

TENDRING DISTRICT COUNCIL - PLANNING SERVICE ENFORCEMENT POLICY

V.8: June 2025

VERSION HISTORY

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V.8	12/06/2025	Updated post Legal feedback

Introduction

Tendring District Council's Local Enforcement Policy outlines the purpose and delivery of the Planning Enforcement service within the district. As a Local Planning Authority, the Council is responsible for investigating and enforcing breaches of planning control when it is in the public interest. This helps protect the quality of life for residents and the district's built and natural environment.

While this policy is focused on planning enforcement, the Council is also responsible for the enforcement of building regulations under separate legislation as the Building Control Authority for the district. Parts of this policy, including the customer expectations section will also therefore apply equally to building control procedures as indicated.

Key Points Regarding This Policy Document:

- **Discretionary Enforcement:** The decision to take enforcement action is discretionary, guided by this Policy which details the principles and procedures for handling alleged breaches.
- **Reporting and Prioritisation:** The document shall outline key enforcement policies and also provide for the centralisation of information relevant to enforcement investigations.
- **Investigation and Action:** It outlines the investigation process and the various enforcement actions available, including formal actions like enforcement notices, prosecutions, or injunctions.
- **Positive Approach:** The Council aims to promote fairness and protection from harm by encouraging compliance and responding proportionately to breaches.
- **Public Awareness:** The Policy ensures that the public, Councillors, and officers understand the Council's approach to planning and building control enforcement as covered by this document, providing greater certainty for all involved.
- **Review and Compliance:** The Policy will be reviewed every four years, or sooner, to remain compliant with national and local planning policies and to reflect good practice.

Accordingly, this document is set out in three main sections:-

Section 1 – The Adopted Policy for Planning and Building Control Enforcement.

Section 2 – Performance Indicators and Customer Expectations

Section 3 – Further information on available Enforcement Types / Actions

Appendix 1 – Planning Enforcement Harm Assessment (Subject to amendment)

Appendix 2 – LABC QMS Enforcement Policy

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Adopted Policy

This policy was adopted by Tendring District Council on **BLANK** as working practice and replaces the Council's Planning Enforcement Policy dated 2022.

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Section 1 – The Adopted Policy for Planning Enforcement and Building Control

1. THE PURPOSE OF PLANNING AND BUILDING CONTROL ENFORCEMENT

Planning Enforcement

Most forms of development require planning permission under the Town and Country Planning Act 1990 (as amended). This includes:

- Many types of building works
- Material changes in the use of land or buildings
- Certain engineering operations
- Mining and other similar activities

Planning permission can be granted in two main ways:

By the Council (as the Local Planning Authority) through a planning application

Through national legislation, where permission is automatically granted. This is called permitted development, set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Permitted development rights often cover minor changes, such as house extensions, garages, outbuildings, and fences. However, these rights can be:

- Restricted by conditions on a previous planning permission.
- Removed by an Article 4 Direction, which requires that planning permission is obtained even for works that would normally be permitted. These directions are used to protect the character or wellbeing of specific areas.

Before carrying out any work, it is important to check whether an Article 4 Direction applies or whether permitted development rights have been limited by condition.

A **breach of planning control** occurs when development is carried out

- Without planning permission
- In a way that breaches the conditions or limitations of a granted permission, including those attached to permitted development rights

The Council's Planning Enforcement Team investigates and takes action where breaches occur. We are also responsible for enforcing special planning controls, including unauthorised works to listed buildings (under the Planning (Listed Buildings and Conservation Areas) Act 1990), unlawful works to protected trees (under the Town and Country Planning Act 1990, Breaches of the Hedgerows Regulations 1997 and Unlawful advertisements.

Enforcement action is taken to address harm to public amenity or other significant impacts. We do not act in private disputes or where no breach of control has occurred. Any enforcement action taken must be, a) In the public interest and b) Proportionate to the harm caused

Where possible, the Council aims to resolve breaches informally through advice and negotiation. If this is unsuccessful, we may use formal enforcement powers, such as, serving enforcement notices, requiring certain steps to be taken or works to stop and/or taking legal action through the courts, including prosecution or injunctions

Building Control Enforcement

The building control system is governed by the Building Act 1984, as amended and by the Building Safety Act 2022, and related regulations. The main regulations referred to in this policy are the Building Regulations 2010 (as amended).

These regulations apply to most types of building work in England, including:

- Constructing or extending a building
- Installing or altering controlled services or fittings (e.g. drainage, electrics, heating)
- Materially altering a building or system
- Changes in how a building is used
- Adding cavity wall insulation
- Underpinning a structure
- Carrying out work to improve energy efficiency

The regulations apply to all types of buildings, domestic, commercial, and industrial, unless exempt. They set minimum standards to protect the health and safety of people in and around buildings. **Failure to comply with the building regulations is a criminal offence and may lead to prosecution.** Those involved in the work, such as the client, designer, or contractor, are legally responsible under Part 2A of the 2010 Regulations to ensure the work complies.

In serious cases, failure to comply may result in unlimited fines, imprisonment and formal enforcement actions such as:

- Enforcement notices
- Compliance notices
- Stop notices
- Injunctions

As the local building control authority, the Council has a statutory duty to enforce these regulations. However, we aim to work cooperatively to achieve compliance wherever possible. Formal enforcement powers will only be used where necessary and always in a fair, proportionate, and public interest-driven manner.

