



# Brentwood Local Planning Enforcement Plan

This Plan sets out how Brentwood will manage enforcement proactively in a way appropriate to the area of the Borough

March 2015

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## Executive Summary

- National Planning Policy Guidance (PPG) published on-line since March 2014 states, in paragraph 006 of the Section entitled Ensuring Effective Enforcement, that the preparation and adoption of a local enforcement plan is important because it:
  - Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - Sets out the priorities for enforcement action, and which will inform decisions about when to take enforcement action;
  - Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
  - Provides greater certainty for all parties engaged in the development process
- This Local Enforcement Plan has been the subject of public consultation and report to the Planning and Development Committee and the full Council before adoption and is intended to meet these criteria. The plan sets out the objectives of the Planning Enforcement Service and the system and principles for the exercise of the relevant statutory powers. The local context in the plan includes the natural and historic environment. References to “the Act” mean the Town and Country Planning Act 1990, as amended. Other legislation specifically referred to relates to the Equalities Act 2010, Listed Buildings and Hedgerows and High Hedges.
- Brentwood Borough Council is the responsible Local Planning Authority for the enforcement of planning control within the Borough, apart from matters which are within the jurisdiction of the Essex County Council or the Essex and Southend Waste Authority. The County Council as the Highway Authority is responsible for trees, verges and hedges within highway control.
- There are a range of powers to be exercised in the public interest where a breach of planning control is under consideration. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and is planned and managed to achieve social, economic and environmental objectives. This Plan seeks to promote procedures which will manage enforcement issues in an appropriate way for the Borough.
- Effective enforcement relies to a large degree on efficient and timely communication. Possible breaches of planning control; unauthorised works/activities/advertisements on land, buildings, trees or hedgerows are brought to notice by members of the public, Parish Councils, Council Officers in different departments and well as by Planning and Enforcement Officers. An efficient system needs the Council’s website to be a helpful source of reference and advice with a robust reporting system which is transparent

about the decisions taken. References to the PPG section “Ensuring Effective Enforcement” are given particularly in Appendix 1 which describes the options and procedures available to tackle possible and actual breaches of planning control in a proportionate way. The plan is published on the Council’s web site with an on-line form for reporting planning issues and enforcement complaints.

- The Plan sets out standards and proposed priorities restating and updating principles of good practice enforcement advocated by the Government but adapted to local circumstances. “Enforcing Planning Control: Good Practice Guide for Local Authorities” published in 1997 with Circular 10/97 remains in force, although the Circular itself has been withdrawn and replaced by PPG. Chapter 11 of this Guidance addresses prosecution of Enforcement notice offences. Other Good Practice Guidance for Untidy Land, High Hedges and Listed Building Prosecutions also remains current.
- Planning enforcement seeks to achieve compliance with planning control, affording contravenors where appropriate an opportunity to remedy any breach before the Council pursues using its statutory powers. A scoring chart is used for all investigations and this is published as part of the plan to show how decisions are generally reached on when it is expedient to take enforcement action. This statutory discretion is to be exercised in the public interest. The Act enables the Local Planning Authority to issue an enforcement notice when it appears to them “*expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations*”. PPG (paragraph 003) states that a local enforcement plan is a material consideration when it is not part of the development plan.
- The exercise of this statutory discretion in a consistent proportionate response to planning harm or anticipated harm is aimed at securing public confidence in the planning system overall as advocated in the National Planning Policy Framework (NPPF). Through this Enforcement Plan, the Council seeks to promote a clear understanding of the role and function of Planning Enforcement, the exercise of discretion having regard to planning considerations, appropriate to the local context. In serious or intractable cases resort to the full range of legal powers may be required. It is hoped, however, that Brentwood’s Local Planning Enforcement Plan by clearly setting standards of consistent good practice, is helpful to residents and businesses alike in explaining priorities and practice details, and will contribute to avoiding uncertainty in an area which can be very technical and complex.

# 1 Introduction

## Functions of the Planning Enforcement Service

- 1.1 Effective enforcement of planning and associated legislation is necessary to protect the amenity and environment of the Borough of Brentwood. Investigation powers are entrusted to Local Planning Authorities (LPA) by Parliament to enable the LPA to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.
- 1.2 The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with conditions of a valid planning permission) and bring about remedial action where appropriate.
- 1.3 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop Notice, unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued which requires steps to be taken (and appeal procedures are exhausted or time-barred) it is a criminal offence not to take those required steps.
- 1.4 Planning Permissions usually have conditions which are necessary to make the development acceptable in planning terms, for example incorporating approved plans or requiring specific works. If conditions are not complied with and not enforced, they become immune from enforcement after a period of years. Section 29 Infrastructure Act 2015 inserts into the Act a new Section 74A, whereby conditions requiring consent from the Council may be deemed discharged if an application has been made and the conditions in a Development Order made by the Secretary of State have been complied with. Sub-section (9) provides that the provisions will not be retrospective.
- 1.5 The whole of Brentwood lies within the Metropolitan Green Belt, and large parts of the Borough's countryside are considered to be areas of landscape value and important in terms of nature conservation. Liaison with the County Council and Parish Council is important in bringing possible breaches of planning to notice.

