Hull City Council Planning Enforcement Plan

1 Aim and Scope of the Plan

1.1 The Plan sets out how the Council's planning enforcement service will help to achieve corporate regeneration objectives, address breaches of planning control and prioritise its work. The Plan describes the range of powers available to the Council, how the Council will decide whether or not to pursue enforcement action and the process of enforcement. A flowchart is attached as an appendix to illustrate how breaches of planning control are managed.

2 Introduction

2.1 If planning permission, listed building consent or advertisement consent is not required from the Council for a given development or use then the Council cannot take any action under national planning legislation. However, another Council section or department may be able to take action using other statutory legislation. If such matters are raised with the Enforcement Team, these will be forwarded to the relevant part of the Council and the person who raised the issue will be notified.

2.2 The Planning Enforcement Team can only enforce national planning legislation. They cannot get involved in private disputes for example breaches of restrictive deeds or covenants or boundary disputes.

2.3 It is often incorrectly assumed that breaches of planning control are a criminal offence, but this is not the case except in the case of unauthorised work to a Listed Building or trees covered by a Tree Preservation Order. Furthermore, even if it is established that a breach of planning control has taken place, it is not mandatory for the Council to take enforcement action. The decisive issue for the Council to consider in deciding whether to pursue enforcement action is whether it is expedient to do so.

2.4 When considering expediency, the Council will consider whether;-

- the breach of planning control unacceptably affects public amenity or the existing use of land or buildings merits protection in the public interest;
- planning permission would be granted if an application were to be submitted and if so, whether conditions would be imposed; and
- the breach has become lawful through passage of time and therefore immune from enforcement action as stated within current planning legislation.

2.5 In making such an assessment, the Council will have regard to the Hull Local Plan, Area Action Plans associated Supplementary Planning Documents and all other material planning considerations such as the National Planning Policy Framework (NPPF) and its associated guidance.

2.6 Whilst not condoning development or activity carried out without the benefit of planning permission, it is usually inappropriate to take enforcement action against a minor breach of planning control which causes no harm to the amenity of adjoining occupiers or the surrounding area.

2.7 The integrity of the development management process (i.e. determining planning applications) depends on the Council's determination to take enforcement action when it is necessary to do so, in order to remedy the undesirable effects of unauthorised activity. Failure to take enforcement action when it is clearly required can result in the Council being investigated by the Local Government Ombudsman for possible 'maladministration' or being challenged by way of an application for judicial review or in other legal proceedings.

2.8 The Council uses its enforcement powers in a reactive manner. It has primarily been driven by responding to complaints, as opposed to a more proactive approach based upon seeking to achieve specific planning policy objectives. National case law supports generally the position that powers are used rarely and only when absolutely necessary.

2.9 This Enforcement Plan has been prepared in a way to ensure that it is complementary to the range of other enforcement powers available to the Council. It can often be the case that to achieve an effective outcome, the Council needs to co-ordinate the use of its various enforcement powers under separate and independent legislative powers.

2.10 The Council's objectives in producing a Planning Enforcement Plan are consistent with the NPPF (2021).

The Framework states:

"*Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement pro-actively, in a way that is appropriate to that 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*."

2.11 Appendix 2 provides details on how to report a complaint in respect of alleged breaches of planning control.

3 **The Scope of Planning Enforcement**

3.1 Planning enforcement covers planning permission, advertisement consent, listed building consent and tree preservation orders. National legislation allows some minor and small-scale works to be undertaken without the need for any consent or approval. These works are known as "permitted

development". Any works carried out as permitted development cannot be subject to enforcement action. The Council must act within the provisions of national legislation and take account of relevant national policy.

4 Priorities

4.1 To make effective use of resources, allegations about suspected breaches of planning control will be investigated thoroughly and accurately with a priority rating of 'High', 'Medium' or 'Low' depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses. Appendix 3 provides specific examples of breach types within each of these categories.

4.4 The council receives approximately 400 complaints regarding alleged breaches of planning control each year. Although many of these do not result in a formal enforcement action, many require lengthy investigations, site surveillance or legal action over several months. Resources are limited and it is essential to use them to the maximum effect. Therefore, the council must give priority to those cases where greatest harm is caused. Depending on the seriousness of the alleged breach and available resources the target response times for initial response will be as follows:

- **High Priority cases** site visit within 1 working day.
- **Medium Priority cases** site visit within 10 working days.
- **Low Priority cases** site visit within 20 working days.

Complainants should be kept informed of any progress or development.

4.5 The initial assessment and the level of priority will be dependent upon the information provided at the time. Once investigations commence the priority level may change following the initial site visit or following the receipt of additional information. All cases will be kept under review.

