases** are for activities have or can cause harm, such as adverse effects on conservation areas or breaches of conditions. Our aim is to instigate the investigation and assess whether a breach of planning control

within 10 working days of the site visit.

- **Low priority cases** are for a development which may cause some harm but could be made acceptable by way of implementing conditions or simple correction action. Our aim is to instigate the investigation and assess whether a breach of planning control within 20 working days of the site visit.

5.3 In every case, GCSP will try to achieve an outcome at the earliest possible stage. However, it must be remembered that officers can only operate within powers of the relevant legislation and will need to prioritise activities

5.4 All live enforcement cases will be reviewed monthly by the team.

5.5 In accordance with national guidance, where it is considered possible to do so, having regard to planning policies and the assessment of potential impacts, the service will provide an opportunity to resolve planning enforcement enquiries through an agreed set of actions, without resorting to further formal action. This will require action by the property owner once an investigation has begun. If there is clear evidence that an unauthorised use or development is causing serious harm and corrective action is considered necessary to address the harm, or to prevent further irreversible harm, the Council will seek to use formal enforcement measures more promptly.

5.6 Reports will be provided monthly to the Planning Committee of each Council setting out all new complaints received and current complaints under investigation in their respective areas and a list of those cases closed and the outcome of the investigation.

6 INVESTIGATING A COMPLAINT

6.1 Anyone who believes that a breach of planning control has occurred can notify the planning compliance team online. To avoid vexatious complaints and allow the Council to engage with the complainant, any complainant must be prepared to identify themselves. Anonymous complaints about a third party will not be investigated. If a member of the public wishes to be anonymous then they may ask either their local Ward Councillor or Parish Council to submit the online form on their behalf.

Before you make a complaint, you are encouraged to check the shared planning service website to consider whether there is planning permission already for the development, or to review the conditions. Planning compliance operates to protect the public interest and it is therefore helpful if you can be clear in your submission why you believe there is a breach of control and what impact the breach has on you and the locality. The decision to act needs to consider the effect on matters of public interest rather than private or personal interests. It is therefore helpful if a

complainant can provide as much information as possible, including photographs, which are easy to upload on the e-form.

6.2 In some cases, it may be necessary to rely on evidence from complainants to take the necessary action. Those persons will need to consider whether they are willing to actively assist GCSP by providing information in the first instance and potentially acting as a witness at an appeal or in Court. The Compliance Team Officers will explain what may be required in these cases.

6.3 When a complaint is received through an e-form on the GCSP website it will be automatically entered into GCSP database records, and an acknowledgement sent. As indicated above the complaint will be prioritised according to its nature. Once recorded, complainants will be provided with the details of the officer assigned to deal with their complaint. The investigation of cases may require repeat site visits, consultation with relevant bodies and negotiation. When these occur, officers will keep original complainants informed of progress and indicate arrangements for this in the initial response letter.

6.4 The Local Planning Authority has legal authority, through the Town and Country Planning Act to enter land and buildings in order to carry out investigation of an alleged breach of planning control. Whilst seeking cooperation of landowners and property owners to carry out an investigation, if required, the Council can seek the authority of the courts to secure access properties and land. Whilst on site visits officers will have regard to the Equalities Act 2010, Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant.

6.5 An investigating officer may, where they consider an offence has occurred, seek to gather evidence around the alleged breach of planning by way of an interview with an alleged contravener 'under caution' where appropriate.

6.6 Following an investigation, it will be determined whether a breach of planning control has occurred. If no breach of planning control is found to have taken place, then the complainants and any relevant parties will be informed, and the case closed.

6.7 If the investigation finds that a breach of planning control has taken place the complainant and those subject to the complaint will be informed, along with details of the measures that the Council requires to be taken to remedy the breach. The decision to take enforcement action is discretionary. Even where a breach of planning control has taken place, the Council is not automatically required to act. National Planning Practice Guidance is clear that local planning authorities should act proportionately in responding to suspected breaches of planning control.

6.8 The objective of the Councils compliance team is to resolve the harm that arises. Legislation prescribes a range of enforcement options available to a Local Planning Authority (see appendix A). The most expedient mechanism to resolve a breach of planning will not always be through the use of statutory notices – particularly where the property/landowner engages constructively to seek to address

the planning harm identified. This may include seeking retrospective planning permission so that conditions controlling the use can be applied where required to address the unacceptable impacts of the development or seeking to clarify and determine the lawfulness of the development where a range of activity has taken place on land.