## Purpose of the Plan

- 1.6 The Local Enforcement Plan indicates a priority ranking for response to the areas of investigation within the Planning Enforcement Service. It is a principle of Planning Enforcement that action should be proportionate and consider human rights or equalities issues where these are engaged. The Enforcement Plan will be a material consideration in evaluating future breaches. Where an enforcement investigation is closed after concluding

that a planning application can resolve the complaint a time table needs to be set and advice given on the scope of any conditions. Where an enforcement notice is in force the Council may exercise its statutory discretion under Section 70C to decline to determine applications which would, if granted, allow development for which an enforcement notice is in force.

1.7 The Local Enforcement Plan outlines the administrative system for recording and progressing investigations and reporting arrangements. This includes a points scoring system to assess harm and sets a threshold for not taking further formal action. Records are to be maintained: The Good Practice Guide has advice at paragraph 12.6 and PPG at paragraph 009 refers to the statutory register of enforcement and stop notices maintained under Section 188 of the Act. Regulations made under Section 43 of the Local Audit and Accountability Act 2014, (the Openness of Local Government Bodies Regulations, 2014), require decisions made by officers which affect the rights of individuals to be recorded and published as soon as practicable after the decision. The record must contain:

- (a) The title of the decision making officer
- (b) The date the decision was taken
- (c) A record of the decision taken along with reasons for the decision,
- (d) details of alternative options considered and rejected
- (e) the name of any member of a relevant local government body who has declared a conflict of interest in relation to the decision

Such decisions are to be published on the website and the papers retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information.

1.8 This does not prevent a case by case assessment. Planning considerations must be the basis for the decision, and the investigating officer must judge and report on the impact of the unauthorised development the options available and time for compliance. The effect on business, and any relevant Public Sector Equalities duty are also relevant in recommending whether to enforce or take no action.

1.9 The Local Enforcement Plan includes appendices on trees, untidy land issues (Section 215 of the Act) and High Hedge complaints. These refer to more detailed guidance notes for which links are published on the Council's website. The context of the Borough explains the natural and historic environment. The Local Enforcement Plan is intended to guide the Planning Enforcement Service to address local concerns and local priorities.

## 2 Context

### Brentwood Borough Replacement Local Plan

- 2.1 The Brentwood Borough Replacement Local Plan (adopted 2005) is the Borough's current development plan. The plan provides a comprehensive statement of land use policies and proposals for the Borough. These Policies have been developed to protect and enhance the quality of both the built and natural environment and to provide for growth in the Borough. All decisions about the expediency of taking enforcement action will have regard to the planning policies adopted in the Brentwood Borough Replacement Local Plan.
- 2.2 The Council is required to produce a new Local Plan for the Borough which once adopted will supercede the current Replacement Local Plan and this process is underway.

### Historic Environment

- 2.3 The NPPF requires Local Planning Authorities to set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so we are asked to recognise that heritage assets are an irreplaceable resource, and conserve them in a manner appropriate to their significance.
- 2.4 Brentwood has 12 Scheduled Ancient Monuments, 13 Conservation areas, 1160 records of historic environmental assets. These include 512 Listed Buildings in the Borough, consisting of:
- 12 Grade 1 Buildings of national importance, including for instance Ingatestone Hall, the Priory Church of St Laurence, Blackmore which dates from the 12<sup>th</sup> century and has one of the finest 15<sup>th</sup> century timber bell towers in England and the Church of St. Mary the Virgin Great Warley, which is unique in possessing the only art nouveau-style interior anywhere in the world.
  - 27 Grade II\* Buildings of particular importance and more than special interest, including for instance The Old House and the White Hart Inn (Sugarhut) Brentwood, and the Windmills at Mountnessing and Mill Green
  - 473 Grade II Buildings which have statutory protection and warrant every effort being made to preserve them
- 2.5 The Planning Service maintains the statutory List of Buildings of Special Architectural or Historic Interest. The English Heritage website has a searchable database of the National Heritage List which includes detailed Listed Building descriptions.



