

## Appendix 1 – Local Enforcement Plan

### Contents

1. Introduction
2. What is a Breach of Planning Control?
  - Legislative Background
  - Planning Breaches
  - Non planning breaches
3. Principles of Good Enforcement
  - Expediency
  - Proportionality
  - Consistency
  - Negotiation
4. Enforcement Priorities
5. The Investigation Process
  - Registration
  - Gathering Evidence
  - Research
6. What Happens when a Breach is found?
  - Initial Action
  - Formal Action
  - What happens after notices/orders have been served?
  - Direct Action
  - Injunctions
  - Prosecution
7. Immunity from Enforcement Action
  - Time Limits
  - Lawful Development Certificates
8. What happens if you are the Subject of an Investigation?
9. Improving Planning Enforcement
10. Complaints Procedure
11. General Information
  - Useful Websites
  - Commonly used Planning Enforcement Acronyms
  - Definitions
12. How to report a Breach of Planning Control

# 1 Introduction

- 1.1 Cherwell District Council's Planning Enforcement Team comprises a group of dedicated officers who investigate upwards of 400 alleged planning breaches each year. The Council has a statutory duty to ensure that these complaints are investigated and appropriate action, where necessary, is taken. The principal remit of this Local Enforcement Plan is to ensure that the Council's resources, directed at planning enforcement, are put to the best possible use.
- 1.2 The Local Enforcement Plan has been written in accordance with Government guidance contained in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). The NPPF was published in March 2012 and provides an overview of how the planning system should help to deliver sustainable development. The PPG is an electronic document which has been regularly updated since going live in 2014. It helps to explain how the Government objectives, set out in the NPPF, can be achieved. Of particular relevance to the Local Enforcement Plan is the sub-section in the PPG entitled *Ensuring effective enforcement*.
- 1.3 Although not a requirement, Paragraph 207 of the NPPF sets out the advantages that a local planning authority (LPA), and the community for which it is responsible, would derive from producing a Local Enforcement Plan:

*"Effective enforcement is important as a means of maintaining public confidence in the system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. 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."*

- 1.4 The aim and objectives of this Local Enforcement Plan are therefore as follows:
  - To identify the Council's planning enforcement priorities
  - To provide a framework for the investigation of alleged breaches of planning control
  - To set out the range of action that can be taken where it is considered appropriate to do so
  - To proactively monitor the implementation of planning permissions
- 1.5 The plan is built around a process of escalation. In most circumstances, where there has been a breach of planning control, the Council will only issue a formal notice where it is expedient to do so having regard to the provisions of the development plan and to any other material consideration. This assumes that informal negotiations have been or are expected to be unsuccessful.
- 1.6 The Local Enforcement Plan will be kept under review and will be amended, when required, to take into account changes in national legislation, policy and guidance, the Local Development Plan, resources and priorities. The Local Development Plan currently includes the saved policies of the Cherwell Local Plan 1996 and the Cherwell Local Plan 2011-2031 Part 1.

## 2 What is a Breach of Planning Control?

### Legislative Background

- 2.1 The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990, which includes amendments set out in the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004. They are collectively referred to as the “Town and Country Planning Act (as amended)” and, for the purposes of this document, by the acronym TCPA.
- 2.2 The TCPA states that planning permission is required for *development*. Section 55 defines *development* as: “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”
- 2.3 A breach of planning control is defined at Section 171A as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.
- 2.4 Relevant secondary legislation:

The Town and Country (General Permitted Development) Order 2015 (GPDO)

The GPDO sets out *development* that homeowners and other bodies can carry out without the need for planning permission. They are commonly referred to as ‘permitted development rights’.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

This legislation sets out the various categories that different uses of land fall into and what constitutes a material change of use that would require planning permission.