5 How we deal with complaints /enforcement action process:

5.1 Most breaches of planning control are reported to the Council directly by members of the public, businesses or council officials. The procedure outlined below is a guide to how we will respond to these complaints:

On receiving a complaint about a suspected breach of planning control, we will need as much information as possible, for example.

1. The address or detailed location of the site.
2. Precise details of the alleged breach.
3. When the alleged breach started/took place.
4. The nature of any building work/alleged uses of the property.

5. The previous and current uses of the property.

6. Names, addresses, telephone numbers of persons responsible, if known

7. Photographs, if possible.

8. Name, address and contact details of the complainant

5.2 Members of the public, who are reluctant to give their details, because they fear repercussions, are advised that their details are treated with the strictest confidence. However, they may in certain circumstances wish to remain anonymous. If they are still reluctant, we would advise them to use their local Councillor to act on their behalf.

5.3 Where we are notified that building works have commenced at a property, these will, in the first instance, not be registered as potential enforcement cases, until research has been undertaken to establish whether there is planning permission or it is permitted development, e.g. checking aerial photographs to see if there is any indication of when building work started, and what was on the site previously.

5.4 Checks will be made as required with council departments, such as Development Management, Building Control, Development Delivery, Environmental Protection, Licensing, Food Safety, Trading Standards, Streetscene, Highways, Housing and Council Tax/Business Rates.

5.5 From this research, a formal case can be made up. In some instances, this will indicate that planning permission has been given for the building work /activity that is the subject of the complaint. If this is the case, an officer will visit to make sure that it is being carried out in accordance with the approved plans.

5.6 After the relevant planning history has been researched, the first step of the enforcement investigation normally involves a Case Officer visiting the site/building. It is standard procedure for the Case Officer not to visit the complainant immediately after visiting the site of the alleged breach, as this could reveal to anyone present at the site the identity of the complainant. If a complainant wishes for the Case Officer to visit their property, they should contact the Officer in order to make this request.

5.7 The Case Officer will seek to obtain as much information as possible on this first site visit. In some cases, the Case Officer may be accompanied by another colleague or an officer from another department. The Case Officer will not usually notify the owner or occupier of the site where the alleged breach of planning control is taking place, and has the legal right under Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended), to enter any land at any reasonable time to ascertain whether a breach of planning control has occurred.

5.8 If no-one is present when the Case Officer first visits the site/building, they will leave a business card asking the owner or occupier to contact them.

5.9 Should the owner or occupier of this land be unwilling for the Case Officer to enter the land, the officer will seek to agree a mutually convenient time for a site visit to be undertaken.

5.10 If the Case Officer is still not able to enter the land, the Council will apply to the Magistrates Court for a warrant to be issued authorising officers to enter the land. Willful obstruction of an authorised officer(s) at this stage is a criminal offence subject to a maximum fine of £1,000. If considered necessary, the authorised officer(s) may be accompanied by the Police when exercising this warrant.

5.11 Once a site visit has been completed, the Case Officer will write to both the owner/occupier of the site and the complainant to advise of his or her findings and how the investigation will be progressed.

5.12 If a breach is established, an assessment will be made of the harm caused by the breach. If it is considered that no or limited harm is being caused by the breach, the owner will be asked to submit a planning application to rectify the breach. If it is considered that harm is being caused by the breach, officers will negotiate to try and remedy the breach or other approaches will be advised such as a Certificate of Lawfulness. If the owner is unwilling or unable to rectify the breach, then officers will proceed with formal action as referred to within Appendix 1.

5.13 Appendix 4 sets out a flow chart which summarises the steps that will be followed in dealing with any enforcement investigation.

6 **Deciding when to take Enforcement Action**

6.1 There is a common misconception that breaches of planning control are a criminal offence and should automatically attract enforcement action. The quote from the NPPF in paragraph 1.6 clearly sets out that enforcement action is a discretionary power. It is for each local planning authority to decide the amount of resource to put into enforcement, how to determine when action is necessary and the type of action that is appropriate. In making these decisions the authority should be mindful of maintaining public confidence in the planning system.

6.2 Notwithstanding the above, it should be noted that unauthorised works to a listed building is a criminal offence. Similarly, the display of advertisements without deemed or express consent and also works on a tree or trees which are the subject of a Tree Preservation Order are criminal offences.

No breach or Immune from action:

6.3 If it is established that no breach of planning control has occurred, or that the activity is immune from enforcement action due to the length of time that the activity has been taking place (more than 4 years for development and more than 10 years for use), the Council will be unable to take any further action. In such circumstances, the Council will write to both the complainant and the owner of the site explaining in full the reasons why no action is to be taken and formally confirming that the matter has been closed. It should also be noted that immunity does not apply to breaches undertaken on Listed Buildings instead such action should meet the public interest test.