2.6 The Local Enforcement Plan recommends prioritises Listed building enforcement with injunctions and prosecutions where harm is caused or apprehended, but also considers the positive changes introduced by the Enterprise and Regulatory Reform Act 2013 which took effect in 2014. This is in line with English Heritage recommendation the highest priority should be given to enforcement of heritage protection, while drawing a distinction between “Heritage Crime” where enforcement should be pursued in the public interest, and less serious breaches of the controls which can be managed under the new powers.

2.7 The changes now in force are:

(i) Heritage Partnership Agreements which may grant listed building consents over a period up to 25 years

(ii) There is now provision for national and local Listed Building Consent Orders which grant consent for specified works

(iii) Certificates of Lawful Proposed Works to Listed Buildings

(iv) Better Definition of List description or Exclusion of Curtilage protection

(v) Certificates of Immunity from listing may now be granted without a planning application having been made

(vi) Abolishing Conservation Area Consent and addressing demolition within conservation areas by planning controls

2.8 In addition to consulting on the draft Enforcement Plan, it is proposed that details of these changes are sent to owners of all the listed buildings in the Borough.

## Natural Environment

2.9 Within Brentwood there are 3 SSSI's, 3 historic parks, 76 natural and semi natural sites, 1 local nature reserve, 147 sites identified as landscape wildlife importance in addition to 11 parks and 4 country parks. The quality of the environment depends heavily on trees, in both the urban and rural locations with particular issues in Conservation Areas. There are statutory responsibilities for making tree preservation orders (TPO) in section 198 of the Act, where it appears that it is expedient in the interests of amenity to do so. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 allow immediate protection of trees under TPO's subject to the orders being served as required and confirmation within 6 months. Under section 210 of the Act, breach of a TPO is an offence with a maximum fine liability in the Magistrates' court of £20,000. In addition, if any tree protected by TPO or Conservation Area status is removed

## The National Planning Policy Framework

- 2.10 Enforcement is referred to in paragraph 207 of the National Planning Policy Framework (NPPF) 2012. The discretionary and proportionate nature of enforcement is stressed and it is suggested that local planning authorities 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 it is appropriate to do so'.

## The Planning Practice Guidance

- 2.11 The PPG at paragraph 007 sets out 14 options available to local authorities to tackle possible breaches of planning control in a proportionate way. These are described in the Planning Enforcement Toolkit at Appendix 1.

## Legal Context

- 2.12 The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and take action to remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.13 Enforcement provisions of the Localism Act 2011 extensively addresses tactics previously adopted by some developers that were seen as abuses, such as twin tracking an appeal against an enforcement notice and an application for retrospective approval. It also covers time limits on concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti.
- 2.14 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice.
- 2.15 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear and flagrant breach of a planning decision or a serious case of harm .

## 3 Service Standards

- 3.1 Brentwood Borough Council's existing practices have sought to achieve the principles of good enforcement practice.

### Openness

- 3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

### Proportionality

- 3.3 We will deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any undertakings given, the history and whether time limits are approaching which would confer immunity on unlawful development.

### Consistency

- 3.4 We seek to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible a fair and equitable outcome.

### Helpfulness

- 3.5 We aim to be polite but firm with the person/people that are alleged to be in breach of planning or environment controls. We will meet when requested, both before and during enforcement actions, to try and achieve a satisfactory outcome and will keep complainants and Members informed.

### Procedures

- 1) Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will

explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.

- 2) The rights of appeal of the developer against any formal notice will be clearly explained.
- 3) Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent.
- 4) Any threat of formal action will be followed up swiftly if there is inadequate evidence of steps being taken to resolve the problems.

## Minimising Occasions that Breaches of Planning Control Occur

- 3.6 Breaches of planning control comprise the carrying out of development without the granting of planning permission, or deemed permission by government order, or without compliance with approved plans or any conditions attached to a planning permission. While carrying out development without planning consent is not a criminal offence, failure to comply with an enforcement notice is a criminal offence.
- 3.7 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders (TPO), trees within a Conservation Area, advertisements and fly-posting also come within the scope of planning control, but unlike those identified above, constitute a criminal offence. There is more detailed information on tree enforcement protection in Appendix 3 and information regarding untidy land notices in Appendix 4.
- 3.8 Development Management Officers already monitor the implementation of planning permissions by focusing upon achieving quality development in accordance with policy. The Council regards planning enforcement action as a last resort, following advice and guidance. It strives to promote its pre-application advice service, which should result in better quality and more lawful development.

