



ENFORCEMENT POLICY

Adopted March 2010



Charnwood Borough Council

Planning Enforcement Policy

Our commitment to enforcing the planning regulations

Introduction

Effective enforcement is necessary to protect the integrity of the planning system and for the proper planning of the Borough. Planning enforcement is necessary in order to deliver high quality, sustainable development. The need to ensure development proceeds in accordance with approved plans, the need to comply with planning conditions and the need to monitor Section 106 Agreements requires an effective enforcement service. The enforcement of planning control is therefore integral to development management.

The national planning system seeks to strike a balance between the rights of landowners to enjoy their property, whilst at the same time protecting the amenities of their neighbours and the general public as the case may be. The enforcement process is also directed towards the conservation of important trees and hedgerows and the protection of historic buildings and areas in the wider public interest.

The Borough Council does not stand in the way of development without justification. However, it is expected that land owners and developers will observe the spirit of planning legislation and refrain from development until the necessary planning permissions have been obtained. Application forms and guidance for prospective applicants can be found on our web site: [Forms and Guidance](#)

When development does take place without permission the Council has a range of enforcement powers available:

- To establish whether a breach of planning control has taken place
- To evaluate what harm might have been caused as a result of the breach and,
- To require the necessary steps to remedy the situation.

The emphasis of Charnwood's enforcement policy is on persuasion, influence and education to secure the aims of the planning legislation and planning policies. The need for enforcement action may be minimised by the careful consideration of a proposal against the various national and local policies and guidelines. Details of the Council's local planning policy for your area can be found by clicking the following link: [Local Plan and National Planning Policies](#).



The Role of Enforcement

The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with the conditions of a valid planning permission) and bring about remedial action, where appropriate. Where harm is evident, swift and firm action will be taken against individuals or companies that ignore planning controls, as set out in this enforcement policy.

Normally the carrying out of development without the appropriate consent does not constitute a criminal offence. However there are some activities where unauthorised works will constitute an immediate offence with the risk of criminal sanctions. These include:

- Works to a Listed Building,
- Works to trees protected by a preservation order or situated within a Conservation Area
- Removal of most hedgerows outside residential curtilages, and
- The display of advertisements

The enforcement team also monitors planning conditions on major developments, and ensures compliance with Section 106 agreements, as well as dealing with breaches in respect of protected trees, and High Hedge complaints: (High hedges and complaining to the council).

Charnwood Borough Council has adopted the national Enforcement Concordat for regulatory services. The Government has set out guidance for enforcement within local government and Charnwood is committed to following the good practice identified within the guidance.

Planning enforcement relies heavily on legislation and therefore, it is imperative that good quality, professional and timely legal advice is available. A working protocol exists to ensure deadlines and timescales are met in relation to the provision of advice, the service of enforcement notices and the progression of formal action in respect of prosecutions.

Complaints

The Council relies generally on the public to report breaches of planning control. In the more sensitive cases development is closely monitored to ensure compliance as works proceed. The Council has an established procedure for investigating alleged breaches of planning control together with agreed targets for dealing with complaints efficiently and effectively which is outlined below.

Procedure

Complaints may be reported in a number of ways:

- By e mail,
- By completing the on-line complaints form on the CBC web site,
- By letter,
- By visiting the Council Offices
- By telephone (If it is an urgent complaint such as works to protected trees or a listed building then these matters will be dealt with immediately on receipt of any complaint)


Be advised that the Council cannot normally act upon anonymous complaints other than in circumstances where there is an immediate criminal offence, a threat to public safety or a clear and credible threat to the proper planning of an area. Any investigations into anonymous complaints in these circumstances will be at the discretion of the Council. Anyone with a legitimate concern but who wishes to keep their identity confidential from the Council may, of course, enlist the services of their local councillor to make their complaint,

To assist the Enforcement team in responding effectively to a complaint the following details will be required:

- The exact location of the alleged breach
- Details of the breach
- The name and address of the complainant

The name and address of any complainant will be kept confidential, although if you make representations on any subsequent planning application these will be available for the public to read. It should be understood that whilst the Council will not reveal the identity of the complainant during the course of investigating a case, in many situations the identity of the complainant can be deduced logically, i.e., there may be only one property from which a complaint reasonably could have originated.