### Planning Breaches

- 2.5 The majority of planning enforcement investigations therefore involve one of the following alleged breaches:
- Building work or engineering operations carried out without planning permission
  - Unauthorised change of use of land or buildings
  - Development which has not been carried out in accordance with an approved planning permission
  - Failure to comply with a condition or legal agreement attached to a planning permission
  - Any contravention of the limitations on, or conditions belonging to, permitted development rights, set out in the GPDO.
- 2.6 Although not breaches of *planning control*, other matters which are dealt with by the Planning Enforcement Team include:
- Demolition taking place in conservation areas where permission is required
  - Works carried out to a listed building which affect the historic character or setting, without listed building consent being granted  
(Demolition in a conservation and works to a listed building fall under the remit of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended))

- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given
- High hedges
- Display of advertisements, which require consent under the Town and Country Planning (Control of Advertisements) Regulations 2007
- Failure to comply with the requirements of an Enforcement Notice (see Section 6)

**For the purposes of this document, future references to planning control will also include the breaches identified in the paragraph above.**

#### **Non Planning Breaches**

2.7 The Council regularly receives correspondence for matters which are not breaches of planning control. Whilst the Planning Enforcement Team may not be able to deal with such grievances there may be other legislative controls open to a complainant. The most common examples of which are:

- Neighbour nuisance, boundary and land ownership disputes. These are civil matters that the Council cannot get involved in. Further advice can be obtained from a solicitor or the Citizens Advice Bureau
- Use of or development on the highway, footway or verge that is covered by highway legislation. Complainants are advised to contact Oxfordshire County Council via the following link: <http://fixmystreet.oxfordshire.gov.uk/>
- Dangerous structures are normally the responsibility of our Building Control Department. They can be contacted on (☎ 0300 003 0200)
- Anti-social behaviour including fly tipping, noise and smell are the remit of the Council's Environmental Health Team (☎ 01295 227007)

2.8 As already referred to above, the GPDO makes provision for development that can be carried out without the need for planning permission and is therefore immune from any action. For example not all domestic extensions and outbuildings require planning permission. Homeowners should however be mindful that the permitted development set out in the GPDO may have been removed by the Council and they should therefore check the property's planning history (available either via the Council's website or at the Council offices, on microfiche, in respect of older permissions/consents) before carrying out any works which are reliant on this legislation. The removal of permitted development rights would ordinarily be via a condition on a planning permission or in architecturally sensitive areas by an Article 4 directive.

# 3 Principles of Good Enforcement

## **Expediency**

3.1 Planning enforcement is a discretionary power. In deciding whether it is appropriate to take enforcement action the degree of harm the unauthorised development is causing, or is likely to cause, will be carefully considered. Harm can arise through a range, or a combination of factors:

- Adverse impact on visual amenity due to poor design or inappropriate materials
- Loss of privacy or overshadowing and loss of natural light
- Inappropriate development that is harmful to the landscape or the setting of a heritage asset
- Untidy land and run down or derelict buildings that present a very poor quality environment and/or prejudice community safety
- Failure to comply with a condition of a planning permission leading to an adverse impact
- Danger and disturbance due to significantly increased traffic flows
- Loss of protected trees
- loss or damage to listed buildings and demolition of buildings in a conservation area

3.2 Harm, for the purposes of planning, does not however include:

- Breaches of restrictive covenants
- Private disputes
- Competition between businesses
- Loss of an individual's view or trespass onto their land (including ownership disputes)
- Damage to property
- Reduction in value of land or property

## **Proportionality**

3.3 Enforcement action should always be proportionate to the seriousness of the harm being caused. It should, for instance, not always be taken to regularise development which is otherwise acceptable on its planning merits but for which planning permission has not been sought.

3.4 When considering proportionality the PPG advises the following in respect of the human rights of those responsible for the breach as well as those affected:

*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.*

## **Consistency**

3.5 The Council will take a similar approach to cases in order to achieve similar outcomes. However a full consideration of all the circumstances of individual cases means that there is not necessarily any uniformity in the outcome of apparently similar cases.

Decisions made by the Council have to be reasonable and require appropriate measures in order to remedy the breach. This will be achieved by:

- Following advice contained within Government guidance on legal procedures, planning policy and good practice
- Adhering to the planning policies within our Local Development Plan and Supplementary Planning Documents in the interests of protecting our Conservation Areas, Listed Buildings as well as other designated land and features
- Keeping up-to-date with Government circulars, case law and court judgements
- Liaising with various partner agencies and statutory consultees notably in cases where their specialist guidance and knowledge is required (e.g. the Environment Agency and Historic England)

### **Negotiation**

3.6 In all but the most serious cases where the Council may go straight to formal action, the Council will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner. Negotiations aim to achieve one or more of the following outcomes:

- To undertake work to comply with the planning permission granted
- To apply for retrospective planning permission for the works undertaken or a variation to the works that are more likely to secure permission
- To remove an unauthorised development
- To cease an unauthorised use

3.7 However, negotiations will not be allowed to impede or delay whatever formal enforcement action may be required to make the development acceptable in planning terms, or to compel it to stop.