## 4 Identifying Unauthorised Development

- 4.1 To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found at: <http://forms.brentwood.gov.uk/default.aspx/RenderForm/?F.Name=H8GCZSSZ64c&HideToolbar=1> .
- 4.2 It is strongly encouraged that the online form is used in the first instance as this is the most efficient use of resources available. Complaints made by letter, phone or email are logged onto the web form. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.
- 4.3 Anonymous complaints about a third party will not usually be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the Council. If a member of the public wishes to remain anonymous then they must go through either their local Ward Member or Parish Council to submit the online form on their behalf.
- 4.4 The planning history of a site is always investigated to establish any planning permissions or permitted development.
- 4.5 An assessment is then made into the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.
- 4.6 The Council does not investigate highway matters, boundary wall or other land disputes and activities incidental to residential use of a dwelling, including stationing of a caravan or trailer within its grounds as these issues do not constitute planning matters. Any potential breaches of other legislation will be passed on to the appropriate investigative authority.
- 4.7 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.
- 4.8 The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control, where there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by

negotiation. Such breaches include temporary structures, flyposting, untidy sites, changes in surfaces, unobtrusive and minor changes of use or extensions. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the local planning authority are set out in Appendix 1 Enforcement Toolkit. The Scoring Chart and the form of record where required under the Openness of Local Government Bodies Regulations 2014 also form part of this Appendix.

## 5 Enforcement Priorities

Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

**Table 1:** Enforcement Priorities

| Priority      | Considerations   | Site Visit within |
|---------------|--|-------------------|
| <b>High</b>   | <ul style="list-style-type: none"> <li>• Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a conservation area or the openness of the Green Belt</li> <li>• Unauthorised works to a listed building</li> <li>• Irreversible harm to amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area</li> </ul> | 24 hours          |
| <b>Medium</b> | <ul style="list-style-type: none"> <li>• Development prior to compliance with and discharging of conditions on a planning approval</li> <li>• Breach which results in serious demonstrable harm to amenity of neighbourhood</li> <li>• Unauthorised development in a designated area</li> <li>• Source of significant public complaint</li> <li>• Unauthorised advertisements that have a detrimental impact on highway safety</li> </ul>                          | 5 working days    |
| <b>Low</b>    | <ul style="list-style-type: none"> <li>• Unauthorised development which is not the source of significant public complaint</li> <li>• Erection of unauthorised advertisements</li> </ul>  | 15 working days   |

5.1 All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and

consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.

**Table 2: Target times for initial response to complaint and the owner or occupier of the site**

| Priority | Response targets from notification |
|----------|------------------------------------|
| High     | 3 working days                     |
| Medium   | 10 working days                    |
| Low      | 20 working days                    |

5.2 Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. When these occur, Enforcement Officers will endeavour to keep original complainants informed on a regular basis and indicate arrangements for this in the initial response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation.

## Site Visits

5.3 Planning and Listed Building legislation gives authorised Officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. The Toolkit at Appendix 1 has the statutory references. Because of the nature of enforcement work it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours notice will be given if access is required to a dwellinghouse.

5.4 On site visits Investigating Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where she/he considers an offence has occurred, interview an alleged contravener 'under caution' (PACE) where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.

5.5 After the first site visit (and also during the investigation process) the Investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.



- 5.6 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action where necessary.

## 6. Response Procedures

6.1 The officer will write to the owner and occupier of the site, when appropriate, and the complainants to advise on one of the following:

No further action (with properly recorded reasons), as:

- There is no breach, or
- It would not be expedient to pursue the case.

Further investigation required:

- This often involves the serving of a Planning Contravention Notice

Negotiate a solution:

- This depends on context and the intent of the owner.

Retrospective application for planning permission:

- The Council will identify if the unauthorised development meets the requirements of the relevant planning policy(ies). If the development appears acceptable the owner of the property will be requested to submit a planning application in order to rectify the breach.

Formal enforcement action, as a last resort:

- If planning permission is unlikely to be forthcoming and an application is not being sought, letters and notices will be served to set out the reasons for this by identifying the harm, the policy context and other material planning considerations.
- Where it is considered that **serious harm** would result and the unauthorised development could NOT be made acceptable by the granting of planning permission, the owner will be advised that the breach of planning control should cease within 28 days. The owner will receive an explanation in writing why this course of action is justified by identifying the harm, the policy context and other material planning considerations.
- Action will only be taken in accordance with the authority delegated to the Head of Planning and in accordance with the Council's approved priorities.

