

## PLANNING COMMITTEE

23 AUGUST 2011

### REPORT OF THE TEMPORARY HEAD OF PLANNING

#### **A.5 ENFORCEMENT POLICY, HARM ASSESSMENT (INCLUDING COUNCILLOR REFERRALS OF PLANNING COMPLAINTS) AND PUBLIC ACCESS**

(Report prepared by Sarah Stevens, Andy Knowles and Clare David)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To seek the Planning Committee's approval of the Council's Planning Enforcement Policy; the Harm Assessment – Prioritisation Scheme and the procedure by which enforcement cases are displayed on the Council's web site via Public Access.

##### **EXECUTIVE SUMMARY**

The recommendation is to update the Harm Assessment Scheme so that the same consideration is given to complaints reported by Councillors as to all others and to revise the Harm Assessment scheme so that breaches of planning control that would not secure an unconditional planning consent retrospectively are pursued to a successful conclusion regardless of their Harm Score. It is also recommended, despite the existing delegated powers relating to planning enforcement, that any change to the level of the Harm Score is agreed with the Head of Planning Services, the Enforcement Manager (or other equivalent authorised officers), and the Planning Portfolio Holder in order to ensure continued agreement to the operation of the scheme. With regard to Public Access it is recommended only to display those enforcement cases that result in an identified breach of planning control following the initial investigation. Finally, it is recommended that a further review take place in 12 months time to incorporate further improvements if appropriate.

##### **RECOMMENDATIONS**

- A. That the Planning Committee approves the Harm Assessment – Prioritisation Scheme as contained at Appendix 1 and the Planning Enforcement Policies at Appendix 2 of this report;**
- B. That the Planning Committee approves those actions set out in Option 4 of the report as the Council's protocol for displaying planning enforcement information on Public Access (including those retrospective cases since February 2011); and**
- C. That the policies are monitored in accordance with this report and a further review and report is considered by the Planning Committee in twelve months.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The efficient and effective operation of the Council's planning enforcement function will help to protect and enhance our built and natural environment and assist in the regeneration of the District by controlling inappropriate development.

### **FINANCE, OTHER RESOURCES AND RISK**

The review of the Harm Assessment and Public Access procedures will ensure that the service provides a proportionate approach to planning enforcement whilst at the same time meeting legislative requirements.

### **LEGAL**

The proposed changes will comply with legislation and particularly the guidance of PPG 18 – Enforcement and Planning Control.

### **BACKGROUND**

#### Planning Enforcement Policy and Harm Assessment Prioritisation Scheme

#### What is a breach of planning control?

A breach of planning control is defined by the Town and Country Planning Act 1990 as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.”

The seriousness of breaches of planning control can vary considerably and in the majority of instances a breach of planning control is not in itself an offence. The failure to comply with any subsequent enforcement notice, however, is an offence and can be the subject of a prosecution and a fine.

#### Why and what should the Council enforce?

In its role as a Local Planning Authority the Council has the powers to enforce against breaches of planning control. The decision to enforce is entirely at the Council's discretion, however, the use of the available powers is important for us to ensure that we protect the quality of life for our residents and visitors and the character and quality of our natural and built environment. Ultimately, proactive enforcement also contributes to the economic vitality of our economy as it allows the Council to take action against those businesses that breach planning controls and allows compliant businesses to compete on a level playing field. Although the Council's powers to enforce are discretionary, failure to do so or on an adhoc basis can result in either Ombudsman's complaints or Judicial Review.

The important function of planning enforcement was recognised in 2009 when Cabinet provided additional resources to the Planning Service to ensure a more proactive and robust approach.

In 2009 enforcement procedures were such that when an investigation into a breach of planning control was opened the case was not closed until the breach was rectified. This resulted in the Planning Service continuing to use a disproportionate amount of resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest. Enforcement cases stood at around 600 cases each year, many of which remained unresolved, when public expectation was, and still is, to provide closure to complainants and alleged offenders fairly, quickly and effectively.

The Council of course does not have limitless resources and it is not possible or expedient to enforce against every breach of planning control. In addition two points should be noted: - firstly, that a breach of planning control is not (in the majority of circumstances) an offence in itself; and secondly, that central government advice and accepted good practice is that enforcement action should be regarded as the 'last resort' with the emphasis being placed on achieving an amicable resolution through negotiation and regularisation of the breach wherever possible.

It was on this basis that in 2009 the Council adopted a new approach to planning enforcement in the form of Harm Assessment. The scheme was designed to provide a consistent method to identify and deal with minor breaches of planning control where it was not considered expedient to pursue them because they caused negligible harm to public amenity and/or interest. By adopting this scheme the enforcement service is able to devote its resources proportionately to resolving those cases that involve more substantial breaches.

Harm Assessment is currently applied to identified breaches of planning control that have not been referred to the service by Councillors (the latter are currently all pursued to a satisfactory conclusion regardless of their 'Harm Score') and do not involve offences relating to advertisement displays or works to listed buildings. The breach is assessed against a number of criteria and then allocated a 'harm score' of anything between 0 and 10 (with 0 being the lowest score and ten the highest).

Under the present scheme any breach receiving a score of 5 or less is deemed not to be expedient to pursue. The complainant and the offender are advised accordingly and the case is closed. The property owner is advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, as the breach that has occurred could affect any future sale of the property but the submission of an application is not monitored or pursued. Once all parties have been notified the Council takes no further action. Breaches of planning control that attract a score of 6 or more are pursued by officers until matters are resolved either through negotiation or by taking formal action.