2. POLICY AND GUIDANCE (PLANNING ENFORCEMENT AND BUILDING CONTROL)

Planning Enforcement

Local Planning Authorities have discretion over whether or not to take enforcement action; and they need to consider whether action is lawful, appropriate and proportionate having regard to the Development Plan and any other material considerations, including the approach set out in the adopted Local Enforcement Policy (see policy section) and the National Planning Policy Framework. Some parts of the NPPF and other policy considerations are highlighted below, but there are others, for example the Code for Crown Prosecutors should prosecution be pursued. The Government has issued policy guidance on the adoption of Policies and the enforcement of breaches of planning control, to which the Council will often refer when considering the approach to dealing with enforcement cases.

National Planning Policy Framework December 2024 (NPPF)

This provides for enforcement under Para 60. *“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”*

National Planning Practice Guidance (NPPG)

This provides some key guidance quoted below, but is subject to change and updating:-

“Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework...”

“The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.”

“Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.”

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- 1) there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- 2) development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- 3) in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

In preparing and adopting this Policy, the Council has had regard to the Government's recommendations in the NPPF and the National Planning Practice Guidance on effective enforcement of planning breaches.

Local Plan Policy

The Council's adopted 'Development Plan' is fundamental in guiding decisions relating to breaches of planning control. The current Development Plan is made up of the Tendring District Local Plan 2013-2033 and Beyond for which Section 1 was adopted on 26th January 2021 and Section 2 was adopted on 25th January 2022.

The policies and proposals in the Local Plan provide the statutory framework for planning decisions in Tendring District until 2033 (subject to future review) and relate to a wide range of topics including housing, employment, transport, education, heritage and landscape.

General duty for listed buildings and conservation areas in exercise of planning functions.

When exercising planning enforcement decisions affecting listed buildings and conservation areas there are duties that the Council as Local Planning Authority must adhere to.

Under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 it provides that a Local Planning Authority in considering whether to grant planning permission affecting a listed building or its setting, is required to have 'special regard' to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Further, under section 72(1) of that Act, in exercising planning functions affecting any buildings or other land in a conservation area, the Local Planning Authority is required to pay 'special attention' to the desirability of preserving or enhancing the character or appearance of that area.

The district of Tendring has many listed buildings and conservation areas. These duties will need to be applied when considering whether enforcement action is necessary for unauthorised works to a listed building or its setting, the demolition of an unlisted building in a conservation area, or other development within a conservation area.

Duty to protect, conserve and restore European sites (habitats and species)

The Council as a competent authority, is under a duty to help protect, conserve and restore European sites. The duty applies to amongst other things, taking decisions, including enforcement that might affect a European Site. European Sites are Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), including their inshore waters within 12 nautical miles of the coast. European sites on land will also be sites of special scientific interest (SSSI). When the site, or any part of it, is a SSSI the Council will also have other duties for the site.

If a plan or project (which includes development to be acceptable via enforcement action or lack thereof) might impact on the features of a European site there is a duty under regulation 63 of the Conservation of Species and Habitats Regulations 2017 to carry out a habitats regulations assessment (HRA). The competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site, unless there are imperative reasons of overriding public interest which must be demonstrated (regulation 64).

Again, in determining whether enforcement action is appropriate, this duty will be applied where applicable. There are three European sites in the district of Tendring, Hamford Water, the Colne Estuary and Stour Estuary.

Building Control

Section 58Z8 of the Building Act 1984, as amended (the “Act”) and the Building Safety Regulator

Sections 58Z – 58Z10 of the Building Act 1984 set out the provisions that apply to building control functions delivered by local authorities and registered building control approvers and allows for the publication of, and amendment to Operational Standards Rules (OSRS) <https://www.gov.uk/government/publications/building-control-bodies-professional-codes-and-standards/operational-standards-rules> . The OSRs set particular standards to be met and practices, procedures or methods to be adopted in exercising building control functions. These include the requirement to apply a risk-based approach to the use of regulatory intervention and/or enforcement tools and need for an enforcement policy.

Both Planning and Building Control Enforcement

Human Rights

The provisions of the European Convention on Human Rights are relevant when considering enforcement action. There is a clear public interest in enforcing planning controls in a proportionate way. When deciding whether enforcement action is taken, the Council should have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

Public Sector Equality Duty (PSED)

In making decisions in relation to planning and building control enforcement matters, the Council will have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- (c) Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.

General duty on all authorities with regards to biodiversity

The Natural Environment and Rural Communities Act 2006 as amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity. Section 40 A1 states “For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England”

This duty to conserve and enhance biodiversity applies to local planning authorities and a range of other public authorities. Section 40 requires authorities to consider what actions they can take to further the general biodiversity objective and, after consideration, determine policies and specific objectives to achieve this goal. The actions can include conserving, restoring, or enhancing populations of particular species and habitats. While the Section duty does not explicitly state that planning/building control decisions and/or enforcement action must contribute to biodiversity conservation, it is essential to consider the broader context of planning/building and enforcement functions within the authority.

Typically, the local planning authority plays a crucial role in land use decisions, and decisions related to development that the Council’s Planning and Building Enforcement Teams may need to investigate that could have significant implications for biodiversity interests. In making decisions in relation to planning and building control enforcement, the Council must consider whether the development in question would conserve and enhance biodiversity and have regard to any guidance issued.