### How we decide if an investigation is 'complete'

6.2 We consider our investigations to be "complete" when one of the following points has been reached:

- The investigation identifies that no breach in planning control has occurred.

- An alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted and approved following the investigation.
- A breach in planning control has been identified and an application requested but not submitted. A report has been prepared and is on an agenda for Councillors to confirm that it is not expedient to take formal enforcement action in this case at this time.
- A breach in planning control has been identified. Authority to take formal enforcement action and/or issue a notice has been given. The matter is then passed to legal advisors to process.

## 7. Improving Planning Enforcement

- 7.1 The Council will monitor the length of time taken from the receipt of information regarding a suspected breach of planning control to the conclusion of the case with specific reference to the timescales shown previously in this document. This is carried out in order to ensure the timely progression of all complaints received.
- 7.2 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers.

### Compliance Checking

- 7.3 In order to maintain public confidence in the planning process, national planning practice guidance asks local planning authorities to consider a proactive approach to enforcement. The Council will therefore identify a sample of planning applications and/or developments and check for compliance.
- 7.4 The outcome of the compliance check will be reported to the applicant, agent or landowner. Any non-compliance will be addressed through usual enforcement practice.

## Appendix 1: Planning Enforcement Toolkit

The main options to tackle possible breaches of planning control are:

### No formal action

Early engagement is important, and the landowner may take immediate action when advised of the issue. Where a breach of planning control is on council owned land, or on land where a covenant controls the issue, such breaches are most effectively addressed through estate management or landlord control.

PPG (paragraph 011) states that local planning authorities should usually avoid taking formal enforcement action where

- 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;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- 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.

An outstanding breach of control may affect the sale and marketing of a property and nothing in this plan should be taken as condoning a clear and wilful breach. However, the balance of public interest varies from case to case.

A scoring chart for assessing harm is attached to this Appendix .

### Retrospective Planning Application

PPG paragraphs 012 and 013 advise that where the LPA consider that an application is the appropriate way forward to regularise the situation, the owner and occupier should be invited to submit an application under Section 73A of the Act without delay. It cannot be assumed that permission will be granted – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

### Planning Contravention Notice

This can often be the first formal step in formally resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may give notice of a date and time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the authority. An opportunity to make such representations must be made. It is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information. Paragraphs 015 and 016 of PPG refer.

## Section 330 of the Town and Country Planning Act 1990

This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. For both of these cases 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. Conviction currently carries a maximum fine not exceeding £1,000.

## Rights of Entry

The Act specifies the purposes for which entry to land including buildings may be authorised, namely:

- to ascertain whether there is or has been any breach of planning control
- to determine whether any of the LPA's powers should be exercised
- to determine how such power should be exercised, and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action.

A record should be made of the inspection with appropriate photographs

Entry to a dwellinghouse cannot be demanded as of right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates for a warrant to allow entry. Paragraphs 052-055 PPG refer. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

## Breach of Condition Notice:

This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition, but may be served in addition to an enforcement notice, perhaps as an alternative to a stop notice. It can only be challenged by judicial review. Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with any conditions and any specified steps will be in breach of the notice and guilty of an offence. Paragraphs 046-049 of PPG refer.

## Enforcement Notice:

Effective enforcement is important. Development becomes immune from enforcement if no action is taken within four years of substantial completion of building operations or ten years of a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know

- Exactly what, in the LPA's view, constitutes the breach of planning control; and
- What steps the LPA require to be taken to remedy the breach.

An enforcement notice may “under enforce”, by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect: however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. Paragraphs 018-023 of PPG refer.

## Planning Enforcement Order:

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. Paragraphs 024-027 PPG refer.

## Enforcement on Crown land:

There are restrictions in Section 296A and 296B of the Act on serving enforcement notices, stop notices, revocation order and discontinuance orders on the Crown. An LPA can only enter Crown land for any purposes connected with the making or enforcing an order under the Act with the consent of the relevant Crown body. Consent is also required before bringing legal proceedings in the courts. The Crown is immune from prosecution under these provisions.

## Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area. Best Practice Guidance is on the Council's web site

## Stop Notice:

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. Paragraphs 028 – 035 PPG refer.

## Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the environment in the surrounding area. Paragraphs 036-045 PPG refer.

## Listed Building Enforcement :

PPG paragraph 057 notes that the Listed Building Enforcement provisions are in sections 38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the enforcement provisions relating to the demolition of an unlisted building in a conservation area (“relevant demolition”) are in the Act. Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is time limit in which such an enforcement notice can be served.