## 4 Enforcement Priorities and Response Procedure

4.1 Given the number of alleged breaches that occur throughout the year, it would be impossible to investigate and pursue all cases within an equally rigid timeframe given the resources available. Therefore each investigation is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The table below sets out the three categories of alleged breach which will allow the Council to respond in a fair, proportionate and timely manner according to the nature of the allegation.

Priority Category	Potential Planning Breach	Site Visit (working days)	Complainant Response Time (working days)
A	<p>This category is for development causing serious threat to public health and safety, or permanent, serious damage to the natural or built environment.</p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Activities that have the potential to cause irreparable harm to Conservation Areas, Sites of Special Scientific Interest, the Cotswold Area of Outstanding Natural Beauty etc</li> <li>• Unauthorised development that represents a serious danger to members of the public</li> <li>• Ongoing unauthorised works to a listed building</li> <li>• Ongoing unauthorised works to a protected tree</li> </ul>	1	3
B	<p>Less urgent than Priority Category A, but considered harmful with the potential to get worse.</p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Unauthorised on-going construction</li> <li>• Breach of planning conditions precedent</li> <li>• Breach of an enforcement notice</li> <li>• Unauthorised advertisements that constitute a potential highway danger</li> <li>• Sub-standard living accommodation resulting from an unauthorised change of use</li> </ul>	5	10
C	<p>This category covers the majority of cases, where there is a possible breach but one that is unlikely to get any worse.</p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Unauthorised construction</li> <li>• Unauthorised advertisements not covered in category B</li> <li>• Unauthorised works to a listed building</li> </ul>	15	20

The examples set out in the table are not exhaustive and each case will be judged on its own merits and prioritised accordingly.

4.2 Many cases will require repeat site visits, negotiation, the serving of notices on owners and, in a limited number of cases, prosecution before the breach is resolved. The Planning Enforcement Officer allocated to each case will keep original complainants informed on a regular basis of progress. They will indicate arrangements for how they

will achieve this in their initial response as well as set out a strategy, where appropriate, for resolving the alleged breach identified. The timescale for the initial response is set out in the table above. Complainants will also be invited to contact the Planning Enforcement Officer directly for a case update as well providing them with an opportunity to forward new information relevant to the case. Although some breaches take a considerable time to resolve, the Council aims to resolve 80% of cases within 13 weeks of the receipt of the complaint.



## 5 The Investigation Process

### **Registration**

- 5.1 Each new case is recorded on our database and given a unique reference number. As part of this process a Planning Enforcement Officer will be allocated to carry out the investigation. An acknowledgement email or letter will be sent once this process has been completed.

### **Gathering Evidence**

- 5.2 Where a complaint relates to an alleged unauthorised use of land, officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a *reasonable attempt* will consist of an appropriate number of site visits at days and/or times deemed most suitable for the allegation (see Section 4). This approach ensures that the Council's resources are used efficiently.
- 5.3 Where officers can find no evidence of a planning breach the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning.
- 5.4 Officers may make use of the Planning Contravention Notice (see Section 6) and if they have reasonable suspicion that a breach of planning is likely to have occurred. In more serious cases officers will invite the transgressor to attend an interview under caution at the Council offices. These tools will be used in accordance with Government guidance and best practice.

### **Research**

- 5.5 Officers may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from witnesses to the alleged breach, other Council officers and contacts in other organisations who have a knowledge of the site in question. The Council may also seek clarification on certain points by researching case law or obtaining legal advice where the subject of an investigation is particularly complicated or contentious.