General duty on public bodies as regards Areas of Outstanding Natural Beauty (National Landscapes)

Under Section 85(A1) of the Countryside and Rights of Way Act 2000 as amended by the Levelling-up and Regeneration Act 2023, there is a general duty on public bodies to now ‘seek to further’ the statutory purposes of areas of outstanding beauty (AONBs now

rebranded as National Landscapes but the name change is non-statutory). This replaces the previous duty on relevant authorities to 'have regard to' their statutory purposes.

Section 85(A1) provides *“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”*

There are two AONBs in the district of Tendring, The Dedham Vale and Suffolk Coast and Heaths.

3. THE PLANNING AND BUILDING ENFORCEMENT POLICIES

Policy ENF01 – Planning Enforcement Standards

All planning enforcement matters shall be considered and processed by the Council in line with the following standards:-

- **Clear Communication:** Information and advice about planning breaches will be communicated in plain language, detailing required actions and the rationale behind decisions. All parties involved will be informed about who is managing the investigation, the Council's contact details regarding the matter, and the potential actions that may be taken. Each case will be assigned a reference number for tracking, and Officers will make efforts to contact property owners if available prior to any formal action.
- **Compliance Timelines:** Reasonable timescales for compliance for all informal and formal actions will be established, along with clear consequences for non-compliance.
- **Public Accountability:** Decision-making processes will be transparent and all decisions exercised under delegated powers will be recorded in an officer report to be published in accordance with the Council's constitution. Where enforcement decisions are made by the Council's Planning Committee reports, resolutions and minutes will also be published in accordance with the Council's constitution.

Some details regarding live enforcement matters/investigations shall be placed online. The publication of reports, decisions, and live case information however will always be subject to the need to withhold information which might prejudice subsequent proceedings, any publication by the Council is also subject to data protection laws. **Only Formal enforcement actions, such as the issue of a Planning Enforcement Notice, must be published as required by planning legislation.**

Comprehensive information on planning enforcement procedures will be available on the Council's website, including contact details for the enforcement team.

Policy ENF02 – Planning Enforcement Site Investigation

When Enforcement Investigation matters require on site investigation, Officers will introduce themselves to the site owners/occupiers during visits when possible. The right to access land or property without an owner's express consent is reserved by the Council and can be used when appropriate by exercising powers of entry (Section 196A of the Town and Country Planning Act 1990 as amended).

Assessments on site will include consideration of site conditions, impact on adjacent properties, and relevant planning history along with material considerations relevant. Officers may conduct site visits outside normal hours, if necessary. Any photographs, videos, recordings, including body cams, drone and dashcam footage as may be taken as part of the investigation regarding the site, statements, interviews and used as evidence shall be subject to the Council's data protection and retention policies, and any council policy/duty as required to allow the investigation to conclude lawfully or allow any criminal matters to be taken forward.

Policy ENF03 – Planning Enforcement Assessment

Formal enforcement action cannot be taken where there has been no breach of planning control. Enforcement action can not be taken to protect private interests or disputes. Formal action can only be exercised in the public interest* and must be proportionate.

Decisions regarding enforcement action will consider the local development plan, NPPF and policies listed in this enforcement policy document, and relevant material planning considerations in the public interest* and all legal duties that apply to the matter under investigation. Such decisions shall consider the extent of any harm** with prioritisation given to public health risks, environmental harm, and/or loss of amenity for which the adopted Harm Assessment tool will be used to help judge in all investigations.

In all planning enforcement cases the officers will consider:-

- If the harm** can be resolved/reduced/reversed due through any informal or formal action,
- If no resolution is possible, would taking no action affect public confidence,

- If the Council's decision against any likely success would result in significant cost to the public that outweighs any benefit gained, and therefore in itself not in the public interest*.
- All enforcement actions will comply with relevant legal duties, including (but not limited to) ecological/wildlife and historic environment considerations, the European Convention on Human Rights and the Equalities Act 2010.
- All enforcement actions shall have due regard and give material weight to all planning policies, and all material planning considerations.

***Public Interest:**

"Public" refers to the wider local community or concerning the people as a whole. It is not individuals, and may not include individual neighbours. It is the welfare or well-being of the general public and society. "Interest" in this context is the material interests that would be affected by planning matters. On this basis, Public Interest are the planning material interests that affect the wider community or people as a whole.

The following matters are not considered to be in the public interest, devaluation of property, loss of a private view, breach of a restrictive covenant, moral considerations (for example, religious objections to licensed premises, political or ideological opinions), ownership and issues which are covered by other legislation (eg Building Regulations, Health and Safety regulations, Environmental Controls).

****Harm:**

Harm is the negative impacts of development resulting from material planning matters. If the enforcement matter is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area it will not be pursued. When the development is acceptable on its planning merits, any enforcement matter may be closed if the sole purpose of enforcement action is to regularise the development. In summary with any breach of planning control, a Planning Enforcement Officer must consider if the level of harm is so significant that it warrants formal action. Where there is significant harm and it is in the public interest to do so, then enforcement action should be taken without undue delay.

Policy ENF04 – Withdrawing Planning Enforcement Notices

Planning Enforcement Notices run with the land. They may only be withdrawn at the Council's discretion for example, planning permission is now granted for the breach alleged in the notice resulting in the notice having no effect. Conversely and by way of example, if there is a notice in place for a specified use of land to cease that remains in perpetuity however the Council can exercise its discretion to withdraw the notice if that use is unlikely to resume.

Where an extant Planning Enforcement Notice has been complied with, but it is possible that the breach alleged in the Notice could easily re-occur, applicants would need to provide very special circumstances as to why the notice should be withdrawn.