6.9 The decision to take formal enforcement action is discretionary and will be made on a case-by-case basis bearing in mind the need to take a proportionate approach as set out in the NPPF. This decision will only be taken after careful consideration of the relevant facts, the planning merits of the case, including reference to the planning policies which apply at local and national level, and Equalities and Human Rights legislation where appropriate and relevant. GCSP must also 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 is reasonable. Where it is felt that formal action should not be taken the case will be closed and all those involved informed. If formal action is required, the appropriate notice(s) will be served and again those involved will be informed. The various forms of notices which form the toolkit for action by the Councils are set out in Appendix A.

6.10 Dealing with enforcement cases can take be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity, and therefore the process itself can take considerable time. In addition, if a person chooses to appeal against formal enforcement action this will lengthen the time taken to resolve the case.

6.11 If the investigation indicates that a breach of control has occurred that justifies enforcement action, an Enforcement Notice will be served. The Notice takes 28 days to come into effect during which time the person involved can appeal against it to the Secretary of State. An Enforcement Notice may be quashed or revised by the planning inspector appointed by the Secretary of State.

6.12 Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months. An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a reasonable period for their completion. If a person does not comply with a notice, they may be prosecuted with the possibility of being fined by the Courts.

6.13 Contrary to popular belief a breach of planning control is not automatically a criminal matter (until there is a failure to comply with a formal notice). However, in the following cases a criminal offence is committed once a breach is established:

- Unauthorised works to a Listed Building. This is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. There is no time limit upon the council within which to pursue Listed Building compliance action and/or prosecution.
- Display of an advertisement without the necessary consent: This is an offence under section 224 (3) of the Town and Country Planning Act (1990)
- Fly Posting – the displaying of an advert without the landowners' consent.

Flyposting is an offence under section 224(3) of the Town and Country Planning Act 1990.

- Unauthorised works to a tree the subject of a Tree Preservation Order (TPO). Under section 210 of the Act, it is an offence to cut down, uproot, or willfully destroy a protected tree, or willfully damage, top or lop a protected tree in such a manner as to be likely to destroy it.
- Unauthorised works to trees in Conservation Areas: Most established trees (except fruit trees) in Conservation Areas are protected, under sections 211 and 212 of the Act.
- Unauthorised works to Hedgerows. It may be an offence under section 97 of the Environment Act 1995 and section 5 of the Hedgerows Regulations 1997, to remove hedgerows without the Council's consent.
- Failing to obtain planning permission for demolition of unlisted buildings in conservation areas. This is an offence under section 196D of The Town and Country Planning Act 1990.

6.14 The Councils, as enforcing authorities will use discretion in deciding whether to prosecute offences. Prosecution will be pursued when it is in the public interest and in accordance with the Crown Prosecutor's guide. The principal aim is to remedy the harm caused by the breach. The relevant factors will include:

- the seriousness of the breach,
- the likelihood of securing a conviction,
- whether the works to comply would be straightforward,
- the costs of direct action and the likelihood of the recovering those costs,
- the likelihood of the breach being quickly re-established if direct action is taken.

Where appropriate the Councils could consider seeking a Confiscation Order under the Proceeds of Crime Act 2002. The Act allows the Councils to recover assets that have been accrued through criminal activity this can include breaches of planning control that give rise to a criminal offence, such as non-compliance with an enforcement notice.

6.15 In the case of vexatious complainants, these will be referred to each Partner Council's respective complaints procedures. This is for recurring complaints with excessive related work / costs arising from such.

7 WHAT IF THE COMPLAINT IS AGAINST A PERSON

7.1 If the compliance team contact a person about an alleged breach of planning control, they are entitled to know what the allegation is (but not who made it) so their side of the matter can be explained.

7.2 If the person contacted is not involved, or if the complaint is unfounded, no action will be taken. If the person is involved the compliance team will advise of the details of the breach and how it can be put right.

7.3 Co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised works/use.

A reasonable period of time, usually 28 days will be allowed for this to happen.

7.4 In some circumstances the submission of a retrospective planning application may be invited, if it is considered that permission may be granted.

7.5 If there is a business which is threatened by enforcement action, GCSP will ask the councils to help identify alternative premises to minimise the possible impact on the business. This does not mean formal action will be delayed or stopped.

7.6 If an Enforcement Notice is issued it will give the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the period for compliance. Those receiving a formal notice are advised to respond promptly to any correspondence received and stop the work or activities which are the subject of the notice.

7.7 A notice may be appealed against, and this is dealt with by the Planning Inspectorate (PINS). There is more information about the appeal process and how to submit an online enforcement appeal through the GOV.uk appeals page.

8 ENFORCEMENT REGISTER

8.1 It is a statutory requirement that a district planning authority maintains a register of notices that is open for public inspection. The register will be available via our Public Access service from November 2022.