Allegations that development has been carried out without planning permission will be recorded individually. The Council will **acknowledge any complaint made in writing within 3 working days** and the complainant will be advised of the name of the enforcement officer assigned to undertake the resultant investigation.



Investigations will begin straight away and **the site will be inspected within 10 working days, although priority will be given to urgent alleged breaches, such as where irreparable damage might be occasioned to a Listed Building or protected trees which need to be dealt with urgently. These cases will be prioritised in order to ensure any harm is minimised wherever possible.**

The complainant will be informed of the outcome of any investigations within 15 working days of the complaint having been received. Should the investigation confirm that no breach of planning control has taken place the complaint file will be closed and the complainant informed of the conclusions of the investigations.


Occasionally it may not be possible immediately to establish whether a breach of planning control has taken place. In such cases a "**planning contravention notice**" may be issued. This is a formal request for information to be provided by the developer requiring details of precisely what is taking place together with an explanation as to why no planning permission has been sought. The complainant will be kept informed of the investigation and initial findings along with any response elicited by the notice.

Where it is clear that a breach of planning control has taken place the developer will be advised of the need to submit a planning application, where appropriate. This affords the opportunity to gather full details of the work that has taken place and to consult neighbours before making a decision. This course of action is also in line with Government advice: [PPG18](#); Enforcing Planning Control, which encourages Councils to seek a negotiated resolution where appropriate before resorting to formal legal procedures.

Where ever possible efforts will be made to negotiate a satisfactory resolution rather than take formal action. Many of the breaches of planning control that are investigated by the Council are resolved through negotiation or regularised through the submission of a retrospective planning application.

Over 50% of applications submitted to the council are invalid for want of essential information. Applicants are advised to consult the checklist to ensure applications are complete and can be dealt with as quickly and efficiently as possible. [Forms and Guidance](#)

In determining the application it may be possible to secure amendments or impose necessary conditions to overcome complainants' concerns or objections. Once an application has been submitted it will be treated on merit like any other application and any works already undertaken will have no bearing upon the determination.



If an application is not submitted within a reasonable timescale taking into account the circumstances of the case and the harm being caused by the breach consideration will be given to the service of an Enforcement Notice. If, for instance, the unauthorised development is considered not to cause any material harm, or had an application been submitted it would have been granted planning permission, then enforcement action in these circumstances will not be appropriate. A decision not to take further action will be taken by officers, but only after that course of action has been endorsed by Ward Councillors.

In some circumstances the developer may be given the opportunity to remedy the breach of planning control on a voluntary basis. The timescales for remedial work will depend upon the circumstances of the case, taking into account the harm caused by the breach of planning control. If the breach is not remedied within an appropriate period the Council may move to take formal enforcement action.

If it is expedient to do so, unresolved breaches of planning control will be referred to the Ward Councillors or ultimately the Planning Committee, in order that consideration can be given to taking appropriate formal enforcement action. This can take the form of an enforcement notice or, in the case of an immediate offence, as in issues of fly posting or unauthorised works to a listed building, prosecution in the Magistrates' Court.

Delegated authority to the Head of Development Control exists for most enforcement action and offences in respect of fly posting and illegal advertising, untidy land notices and breach of condition notices. If a case is contentious it can be referred to Planning Committee for a members decision on enforcement action.

Should you wish to submit complaints electronically please complete a complaint form and e mail it to: development.control@charnwood.gov.uk



Formal Enforcement

Enforcement Notices are formal legal documents served by the Council which can require:

- the cessation of an unauthorised use of land or buildings,
- the removal of any unauthorised buildings or structures that do not have planning permission

Before authorising the service of an Enforcement Notice the Council must find out the names of all the owners and occupiers of the property and make sure they are served with a copy of the notice. The notice itself must be precise as to what action the Council wants taken and by what date. There are rights of appeal to the Planning Inspectorate and the notices can be challenged if they are inaccurate. [View Enforcement Notices Served.](#)

Where conditions imposed on a planning permission are being disregarded, the Council can serve a Breach of Condition Notice on the developer or occupier. If this is not complied with, the Council can take legal action. There are no rights of appeal against a Breach of Condition Notice. Where appropriate, the Council will use this procedure in preference to the service of Enforcement Notices.