There are five important differences between planning enforcement and listed building and conservation area enforcement, namely:

- There are no application fees for listed building consent or relevant demolition;
- There are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;
- Carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;
- Carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990; and
- Listed Building Consent and planning permission for relevant demolition are not granted retrospectively.

A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

## Injunction:

This may be done in the most serious cases generally where irreparable harm is being done or is apprehended, or where and where other actions have been or would be ineffective. Section 187B of the Act applies where the LPA consider it expedient to restrain actual or apprehended breaches of planning control. Section 44A Planning



(Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. The Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify to the best of their ability the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- Photographic evidence of the persons concerned;
- Affidavit evidence by the LPA officers
- Reference to chattels (e.g. registered vehicles) known to belong to, or be used by, that person
- Other relevant evidence (such as a name by which the person is commonly known).

There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

## Unauthorised Advertisements:

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

## Direct Action or "Default" Action:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme case. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

Other than advertisements and Untidy Land notices, direct action is seen as a draconian power and normally a course of last resort. The Council's decision may be challenged by Judicial Review. There may be violence or threats of a breach of the peace and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the cases of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to the recovery.

The Good Practice Guide for Enforcing Planning Control (paragraph 10.5) lists the following practical matters to be considered when planning default action:

- Exactly what must be done (including any necessary operational development on the land) in order to carry out the required steps in the enforcement notice
- What is the best time of day to carry out the operation and how long is it likely to take
- Who is best equipped to carry out the operation – Council staff or a private contractor
- Whether any special powers of entry are needed
- Whether other local authority services (e.g. Social Services) need to be involved
- If chattels (e.g. caravans, cars, working equipment) are to be removed from the land, where can they be stored securely until the owner can retrieve them
- If a breach of the peace or any more serious disturbance is anticipated, it may be advisable to seek and injunction as a precaution and to encourage any necessary police presence

With regard to High Hedge enforcement after a Remedial Notice has taken effect if there is a first conviction and the owner of the land does not comply with an order of the court to take steps within a reasonable period fixed by a court order the land owner may be liable on summary conviction to a daily penalty. While there is a default power for the Council to carry out works to a High Hedge, enforcement by prosecution and Court order is considered better practice.

There are also powers in Section 219 of the Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier.

In recovering reasonable expenses under these provisions the LPA may include such sums as appear reasonable in respect of establishment charges. Any chattels removed may be sold unless their owner claims them within three days and the balance of the proceeds after deducting expenses is then paid to the owner. Unpaid expenses become a charge on the land and an application may be made to the Court for an order for sale.

The Proceeds of Crime Act 2002 provides for confiscation orders where a defendant is convicted in the Crown Court for sentence and the prosecution ask for an order in respect of the conduct or lifestyle of the defendant benefitting from criminal activity. Breaches of enforcement notices which prohibit the carrying on of a use which generate an income can come within these provisions

## Annexures

Annexed to this Appendix :

- Scoring chart for the assessment of Harm,
- Template for recording decisions on the web site where the Openness of Public Bodies Regulations 2014 apply.

**Initial Analysis of Enforcement Enquiries: Harm Scoring and Threshold for taking further action**

| <b>Points Allocation</b>  | <b>Scoring</b>  | <b>Score</b> |
|---|---|--------------|
| Status of breach  | Worsening (1)<br>Ongoing but Stable (0)   |              |
| Highway Safety Issue?   | Yes (1)<br>No (0)   |              |
| Other safety issue?   | Yes (1)<br>No (0)   |              |
| Complainant   | Immediate neighbour. Staff (2)<br>Borough or Parish Councillor (1)<br>Anonymous/ Malicious (0)<br>Other (1) |              |
| Age of Breach   | Within 3 months of immunity (2)<br>Less than 1 month old (1)<br>More than 1 month old (0)                   |              |
| Is the harm   | Widespread / Public (2)<br>Local (Private) (1)<br>None (0)  |              |
| Irreversible harm?  | Yes (1)<br>No (0)   |              |
| Causes statutory or serious environmental nuisance  | Yes (1)<br>No (0)   |              |
| Breach of a condition or Article 4 Direction?<br>(Score 1 per condition breached (max 5)) | Yes (1-5)<br>No (0)   |              |
| Operational development in Green Belt or Major Breach of Plan Policy                      | Yes (1)<br>No (0)   |              |
| Development affecting contaminated land   | Yes (1)<br>No (0)   |              |
| Flood Zone  | Zone 3 (2); Zone 2 (1); Zone 1 (0)  |              |
| Affecting setting of Conservation Area  | Yes (1)<br>No (0)   |              |
| Harming a listed building or its setting  | Yes (1)<br>No (0)   |              |
| Sensitive site e.g. SSSI; SAM; Listed Garden; Archaeological importance                   | Yes (1)<br>No (0)   |              |
| Part of a special initiative (specify)  | Yes (1)<br>No (0)   |              |
| Undesirable Precedent (specify)   | Yes (1)<br>No (0)   |              |
| <b>Total Points (Harm Score)</b>  |   |              |