Action to remedy the breach;

6.4 If the owner or occupier of the site takes prompt action to remedy the breach of planning control, the Case Officer will subsequently visit the site and then confirm in writing to both the owner/occupier and the complainant that the breach of control has been remedied and that no further action will be taken.

Retrospective applications;

6.5 The owner/occupier of any site where a breach of planning control has occurred has the legal right to submit a retrospective planning application in an attempt to regularise the breach. Such an application will be considered by the Council in the same way as all other planning applications, i.e. with regard to the provisions of the Local Plan and associated Supplementary Planning Documents, NPPF and all other material planning considerations, and with each application being determined on its own planning merits.

6.6 The Localism Act 2011 amended the Town and Country Planning Act 1990 to enable a Local Planning Authority to decline to determine an application if there is a valid enforcement notice in place. This was done to stop delays to enforcement by the submission of applications that propose minor changes to the subject

6.7 Neighbouring properties, and any complainants who first raised concerns with the Planning Enforcement Team, will be formally notified of a retrospective application. Representations will be taken into account when the planning application is determined

6.8 Any enforcement action that is proposed or has already been taken by the Council may be put on hold pending the determination of the relevant planning application. In some circumstances it may be considered appropriate to continue enforcement action, for example where the harm caused by the unauthorised activity is seriously detrimental to the surrounding area or where there is the potential for the development to become immune.

6.9 If a retrospective planning application has to be presented to a meeting of the Council's Planning Committee and the officer recommendation is to

refuse the application, a recommendation to take enforcement action will normally also be included within the officer's report. A decision to refuse a retrospective planning application and to serve an Enforcement Notice at the same time does not remove the right of the owner/occupier to appeal on a number on different grounds.

6.10 If the application is subsequently approved, the activity will then be lawful and no enforcement action can be taken. The decision will be published so that anyone who made representations on the relevant planning application can see the outcome of the application.

6.11 If the application is refused, the Council will then pursue enforcement action to remedy the breach of planning control. However, it should be noted that such a notice could still be appealed.

Compliance with Notice;

6.12 The Enforcement Notice gives a period for the work to be done to remedy the breach. When this period has expired, enforcement officers will visit the site again to check that the Enforcement Notice has been complied with. If it has, and the breach of planning has been remedied, then the owner will be written to and told that the Enforcement Notice has been complied with.

6.13 In response to a notice being issued, in some cases works may be undertaken to make the development fall within the boundaries of 'permitted development'. For instance, the roof of an outbuilding may have been reduced in height to less than 2.5m (within the parameters of permitted development). If works of this nature have been undertaken to such an extent that a Certificate of Lawfulness would have been issued, then generally enforcement officers will no longer pursue further compliance. It would not be expedient for the structure to be demolished, and rebuilt as permitted development, as the part of the structure that caused the most harm (in this example, the roof) has been removed.

6.14 In some cases, works may have been undertaken to remedy the breach, but not every action required on the Enforcement Notice has been complied with. An assessment must be made of the harm caused by the remaining structure / use, and the likelihood of it gaining planning permission. In some cases, if it is considered that the works undertaken overcome the harm caused by the breach, then no further action will be taken. In these cases, however, the enforcement notice is kept on the register, so further action can be taken should the breach reoccur particularly in respect of an unauthorised change of use.

Prosecution;

6.15 If, following the period to comply with the Enforcement Notice, no remedial works, or insufficient remedial works have been carried out, then the Council has the power to prosecute the person(s) responsible in law for

non-compliance with the notice[1]. Non-compliance with an Enforcement Notice is an offence, liable to a fine of up to £20,000 in the Magistrates' Court and an unlimited fine in the Crown Court. The Proceeds of Crime Act 2002 could result in confiscation of gains resulting from conviction for failure to comply with an Enforcement Notice. The Council willalso seek to recover its costs arising from non- compliance with the Enforcement Notice. If the financial penalty given by the court does not achieve compliance with the Enforcement Notice, then further legal action can be undertaken to achieve compliance to overcome the harm of the breach of planning control. It should also be noted that if expedient the matter can be taken to the Crown Court to seek financial penalties under the Proceeds of Crime Act 2002.

6.16 The Council will also consider undertaking the work required by the notice in default and this will involve laying a charge on the land/property on completion and seeking to recover the costs in due course. The recovery of full costs is not always possible as on occasion the sale value of the site may be less than the cost of the default works.