## 6 What Happens when a Breach is Found?

### Initial Actions

#### No Further Action

- 6.1 The Council may, following initial investigation, decide that there has been no breach of planning control or that the breach is so minor or insignificant in nature that it is not expedient to take formal action, or that there is insufficient evidence to pursue the matter further.
- 6.2 Just because a building, extension, structure, use or advertisement is in breach of planning control this is not, in itself, a reason to take enforcement action. Even when it is technically possible to take action the Council is required to first decide if formal action would be proportional and expedient (see Section 3). The Council will not take action against breaches of planning control which do not cause material planning harm.

#### Retrospective Planning Permission

- 6.3 Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, a retrospective planning application will be sought. If a retrospective application is not submitted within one calendar month of a written request to do so, or the application remains invalid (e.g. the applicant has not provided the fee or has failed to provide all the requisite information) for two calendar months, the Council will consider whether or not it is expedient to take formal enforcement action.

#### Voluntary Compliance through Negotiation

- 6.4 Where it is considered that the breach of planning control is unacceptable, the Council will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised development.

### Formal Action

Although the Council will nearly always be willing to enter into negotiations, in the event that a solution to a breach cannot be reached, the Council has recourse to the following:

#### Planning Contravention Notice (PCN)

- 6.5 Where it appears that a breach of planning may have occurred but the Council wishes to find out more information before deciding what if any enforcement action to take the Council may serve a Planning Contravention Notice (PCN). A PCN (section 171c of the TCPA) can be served on the owner or occupier of the land, anyone who has an interest in the land, or anyone who is using the land for any purpose. The PCN requires the owner/occupier to provide written information about ownership and the activities taking place on the land or within any buildings on the land. The PCN may invite the owner/occupier to meet with Council officers to discuss the matter in person.
- 6.6 This form of action may be useful where the Council considers that planning permission could be granted after the unauthorised development has been carried out (i.e. a retrospective planning application) but the owner or operator has not made an

application. It is an offence to fail to respond to a PCN within 21 days or make false or misleading statements in reply. There is no right of appeal against a PCN.

### **Section 330 Notice**

- 6.7 Where it is important to obtain clarification about the ownership and the people occupying a property, a Notice can be served, under Section 330 of the TCPA, on the apparent owner or occupier. This will require them to confirm details of those persons who have a legal interest in the property. There is no right of appeal against a Section 330 Notice and failure to respond may be an offence.

### **Powers of Entry for Enforcement Purposes**

- 6.8 In addition to the investigative powers outlined above, Council officers also have power to enter land, specifically for enforcement purposes. This right is limited to what is regarded as necessary to ensure effective enforcement in the particular circumstances. A notice period of 24 hours is required before entry to a dwellinghouse can be legally required. Prior notice is not required for access to domestic outbuildings or garden land, industrial, commercial or farmland etc. Where entry is refused or obstructed it is possible to apply to a magistrate for a warrant to allow entry.

- 6.9 In order to provide greater clarity in April 2015 the Government published the *Power of Entry: Code of Practice*. The stated aim of the code is that it *provides guidance and sets out considerations that apply to the exercise of powers of entry including, where appropriate, the need to minimise disruption to business. It will ensure greater consistency in the exercise of powers of entry, and greater clarity for those affected by them, while upholding effective enforcement*. This document can be found via the Government publications website (see Section 10).

### **Enforcement Notice**

- 6.10 An Enforcement Notice is the most common form of notice used to deal with unauthorised development. The notice will specify what the alleged breach is, the steps that must be taken to remedy it and a time period in which to carry out those steps. An Enforcement Notice cannot come into effect until at least 28 days after it is served. Prior to the date that the notice comes into effect the recipient of the notice has a right of appeal to the Secretary of State for Communities and Local Government through the Planning Inspectorate (see [www.gov.uk](http://www.gov.uk)).
- 6.11 If an appeal is lodged, the Planning Inspectorate will allocate an Inspector to determine the appeal. The Inspector acts as an independent arbitrator between the Council and the individual(s) to whom the Enforcement Notice was served. If a valid appeal is made, the requirements of the Enforcement Notice are suspended until the appeal has been determined or it is withdrawn. If the Enforcement Notice is upheld the time period for compliance will run from the date of the Inspector's decision.

### **Listed Building and Conservation Area Enforcement Notices**

- 6.12 A Listed Building Enforcement Notice may be issued when unauthorised works are carried out to listed buildings. Where the demolition of unlisted buildings within a Conservation Area occurs without consent a Conservation Area Enforcement Notice may be issued. As with an Enforcement Notice the recipient has a right of appeal to the Secretary of State.