Note for ENF1 to 3: If the breach of planning control raises no planning issues, then support by both national and local government is given to not to take further action. For example, if the unauthorised development would have been permitted, had a planning application been submitted, it would be unlikely to be expedient to take enforcement action. In conclusion the fundamental principle is that taking enforcement action must be in the public interest and proportionate and to resolve significant harm.

Policy ENF05 – Building Control Enforcement Policy

To ensure consistent working and alignment with both the adopted Local Authority Building Control (LABC) Quality Management System, the Council adopts all provisions contained within the ISO 9001:2015 LABC Quality Management System – Enforcement Policy.

In line with that document all Building Control Enforcement officers shall consider the following factors before deciding when to act.

- The seriousness of the breach.
- The track record of non-compliance.
- The continued risk to health, safety or the environment.
- The effects of non-compliance.
- The likely effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.

We will consider prosecuting:

- Where the offence involves a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order.
- Where the offence results in an imminent risk to public health, safety, or the environment.
- Where there is a failure to correct an identified serious risk within a reasonable time.
- Where there is a history of similar offences.
- Where there is obstruction or assault of a surveyor or where an surveyor is given false or misleading information

Section 2 – Performance Indicators and Customer Expectations for Planning Enforcement and Building Control

4. REPORTING AN ALLEGED BREACH (PLANNING ENFORCEMENT AND BUILDING CONTROL)

Breaches of planning control or building regulations can be reported to the Council by letter, email or by completing an 'Enforcement Enquiry Form' form on the Tendring District Council website. Any interested party can also contact the Council in person or by phone in cases of urgent matters, for example unauthorised works are being undertaken to a Listed Building or a protected tree.

Where an alleged breach is reported and the web site form is not used, the enquirer will be asked to provide certain information before the Council can investigate further, this needs to be sufficient for Officers to complete the enquiry form, or the enquirer may be asked to complete the enquiry form. The purpose being to receive sufficient information to enable the enforcement team to prioritise the action to be taken, understand the concerns in full and enable effective following action. Providing full details also enables exchange of contact details so that interested parties can be updated at key stages.

Please note that anonymous enquiries will not usually be acted upon unless there is sufficient evidence and details to enable reasonable consideration of the enquiry, and the alleged breach is serious or readily apparent. Personal details will remain confidential and will not be revealed unless required by law. In exceptional cases, the Council may be required to reveal personal details to the police in connection with an investigation.

The planning / building control enforcement enquirer can also speak to their local District Councillor, Town or Parish Council, but advising them about their concerns is not a formal enforcement request for an investigation. Councillors, Town and Parish Councils will decide whether they raise a matter with the planning enforcement team, but this will be recorded as an enquiry from the Councillor, Town/Parish Council and not the member of the public that originally reported the issue. The Council's enforcement team will still require certain information in order to start the investigation (as detailed on enquiry form). Direct contact is encouraged and preferred over other means of raising an enforcement enquiry to minimise delay and avoid the risk of breach of confidentiality outside of the control of the District Council and/or concerned party.

5. PLANNING ENFORCEMENT PRIORITIES FOR INVESTIGATION

A single standard of priority management is applied in the consideration of planning enforcement matters: -

Priority

For all planning enforcement cases, an initial desktop assessment will be carried out within five (5) working days of receipt of a completed enquiry form. Some matters will not require a site visit, but if a site visit is considered required it shall be carried out within ten (10) working days of receipt of the completed form.

Immediate investigation and site visit will be necessary on receipt of a completed enforcement enquiry form for the following:-

- demolition of a listed building or unlisted building in a conservation area.
- ongoing works to a listed building
- removal of a protected tree or hedgerow (all that require permission for alteration/removal by Local Planning Authority).
- development causing an immediate significant danger to the public or highway.
- if part of the site includes a SSSI, or designated to protect wildlife.

Note: Should any enquiry include any of the above in part, this will still be an immediate investigation.

Identification of Case (Traffic Light)

Planning Enforcement cases will be classified using a 'traffic light system' to identify the highest priority cases. In other words, cases of very high priority and urgency will be classified as red, less urgent cases will be treated as amber and cases which are either not urgent or can be investigated over a longer period will be treated as green. This ensures that the cases causing most harm and impact are given the highest priority and are dealt with most expediently with resources available to the Council.

The identification of the case as red, amber and green shall be based on the initial harm assessment tool, but all matters needing immediate enforcement investigation defined above shall be treated as Red.

The status of the case may be altered to reflect changing circumstances as the investigation proceeds. This may, for example, reflect an improvement to, or resolution of the situation; or that works on site have not ceased despite the requests from the Council or further breaches on the site are discovered

6. PLANNING ENFORCEMENT HARM ASSESSMENT

The decision whether to take enforcement action is discretionary and the Council, like most Councils throughout the country, has limited resources to devote to resolving planning enforcement issues. Therefore, a process to assess the degree of harm, public interest and policy considerations is carried out to assist in deciding whether it is appropriate to take action, what type of action may be appropriate and how the case should be prioritised.

Harm assessments will be carried out as part of the initial assessment where a breach has been confirmed. The degree of harm resulting from the breach is graded against a series of planning criteria and other considerations listed. The Council receives in excess of 350 enforcement investigation requests each year of which almost half are found to involve no breach of planning control. Where it is decided that enforcement action should not be taken, for example where the breach is minor or results in no significant harm, the case will likely be closed and the reasons for the Council's decision recorded.

