

Subject:	<i>Planning Enforcement Policy Document (Draft)</i>		
Date of Meeting:	11 August 2010 23 September 2010 (Environment CMM)		
Report of:	<i>Director of the Environment</i>		
Contact Officer:	Name: Gerard McCormack	Tel: 01273 29 2031	
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Key Decision:	N/A		
Wards Affected:	All Wards		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This Planning Enforcement Policy sets a framework for how the planning enforcement team will manage complaints and any subsequent investigations into breaches of planning control. It will aim to clearly set out the aims of the Planning Enforcement Team, the background to Planning Enforcement and the scope of enforcement powers. This Planning Enforcement Policy will set out priorities for responses to complaints and clarify the timescales for response by Enforcement Officers. This policy document also seeks agreement about how Members and the general public will be kept up to date in relation to the work being carried out by the Planning Enforcement Team.

2. RECOMMENDATIONS:

- 2.1 That the draft planning enforcement policy be noted; and
- 2.2 That the Environment Cabinet Member be recommended to approve the policy for adoption by the Development Control Service.

3. RELEVANT BACKGROUND INFORMATION:

Policy Context and history

- 3.1 Under Section 172 of the Town and Country Planning Act 1990 (as amended), the Council has the power to take enforcement action where it assesses that a breach of planning control has resulted in material harm in planning terms.
- 3.2 Guidance as to how to apply this power and when a Council should find enforcement action expedient is contained in PPG18 and Circular 10/97, both entitled 'Enforcing Planning Control'. The government urges local planning authorities to use enforcement action as a **last resort**. Formal enforcement action

will not be authorised unless it has been concluded that there is no other course of action available.

In addition to Government guidance the statutory Development Plan sets criteria against which to judge whether a breach of planning control is unacceptable.

3.3 When determining applications for planning permission, the authority is required to have regard to the development plan, so far as is material, and to any other material considerations. In addition, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

3.4 The Development Plan is the Brighton & Hove Local Plan adopted in 2005.

4. CONSULTATION:

4.1 Methodology

Consultation presentations were given to officers within the Council, professional users of the planning service at the Agent's Forum, Members, the general public and at the Conservation Advisory Group Meeting. Rottingdean Parish Council has been invited to comment also.

4.2 Results and concerns

Overall the planning enforcement consultation was well received by those who attended the presentations. There were some themes and these are set out below.

4.2.1 There was a strong feeling that it was important to increase public awareness of the planning enforcement service through press releases, city news articles, by improving the information contained within the planning enforcement section of the Council's website and submitting performance reports to planning committee. It was felt that greater public awareness would stop breaches of planning control occurring and reduce the need for retrospective applications having to be submitted.

4.2.2 Targeting (either geographically or by area) of enforcement action and education were described as being important factors in an effective enforcement service. Education in particular ensures that the public is aware of planning regulations as well as increasing public confidence in the service.

4.2.3 Anonymous complaints should not be accepted unless a significant amount of information is provided to warrant an enforcement investigation being set up.

4.2.4 There was support for the idea that complainants should be encouraged to contact the designated case officer four to five weeks after receiving their initial acknowledgement letter. It was felt that setting out a timeframe would allow for an investigation to be carried out and give certainty to complainants on response times. Such an approach would free up officer time as the onus would no longer be on them to update complainants.

- 4.2.5 To increase public confidence in the service enforcement cases would remain open until complainants had received confirmation from the case officer of closure either verbally, by letter or via email.
- 4.2.6 It was felt that the term transgressor sent out the wrong message and that it should be changed to those in breach.

The main priorities identified for the service were to:

- preserve and enhance the character and appearance of the cities conservation areas,
- seek to remove illegal advertisements that causes harm to local amenity or highway safety in a timely fashion,
- improve the character and appearance of buildings in disrepair, and
- ensure planning conditions are discharged and implemented.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no financial implications relating to this policy document that fall outside the normal service delivery for the department.