### **Section 215 Notice**

- 6.13 Where the condition of buildings or land causes serious harm to the amenity of an area, the Council may serve a notice on the owner and occupier under Section 215 of the TCPA. Such a notice would set out steps for improving the condition of the land or buildings and specify a timeframe for compliance. The notice can be appealed at a magistrate's hearing. Failure to comply with a Section 215 Notice may be an offence subject to a current maximum fine of £1,000.

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

- 6.14 This type of notice is used where planning permission has been granted subject to conditions and one or more of the conditions has been breached. The Council can issue a Breach of Condition Notice (BCN) to ensure full or part compliance with the planning conditions. A BCN would state the breach and the steps required to remedy the breach. The notice will allow a minimum of 28 days in which to comply with its requirements. There are no rights of appeal against a BCN. Failure to comply with a BCN may be an offence prosecutable in the magistrates' court and is subject to a current maximum fine of £2,500.

### **Stop Notices**

- 6.15 When the effects of unauthorised activity are seriously detrimental, a Stop Notice may be served to ensure that an activity does not continue if an appeal is lodged against an Enforcement Notice. A Stop Notice can only be served where an Enforcement Notice has been issued. A Stop Notice can relate to any, or all, of the uses or activities specified in the Enforcement Notice. It does not apply to works to a listed building. A Stop Notice can require a use or activity to cease 3 days after it is issued.
- 6.16 It is an offence to contravene a Stop Notice and can result in an unlimited fine at the Crown Court. Whilst there is no right of appeal against a Stop Notice, the validity of a Notice or the decision to issue the notice can be challenged in the courts by an application for judicial review.

### **Temporary Stop Notices**

- 6.17 Where the Council considers that a breach of planning control should stop immediately, it can serve a Temporary Stop Notice. Such a notice expires 28 days after it has been served and during this period the Council must decide whether it is appropriate to take further enforcement action. Once a Temporary Stop Notice has been served it is not possible to serve further Temporary Stop Notices for the same breach of planning control.
- 6.18 There are restrictions on the use of Temporary Stop Notices; for example, such a notice cannot prohibit the use of a building as a dwellinghouse and may not prevent the continuance of an activity which had been carried out for a period of four years (see Section 7).

### **Discontinuance Notice (unauthorised advertisements)**

- 6.19 It is an offence for any person to display an advertisement in contravention of The Town and Country Planning (Control of Advertisement) (England) Regulations 2007. A Discontinuance Notice may only be served if the Council is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. The act also enables the Council to take discontinuance action against any advertisement, which normally has the benefit of deemed consent. There is a right of appeal against a Discontinuance Notice. Rather than issuing a notice, the Council may, in certain circumstances, go straight to prosecution.

### **Completion Notice**

- 6.20 A Completion Notice may be served if the Council is of the opinion that development (which has started within the statutory 3 year period if planning permission was originally required) will not be completed within a reasonable period. For this type of notice, the period for compliance has to be a minimum of 12 months. The Council must also refer the notice to the Secretary of State for confirmation. There is a right of appeal against a Completion Notice.

### **Planning Enforcement Order (PEO)**

- 6.21 The Localism Act 2011 introduced the power for LPAs to apply to the magistrates' court for a Planning Enforcement Order (PEO). Such an order would be sought where there has been a deliberate attempt to conceal a breach of planning control. Where a PEO is granted, the Council 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 of immunity (see Section 7) will not apply in cases of a concealed breach. An application for a PEO must be made within 6 months of the Council becoming aware of the breach. A magistrates' court may only make a PEO if it is satisfied that the breach has been deliberately concealed.

### **What Happens after a notice is served?**

- 6.22 Recipients of a notice/order will normally respond in one of three ways:
- Comply fully with the notice/order – at which point the case is closed
  - Contest the notice/order by way of an appeal to the Planning Inspectorate or challenge in a court of law (depending on which notice has been served)
  - Fail to comply or fully comply with the notice/order
- 6.23 Where a case goes to appeal there can be quite a significant delay in reaching a resolution particularly if the case goes to Public Inquiry. If the appeal against the notice is allowed and/or planning permission is granted this will normally be the end of the matter. If the appeal is dismissed, or no appeal is made, failure to comply with the requirements of the notice/order will usually result in the Council pursuing a prosecution.