Where the Harm Score is **4** or below, the case will not be investigated further. The developer will be informed of the breach/ likely breach and invited to remedy or regularise it. Complainants will be notified that the development causes insufficient harm to warrant further action.

**PLANNING ENFORCEMENT DECISIONS BY AN OFFICER  
published pursuant to S.I 2014/2095**

|   |                        |
|---|------------------------|
| <b>Case ref:</b>  |                        |
| <b>Site:</b>  | <b>Decision By:</b>    |
| <b>Ward:</b>  | <b>Parish Council:</b> |
| <b>Decision :</b>   |                        |
| <b>Reasons/ Delegated Report:</b>   |                        |
| <b>Alternative options considered and rejected when making the decision</b> |                        |

**DETAILS OF ANY CONFLICT OF INTERESTS OR DISPENSATIONS GIVEN**

The Openness of Local Government Bodies Regulations 2014 S.I 2014/2095 require the following to be declared:

- A record of any conflict of interest declared by any Member who is consulted by the officer which relates to this decision
- In respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's Head of Paid Service

**Details of any conflict of interest:**

|                             |   |
|-----------------------------|---|
| <b>Signed:</b>              | <b>Date:</b>                                |
| Contact Officer             | <b>Date decision published on website :</b> |
| <b>Implementation date:</b> | Copy to Ward Councillors if required:       |
|                             |   |

## Appendix 2: High Hedges Procedure

The Anti-social Behaviour Act 2003 gives the owner or occupier of domestic property a right to complain to the local authority if the height of a high hedge adversely affects the reasonable enjoyment of his property. The owner of the property that is unoccupied can also complain, on the basis that a prospective occupier would be affected. The right to complain does not extend to the effects of the roots of a high hedge.

If the authority finds the complaint justified, it issues a remedial notice, stating what immediate action should be taken and what further preventative action is required. There is a right of appeal. It is an offence not to take action required by a remedial notice.

After a remedial notice has been taken effect, the hedge owner is required to comply. There should be no need for further enforcement unless the hedge is allowed to grow significantly. Works may not be undertaken if there are birds nesting during the nesting season.

Unlike the policy relating to hedgerows on non-residential property, there is no special protection for ancient hedges.

A “high hedge” for this purpose is one formed wholly or predominately of a line of at least two evergreen or semi-evergreen trees or shrubs. The hedge must measure more than two metres above ground level. There is an exception that may cause difficult arguments: a hedge is not regarded as forming a barrier to light or access if gaps significantly affect its overall effect as a barrier at heights over two metres (Anti-social Behaviour Act, section 66). There is no statutory definition of evergreen or semi-evergreen. A dictionary definition of evergreen is, “having green leaves all the year through; opposite to deciduous” (Shorter Oxford Dictionary). “Semi-evergreen” has been defined, “Normally evergreen but losing some or all of its leaves in a cold winter or cold area” (Hillier’s Manual of Trees and Shrubs, 5th ed., 1981, David & Charles Publishers plc).

The High Hedges Procedure, complaint form and useful links to legal and national guidance is available to view on the Council’s website  
<http://www.brentwood.gov.uk/index.php?cid=2060>

# Appendix 3: Tree Protection Enforcement

## Good Planning

Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

## Tree Protection

Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage.

Trees may be protected by legislation enshrined in the Town and Country Planning Acts 1990 -2012, by being subject to a tree preservation order (TPO) or being situated within a conservation area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission.

In certain circumstances trees may be protected by conditions attached to a planning permission.

## Compliance

Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as B.S. 3998, and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the trees itself and of the protected tree stock of the borough. Compliance should be the starting point of any enforcement policy.

## Specific Tree Protection

a) Where trees are protected by a TPO, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

b) Where trees are protected by inclusion in a conservation area six weeks notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six week period, the Authority is required to consider the need to

make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks the works may go ahead as notified.

c) Trees retained under planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

d) Offences under 1 and 2 above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, 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. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

Secondly, anyone who carries out 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 offences in this category must be brought within six months of the date the offence was committed.

e) Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that:

- 1) The defendant has carried out, or caused, or permitted works on the tree
- 2) The tree was protected
- 3) The tree works were carried out without the Authority’s consent
- 4) The works were not exempt works

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

f) Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council’s Arboriculture Officer will also make a site visit.