6.17 The Council will publicise successful prosecutions for non-compliance with enforcement notices and other breaches of planning control such as advertisements.

7 Monitor the implementation of planning permissions

7.1 Once planning permission is granted, you may need to get formal approval of any details required by conditions. It is therefore imperative that applicants carefully read their permission once it is received ensuring that works do not commence on site in breach of planning conditions as they do not have permission until all conditions have been complied with and therefore a lawful start has not commenced.

7.2 The onus is on the landowner, applicant or developer to make sure that all the necessary consents are in place before work starts, and to make sure that all the conditions are complied with. The Development Management Team will not write to owners/operators reminding them of their responsibility to discharge conditions.

7.3 There is no requirement to inform the Development Management Team when work will start on site; however, owners/developers have to notify our Building Control Service or a private Building Inspector that they are going to start building works.

7.4 Commencement lists are produced weekly by the Council's Building Control Service setting out what developments are scheduled to commence that week. Copies of these lists are checked by the Planning Enforcement Team against planning application decisions ensuring that all;

[1] All decisions regarding potential prosecution lie with the Council's Legal Service in accordance with the Code for Crown Prosecutors.

- pre commencement conditions have been discharged. If conditions have not been discharged, a new investigation is opened and conducted in accordance with the process set out within the plan; and

- financial contributions that formed part of a 'section 106 agreement' required prior to commencement of development have been received by the Council.

8 Special controls

Advertisements

8.1 Unlike most spheres of planning control, the display of advertisements without consent is an offence. Therefore, we have the power to initiate prosecutions without the need to issue a notice. Where it has been considered that an advertisement should be removed, an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken without further correspondence.

8.2 Section 225 of the Town and Country Planning Act (as amended) provides powers to 'remove or obliterate' unauthorised posters and placards. We will consider using these powers as appropriate as an alternative or in conjunction with prosecution action.

8.3 The Localism Act introduced through s.225A the following provisions in respect of dealing with advertisements: Removal Notices, Action Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court.

8.4 Removal Notices provide the power to seek removal of any structure used to display an advertisement. Where the notice is not complied with, we may undertake the works in default and seek to recover the expenses for doing so.

8.5 Where there is a persistent problem with unauthorised advertisements, an action notice can be issued specifying measures to prevent or reduce the frequency of the display of advertisements on the surface. Again, where the notice is not complied with, we may undertake the works in default and seek to recover the expenses for doing so.

Trees

8.6 The Town and Country Planning Act 1990 (as amended) requires appropriate consent to be gained for works to trees which are protected by a Tree Preservation Order (TPO) or within a Conservation Area. An offence will be committed should these works be conducted without following the

relevant procedures. Therefore, as with unauthorised advertisements, a prosecution can be sought without the requirement to issue a notice. However, such action will not remedy the harm caused. In such cases the Council may issue tree replacement notices, requiring trees to be replanted. Section 207 of the Town and Country Planning Act (as amended) provides this power in related to trees covered by a TPO. Section 211 provides this power in relation to trees within a Conservation Area.

9 **Other Powers**

High Hedges

9.1 Councils have the power, under Part 8 of the Anti-Social Behaviour Act 2003, to adjudicate on disputes over high hedges. The Council charges for this service. Details of the service are on the High Hedge page on the council's website.

9.2 Further information about this process can also be found within the Government's publication "High Hedges: complaining to the council" which can be accessed from the Gov.uk website, or alternatively contact the City Council for further information.

11 **Review of the Local Enforcement Plan**

11.1 The Council will review this plan every three years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures and priorities. An earlier review will be undertaken should there be a need to do so.

Appendix 1: Enforcement Options

Enforcement Notice	These will be the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice. The Secretary of State can quash the notice or uphold it with or without amendments.
Breach of Condition Notices (BCN)	These can be used in addition or as an alternative to an Enforcement Notice where the unauthorised activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can only be used to secure complete compliance with a planning condition, "under-enforcement" is not an option. Also, as there are no powers for the Council to enter the land and carry out works, prosecution is the only means of enforcement (maximum fine £2,500). Therefore the use of a BCN may not always be appropriate but is dependent on the breach of planning control identified.
Section 215 Notice	Such a Notice requires steps to be taken to remedy the condition of land/buildings which is considered to be adversely affecting the amenity of the surrounding area. Such Notices have to be specific and no variation to requirements can be stated in extreme circumstances a S215 notice can require demolition.
Works in default	local land charge registered against the land/property until recovered from the landowner. However, recovery is not guaranteed so this is not always an effective use of Council resources. Recovery of costs can often take years to secure.
Listed Building Enforcement Notices	A Listed Building Enforcement Notice (LBEN) can be served against unauthorised works that damage the character of a listed building. Penalties are the same as for standard enforcement notices and works in default can also be carried as above.
Listed Building Protection	The specific power to prosecute without LBEN carries the same fines as above with the addition in the Crown Court of a prison sentence of up to 2 years. This rarely used power would apply in cases of serious damage caused to the character of a Listed Building such as demolition, destruction or irreparable damage.