### **Direct Action**

- 6.24 Failure to comply with the requirements of an Enforcement Notice, Breach of Condition Notice or a Section 215 notice may result in the Council carrying out works required by that notice. Any costs and expenditure incurred in carrying out such works can be recovered from the landowner and where costs and expenditure are not recovered they can be registered as a charge on the land.

### **Injunctions**

- 6.25 Section 187B of the TCPA is available for the Council to apply to the courts for an injunction to stop an actual or alleged breach of planning control. Injunctions are a discretionary order. They can be used to require someone to stop carrying out an activity or to require them to remedy a breach. They are usually only used where there is urgency, where the planning breach is serious or where other legal processes have not led to the breach being rectified. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

### **Prosecution**

- 6.26 A breach of planning control is not a criminal offence. However, non-compliance with the requirements of a formal notice may be a criminal offence and on conviction the person served with the notice may be subject to a fine. Where a transgressor has failed to comply with a formal notice the Council will normally instigate prosecution proceedings if there is a realistic prospect of conviction and it is considered to be in the public interest to do so. A successful prosecution does not, however, always mean that a breach will be remedied. In such instances the Council has recourse to further prosecutions which could result in more substantial fines and or imprisonment.
- 6.27 The legal mechanisms open to the Council are not limited to those set out above. The Council may for example look to recover profits made from unauthorised development through the Proceeds of Crime Act 2002.

# 7 Immunity from Enforcement Action

## Time Limits

7.1 The Planning and Compensation Act 1991 (part of the TCPA) introduced rolling time limits within which the Council can take planning enforcement action against breaches of planning control. The time limits are: -

- 4 years for building, engineering, mining or other operations in, on, over or under land without planning permission

Development becomes immune from enforcement action four years after the operations are substantially completed

- 4 years for the change of use of a building, or part of a building, to use as a single dwellinghouse

This development becomes immune from enforcement action four years after the date the change of use first occurred.

- 10 years for all other changes of use and breaches of conditions

The ten year period runs from the date the breach of planning control first commenced.

- \* These time limits do not apply where the Council considers that the unauthorised development has been deliberately concealed (see Planning Enforcement Order in Section 6)

## Lawful Development Certificates

7.2 If owners of land or property consider that a breach of planning control has become immune from enforcement action they may apply for a Certificate of Lawful Use Existing (CLUE). The decision to approve or refuse a certificate will be dependent on the applicant submitting documentation to establish that *on the balance of probability* the lawfulness of the existing development exceeds the relevant time requirement set out above. Given the nature of the application, the Council's Legal Team are involved in the evaluation of the information provided.

7.3 This option is well worth considering because if a landowner should later want to sell their property, the CLUE can be used to answer queries raised by potential buyers or their legal representatives regarding the legality of building works or uses.