5.2 Legal Implications:

There are no legal implications relating to this policy documents that fall outside the normal service delivery for the department.

5.3 Equalities Implications:

There are no equalities implications relating to this policy document that fall outside the normal service delivery for the department.

5.4 Sustainability Implications:

There are no sustainability implications relating to this policy document that fall outside the normal service delivery for the department.

5.5 Crime & Disorder Implications:

There are no crime and disorder implications relating to this policy document that fall outside the normal service delivery for the department.

5.6 Risk and Opportunity Management Implications:

There are no risk and opportunity management implications relating to this policy document that fall outside the normal service delivery for the department.

5.7 Corporate / Citywide Implications:

Setting out a clear operational framework supports the objective of improving communication and customer service.

6. REASONS FOR REPORT RECOMMENDATIONS:

- 6.1 So that the planning enforcement policy can be formally adopted if agreed at the Environment Cabinet Member Meeting.

SUPPORTING DOCUMENTATION

Appendices:

1. Draft Planning Enforcement Policy.

Documents in Members Room:

None.

Background Documents:

None.

Draft Planning Enforcement Policy

1. Foreword

Brighton & Hove City Council formed in 1997 is a historic and vibrant city housing some 247,817 people (2001) and employing over 10,000. Demands on land and its uses increases continually' thereby creating the groundwork for friction between competing users of land be they commercial or residential.

Brighton & Hove Council has numerous areas of special architectural or historic interest, within its boundaries, which it is committed to preserving and enhancing through effective use of its enforcement powers particularly in relation to its 900 plus listed buildings and 34 conservation areas. There is evidence of growing public concern over development that takes place without the appropriate planning permission or without proper reference to approved plans or attached conditions. The number of enforcement enquiries in Brighton & Hove has grown steadily over the years and the Government also recognises that public expectations in this area have become more demanding.

This Planning Enforcement Policy sets a framework for how the Planning Enforcement Team will handle complaints and any subsequent investigations into breaches of planning control. It will aim to clearly set out the aims of the Planning Enforcement Team, the background to Planning Enforcement and the scope of enforcement powers. This Planning Enforcement Policy will set out priorities for responses to complaints and clarify the timescales for response by Enforcement Officers. This policy document will also seek to formulise how Members and the general public will be kept up to date in relation to the work being carried out by the Planning Enforcement Team.

2. Introduction

The Development Control service operates in connection with the Council's statutory role as local planning authority in the regulation of the use and development of land and buildings under the Planning Acts and related legislation. Given the high quality of its townscape, particularly its important conservation areas and listed buildings, the enforcement of planning controls is a priority for Brighton & Hove City Council in order to:

- a) Help ensure that the credibility of the planning system, and to ensure fairness for those who do adhere to planning controls.
- b) Protect it from the effects of unacceptable development.
- c) Remedy the unacceptable harmful effects of unauthorised development.
- d) Ensure the adopted planning policies applicable to this City are properly implemented.

This document sets out the Council's approach to handling planning related enforcement matters. It is designed to let the public know what action they can expect when a breach of planning control is reported, where resources will be targeted and the timescales they can expect for a response to certain key stages in the process.

It is an important principle of the planning system that the use of formal planning enforcement action is a **discretionary power** of the Council. In considering any enforcement action, the decisive issue for this Council is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings, and therefore merit such action in the public interest.

Educating residents in relation to both national and local planning legislation is a key element to effectively enforcing planning controls. As residents become more informed and aware of the regulations it is hoped that less unauthorised building work will take place within the city.

3. Principle of Enforcement

Brighton & Hove City Council believe in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of:

- Proportionality in the application of the law and in securing compliance.
- Consistency of approach.
- Transparency about how the service operates and what those regulated may expect from the service.
- Targeting of enforcement action and education.

Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties, expect the action taken by the enforcing authority to be proportionate to the seriousness of any breach.

Consistency

Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in advice given, the response to incidents, the use of powers and decisions on whether to prosecute.