## **CURRENT POSITION**

### Why review the approach?

Enforcement can have significant implications on individuals and businesses either directly or indirectly and can mean taking difficult and potentially sensitive decisions.

It is essential, therefore, that the Council's approach to enforcement is carried out in a fair, just and consistent manner and that it is proportionate to the identified breach, having taken into account all material considerations including the requirements of the Human Rights Act 1998.

The Council's Constitution presently delegates all planning enforcement powers (including any decision not to take enforcement action) to the Assistant Chief Executive (ACE) (or other designated officer) except where stop notices, temporary stop notices, prosecutions and injunctions are concerned. These have to be agreed in consultation with the Chairman of the Planning Committee. The ACE does have the discretion to refer any planning enforcement decision to the Planning Committee and usually decides to do so where particularly controversial and sensitive cases are concerned.

To ensure a transparent and consistent approach, the Council's planning enforcement service operates within a framework of operational policy documents and an operations manual. These include:

1. Planning Enforcement Policy – approved by the Planning Portfolio Holder late last year and again in April this year following minor changes.
2. Harm Assessment – Prioritisation Scheme – approved by the Portfolio Holder for Planning in April 2009.
3. The Enforcement Concordat – Good Practice Guide – DTI 2003
4. Enforcement Manuals – Volumes 1 and 2 - 2008 and 2009.

The Enforcement Concordat recognises that it is important to monitor and review established enforcement policies. Furthermore, the decision of the Portfolio Holder in 2009 when agreeing the Harm Assessment Scheme recommended that it should be regularly reviewed. The delegated power to officers is considerable. This is to ensure that corrective measures can be taken swiftly, however, enforcement matters can be emotive and it is therefore essential that members are aware of and approve those policies that are in place and under which officers undertake their duties on behalf of the Council. A review and reapproval of those policies is therefore required.

#### Review of the Planning Enforcement Policy and Harm Assessment – Prioritisation Scheme

The Planning Enforcement Policy document was approved very recently by the Planning Portfolio Holder and needs only minimal changes at present. However, the Policy does refer to the Harm Assessment scheme which is now over two years old and this does need to be reviewed in accordance with the previous Portfolio Holder decision to ensure that it remains fit for purpose. (It is not intended to review the Concordat which is a government document or the Enforcement Manuals which essentially set out office procedures and practices.)

The Harm Assessment Scheme has been instrumental in enabling the enforcement service to achieve performance targets but much more importantly it has resulted in a fair, open and just system that results in a quick and effective result for our residents and ensures alleged offenders and complainants are treated in a consistent and transparent manner. The purpose of the review is to ensure that the effectiveness of the scheme and the service continues but that improvements are

made wherever possible and that the scheme complies with national legislation.

Since introducing a more proactive approach to planning enforcement the number of complaints received year on year has increased. In 2010 the service investigated 700 alleged breaches of planning control. Figures confirm that 20% of the 700 investigations were cases where Harm Assessment enabled the breach to be closed. The closure of 175 cases through Harm Assessment enabled officers to use their resource in other more important areas.

One way in which the scheme could potentially be improved (and which would ensure compliance with National Planning Policy Guidance PPG 18 Enforcement and Planning Control) is by pursuing those breaches of planning control where they could not be recommended for unconditional planning approval if they were made the subject of a retrospective application for planning permission, even where their 'Harm Score' is less than 5. This would also increase the protection to public amenity and the environment from inappropriate development. The decision as to whether or not an unconditional planning permission would be forthcoming would be decided in consultation with the area planning officer and agreed by the Enforcement Manager (or equivalent authorised officer).

The Harm Assessment Scheme accounts for approximately 20% (or 140 cases) of the enforcement team's annual workload of around 700 cases. A very small percentage of these 140 cases are scored at 5 or less and less again are considered to be unable to secure an unconditional planning permission. It is estimated that this amendment to the Scheme would amount to between 6 to 12 cases each year and will have a negligible impact on workloads whilst protecting the Council from complaints of maladministration and further protect public amenity and the quality of the built and natural environment.

There is an exception to the application of the Harm Assessment at present and this is where complaints are reported by Members of the Council or by Members on behalf of a resident. These are not weighted under the provisions of the scheme and are automatically given full consideration until a conclusion is reached, irrespective of harm. In the interests of transparency, fairness and efficiency it is considered appropriate to apply the same degree of investigation to these cases in the future.

It is also recommended, despite the existing delegated powers relating to planning enforcement, that any change to the level of the Harm Score is agreed with the Head of Planning Services, the Enforcement Manager (or other equivalent authorised officers), and the Planning Portfolio Holder in order to ensure continued agreement to the operation of the scheme.

A copy of the revised Harm Assessment is contained in full at Appendix 1. A copy of the unaltered Planning Enforcement Policy is contained at Appendix 2.

### Public Access

Public Access is an online service that allows members of the public to view details of planning applications being considered by the Council, including the ability to

monitor the progress of an application, view documents relating to planning applications and submit comments on an application. It also allows the public to search for planning appeals and records of enforcement cases.

In the past the Council displayed records of all alleged breaches of planning control on Public Access prior to investigation. This practice was introduced to enable members of the public to track the case in question online and helped to reduce the number of direct contacts with officers for information. This enabled officers to devote more time to dealing with the cases. Since February however, this practice has been suspended subject to a review of the methodology to ensure that the Council uses a fair and proportionate approach.