# 8 What happens if you are the Subject of an Investigation?

- 8.1 The Council understands that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a lack of an awareness of planning legislation. Therefore, if you receive a letter from the Council or a visit from a Planning Enforcement Officer, the Council encourages you to respond positively and provide the information which we need to resolve the matter. It is in the interests of all parties if an identified breach can be addressed at an early stage.
- 8.2 The Council has a duty to investigate complaints alleging a breach of planning, even if they prove to be unfounded. If you are contacted about an alleged breach you are entitled to know what the allegation is and to have the opportunity to explain your side of the case. However, the Council will not disclose the identity of the complainant(s). The matter can obviously be resolved quickly if it is determined that there is no breach. In other cases a resolution may be negotiated, however this does not mean that you can delay any response or action. We expect you to respond within the stated timescales and we will pursue prosecutions for failures to respond to formal notices (see Section 6). The Council will not allow protracted negotiations to distract it from taking appropriate action.
- 8.3 In many cases, particularly where the development is likely to be acceptable, we may invite you to submit a retrospective planning application, although this is on the understanding that it will not prejudice any decision the Council may take. In cases where planning permission has been obtained and the deviation from the approved plans is very minor, you may be entitled to apply for a non-material amendment. In cases where pre-commencement conditions have not been discharged, you may still be able to apply to discharge the condition or alternatively you may need to submit a new planning application.
- 8.4 You should be aware that Planning Enforcement Officers have legal rights of entry to land and property in order to investigate alleged breaches of planning or compliance with Enforcement Notices (see Section 6). The Planning Enforcement Officer will make themselves known to the landowner/developer when they enter a site. It is not always appropriate or possible to give advance warning of a site visit, although in most circumstances the Council will try to do so. In most cases a letter will be sent to you to alert you to a potential breach of planning control as soon as the Council is made aware of it. The letter will advise you to contact the officer dealing with the case at the earliest opportunity.
- 8.5 As your presence is not always required, a Planning Enforcement Officer's visit can be unaccompanied. If it is necessary to enter your house, (as opposed to surrounding land) you are entitled to 24 hours notice. If you actively prevent an Enforcement Officer from entering onto your land the Council can obtain a warrant. Once a warrant has been issued, any obstruction preventing access to the site will be considered a criminal offence. The Council can also call on the Police and a locksmith to force entry.
- 8.6 The Council will use the information gained from a site visit to help assess the harm being caused and what further action, if any, needs to be taken. In addition, you may be served with a PCN (see Section 6) which requires you to provide information concerning the alleged development. PCNs are used to establish the facts of the alleged breach and the details of those with an interest in the land.
- 8.7 If negotiations are unsuccessful or are not appropriate, Planning Enforcement Officers will attempt to explain and to help you understand the implications for any action the



Council may pursue as set out in Section 6. Whilst, we will endeavour to advise you on the planning merits or otherwise of an unauthorised development, Planning Enforcement Officers will not act as your advisor and cannot make decisions on your behalf.

- 8.8 You should therefore consider whether to get your own independent advice from a qualified planning consultant or another appropriate property or legal professional. If you cannot afford to employ a consultant you can contact Planning Aid, which is a voluntary service offering free independent, professional advice (see the RTPI website - details in Section 10).
- 8.9 It is worth noting that if you subsequently wish to sell a property which has been subject to unauthorised works or a change of use, you may find the sale is delayed or lost when would-be purchasers undertake standard property searches. The Planning Enforcement Team will advise the Council's Land Charges Team of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding. You should also be aware that the Council usually make mortgage providers and other parties with a financial interest aware of breaches of planning permission and we will send them a copy of any formal notice or decision relating to planning enforcement.

## 9 Improving Planning Enforcement

- 9.1 The Council will monitor the length of time taken from the receipt of information regarding a suspected breach of planning to the conclusion of the case. This data will be

assessed against the timescales set out in Section 4 of this document. This is carried out to ensure that complaints are processed as quickly as possible and also identify appropriate changes to the way in which the Planning Enforcement Team operates.

- 9.2 In order to maintain public confidence in the planning process, the PPG asks LPAs to consider a proactive approach to enforcement. The Council will therefore identify a sample of planning applications, and other development where formal permission was not sought, to check for compliance. The outcome of the compliance check will be reported to the applicant/owner and agent. Any non-compliance will be addressed through normal enforcement practice.

## 10 Complaints Procedure

- 10.1 The Council will make every effort to provide good customer service and to follow the procedures set out in this document. If however, you have a complaint against the service you have received that cannot be resolved by the Planning Enforcement Officer or their line manager you may wish to follow our formal complaints procedure; details of which can found on our website.
- 10.2 If having been through the Council's complaints procedure, you remain dissatisfied with the Council; you can refer your complaint to the Local Government Ombudsmen. Their contact details can also be also be found on the Council's website. The Ombudsman will investigate the administration of the planning process; they do not have the power to reconsider a planning or enforcement decision.

## 11 General Information

### Useful Websites

**Cherwell District Council** – [cherwell.gov.uk](http://cherwell.gov.uk)

Access to the Council's Local Plans and various design guidance documents.

**Environment Agency** - [www.gov.uk/government/organisations/environment-agency](http://www.gov.uk/government/organisations/environment-agency)

The Environment Agency has a number of powers to deal with unauthorised waste sites that pollute land and or waterways.