Officers need to take account of many variables:

- The scale of impact.
- Matters of fact and degree.
- The history of previous incidents or breaches.

Decisions on enforcement action are a matter of professional judgement and discretion needs to be exercised. The Planning Enforcement Team will continue to develop arrangements to promote consistency including

effective arrangements for liaison with other Council services and enforcing authorities.

Transparency

Transparency is important in maintaining public confidence in the service's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

Targeted enforcement action and education

Targeting of enforcement action and education are crucial factors in an effective enforcement service. They ensure that the public is aware of planning regulations as well as increasing public confidence in the service.

4. The Council's Approach to Planning Enforcement

The Council recognises the importance of establishing effective control over unauthorised development and will not condone wilful breaches of planning control. It must however be remembered that enforcement is a discretionary activity. Apart from some listed building and advertisements cases it is not illegal to carry out works without the relevant consent. It only becomes, illegal after the Council issue an enforcement notice and those in breach fail to comply with the requirements of the notice. In considering whether it is expedient to take enforcement action, the Council will take into account its relevant planning policies and all other material considerations including relevant appeal decisions and case law. Consideration will also be given to the reasonable time and resources available to carry out the enforcement function.

The Council will assess whether a breach of planning control unacceptably affects public amenity or causes harm to land and buildings. The Council considers that the objective of planning enforcement is compliance not punishment and as such will encourage its officers to work with those in breach to achieve favourable outcomes without having to issue a formal notice. In cases where those in breach are not pro-actively working with officers or fail to meet agreed deadlines, formal action will be considered and notices issued where it is appropriate to do so.

5. Investigating Alleged Breaches

In some cases the enforcement team may be unable to take formal action against developments that are reported by members of the public. For example when:

- The works or change of use fall within 'permitted development' tolerances under the terms of the Town and Country Planning Act

1990 (General Permitted Development Order as amended 2008) or use classes order.

- An advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) Regulations 2007.
- Immunity from enforcement action has occurred by way of a use being established for a period of 10 years (4 years for a self-contained dwelling) or building works have been being completed more than 4 years ago.
- The works are considered 'de minimis', i.e. too minor to fall under the scope of planning control.

Breaches of planning control regulations which may require action could include:

- Unauthorised works to a property containing a listed building, a property or building in a conservation area or property or building subject to, an Article 4 direction.
- Unauthorised change of use of a building or land.
- Conditions of a planning permission not being met or discharged.
- Unauthorised extensions to a residential property.
- Unauthorised display of a sign or advertisement.
- Engineering operations.

In addition to responding to complaints the service will carry out targeted pro-active campaigns where and when resources allow.

6. What can the complainant expect from the enforcement service

To initiate a planning enforcement investigation, complaints should only be made via the standard form which can be found on the Council's website, Council offices or can be sent out to complainants if requested. The complaint will only be accepted if this form is filled out in full including the identity and address of the writer, the site address at which the alleged breach of planning control has taken place, a description of the unauthorised development/use and the harm that is considered to be caused by it. Complainants will also be encouraged to send in dated context photographs of the alleged breach, in order to assist the enforcement investigation. Only in exceptional circumstances, such as when emergency action is required, or when there is a special reason why using the standard form is not feasible, will be possible to initiate investigations, by, telephone, or personal visit to speak to the Planning Enforcement Team.

The Council will not investigate anonymous complaints as it means we cannot verify particular aspects of the complaint at a later stage. All complaints received will be treated in the strictest confidence. However sometimes in exceptional circumstances complainants may be asked to provide evidence to assist the investigation legal proceedings.

Issues such as boundary positioning and land ownership disputes do not fall under the remit of town planning and are dealt with under separate pieces of legislation. Should complaints be made to the Planning Enforcement Team which fall outside the Teams discretion, the Team will endeavour to re-direct the complaint or to advise accordingly. Formal enforcement action will not normally be taken where a trivial or technical breach of planning causes no harm to the local environment.