9 DELEGATED POWERS

9.1 The Council has delegated responsibility for most decisions on whether to take enforcement action, and prosecution for breaches of enforcement cases to the Joint Director of Planning. In turn, and in accordance with a scheme of officer delegation, the Joint Director has delegated decision making on certain types of enforcement decisions, to senior officers in the shared planning service. This allows planning compliance matters to be investigated efficiently, and for formal action to be taken quickly in urgent cases.

10 INFORMATION SHARING

10.1 The planning enforcement service routinely shares information with other services within the Councils to investigate alleged breaches more effectively, and to

assist in fulfilling other council functions. Complainants' identities will not be divulged to staff outside the planning department without consent.

10.2 It is important that members of the public feel confident about reporting breaches of planning control to GCSP. With that in mind, GCSP will not disclose complainant details to third parties without consent. The identity of a person making a complaint will be kept confidential unless the Council is required by law to release the information. If a case proceeds to formal action, evidence from the complainant may be needed as part of the case. In such cases, GCSP will usually ask the complainant to make a statement.

APPENDIX A: POTENTIAL OUTCOMES OF AN INVESTIGATION

Where an investigation identifies that a breach of planning control has occurred, the Town and Country Planning Act provides for a range of measures that can be taken by the Council. Potential outcomes from an enforcement investigation comprise the following.

Planning Contravention Notice

This notice seeks information about the development.

A Planning Contravention Notice (PCN) can be used as part of the investigation where it appears there may have been a breach of planning control, to obtain information about the possible breach and those parties responsible. A PCN may also invite the person responsible to meet an officer to discuss the case. It is a legal requirement to provide the requested information. The Service will usually issue a PCN where cooperation has not been forthcoming from those subjects of a compliance enquiry and where it is necessary to obtain relevant information.

Retrospective planning application

An application submitted for works already completed or part completed.

Temporary Stop Notice

These can be used when the local planning authority considers it important for works on a site in breach of planning regulations to cease immediately. TSN are valid for a period of 28 days and are intended to allow for the Council to continue investigation of a breach and where necessary prepare appropriate notices (if assessed to be necessary). They are a temporary measure and may be served before an enforcement notice and again where it is necessary to immediately take action.

Breach of Condition Notice

These are used when conditions attached to a planning permission have not been

complied with. These notices may be used where it is necessary to stop a breach restricted by a condition quickly. This may be, for example, because it is causing serious environmental harm or detriment to amenity or public safety. A Breach of Condition Notice may be served in conjunction with an Enforcement Notice, it should be noted there is no right of appeal to the Secretary of State.

Enforcement Notice

Enforcement Notices are used when the Local Planning Authority is satisfied there has been a breach of planning control that justifies the issuing of such a Notice. A Notice sets out the required steps to rectify the breach.

Notice under Section 215 of the Town and Country Planning Act

This Notice may be issued by the local planning authority where it appears to them the condition of a specified area of land is having an adverse effect upon the amenity of an area. The Notice can require a broad range of remedial works to be undertaken by a fixed deadline. Appeals against this Notice may be made to the Magistrates' Court.

Notice under Section 224 of the Town and Country Planning Act

This allows local planning authorities to remove and dispose of any display structure – such as an advertisement hoarding – which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to a structure in a building to which the public have no right of access.

Planning Enforcement Order

Where it can be shown that there has been a deliberate attempt to conceal an unauthorised development until the relevant time periods have expired, the Councils may apply to the magistrates' court for a Planning Enforcement Order. This must be done within six months of the date the breach was detected.

Stop Notice

These can be used when the local planning authority considers it important for a breach to cease immediately and where it is considered essential to safeguard amenity or public safety in the neighbourhood. They are issued in conjunction with or following the issue of an Enforcement Notice.

Injunction

A local planning authority can, where they consider it expedient, apply to the High Court or County Court for an injunction to restrain a breach of planning control.

Direct or "Default" Action

In exceptional circumstances, the Councils have the power to enter the land,

undertake the steps necessary to remedy a breach of planning control and attempt to recover the costs.

CONSEQUENCES ON FAILURE TO COMPLY

Prosecution

Prosecutions are normally brought in the Magistrates Court against the failure to comply with one of the notices listed above along with the unauthorised display of advertisements, unauthorised works to a protected tree or unauthorised works to a listed building. In some serious matters cases may be brought in or referred to the Crown Court.

POCA

POCA stands for the Proceeds of Crime Act which was first implemented in 2000. This provides for the Local Authority to seek to recover the financial benefit arising from a person or company's criminal activity. The provisions of the Act can therefore be used by Local Planning Authorities in appropriate circumstances where a criminal offence has been committed and significant financial benefit derived from that offence.