

EASTSUFFOLK
COUNCIL

Local Planning Enforcement Plan

March 2019

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Adopted policy

This policy was amended following consultation with Planning Committee in February 2019 and was adopted by the Council's Cabinet on 5th and 13th March 2019 respectively as working practice.

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LOCAL ENFORCEMENT PLAN AT EAST SUFFOLK COUNCIL

1 INTRODUCTION

This Plan has been produced in response to The National Planning Policy Framework and outlines how the Council will approach Enforcement to ensure public confidence in the Planning system.

Planning Enforcement within ESC is undertaken in accordance with the Council's joint Compliance and Enforcement Policy adopted in April 2019.

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

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

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

Specifically it covers:

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

This enforcement policy does not relate to high hedges. If you have a query concerning high hedges please read our documents: 'High Hedges – A guide to the new High Hedges Legislation' and 'High Hedges – Criteria for resolving disputes'. These are available on our website.

The principles of good enforcement

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

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

Openness: to provide information and advice in plain language on the rules, and discuss problems with anyone experiencing difficulties either because of a breach of planning or as the result of an investigation. We will not normally make personal details available, such as a name, telephone number or address, but our decision-making processes will be transparent to make sure that everyone has confidence in the service.

Helpfulness: to work with all parties to resolve investigations without formal action if practicable.

We will tell you everyone who is dealing with the investigation and how you can contact them.

We will give explanations for the actions we take and any rights of appeal.

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

Proportionality: to take action, when it is necessary, in relation to the risks posed and the Seriousness of the breach.

Some incidents or breaches of regulatory requirements have the potential to cause serious risk to public health and safety, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing. There may be occasions when the breach of regulations will justify statutory action. Any such action will only be taken in accordance with the law, and after due consideration has been given to any Convention Rights, under the Human Rights Act 1998, that may be affected by such action.

However, our resources are limited, and it is essential to use available resources to maximum effect. In planning terms, this means where there is the most harm to amenity or the environment. Our decisions are not based on who is complaining or how loudly.

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

2 WHAT IS BREACH OF PLANNING CONTROL?

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

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

Other than the items listed above, it is not therefore an offence to undertake development without firstly obtaining planning permission. However, if enforcement action is taken against unauthorised development and the requirements of an enforcement notice are not satisfied within the specified period, an offence has then occurred, which can be pursued in the Court.

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

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

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

On average we receive requests for around 500 planning enforcement investigations a year across the district.

Some 60% of these result in a finding of no breach of planning control at all; others range from small scale breaches to very serious incidents.

In the end, the test of a breach is the amount of harm it causes. Harm from breaches of planning control takes many different forms, including the following;

- impact on visual or residential amenity,
- impact on highway safety,

- loss of amenity for the public in general,
- loss of amenity for occupiers and users of surrounding land and buildings or on the environment in general

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

Harm can similarly occur if unauthorised development undermines the policies of our Development Plan, or could set a precedent which, if repeated, would undermine the policies of the Development Plan, then planning harm is caused. An example could be a new house in the countryside.

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

3 HOW YOU CAN REPORT A POTENTIAL BREACH

We prefer you to report potential breaches in writing to the Enforcement Team. This can be via email or using the 'report a possible breach of planning control' form that is on our website https://my.eastsuffolk.gov.uk/service/Planning_control_report_a_possible_breach. You can find further details at the end of this policy document. Sometimes, for example, where someone is doing unauthorised work to a listed building, it may be necessary for you to telephone us during office hours.

We will ask you to identify yourself and give contact details so that we can keep you informed in writing at key stages. We will consider oral and anonymous requests for investigations.

However, anonymous reports often don't give us enough information. Therefore looking into anonymous requests for investigations will be at the Council's discretion.

It is our policy not to reveal the identity of the informant, or information which is likely to reveal the identity of an informant to an alleged offender. We may be asked to reveal the identity of an informant under the Data Protection Act 2018, but we will always apply the rights of the individual in accordance with that Act and any other appropriate legislation.

You can speak to your local district councillor, town or parish council. However, speaking to them or advising them about your concerns is not a formal enforcement request for an investigation.

Councillors, town and parish councils will decide whether they raise a matter with us, but this will not be logged as a complaint from a member of the public. The priority we give to an investigation does not change because we receive it from a Councillor, town or parish council.

Through whatever route you request your investigation it helps our planning and enforcement officers if you provide us with as much information as possible about your concerns, particularly:

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

4 HOW WE PRIORITISE COMPLAINTS

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

The Council has established a set of priorities to reflect the importance it places on the quality of life for its residents and businesses, and the need to protect the special character of the built and natural environment of the District. The performance standards set for the service encourage a more pro-active approach to enforcement and will not be immediately achievable. It is our intention to progress to these standards in stages, monitoring progress on a monthly basis. The categories are intended as a set of guiding principles, rather than attempting to list every possible eventuality.