The harm assessment result will be reviewed and updated before the closing of the case. This may result in a revised harm assessment or no change to the initial position.

The effectiveness of the Harm Assessment form will be assessed every 12 months to ensure that the scoring system provides an accurate guide for officers in assessing cases. However, it is important to note it is only a guide/tool that will have limitations and does assist, not replace, professional judgement on the matter being investigated.

7. CASE PROGRESS REPORTING FOR PLANNING ENFORCEMENT AND BUILDING CONTROL ENFORCEMENT

Updates to the enquirer

On the Council's website, all planning enforcement enquiry cases will be recorded online, unless there are specific reasons not to place information in the public domain e.g. application of data protection laws; information relating to a concluded or ongoing investigation where formal enforcement action is or may be taken. This under the public planning application search section of the Council's web site, via selecting Enforcement tab.

The record that is placed on the website will provide only basic information regarding the investigation and stage but will not provide any sensitive information.

Building Control enforcement matters will not be recorded online in any form.

Enforcement cases, whether related to planning or building control, can be complex and take varying amounts of time to resolve. This is because each case is different and often involves multiple steps, investigations, and legal processes.

Why Enforcement Takes Time

When we receive a report of a potential breach, our officers must:

- Investigate the alleged issue
- Research the site and relevant planning or building regulations
- Determine whether the development is permitted or requires consent
- Visit the site and speak with those involved

This process can take time, especially if the situation is complicated or if cooperation from the landowner is limited.

When You'll Hear from Us regarding Enforcement matters

We aim to keep the enquirer informed at key stages of the process, rather than providing updates where nothing has changed. Our typical communication timeline is:

Stage	Action	Timeframe
Stage 1	Acknowledgement of planning/building regulation enforcement enquirer	Within 3 working days
Stage 2	Establishment of Breach or Closure of the case (including letter of summary to enquirer if closed).	Within 21 working days
Stage 3	Reporting on the proposed/agreed resolution/remediation for the site, including any planning/building regulation application sought to address the breach.	Within 42 working days
Stage 3a	Outcome of any Planning/Building regulation application (including letter of summary to enquirer if enforcement case is then closed)	As soon as available
Stage 4	Case review and update	Every 6 months (and 6 months thereafter)
Stage 5	Serving of formal notice, prosecution or closure (including letter of summary to enquirer if enforcement case is then closed)	As applicable

If no breach is found, we will inform you and close the case.

What Affects the Timeline?

The time it takes to resolve a case depends on several factors, including:

- The complexity and seriousness of the breach
- Whether planning permission or building consent is needed
- The cooperation of the landowner
- The need for specialist reports (e.g. bat surveys, which are seasonal)
- Whether the case goes to the Planning Committee or requires legal agreements
- Appeals or legal challenges, such as judicial reviews

Some cases may be resolved quickly, while others can take 6–12 months or longer—especially if appeals are involved. Where a Planning Enforcement Notice is issued there is a right of appeal to the Secretary of State which can add significantly to the overall timescale. Therefore, it is not possible to give an average time for resolving an investigation

Keeping Informed

We understand that enforcement matters can be frustrating, especially when progress seems slow. We are committed to keeping the enquirer updated at key points and will also provide updates on our website where possible.

Updating the Council regarding Planning Enforcement matters

Officers shall report the following information to the Planning Committee (unless amended) or as needed the Tendring/Colchester Borders Garden Community Joint Committee the following information at least twice a year for planning enforcement matters only.

- Number of enforcement enquiries received/registered in each quarter;
- Number of enforcement enquiries closed to date that year;
- Number of live cases presented by category, electoral ward and time period since receipt;
- Enforcement-related appeal decisions.

Role of Councillors with regard to Planning Enforcement matters

At Tendring all planning and building control Enforcement functions are delegated to senior officers, but planning enforcement matters can also be decided by Planning Committee / Tendring/Colchester Borders Garden Community Joint Committee. Councillors play a vital role in planning enforcement by representing their constituents and acting as a link between residents and the planning authority.

- They can raise local concerns, help residents understand the planning process, and advocate for local issues, ultimately influencing the enforcement of planning regulations. Councillors can facilitate public engagement in planning matters, making the process more transparent and accessible
- They help set the direction of planning policy, ensuring it aligns with local needs and aspirations.
- They can influence the overall planning vision and culture within the planning service.
- They can help identify potential breaches of planning control early on, preventing issues from escalating.
- They can support the planning authority's efforts to ensure that planning regulations are followed and actions are accountable in the public interest.

Section 3 – Further Information on available Planning Enforcement and Building Control - Types / Actions

8. BREACHES OF PLANNING CONTROL

Many types of development require planning permission before they can be carried out including building works, engineering works, mining operations and material changes to the use of land or buildings. Development is defined in section 55 of the Town and Country Planning Act 1990 (as amended).

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- *The carrying out of development without the required planning permission; or*
- *Failing to comply with any condition or limitation subject to which planning permission has been granted.*

Planning permission is granted expressly or may have deemed permission by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The latter is known as Permitted Development. Both types of permission have restrictive conditions or limitations that must be complied with.

A contravention of the conditions relating to permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, also constitutes a breach of planning control against which enforcement action may be taken, as it would be a breach of condition of express grant of planning permission.

Examples of breaches of development without planning permission include, extension of a building, engineering works, demolition, material change of use of a building or land, development not in accordance with the plans approved by the permission or planning conditions imposed.