High priority is given to the preparation and service of legal notices. **We aim to serve the appropriate notice within 6 weeks of their authorisation by the Plans Committee.** The complainant will be informed when the notices are served, what action they require and when the period for compliance expires.

Appeal procedure

It is the right of any party served with an enforcement notice to appeal against that notice before it comes into effect. The complainant and neighbours will be advised of any appeal that is lodged against an enforcement notice and the grounds upon which the appeal has been made. They will then be able to make further comments directly to the planning inspector appointed by the Secretary of State assigned to hear the appeal, although at this stage it should be noted that the names and addresses of complainants cannot be kept confidential.

Appeals can follow three procedures:

Written representations – in which each party, the appellants and the Council, will submit written statements in respect of their case and the Inspector will make a decision based on those representations and a site visit.

An informal hearing - this hearing is open to the public to attend should they wish to do so. Statements are produced to the Inspectorate before the hearing. The hearing is informal and provides the parties the opportunity to rehearse their case in front of the Inspector and for the Inspector to ask questions to clarify points.

A public inquiry - this procedure is more formal and usually applied when evidence is required to be tested under oath by all parties.

Where an appeal is submitted, the period for compliance is held in abeyance pending the outcome of the hearing. In the event that the Enforcement Notice is upheld then the period for compliance will be from the date of the decision of the Inspector and whatever period for compliance is stipulated in the enforcement notice, unless altered on appeal.

Arrangements to inspect the premises will be made by the officer dealing with the case no later than 5 days after the compliance period runs out in order to find out whether the requirements of the enforcement notice have been satisfied.

If the unauthorised development or use remains in place after the enforcement notice becomes effective the Council will begin legal proceedings as soon as possible and the complainant will be kept informed of the outcome of any such prosecution . As a last resort the Council will consider carrying out works itself to remedy the breach.

When an enforcement or breach of condition notice is served the existence of that notice will be recorded as a land charge on the property and will remain in perpetuity. The presence of such a notice is likely to cause problems with the future sale of a property and provides a strong incentive for a landowner to remedy the situation to safeguard their investment and to ensure that any future sale is not obstructed or delayed.

Monitoring

New development can bring significant benefits to local communities, including new homes and jobs. However there are often impacts on the local area as a result of development, for example more people using local facilities such as parks, roads and leisure centre's. These impacts can be addressed through 'planning obligations', which are commitments, made by the developer and formalised by a legal agreement under the Planning Act. The legal agreement is known as a 'Section 106 agreement' and forms part of a planning approval. Section 106 agreements are legally binding, and the obligations may be either in cash or in kind, to undertake works, provide affordable housing or provide additional funding for services.

The Department of Communities and Local Government (CLG) has prepared [guidance on Section 106 Agreements](#)

The enforcement team is also responsible for monitoring compliance with Section 106 agreements and has an officer dedicated to this process. All Section 106 agreements are compiled on a register and the triggers for those 106 agreements are monitored closely. When a trigger is reached the developer will be contacted if payment or compliance has not automatically been achieved. Where the clause in any agreement is not complied with, despite the involvement of the compliance officer, the matter will be referred to the legal services team for formal action to be pursued for breach of the contract.

The compliance officer also monitors compliance with planning conditions on major developments. When notification is received that a development is underway the conditions of that permission will be monitored to ensure those conditions are discharged. Any breaches of those conditions will follow the procedure outlined above in respect of breaches of planning control. On the 6th April 2008 legislation was introduced to require a fee to be payable where a written request is made for a written response for confirmation that one or more conditions imposed on the same planning permission have been complied with. Information in respect of this requirement can be found on the Charnwood Borough Council web site: [fee to discharge conditions](#).



The Enforcement Team

If you need to contact the team in respect of this policy or in relation to any breach of planning control then please do so using the contacts below:

Helen Robinson Senior Enforcement Officer 01509 634743
Helen.robinson@charnwood.gov.uk

Sara Coleman Planning Enforcement Officer 01509 634773
Sara.coleman@charnwood.gov.uk

Jonathan Short Planning Enforcement Officer 01509 634736
Jonathan.short@charnwood.gov.uk

Matthew Reed Compliance Technician 01509 634722
Matthew.reed@charnwood.gov.uk

Please contact Matthew Reed in respect of monitoring of conditions and 106 Agreements.