In respect to complaints received about alleged breaches the following service standards apply:

- 1) Written acknowledgements of receipt of complaint within three working days.
- 2) Other than in cases where immediate or urgent action may be required (see (3) below) initial investigation to be undertaken within ten working days of receipt.
- 3) In cases of reported breaches in planning control involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 48 hours of receipt. Urgent action will be instigated to stop unlawful activity where harm being caused makes this appropriate. Such cases include damage or demolition of listed buildings or any other cases where there is a serious and imminent danger of harm to people or irreversible damage to property,
- 4) The complainant is advised contact the designated case officer preferable by email or phone 4/6 weeks after receiving their acknowledgement letter. At this stage the officer will be able to inform the complainant on the progress of the investigation
- 5) Within 5 days of the decision to close an enforcement case the complainant will be notified by letter or email advising them why the case was closed.

7. What can those in breach expect from the enforcement service

Under normal circumstances, prior to taking formal enforcement action the officer concerned will fully and openly discuss the circumstances of the breach and where possible attempt to resolve any points of difference. A person in breach will be contacted within 5 days of a site visit having taken place advising them, what they are required to do in order to remedy the breach of planning control. Should a retrospective application for planning permission be applicable the letter will also advise the transgressor on the likelihood of obtaining a favourable recommendation in the opinion of the Enforcement Officer. In almost all cases written notification of the breach and opportunities to rectify the situation will be given prior to any action being taken. However, this may not be possible if urgent or immediate action is required, such as in examples given in (3) above.

When breaches appear to have occurred officers will:

- Communicate clearly to the responsible party or their planning agent identifying the problem and the measures that may need to be taken to achieve compliance.

- In the case of formal action being authorised the contravener's rights of appeal will be explained to them.
- Where officers consider there is no significant planning harm or that harmful effects may be satisfactorily addressed by mitigation measures, allow a reasonable period for the submission of a retrospective planning application to regularise a breach of planning control.
- Where initial attempts to persuade those in breach to voluntarily remedy the harmful effects of unauthorised development fails, negotiations will not hamper or delay whatever formal enforcement action may be required to make the development acceptable. Officers will be keen to see that persons in breach are pro-actively seeking to resolve breaches of planning control rather than attempting to delay matters.
- Initiate formal enforcement powers given to local planning authorities when necessary, after being satisfied that there is a clear breach of planning control that would unacceptably affect public amenity of the existing use of land and building meriting protection in the public interest.
- Persistent offenders and those who seek to exploit the planning process at the expense of others will be dealt with by all and any of the appropriate enforcement processes.

8. What can officers expect from complainants and those in breach

Planning Enforcement Officers often deal with heavy caseloads and can as a result experience many pressures on their time throughout the day. Therefore in order to allow Officers to make best use of their time and ensure that the enforcement service is as effective and efficient as possible members of the public are asked to adhere to the following:

- If people wish to speak to an Enforcement Officer in person at the Council offices they will be required to first book an appointment as walk in callers will not be seen.
- People are asked to treat officers with respect and listen to what is being said rather than what they 'think or want to hear'. Sometimes a favourable outcome cannot always be achieved. If this occurs the reason for no action being taken will be explained in full by the Officer in a clear language.
- Officers are happy to speak to members of the public on the phone provided the conversations are productive. If callers are unreasonable in their expectations or are rude to staff they will be asked to only communicate with the Officer via letters or email to which they can expect a response within 10 working days of receipt.

9. Enforcement options

As discussed earlier in this policy document Officers will seek to work with those in breach to voluntarily resolve contraventions whenever this is possible and appropriate thereby avoiding formal action having to be taken. When this is not possible or appropriate to obtain a satisfactory voluntary resolution to a contravention and it is considered expedient to

take formal enforcement action to rectify or resolve the breach the main options for action are summarised as follows:

Section 215 Notices:

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The Council also has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Breach of Condition Notice:

These can be used as an alternative to an Enforcement Notice. There is no right of appeal against this notice. There is no right of appeal against this notice.