The Council receives between 600 and 700 enforcement complaints each year and, on average, around 40% of these do not result in an identification of a breach. The review, therefore, considers a number of options for the methodology of displaying enforcement records to ensure a more equitable system.

Option 1 - is to continue displaying all allegations regardless of outcome. This option is not considered appropriate as there is no statutory duty to do this and as it includes a large percentage of cases that do not result in a breach being identified it seems disproportionate and unjust.

Option 2 - is not to display enforcement records at all. This option is not considered appropriate as there is a statutory duty to publish enforcement registers (albeit that this does not have to be available on-line and only where enforcement notices have been issued). The information has to be publically available by law and there seems no reason for this not to be provided online as well (subject to data protection issues) particularly when considered in the light of the government's drive and the Council's commitment to providing an e-planning service.

Option 3 - to comply with the principle of providing information where there is a genuine public interest another option is to publish a synopsis of an enforcement case after the investigation has been concluded. This could include a brief description of the alleged breach of planning control, information pertinent to the investigation and the outcome with appropriate dates. Those that do not result in an identification of a breach could be removed after six months. This would allow a reasonable amount of time for complainants and interested parties to be made aware of the outcome but would be proportionate and just in relation to the outcome. This option, however, would have resource implications as the records would have to be monitored on a frequent basis to ensure that they were not being displayed outside of the agreed protocol.

Option 4 – is to display only those allegations that result in an identified breach following the initial investigation even where it is determined not to pursue a formal action. This would be more in accordance with the statutory requirement to publish enforcement registers where formal action has been taken. This would represent a fairer and less resource hungry system of displaying records as it would exclude those cases where no breach were found. However, it may increase the number of direct enquiries as not all cases would be available to track online.

A review of neighbouring authorities confirms that different approaches are taken on the amount of information that is available online and some contain little if no information on their enforcement services workload. Others show basic enforcement notice information – in line with the statutory register. Three authorities: Colchester Borough Council, Chelmsford Borough Council and Uttlesford District Council provide full information on all investigations, the outcomes of those cases and a full enforcement notice register.

Of the four options, option 4 is considered to be preferable for the reasons given above.

#### **BACKGROUND PAPERS**

Harm Assessment; Enforcement Policy 2010  
PPG 18 Enforcement and Enforcement Control

#### **APPENDICES**

Appendix 1 Harm Assessment  
Appendix 2 Planning Enforcement Policy

**HARM ASSESSMENT – PRIORITISATION SCHEME**

**PROCEDURE FOR CLOSURE OF REPORTED BREACH OF PLANNING CONTROL INCIDENTS**

**Purpose**

This document sets out the Council's Harm Assessment procedure in relation to the handling of alleged breach of planning incidents. It assesses the "planning harm" the incident is perceived to cause and provides a process for the "closure" of minor breaches of planning control.

**Background**

In the past when the Council considered an alleged breach of planning control the case was not closed until the breach of planning control was rectified. This resulted in the Planning Service continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest.

In 2009 a new procedure was introduced based on an assessment of harm.

**The Scheme**

The Harm Assessment Scheme is applied to incidents which are found to be a breach of planning control following site inspection. The scheme grades the "harm" of that breach against a series of scored planning criteria. The agreed level of harm (the score) is 6 and above (*July 2011*). Where the cumulative score is 5 and under it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be negligible. The case will be closed and advisory letters will be sent to both the offender and complainant. The property owner will also be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, as the breach that has occurred could affect any future sale of the property. The submission of an application will not, however, be monitored or pursued. Once all parties have been notified the Council will take no further action. *This will not apply to those cases with a Harm Score of 5 or less where it is agreed by the Enforcement Manager (or equivalent authorised officer) in consultation with the area planning officer that the breach would not receive an unconditional grant of planning permission. In these instances the breach will be pursued to a successful conclusion.*

Breaches of planning control that attract a score of 6 or more will be pursued by officers until matters are resolved either through negotiation or by taking formal action.



Harm Assessment will be applied to all incidents involving development. Advertisement Control, Amenity Notices and Tree/Hedgerow matters have different legislative requirements and will be dealt with separately.

A copy of the proposed "Harm Assessment Form" is reproduced below. Sixteen planning "harm" factors are set out dealing with factors such as, the nature of the breach, safety issues, policy matters, degree of harm etc.

### **Operational Aspects**

The "Harm Assessment Form" will be completed by the investigative case officer within 20 working days of receipt of an incident. Where the alleged breach of control relates to a change of use of land the investigator should visit the site a minimum of three times in that twenty day period (if necessary) to establish if a breach of control is occurring (if the initial or second visit are inconclusive). The result of the harm assessment by the twentieth day will allow the decision on "harm" to be incorporated in the Service's normal 21 day letter to complainants informing them of the Services findings and intended action or, where applicable, that no additional action is to be taken.

### **Conclusion**

Since 2009 the Harm Assessment scheme has provided:

- A quantitative and qualitative assessment of harm to public amenity/interest
- A procedure that is open and transparent
- A quick and effective processing of incidents
- A flexible system to make efficient use of resources
- Equality of treatment of dealing with incidents

It has proven that the criteria and scoring is effective in identifying minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the enforcement team.

It is recommended that the details of the scheme are reviewed on an annual basis.