There may also be breaches of other special planning controls (not within the definition of a 'breach of planning control') for example: removal of trees protected by a Tree Preservation Order or trees in a conservation area, demolition/works to a listed building, display of an advertisement without consent, or removal of protected hedgerows.

Is a breach a criminal offence?

Most breaches of planning control are not immediate criminal offences but may result in the Council taking formal enforcement action where this is justified in the public interest to resolve the breach. If formal enforcement action is taken, for example the service of a Planning Enforcement Notice, it is then a criminal offence to fail to comply with the notice.

There are certain breaches of planning control and breaches of other special planning controls that are immediate criminal offences, including:

- Demolition of a listed building or the carrying out of works (likely to cause harm and that affect its special interest without listed building consent.

- Breaches of condition of listed building consent.
- Demolition of an unlisted building in a conservation area without planning permission.
- Felling or unauthorised works to trees protected by a Tree Preservation Order or within a Conservation Area or removal of a protected hedgerow.
- Display of unauthorised advertisements.

Time Limits on Planning Enforcement

When a **breach of planning control** has occurred, the Council must usually take formal enforcement action **within 10 years** from the date the unlawful development was substantially completed or implemented. After this time, the development may become **lawful by default** and immune from enforcement.

For unauthorised buildings or change of use to a dwelling, a 4-year time limit applied before 25 April 2024. If such a development was completed before this date, the shorter 4-year rule still applies.

Exceptions to the Time Limits

There are cases where enforcement may proceed even after the usual time limits:

- **Deliberate Concealment:** If a breach was intentionally hidden and only discovered after the time limit passed, the Council can apply for a Planning Enforcement Order. This allows enforcement despite the expiry of the original time limit.
- **Listed and Conservation Area Buildings:**
 - There is no time limit for taking enforcement action against:
 - Unauthorised demolition of an unlisted building in a Conservation Area, or
 - Unauthorised works to a Listed Building

These breaches do not become lawful over time, and a Listed Building Enforcement Notice may be served at any point.

Time Limits for Prosecution

While enforcement action has its own time frames, criminal prosecutions have separate time limits depending on the offence and what the law specifically allows. Regardless of the legal timelines, investigations must proceed promptly and fairly. Any undue delay may lead to claims of abuse of process, where the defendant could argue that delays have compromised their right to a fair defence.

9. TYPES OF ENFORCEMENT ACTION

When an enquiry has been investigated and it has been established that there has been a breach of planning control, there are a number of options available to the Council to resolve the breach, although not all options will be appropriate in all cases.

Planning Contravention Notice (PCN)

The PCN enables Local Planning Authorities to obtain information about a suspected breach of planning control as part of an investigation. It sets out a list of questions about the development or activity to establish whether a breach has occurred. The Council can offer a meeting to allow additional information to be provided. It is a criminal offence not to comply with the requirements of the notice within the 21 day period set for its return or to make false or misleading statements.

Section 16 Notice (Local Government (Miscellaneous Provisions) Act 1976)

This notice is primarily intended to establish information about ownership and other interests in the land as part of an investigation. It is a criminal 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 330 Town and Country Planning Act 1990

This provision enables the Council to require information as to interests in land, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person(s) receiving rent. It is a criminal 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.

Breach of Condition Notice (BCN)

The Council can serve a BCN on the developer/occupier or any person having control on the land, if they do not comply with conditions imposed on a planning permission. There is no right of appeal against a BCN and failure to comply within the specified period is a criminal offence allowing the Council to issue proceedings.

A BCN can only be used to secure complete compliance. It does not apply to breaches of control relating to listed buildings, advertisements or protected trees/hedgerows. The Council can use this procedure in preference to issuing a Planning Enforcement Notice, where appropriate, however the penalties for non-compliance may be lower than if a Planning Enforcement Notice is used to remedy the breach of condition, and there is non-compliance.

Planning Enforcement Notice

The Council can issue a Planning Enforcement Notice if there's a breach of planning control and action is necessary. It must be served on the landowner, occupier, and anyone else considered by the Council to have a significant interest in the property.

The notice takes effect no sooner than 28 days after being served, giving time to appeal. It will outline the steps that must be taken and by when. Failing to comply is a criminal offence. Recipients have the right to appeal to the Secretary of State via the Planning Inspectorate. While an appeal is ongoing, the notice is paused. The Council will inform relevant parties of the appeal and explain how to submit public comments, which will be publicly available.

If there's no appeal, or the appeal is unsuccessful, the notice becomes enforceable. The recipient must comply within the stated timeframe, or face potential legal action, including court proceedings or injunctive relief.

Local Planning Authorities can also take direct action: they may enter the land, complete the required work, and recover costs from the landowner. Obstructing officials during this process is a criminal offence. These powers are used when other efforts to gain cooperation have failed.

Stop Notice

The Council can serve a Stop Notice with a Planning Enforcement Notice where it considers that continuing unauthorised development is causing significant harm. A Stop Notice's requirements should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. The Stop Notice continues to take effect even if an appeal is lodged against the Planning Enforcement Notice. The Stop Notice does not usually come into effect until three days after it is served, although this can be reduced if necessary. Work must stop immediately the Notice comes into effect and there is no right of appeal against the Stop Notice but it can be challenged by judicial review. Failure to comply with the Stop Notice is a criminal offence.

There are compensation liabilities to the Council if the Planning Enforcement Notice is later quashed, varied or withdrawn or the Stop Notice is withdrawn, but these are not related to the planning merits of the case.