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to.

In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

g) Time scale: Initial investigation as outlined above will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

**Table 1:** Tree Protection Enforcement Timescales

| Response Level | Response Criteria  | Response Time          |
|----------------|--|------------------------|
| 1              | Ongoing works likely to have a significant impact on public amenity  | Within 2 working days  |
| 2              | Completed works likely to have a Significant impact on public amenity<br>And ongoing works of lower amenity impact | Within 8 working days  |
| 3              | Other works including longstanding issues  | Within 20 working days |

h) Possible actions by authority: The Council has a range of possible courses of action available to deal with the cases of unauthorised works on protected trees. These include the following:

- 1) Initiate a prosecution (which may be for destroying the tree or for lesser works to it).



- 2) Administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence.
- 3) Require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990.
- 4) Serve a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.
- 5) Informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs.

Decisions as to what action to take will be taken in the public interest, ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually.

Prosecutions will be considered against the tests of evidential value and public interest, these will be dealt with by the councils legal advisors.

Cautions may be used in accordance with guidance from the legal section.

i) Replanting: In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a tree replacement notice [TRN] may be considered. A TRN may also be considered when the automatic legal duty to replant on the death or removal of a protected tree. Any replacement tree is subject to the same protection as the original tree that was lost.

## Appendix 4: Untidy Land Notices Section 215

7.5 From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health but they will be an eyesore, which means it is detrimental to the local amenity.

7.6 Under section 215 of the Town and Country Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up. The power is exercisable if it appears that 'the amenity of a part of [the local planning authority's] area, or adjoining area, is adversely affected by the condition of land in their area' (section 215(1)). The notice 'shall require such steps for remedying the condition of the land as maybe specified in the notice to be taken within such period.

7.7 There is a right to appeal to the Magistrate's Court on any of the following grounds:

- (i) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (ii) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III [the requirement to have planning permission];
- (iii) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (iv) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonable be allowed.

7.8 If the notice is not complied with, the local planning authority is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying our works under an enforcement notice. The Council may also prosecute for non-compliance.

7.9 To find out more about the Best Practice Guidance, please visit the Council's website [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11491/319798.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf)

## Appendix 5: Hedgerows

- 7.10 The Environment Act 1995 empowered the Secretary of State to make regulations to protect important hedgerows. The Hedgerows Regulations 1997 require consent from the local planning authority for the removal of important hedgerows over 20 metres in length (or, if shorter, meeting other hedgerows at each end) growing in, or adjacent to, any common land, designated nature reserve or site of special scientific interest, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, unless they are within or mark the boundary of the curtilage of a dwelling house. Important hedgerows are those over 30 years old which meet criteria covering archaeology and history and wildlife and landscape.
- 7.11 The Brentwood Replacement Local Plan (2005) recognises the many natural features of conservation interest, including hedgerows, which should be appropriately managed and, wherever possible, enhanced. Policy C5 Retention and Provision of Landscaping and Natural Features in Development it says “*in proposals for development, existing trees, hedges, woods, ponds, watercourses and other natural features should be retained*”
- 7.12 An important hedgerow may only be removed (subject to exceptions) if the owner has served a hedgerow removal notice on the local Planning authority and either consent has been given or a period of 42 days has passed within the authority serving a hedgerow retention notice. Where a hedgerow retention notice has been given stating that work relating to a hedgerow may not be carried out and that notice has not been withdrawn, removal of the hedgerow consisting of or including any such work is prohibited.
- 7.13 One of the exceptions to needing to give notice is if the removal is required ‘for making a new opening in substitution for an existing opening which gives access to land.’ This exception is subject to the requirement in regulation 6 (2) that:
- ‘Where the removal of a hedgerow to which these Regulations apply is permitted by these Regulations only by paragraph (1)(a), the person removing it shall fill the existing opening by planting a hedge within 8 months of the making of the new opening.’*
- 7.14 If a hedgerow has been removed in breach of regulation 5, the local planning authority may serve a hedgerow replacement notice on the owner of the land (or if removed by a utility operator, on that operator) requiring another hedgerow to be planted. The notice shall state the species and position of the shrubs, or trees and shrubs to be planted and the period within which the planting is to be carried out. There is a right of appeal against the notice. The authority may carry out works in the default and recover the cost from the owner as under the tree preservation order regime.

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