## TENDRING DISTRICT COUNCIL, PLANNING SERVICES

### HARM ASSESSMENT FORM

TO BE COMPLETED BY AN OFFICER WHO HAS INSPECTED THE DEVELOPMENT

**All retrospective refusals of planning permission will automatically receive a full investigation – do not complete form.**

Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based.

Where there is no breach of planning control found, the file will be closed accordingly.

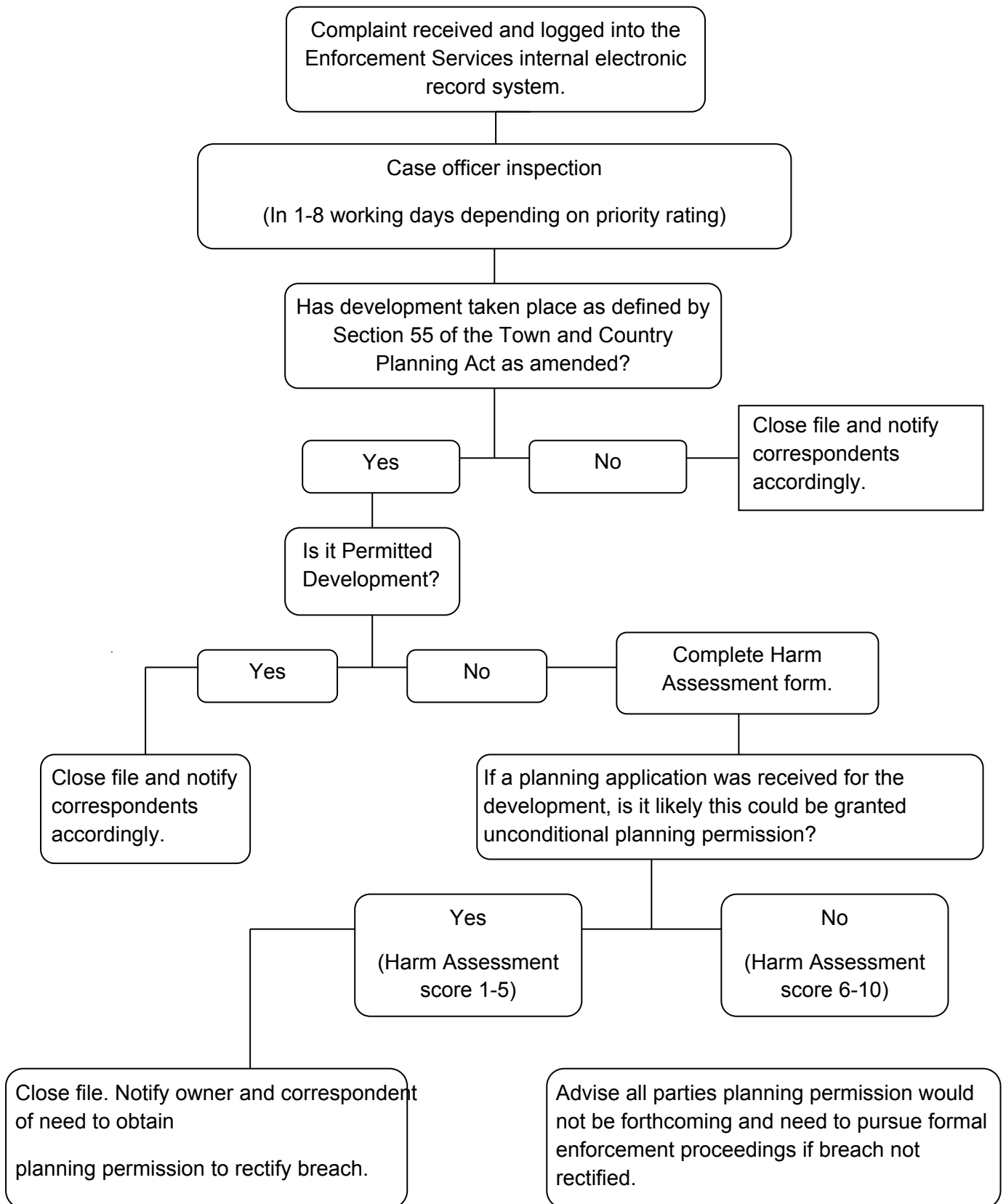
Points Allocation			Score
1	Is the breach:	Worsening/ongoing (1) Stable(0)	
2	Highway safety issue:	Yes (2) No (0)	
3	Other safety issues:	Yes (2) No (0)	
4	Causing a statutory or serious environmental nuisance	Yes(1) No(0)	
5	Complainant:	Immediate neighbour/staff(2) Other/Parish Council (1) Anonymous/malicious(0)	

6	Age of breach:	Within 6 months of immunity (2) Less than 3 month old(1) More than 3 month old(0)	
7	Major Plan Policy Breach	Yes (1) No (0)	
8	Is there harm:	Widespread(2) Local(1) None(0)	
9	Irreversible harm:	Yes(2) No(0)	
10	Flood Risk	Zone 3 (2) Zone 1-2 (1) NFR (0)	
11	Breach of a planning condition or Article 4 Direction:	Yes(1) No(0)	
12	Conservation Area (or adjacent to)	Yes(1) No(0)	
13	Listed building (or affecting the character or setting of)	Yes(1) No(0)	
14	Special exercise (please provide details)	Yes(1) No(0)	
15	Particularly sensitive site e.g. SSSI, AONB, Scheduled monument	Yes(1) No(0)	

	Listed Garden, Archaeological importance		
16	Undesirable precedent (please provide details)	Yes(1) No(0)	
TOTAL POINTS (HARM SCORE)			

NB. Please see the attached Harm Assessment Flow Chart for those cases where the Harm Score is 5 or below but the Enforcement Manager, in consultation with the area planning officer, considers that the breach would not receive an unconditional planning permission.