Temporary Stop Notice

Where there has been a breach of planning control, immediate action can be taken to safeguard the amenities of the area by a Temporary Stop Notice. This differs from a normal Stop Notice as it has immediate effect and does not have to be accompanied by an Enforcement Notice but a Temporary Stop Notice only lasts for 56 days and it is a criminal offence not to comply. There is no right of appeal, but judicial review can challenge the decision to issue the notice. There are limited circumstances where compensation can be claimed.

Injunction

The Council can apply to the County Court or High Court for an injunction to stop an actual or apprehended breach of planning or listed building control, even when the identity of the person is unknown. An injunction must be both necessary and expedient.

An injunction can be sought whether or not other enforcement action has been taken. Failure to comply with an injunction can be considered as contempt of court and can lead to an unlimited fine, confiscation of assets or imprisonment as this is a criminal offence.

Section 215: Untidy Site Notice / Maintenance of Land

Under Section 215 of the Town and Country Planning Act, 1990 the Council has powers to require an owner/occupier to maintain land or buildings if their condition causes harm and adversely affects the amenity of an area.

In assessing the harm, consideration will be given to the appearance of the site and the impact on the amenities of the surrounding area. The Council will decide whether the extent of any harm to amenity of the area justifies the service of a Notice requiring the proper maintenance of land.

A Section 215 Notice will specify what steps the owner must carry out to improve the site to secure an improvement in its appearance in order to avoid further action or prosecution. The owner has a right of appeal to the Magistrate's Court but failure to comply with the notice is a criminal offence. The Council may also carry out the works in default and recover the cost from the owner.

Section 215 Notices may be appropriate in connection with a prominent and derelict site, particularly if it has started to attract fly-tipping, or where an important town centre street frontage has fallen into disrepair, particularly if it is within a Conservation Area. The Council may also serve a Notice where the condition of land impacts upon the wider landscape, particularly if it is in an area of countryside which is noted for its landscape value or natural beauty.

If a residential property is in a dilapidated condition due to lack of proper maintenance over a long period, or the garden is overgrown with domestic waste or there are abandoned vehicles left in the garden, an Untidy Site Notice may be an appropriate remedy. However, gardens which are merely neglected or a house that needs some cosmetic maintenance may not generally qualify for a Section 215 Notice. As with other enforcement investigations, the Council will allocate resources where they can be most effective and where the greatest harm is being caused. It will not use these Notices where there are other more specific and applicable powers available to address the concern.

A Section 215 Notice will specify the steps required to maintain the land and buildings to a satisfactory standard. The scope of works which can be required may include making the site secure, undertaking external repairs, replacing roof tiles, repairs to guttering, repairs to doors and windows, redecoration, removing waste, and cutting back overgrown vegetation. Works which require planning permission, for example the re-building of a garage or extension fall beyond the scope of a Section 215 Notice.

The owner will be notified before serving a Section 215 Notice advising that formal action will be taken unless the appearance of the site is improved. Where no action is taken by the owner and a Notice becomes effective but is not complied with, the Council may:

- Prosecute in the Magistrates Court. A successful prosecution may result in a fine of up to £1,000 and a criminal record.

- Direct action: carrying out the required steps in default and the costs incurred recovered from the owner. Where the costs cannot be recovered a charge on the property can be registered with the Land Registry, thus assuring full cost recovery plus base-rate interest.

The course of action will vary from site to site, and in some cases both direct action and prosecution may be appropriate. Where the costs cannot be recovered a charge on the property will be registered with the Land Registry.

Listed Building Enforcement & Temporary Stop Notices

Under the *Planning (Listed Buildings and Conservation Areas) Act 1990*, consent from the Local Planning Authority is required before demolishing, altering, or extending a listed building in any way that may affect its character.

If unauthorised work takes place, the Council can issue a **Listed Building Enforcement Notice**. This notice sets out the steps needed to address the breach, often including restoring the building to its original condition, and a timeframe for compliance. **Failing to comply is a criminal offence.**

The recipient has **28 days** to appeal to the Secretary of State via the Planning Inspectorate. While the appeal is ongoing, the notice is put on hold. If an appeal is made, the Council will inform neighbouring properties and explain how to make representations, which will be publicly accessible.

Unlike general planning enforcement cases, **unauthorised works to a listed building can lead directly to prosecution**, without the need for a formal notice or court injunction. Even minor unauthorised changes can be treated as criminal offences.

The Council may also issue a **Temporary Stop Notice** to immediately halt suspected breaches while further investigation takes place. These powers mirror those under the Town and Country Planning Act 1990.

Important: In serious cases, courts may issue not only substantial fines, but also custodial sentences for those responsible for unauthorised works to a listed building.

To avoid legal action or damage to heritage assets, it is *strongly advised* that anyone considering works to a listed building first contacts the Council to check whether consent is needed.

Advertisement Control Matters

Advertising is subject to a separate consent process under planning law, outlined in the *Town and Country Planning (Control of Advertisements) (England) Regulations 2007*. Advertisements are regulated based on their **impact on public safety and amenity**.

It is a **criminal offence** to display an advert:

- Without express consent from the Local Planning Authority.
- In breach of any conditions attached to that consent,

- Or without “Deemed Consent,” which applies to certain advert types that meet specific criteria.