Enforcement Notice:

This is the normal method of remedying unauthorised development although there is a right of appeal against the notice. This is an effective tool and will be served fairly early, on the cases that cause significant harm or where the transgressor has made clear they are unwilling to remedy the breach. The transgressor has the right to appeal against the notice for consideration by the planning inspectorate.

Stop Notice:

This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where Stop Notices are issued the Council may be liable to compensation claimed by those if it is served on if it is later decided that the Stop Notice was not appropriate.

Temporary Stop Notice:

These are similar to Stop Notices (above) but take effect immediately from the moment they are displayed on a site, and last for up to 28 days. A temporary Stop Notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

Injunction:

This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

Default Powers:

The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in

extreme cases and when resources allow. The Council will seek to recover all costs associated with carrying out works in default.

Appeals:

There is a right of appeal against most statutory Notices issued by the Council (exceptions are Breach of Condition Notices, Stop Notices). Appeals are in most cases made to the Department for Communities and Local Government (the Planning Inspectorate) or in some cases to the magistrates' court. When a notice is issued the recipient will also be given the necessary information on how to exercise their right of appeal.

10. Informing the public

The Council is committed to educating and informing Members and the public in relation to the work carried out by its Planning Enforcement Team. The Council will attempt to strike a balance between informing the public about planning legislation through articles in city news as well as publicising prosecutions and cases where direct action has been taken. It is considered important to highlight prosecution and direct action to discourage others from breaching planning regulations and ensure the public have confidence in the enforcement service.

Pro-active campaigns will be used to educate the public in relation to the targeted breaches of planning control through Council publications and press releases. Local community groups may also be encouraged to assist in targeted campaigns in their particular area.

As part of the Council's commitment to be open and accountable a full year report will be presented to the Planning Committee regarding planning enforcement. Throughout the year ward members will be made aware of cases where enforcement notices have been issued, appeal decisions and the outcomes of any court action taken in their ward.

The planning and investigations section of the website will be updated on a regular basis with relevant enforcement related new stories, before and after photographs and will identify the number of cases closed and the reasons why they were closed.

11. Key Aims and Objectives

- 45% of all cases reported to be resolved without formal enforcement action having to be taken.
- Preserve and enhance the character and appearance of the cities conservation areas.
- Seek to remove illegal advertisements that causes harm to local amenity or highway safety in a timely fashion.
- Improve the character and appearance of buildings in disrepair through the service of section 215 notices.
- Ensure planning conditions are discharged and adhered to.

12. Particular Customer Needs

The service will endeavour to be flexible in responding to customer needs by adapting the method of operation to suit the customer. In particular, service leaflets, letters or other documents will be translated into other languages at no additional expense to the customers. Arrangements will also be made for interpreters when this is necessary.

13. Contacts and further information

Our service provides a range of supplementary planning documents, design guidelines, planning information and forms. These can be obtained by:

- Looking on the Council website www.brighton-hove.gov.uk.
- Emailing planninginvestiagtion@brighton-hove.gov.uk.
- By writing to us or visiting us at.

Environment
City Planning
Hove Town Hall
Norton Road
Hove
BN3 3BQ

General enquiries contact numbers Planning Contact Centre 01273 292222.

Hove Town Hall has full access for disabled people and induction loops in the general reception area. If you need any help getting into the building, please let us know beforehand and we will make arrangements to help you.

If you need this document in Braille, large print, audio tape, or another language, please contact us on 01273 292929.

Appendix 1

Service Indicators

Action	Target
Register and acknowledge all written complaints	3 working days
Carry out initial site visit	Within 10 working days of case being registered
Customers to contact case officer either by email or on the phone	4-6 weeks after receiving acknowledgement letter
The complainant to be informed of the outcome of the case	Within 5 days of case being closed