## Harm Assessment Flow Chart



## PLANNING ENFORCEMENT POLICY AT TENDRING DISTRICT COUNCIL

### 1. INTRODUCTION

Tendring District Council is a local planning authority. We have the responsibility and power to enforce breaches of planning control.

The decision to enforce in each case is at our discretion; there is no legal requirement for us to provide a planning enforcement service at all. However, we take planning enforcement very seriously. The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit Tendring and the quality of the district's built and natural environment.

This planning enforcement policy sets out how we will run the planning enforcement service and what you can expect from it.

Specifically it covers:

- ❖ what is a breach of planning control?
- ❖ how you can request an investigation;
- ❖ how we prioritise investigations;
- ❖ how we will carry out an investigation, how we will keep you informed and the service standards;
- ❖ what you can do if a request for an investigation is made about your development;
- ❖ a list of enforcement actions we can consider; and
- ❖ a list of contacts for further information.

Trees that are subject to a Tree Preservation Order or are within a Conservation Area are included within this policy. However there is separate legislation and an application process to deal with issues concerning the impact of high hedges on neighbours. This enforcement policy **does not** relate to high hedges. If you have a query concerning high hedges please read our documents: '*High Hedges – A guide to the new High Hedges Legislation*' and '*High Hedges – Criteria for resolving disputes*'. These are available on our website.

### **The principles of good enforcement**

We have signed up to the government's Concordat on the Principles of Good Enforcement Practice as outlined below.

**Standards:** to publish clear standards of service and performance through this enforcement policy.

**Openness:** to provide information and advice in plain language on the rules, and discuss problems with anyone experiencing difficulties either because of a breach of planning or as the result of an investigation. We will not normally make personal

details available, such as a name, telephone number or address, but our decision-making processes will be transparent to make sure that everyone has confidence in the service.

**Helpfulness:** to work with all parties to resolve investigations without formal action if practicable. We will tell you who is dealing with the investigation and how you can contact them. We will give explanations for the actions we take and any rights of appeal.

**Consistency:** to carry out duties in a fair, just and consistent manner taking into account the particular aspects of each case. When we decide whether to take enforcement action, we must always consider meeting the objectives and policies of the development plan and other material considerations. This seeks to make sure that development does not take place in inappropriate locations. Each decision will also take into account: the particular circumstances of the site and surrounding area; the level of harm being caused; and any relevant planning history, such as previous refusals or grants of planning permission or appeals for similar developments.

**Proportionality:** to take action, when it is necessary, in relation to the risks posed and the seriousness of the breach. Some incidents or breaches of regulatory requirements have the potential to cause serious risk to public health and safety, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing. There may be occasions when the breach of regulations will justify statutory action. Any such action will only be taken in accordance with the law, and after due consideration has been given to any Convention Rights, under the Human Rights Act 1998, that may be affected by such action. However, our resources are limited, and it is essential to use available resources to maximum effect. In planning terms, this means where there is the most harm to amenity or the environment. Our decisions are not based on where or who the complaint has come from.

**Complaints about the Service:** to provide well-publicised, effective and timely procedures, and explain our complaints procedure.

## **2. WHAT IS A BREACH OF PLANNING CONTROL?**

There are certain breaches of planning control that constitute criminal acts from the outset and can be subject to high penalties. Such breaches include:

- ❖ unauthorised work to a listed building;
- ❖ unauthorised demolition of an unlisted building in a conservation area;
- ❖ unauthorised works to "protected" trees; or
- ❖ unauthorised advertisements.

Other than the items listed above, it is not therefore an offence to undertake development without firstly obtaining planning permission. However, if enforcement action is taken against unauthorised development and the requirements of an

enforcement notice are not satisfied within the specified period, an offence has then occurred, which can be pursued in the Court.

Because planning enforcement operates to protect the public interest rather than the interest of one particular individual, there are certain issues that we cannot take into account. For example;

- ❖ loss of value to property;
- ❖ competition with other businesses;
- ❖ rights to a view;
- ❖ trespass; or
- ❖ breaches of covenant.

These are not planning matters and therefore we do not include them in any assessment of harm.

On average we receive requests for around 650-700 enforcement investigations a year. Some 40% of these result in finding no breach of planning control at all; others range from small scale breaches to very serious incidents. In the end, the test of a breach is the amount of harm it causes. Harm from breaches of planning control takes many different forms, including the following;

- ❖ impact on visual or residential amenity,
- ❖ impact on highway safety,
- ❖ loss of amenity for the public in general,
- ❖ loss of amenity for occupiers and users of surrounding land and buildings or on the environment in general

There may be damage to the area's historic buildings and environment through, for example, unauthorised work to listed buildings, or failure to comply with the conditions attached to a consent. The demolition of an unlisted building in a Conservation Area can also cause harm.

Harm can similarly occur if unauthorised development undermines the policies of our development plan, or could set a precedent which, if repeated, would undermine the policies of the development plan. An example could be a new house in the countryside.

The local environment can also be harmed by not taking action, just as much as actively undertaking unauthorised works. Where land or buildings are neglected their condition can adversely affect the amenity of the area.