**Oxfordshire County Council** – [oxfordshire.gov.uk](http://oxfordshire.gov.uk)

The County Council takes responsibility for fly-tipping or any obstruction on the highway or the highway verge.

**Government Legislation** - [www.legislation.gov.uk/](http://www.legislation.gov.uk/)

This website provides an electronic library of the current legislative background. The search facility allows users to focus on planning legislation.

**Government Publications** - [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Up-to-date electronic record of all Government documents, guidance and statistics.

**Planning Inspectorate** - [gov.uk/government/organisations/planning-inspectorate](http://gov.uk/government/organisations/planning-inspectorate)

The Planning Inspectorate is an executive agency sponsored by the Department of Local Government which arbitrates on most planning appeals. This website explains the appeal process and what is required to validate an appeal. It also provides an electronic library of previous planning appeal decisions.

**Planning Portal** - [planningportal.gov.uk](http://planningportal.gov.uk)

This Government website provides general planning advice and guidance. It explains what type of development requires or is likely to require planning permission and provides details of the various forms of enforcement action set out in Section 6. It also has links to other relevant Government guidance and legislation. Planning applications can be submitted via the website as can enforcement and planning appeals.

**Royal Town Planning Institute** - [www.rtpi.org.uk](http://www.rtpi.org.uk)

The RTPI is the principal body representing planning professionals in the United Kingdom and Ireland. As part of its remit it provides a voluntary service through Planning Aid which offers free independent, professional advice. Also of relevance, it provides contact details of affiliated local planning consultancies.

## **Commonly used Planning Enforcement Acronyms**

AONB – Area of Outstanding Natural Beauty

BCN – Breach of Condition Notice

CLUE/CLUED – Certificate of Lawful Use Existing (also referred to as a Lawful Development Certificate for an Existing Use)

GPDO – Town and Country Planning (General Permitted Development) (England) Order 2015

LBC – Listed Building Consent

LEP – Local Enforcement Plan

LPA – Local Planning Authority (e.g. Cherwell District Council)

NPPF – National Planning Policy Framework

PCN – Planning Contravention Notice

PEO – Planning Enforcement Order

PPG – Planning Practice Guidance (sometimes referred to as the NPPG)

RTPI – Royal Town Planning Institute

SPD – Supplementary Planning Document

SPG - Supplementary Planning Guidance  
SSSI – Site of Special Scientific Interest  
TPO – Tree Preservation Order  
TCPA – Town and Country Planning Act 1990

## Planning Definitions

### Amenity

Throughout this document there are a number of references to amenity. Whilst amenity is not defined in legislation, in planning terms is commonly considered to refer to the overall quality and character of an area. Factors which contribute to an area's quality and character include:

- types of land uses
- quality of the built form
- provision of open land and trees
- the inter-relationship between all the different elements that make up the local environment

### Curtilage

As with amenity there is no legal definition of curtilage. Recent Government technical guidance defined domestic curtilage as follows:

*What is defined as the curtilage for a particular house will vary according to a number of factors, but in most cases it will comprise the area of land around the original house (i.e. what is understood to be the garden/grounds of the house). But the curtilage may be a smaller area in some cases, especially in the case of properties with large grounds set in the countryside.*

## 12 How to Report a Breach of Planning Control

12.1 If you are reporting a breach of control, the simplest way is to do so via the enforcement page on the Council's web-site. The electronic form prompts you to submit all the

relevant details relating to the alleged breach and also allows you to forward any supporting documentation (including pictures) as pdfs, gifs or jpegs.

12.2 Whilst officers are willing to speak to complainants in the first instance, they will be asked to confirm their concerns via the Council's website, in an email or in writing.

12.3 In the majority of cases, if a complainant is unwilling to divulge their personal details the Council will not investigate the alleged breach. The exception to this rule is where irreparable harm could be caused to a listed building. Complainants should be reassured that in accordance with the Data Protection Act 1998, the Council will not disclose any information relating to their identity. This obviously, however, does not prevent the alleged offender from making assumptions about who has made the complaint.

Your name, address, phone number and preferably your email address.

The location and exact address of the building or site.

The landowner or occupier's name.

What the breach involves.

How the breach is affecting you and residents in the local area.

The date you first became aware of the breach.