There are:

- 16 classes of adverts with Deemed Consent (listed in Schedule 3), and
- 9 classes that don’t require consent at all if conditions are met (e.g. road signs, detailed in Schedule 1).

If an advert is considered illegal or harmful, the advertiser is usually given 14 days to remove it. This period may be shorter if the advert poses a safety risk or affects a listed building, which may also need listed building consent. While content is not normally a planning issue, **offensive content** may justify quicker removal. **Responsibility for legal content on permitted sites lies with the Advertising Standards Authority, not the Local Planning Authority.**

If an advert remains after a warning, the Council can take legal action, including prosecution or formal caution. Each day it remains illegally displayed is treated as a separate offence.

The Local Planning Authority also have powers to remove illegal adverts and supporting structures, and may work with Essex County Council to remove unauthorised adverts on highways under the *Highways Act 1980*. Removed adverts may be subject to a recovery fee, and if replaced, could be confiscated.

Protection of Trees and Hedgerows

Certain trees and hedgerows are legally protected, and it is a criminal offence to carry out unauthorised work on them.

Trees may be protected if they:

- Are covered by a **Tree Preservation Order (TPO)**, or
- Are located within a **Conservation Area**

If a tree is protected, you must obtain permission from the Council before carrying out any work. This includes cutting down, uprooting, lopping, or topping. It is a criminal offence to wilfully damage or destroy such trees.

Ancient hedgerows that fall under the Hedgerows Regulations 1997 are also protected. You must not remove or destroy these hedgerows without approval. Offenders may face prosecution and a fine of up to £2,500 if found guilty.

Offences and Penalties: If a protected tree or hedgerow is damaged or destroyed, the following may apply:

- **Serious Offences:** Anyone who cuts down, uproots, or wilfully destroys a protected tree (or damages it in a way that is likely to destroy it) may be fined:
 - Up to £20,000 in the Magistrates’ Court
 - An unlimited fine if convicted in the Crown Court

Note: A tree does not need to be completely destroyed—if its value as an amenity is lost, it may still be considered destroyed.

- **Lesser Offences:** Carrying out unauthorised works that do not destroy the tree can result in a fine of up to £2,500.

Council officers have the legal right to enter land to investigate suspected offences. Investigations will check whether the tree or hedgerow is protected, whether permission was granted and who carried out the work. If someone is suspected of committing an offence, they may be cautioned under the Police and Criminal Evidence Act 1984. If a protected tree is removed without permission, or due to it being dead, dying, or dangerous, the person responsible must be able to prove the condition of the tree.

Unless the Council waives the requirement, the landowner must:

- Replant a suitable tree in the same location as soon as reasonably possible
- The replacement tree will receive the same legal protections as the original

If replanting is not carried out, the Council may issue a Tree Replacement Notice, enforceable for up to four years. There is a right of appeal.

The Council considers each case individually and decides whether to pursue enforcement based on the public interest and whether the works caused a loss of public amenity.

Prosecution is unlikely if the Council would have approved the work had permission been sought. However, replacement planting is generally required in all cases, and compliance will be monitored. A Tree Replacement Notice may be served if necessary.

10. PROSECUTION

In deciding whether to prosecute any offence (planning or building control), the Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. This Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

The Council will exercise its discretion when deciding whether to prosecute an offence but will only do so if it is in the public interest and in accordance with the Code for Public Prosecutors. Whilst collation of the evidence to prosecute will be from the Enforcement Team (other departments where necessary), **the decision to prosecute will be made by the appropriate senior legal officer in accordance with the constitution.**

Upon successful prosecution/appeal, the Council will seek its reasonable cost incurred in prosecuting or defending a matter. Measures under the Proceeds of Crime Act 2002 (POCA) will be utilised where appropriate to recover money unlawfully gained but monies recoverable under POCA will not form any part of the decision to put a case forward for prosecution.

In addition to prosecution, other enforcement powers may be exercised at the same time (as outlined above) to resolve a breach of planning or building control. Some include direct action for example, under the Building Act 1984 a Building Control Authority can undertake works including the removal/alteration of works that may be necessary to comply with the building regulations.

CONTACTS AND FURTHER INFORMATION

Planning Enforcement and Building Control

Tendring District Council

Town Hall

Station Road

Clacton-on-Sea

Essex CO15 1SE

Tel: 01255 686120

Email: Planning Enforcement planning.enforcement@tendringdc.gov.uk

Email: Building Control Enforcement bcinspections@tendringdc.gov.uk

Planning Inspectorate

(The independent body responsible for planning and enforcement appeals.)

Room 3/01, Kite Wing,

Temple Quay House,

2 The Square,

Temple Quay,

Bristol, BS1 6PN.

www.planning-inspectorate.gov.uk/pins/index.htm

Planning Portal: Is the Government's online planning resource where you can learn about the planning system and research the latest government policy. [Planning Portal](https://www.planningportal.gov.uk/)

Planning Aid: Provides free, independent, professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees. info@planningaid.rtpi.org.uk

Planning Aid

PO Box 37,

Freshwater,

Isle of Wight, PO40 9ZR

Phone: 0207 929 8338

RTPI | Planning Enforcement Handbook for England

<https://www.rtpi.org.uk/practice/2020/may/planning-enforcement-handbook-for-england/>

Advertising Standards Authority

[Home - ASA | CAP](https://www.asa.co.uk/)

High Hedges

Information and guidance on High Hedges and how to make an enquiry can be found on the Council's website via the following link.

<https://www.tendringdc.gov.uk/content/high-hedges>