### **3. HOW YOU CAN REPORT A POTENTIAL BREACH**

We prefer you to report potential breaches in writing to Planning Services. This can be via letter, email or using the 'unauthorised development' form that is on our website. You can find details at the end of this policy document. Sometimes, for example, where someone is doing unauthorised work to a listed building, it may be necessary for you to telephone us during office hours. We will ask you to identify yourself and give contact details so that we can keep you informed in writing at key stages. We will consider oral and anonymous requests for investigations. However, anonymous reports often don't give us enough information. Therefore looking into anonymous requests for investigations will be at the Council's discretion.

It is our policy not to reveal the identity of the informant, or information which is likely to reveal the identity of an informant to an alleged offender. We may be asked to reveal the identity of an informant under the Data Protection Act 1998, but we will always apply the rights of the individual in accordance with that Act and any other appropriate legislation.

You can speak to your local district councillor, town or parish council. However, speaking to them or advising them about your concerns is not a formal enforcement request for an investigation. Councillors, town and parish councils will decide whether they raise a matter with our planning enforcement team, but this will not be logged as a complaint from a member of the public. The priority we give to an investigation does not change because we receive it from a Councillor, town or parish council. Through whatever route you request your investigation, it helps enforcement officers if you provide us with as much information as possible about your concerns, particularly:

- ❖ the name and address of the alleged contravener;
- ❖ the location of the site;
- ❖ what has happened; the length of time it has been happening and an indication of whether it is still continuing;
- ❖ an explanation of the harm that it is causing to you specifically, your neighbours or the area generally; and
- ❖ what you consider would be a satisfactory outcome.

### **4. HOW WE PRIORITISE COMPLAINTS**

The Council's resources are not limitless. It is therefore necessary to target available resources to have the maximum effect. In planning terms this means where there is the most harm to amenity or the environment, not necessarily a response to who is complaining or how vociferously.

The Council has established a set of priorities to reflect the importance it places on the quality of life for its residents and businesses, and the need to protect the special character of the built and natural environment of the District. The performance standards set for the service encourage a more pro-active approach to enforcement. It is our intention to achieve these standards, monitoring progress regularly. The

categories are intended as a set of guiding principles, rather than attempting to list every possible eventuality.

Regardless of who has made the complaint, we will assign it a priority category. Prioritisation of the complaint then sets a performance standard for the first site visit.

**Priority 1** – first inspection within 2 working days of receipt (performance standard -95%).

- ❖ Unauthorised works to a listed building.
- ❖ Unauthorised works to a protected tree.
- ❖ Unauthorised demolition or partial demolition of a building which it is considered essential to retain.
- ❖ Unauthorised development which has been undetected and where the time limit for enforcement action will expire within the following six months.
- ❖ Use of land causing serious harm to the locality or the natural environment.

**Priority 2** – first inspection within 5 working days of receipt (performance standard 93%).

- ❖ Any unauthorised development or non-compliance with a planning agreement, which is causing immediate and irremediable harm in the locality.
- ❖ Unauthorised development in the Dedham Vale AONB or a Conservation Area.

**Priority 3** – first inspection within 8 working days of receipt (performance standard 90%).

- ❖ Display of illegal advertisements.
- ❖ All other complaints relating to unauthorised development not falling in any of the above categories.
- ❖ Untidy land.

## **5. HOW WE WILL INVESTIGATE A COMPLAINT**

We will acknowledge all requests for planning enforcement investigations in writing within three working days of receiving it, and we will give the informant the name and contact details of the enforcement officer who will be involved. We will visit all sites

within the period set out above for each of the three priorities. Wherever possible we will visit a high priority investigation on the same day that we receive the request or the following day.

### **No breach and no further action**

After undertaking an investigation we may decide not to take any further action. This might be because the breach is too minor, or because there is no breach of planning control. Alternatively, the works might be within the amount of development which can be carried out without planning permission. (The exact details of what is 'permitted development' are set out by Central Government in the Town and Country Planning (General Permitted Development) Order 1995).

Similarly, we may decide not to pursue an enforcement investigation, even if there is a clear breach of planning control, because it is not expedient to take action. This might be because although the breach is more than just a minor or technical breach, the harm it causes is not significant, and in our opinion formal action would not be in the public interest. In reaching such a decision we must balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm but whose progress might be delayed as a result. In both these circumstances we will close the case file and notify in writing everyone who has been involved in the investigation. We will also, without prejudice to the outcome, notify the owner that they can make an application to seek regularisation.

The time it takes to resolve each enforcement investigation will vary depending on:

- ❖ the nature of the concerns;
- ❖ the extent of investigations that need to be carried out;
- ❖ the harm which is being caused; and
- ❖ the resources that are available.

Where we serve an enforcement notice there is a right of appeal, which will add several months to the timescale. Therefore, it is not possible to give an average time for resolving an investigation.

We will keep informants informed throughout the process both in writing at key stages and via our website where we record progress for each investigation where a breach has been identified.

To help in meeting these targets the Council has delegated certain powers, including whether to close a case or pursue action, to officers. This allows us to make decisions on behalf of the Council without having to refer to Planning Committee. We will make the reasons for taking any decision clear to all parties.

## **6. ENFORCEMENT ACTIONS WE CAN USE**

After we have received a complaint and undertaken an investigation and established that there is a breach of planning control, we have a number of formal options available to assist in resolving the breach. Not all options will be suitable in each case.