Planning Contravention Notices	This can give an opportunity to formally regularise the position or to provide evidence to the Council that further action is inappropriate. Such a Notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. This is often used when there is an allegation that a separate residential use has commenced.
Stop Notices	The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. A Stop Notice would be simultaneously issued with an enforcement Notice which is relevant to the breach of planning control being enforced. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine the same as for enforcement notices. NB. The Council are advised that 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.
Temporary Stop Notices	A temporary stop notice can be issued to seek immediate

	cessation of the breach of planning control. Unlike a Stop Notice, it does not require an enforcement notice to be served first. It is only valid for 28 days during which time the Local Planning Authority can decide whether to serve an enforcement notice. There is no right of appeal against a Temporary Stop Notice and it is an offence to contravene such a Notice, with the same fines as defined for Stop Notices. Compensation may be payable if the Local Planning Authority later issue a lawful development certificate.
Removal Notice	This Notice was introduced by the Localism Act 2011 and requires the removal of any display structure which is used for the display of unauthorised advertisements.
Discontinuance Notice	Such a Notice requires the removal of an advertisement displayed with the benefit of 'deemed advertisement consent', i.e. an advertisement that would not normally require consent from the Council to be displayed
Court Injunction	This may be taken in the most serious cases where irreparable harm is being (or is about to be) caused or where other actions have failed and harm is still being affected. Legally other action does not have to have been tried first. There are significant costs involved in bringing such action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court injunction.
Urgent Works & Repairs Notice	This Notice can be served on a vacant (or vacant parts of) a listed building where works are urgently necessary for the preservation of a listed building.

Proceeds of Crime Act	On conviction in certain cases further financial costs can be sought against any financial gain which has accrued from illegal activity. Such action is pursued through the Crown Court.

Appendix 2: How to report a possible breach of planning control

Reports of suspected breaches of planning control should, whenever possible, be made in writing. This enables the Council to have a written record of the need to initiate investigation and possible action. When this is not possible reports should be made in person, for example, by telephone and council officers will make a written record.

Planning Enforcement Team
2nd Floor,
The Guildhall,
Alfred Gelder Street,
Hull
HU1 2AA

Reports of suspected breaches can be made by:

dev.control@hullcc.gov.uk

01482 300300 or
01482 612345

Reports will normally be acknowledged by means of a letter or by e-mail advising which Officer will be handling the case. The Officer will act as your point of contact and will advise on progress and outcome of the case.

Details of reports of suspected breaches will be dealt with in the strictest confidence and in accordance with the Data Protection Act 2018 (DPA).

The name and address of those making reports will not be disclosed to the person or organisation involved in the possible breach. In certain cases those reporting breaches may be asked to assist the Council by providing evidence at an appeal or in Court.

Appendix 3: Priority scheme

Category of Breach	
High priority	- Unauthorised demolition, partial demolition or significant alteration of a building, which is considered essential to retain (e.g. listed building or building within Conservation Area) or other development causing irreversible demonstrable harm. - Unauthorised works to trees covered by a TPO or in a Conservation area. - Any unauthorised development/activity which causes clear, immediate, and continuous harm or danger to the locality, including the living conditions of adjoining residents. - Any unauthorised development where the time limit for enforcement action will expire within the next 6 months. - Untidy land and buildings which affect the amenity of the city centre or major thoroughfare across the city. - Situations where a breach has not been resolved by means of a retrospective planning permission.
Medium priority	- Breach of a planning condition which results in serious demonstrable harm to amenity in the neighbourhood. - Unauthorised development in a Conservation Area or when an 'Article 4 Direction' has been issued to remove permitted development rights (usually in a Conservation Area). - Unauthorised development which is the source of significant public concern. - The erection of unauthorised advertisements that have a detrimental impact on highway safety. - Untidy land and buildings which affect the amenity of the wider area (beyond the city centre and major thoroughfare).

Low priority	- Unauthorised development which is not the source of significant public concern. The display of unauthorised advertisements. - Development that is unlikely to require planning permission. - Unauthorised development, which would be likely to receive planning permission/approval (e.g. if a planning application were to be submitted). - In reality it is unlikely any low priority cases will be closed within the first 6 months of being notified. - Non compliance with conditions

Appendix 4: Planning enforcement flowchart