### **Breach of Condition Notice (BCN)**

We can serve a BCN on the developer or occupier when they do not comply with conditions imposed on a planning permission. If they do not comply with the requirements of the BCN we can take legal action. It can only be used to secure complete compliance. It does not apply to breaches of control related to listed building, advertisement or protected trees. We will use this procedure in preference to the service of Enforcement Notices where appropriate. It is a criminal offence to fail to comply with a BCN within the period for compliance specified.

### **Enforcement Notice**

We will serve this when we are satisfied that there has been a breach of planning control and that it is appropriate to take action. With an enforcement notice the recipient(s) must take the specified steps within a set time period. Failure to comply with a notice is a criminal offence. The recipient(s) of a notice have a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient(s) lodge an appeal, we will tell all informants and neighbours of the appeal and how they can make representations to the Planning Inspectorate. Any representations are available for public inspection.

### **Injunction**

We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

### **Planning Contravention Notice**

This is the main method for local councils to obtain information on a suspected unauthorised development. It will usually set out a list of questions about the site/development. We can offer a formal meeting to allow additional oral information to be given. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

### **Section 16 Local Government (Miscellaneous Provisions) Act 1976**

This is primarily intended to establish information about the ownership and other interests in the land. It is an offence to fail to comply with the requirements of the

notice within the period set for its return, or to make false or misleading statements in reply.

### **Section 215 Notices**

We can serve these in relation to untidy land or buildings when the condition of land or buildings negatively affects the amenity of an area. This requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. Recipient(s) have a right to appeal to a magistrates' court if they consider the serving of the notice is unjustified. Failure to comply with the notice is an offence. We may also do the works ourselves and charge the owners.

### **Section 330 Town and Country Planning Act 1990**

We use this power to get information, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

### **Stop Notice**

We can serve these with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after we have served it, although we can reduce this period if necessary. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal; failure to comply with the notice is an offence.

### **Temporary Stop Notice**

We can serve these where we consider that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. In addition it is temporary and only lasts for 28 days. There is no right of appeal to the Secretary of State. A judicial review can challenge the validity and propriety of our decision.

### **Prosecution**

We can commence Court proceedings where a formal notice has been breached. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal Notices, e.g. unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. These proceedings can include:

- ❖ a prosecution; and
- ❖ a formal caution - this is a formal process where you formally admit the offence. It may be referred to at the sentencing stage if you are ever found guilty of a subsequent offence. We may also take it into consideration when we decide whether or not to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution, we must be able to prove that:

- ❖ the building or tree was protected;
- ❖ you have breached a formal notice (Listed Buildings);
- ❖ you have carried out, caused, or permitted the works (Listed Buildings or Protected Trees);
- ❖ the works were carried out without our consent (Listed Buildings or Protected Trees); or
- ❖ the works were not exempt works (Listed Buildings or Protected Trees).

We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors.

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#### **The evidential test:**

We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.

#### **The public interest test:**

We will only bring a prosecution where this is in the public interest. We may apply cautioning in cases where a prosecution can properly be brought, but where we do not consider such action is appropriate in the circumstances of the case. We will use cautions in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

#### **Direct Action**

We do have the power, in special circumstances and as a last resort, to make sure an enforcement notice is complied with by carrying out the required steps ourselves in default of the owner or occupier's action. We can recover all the costs incurred from the owner. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.

## **7. WHAT YOU CAN DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT**

We understand that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage. In some cases a request to investigate may be made against your property. If it is possible to investigate the concerns without disturbing you and establish that there is no breach of planning control, we will not contact you.

Depending upon the level of harm being caused we will be prepared to discuss with you what alternative solutions might be acceptable, rather than the complete removal or rebuilding of the development. However, this approach will not mean that you can delay any response or action that you have agreed to do. We expect you to respond within the stated timescales and we will pursue prosecutions for non-responses to formal notices. We will not allow long drawn out negotiations to hold back the taking of action.

In many cases, particularly where the works are likely to be acceptable, perhaps with some minor changes, we will give an opportunity to submit a retrospective application. This is so that we can consider the development in more detail and, if appropriate, control it through planning conditions.

You should be aware that development which requires but does not have planning permission is unauthorised, and remains subject to potential enforcement action for a set number of years. In the case of building works, or the use of a building as living accommodation, the time period is four years after completing the works or occupying the accommodation. Where the breach is an unauthorised change in the use of land or buildings, or is the breach of a planning condition, the time period is ten years.

If you subsequently wish to sell a property, which has been subject to unauthorised works or a change of use, you may find the sale is delayed or lost as a result. You should also be aware that we usually make mortgage providers aware of breaches of planning permission and we will send them a copy of any formal notice or decision about planning enforcement. Within the Council, the Planning Service advises the Land Charges section of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding.

Our enforcement officers will make themselves known to the landowner/developer when they enter a site, but it is not always appropriate or possible to give advance warning of a site visit. Enforcement officers are legally entitled to enter land and property. You do not have to be there for an enforcement officer to enter onto your land and make a site visit. If it is necessary to enter your house, (as opposed to just the garden) you are entitled to 24 hours notice.

If you actively prevent an enforcement officer from entering onto your land we are able to get a warrant to enter the site. Once we have secured a warrant, any obstruction to access the site will be considered a criminal offence.

We will use the information we get from a site visit to help assess the harm being caused and what further action we may need to take. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience. A senior officer makes all the decisions to serve a formal notice with the involvement of the enforcement officer.

Enforcement officers will be happy to explain the different notices and to help you understand the implications. However, enforcement officers will cannot act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a qualified planning consultant or another appropriate property professional. If you cannot afford to employ a consultant you can contact Planning Aid. Planning Aid is a voluntary service which offers free independent, professional advice (see contacts).

## **8. ENFORCEMENT OF TREE PRESERVATION ORDERS OR CONSERVATION AREA TREES**

Trees that are the subject of a Tree Preservation Order or trees that are within a conservation area are protected by planning legislation. In general, you need to get authorisation from us before you do any work. This includes cutting down, uprooting, lopping or topping. It is a criminal offence to wilfully damage or wilfully destroy a protected tree.

There are two offences which apply when a protected tree is damaged or destroyed:

- ❖ Anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000 (the fine is unlimited if there is a trial in the Crown Court). The Courts have decided that it is not necessary for a tree to be obliterated for it to be “destroyed”, it is sufficient for the tree to have been rendered useless as an amenity.
- ❖ Anyone who does unauthorised works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500.

Any proceedings for these offences must be brought within six months of the date the offence was committed.

### **Investigations**

The initial investigation will be a check to establish:

- ❖ whether the tree is protected;
- ❖ whether any consent or permission has been granted; and



❖ who is doing the works.

We will also carry out a site visit.

### **If you do unauthorised works**

As with planning enforcement complaints, officers investigating unauthorised works to protected trees have a right to enter land to carry out investigations and will take photographs that may be used as evidence later.

We will give you an opportunity to give your version of events during the investigation. However, if it appears that you did the works then we will caution you because you may have committed a criminal offence. We will issue the caution under the Police and Criminal Evidence Act 1984.

If you remove a tree through unauthorised works (or because it is dead, dying or dangerous – remember that the onus is on those carrying out the work to prove that the tree was in such a condition as to warrant its removal), you have an automatic duty as the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless we waive that requirement). The replacement tree is then subject to the same protection as the tree that was lost. We can serve a Tree Replacement Notice within a period of four years to make sure you comply. There are rights of appeal against Tree Replacement Notices.

### **Our considerations whether or not to take action**

We will make decisions as to what action to take in cases of unauthorised works on trees based on the public interest test. Each case will be considered on its own merits. We would not normally bring a prosecution unless the unauthorised works have resulted in a loss of public amenity. In most cases, we will not bring a prosecution if we would have granted consent (or raised no objection) for the works done had you applied for it.

In considering whether to bring a prosecution, we will have regard to the likelihood of you repeating the offence and the degree to which a prosecution would act as an effective deterrent. We will also have regard to any financial advantage perceived to have been gained by carrying out the unauthorised works, and whether you have been prosecuted, cautioned or warned for similar offences in the past.

We can take into account any expression of regret, helpfulness and co-operation with the investigation and also any indication that you were acting in good faith.

We will normally require the planting of replacement trees, irrespective of whether you have been prosecuted or cautioned. When we require replacement planting, we will monitor to make sure it is done. If necessary we can serve a replanting notice to secure replacement planting, which can be invoked if the landowner does not voluntarily carry out replacement planting.

## **9. UNTIDY LAND OR BUILDINGS (SECTION 215 NOTICES)**

Under Section 215 of the Town and Country Planning Act 1990 we have the power to require an owner/occupier to carry out improvement works to their land or building if the condition of the land or building is causing harm to the amenity of an area.

It is our decision whether the extent of any harm to amenity of the area is serious enough to justify the service of a Notice requiring the site to be cleaned up. The Notice will specify exactly what steps the owner must carry out to improve the site.

In assessing the harm, we will consider both the site and its surroundings.

### **Where we will serve Notices**

As with all enforcement investigations, we will allocate resources where they can be most effective and where the greatest harm is being caused. We will not use these Notices where there are more specific powers available to address the concern.

It is likely we will use a Section 215 Notice in connection with a prominent and derelict site, particularly if it has started to attract fly tipping, or an important town centre street frontage that has fallen into disrepair, particularly if it falls within a Conservation Area. We would also serve a Notice where the condition of a piece of land impacts upon the wider landscape, especially if it is in an area of countryside that is officially noted for its landscape value or beauty.

If a residential property is particularly rundown, or a garden is overgrown, or cars/domestic items are being left in the garden to rot, then we can serve a Section 215 Notice. However, our policy is that a garden which is merely untended, or a house that needs some cosmetic maintenance, for example, where a window or window frame needs to be replaced, would not qualify for a Section 215 Notice.

We would not normally serve a Section 215 Notice on a site which is untidy as a result of building works that have planning permission.

### **Scope of the Notice**

The scope of works that can be required in Section 215 Notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting.

If it is necessary for the improvements to involve work which would normally require planning permission, for example the re-building of a garage, then we will not be able to cover these works in a Section 215 Notice. In such cases, we would require a separate planning permission and therefore the use of other enforcement powers may be more appropriate.

## **Action available to us**

We will write to the owner before serving a Section 215 Notice advising that it will be served unless the site is tidied up.

Where a Notice becomes effective but it is not complied with, we will explain the action the Council can take which could involve:

- ❖ direct action where we will carry out the works ourselves and charge the owner for all costs incurred; or
- ❖ prosecution in the Magistrates Court. A successful prosecution may result in a fine of up to £1,000 and a criminal record.

The course of action will vary from site to site, and in some cases we can pursue both direct action and a prosecution. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.