Regardless of who has made the complaint, when the complaint is logged onto our recording system we will assign it a priority category. Prioritisation of the complaint then sets a performance standard for the first site visit.

Priority One – first inspection within 2 working days from receipt of complaint by the investigating officer resulting in;

- ◆ a serious threat to health and/or safety of the public (e.g. traffic hazard, storage of hazardous materials)

- ◆ a serious threat, permanent or irreparable damage to the built, historic or natural environment e.g. damage to a listed building,
- ◆ damage to a Site of Special Scientific Importance (SSSI), a Scheduled Ancient Monument, an Area of Outstanding Natural Beauty, etc*
- ◆ works being undertaken in contravention of an Enforcement Notice, Stop Notice or Injunction

(* effective action in respect of these breaches will require support from specialist officers within the Council's Conservation and Design Team, and in some case, action will need to be taken in conjunction with Historic England and Natural England)

Priority Two – first inspection within 5 working days of receipt of complaint by the investigating officer resulting in;

- ◆ a breach of listed building, or conservation area controls not included in priority one
- ◆ a breach of control that conflicts with planning conditions where amenity problems arise

Priority Three – first inspection within 15 working days of receipt of complaint by the investigating officer resulting in;

- ◆ a breach causing problems which may be resolved by limited modification or the imposition of conditions on a permission
- ◆ a breach which conflicts with planning policy and is unlikely to be given planning permission without substantial modification
- ◆ a breach of a minor/temporary nature raising limited planning or listed building concerns
- ◆ untidy land or a building whose condition adversely affects the amenity of the surrounding area
- ◆ a breach that conflicts with planning conditions where no amenity problems arise

Priority Four – first inspection within 20 working days of receipt of complaint by the investigating officer resulting in;

- ◆ the unauthorised display of advertisements
- ◆ an anonymous complaint where the alleged breach of control is unlikely to adversely affect the amenity or the character of the location.

5 HOW WE WILL INVESTIGATE A COMPLAINT

We will acknowledge all requests for planning enforcement investigations in writing within 14 working days of receiving it, and we will give the requester the name and contact details of the enforcement officer who will be involved. We will visit all sites within the period set out above for each of the four priorities wherever possible. We will endeavour to visit a high priority investigation on the same day that we receive the request or the following day.

No breach and no further action

After undertaking an investigation we may decide not to take any further action. This might be because the breach is too minor, or because there is no breach of planning control. Alternatively, the works might be within the amount of development which can be carried out without planning permission. (The exact details of what is 'permitted development' are set out by Central Government in the Town and Country Planning (General Permitted Development) (England) Order 2015.).

Similarly, we may decide not to pursue an enforcement investigation, even if there is a clear breach of planning control, because it is 'not expedient' to take action. This might be because although the breach is more than just a minor or technical breach, the harm it causes is not significant, and in our opinion formal action would not be in the public interest. In reaching such a decision we must balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm but whose progress might be delayed as a result. In both these circumstances we will close the case file and notify in writing everyone who has been involved in the investigation. The time it takes to resolve each enforcement investigation will vary depending on:

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

Where we serve an enforcement notice there is a right of appeal, which will add several months to the timescale. Therefore, it is not possible to give an average time for resolving an investigation. However, in order to introduce a level of certainty into the process the enforcement team would aim to follow the following levels of performance:

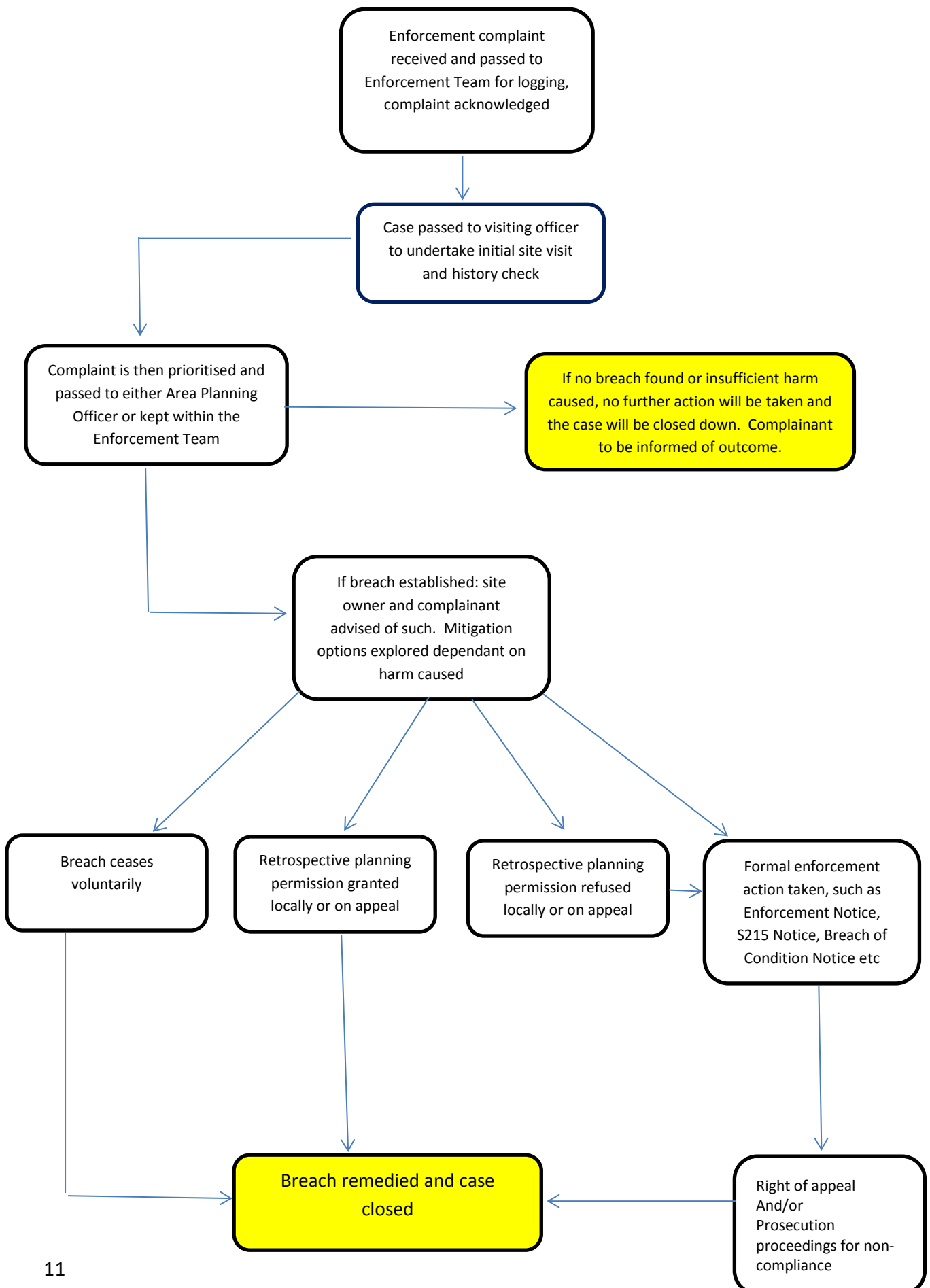
- Within 20 weeks of receiving a request for an investigation we will close 60% of all cases where there is no breach of planning control.
- Within 20 weeks of receiving a request for an investigation we will close 60% of all cases where there is a breach of planning control but it is not expedient to take action.

- Within 24 weeks of receiving a request for an investigation we will decide what further action to take in 80% of cases where a retrospective application is appropriate but not submitted, or where rectification has not occurred.
- Within 24 weeks of receiving a request for an investigation we will determine what enforcement action to take in 80% of cases where formal action is necessary.

We will keep informants informed during the process if required and will advise them in writing or email when an enforcement case is concluded and our reasons for doing so.

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

6. SIMPLE ENFORCEMENT INVESTIGATION FLOW CHART



7 ENFORCEMENT ACTIONS WE CAN USE

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

Breach of Condition Notice (BCN)

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

Enforcement Notice

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

Injunction

We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown.

We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Planning Contravention Notice

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

Section 16 Local Government (Miscellaneous Provisions) Act 1976

This is primarily intended to establish information about the ownership and other interests in the land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

Section 215 Notices

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

Section 330 Town and Country Planning Act 1990

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

Stop Notice

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

Temporary Stop Notice

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

Prosecution

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

These proceedings can include:

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

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

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

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

- The evidential test. We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.
- The public interest test. We will only bring a prosecution where this is in the public interest.

Formal Cautions:

In some cases, whereby neither informal action nor prosecution is an appropriate course of action. the alternative of a "Formal Caution" may be considered.

A "Formal Caution" is the written acceptance by an offender that they have committed an offence. It is formal in the sense that records are kept of all cautions made; however, they do not rank as previous convictions, although they may be mentioned in court when being sentenced for a relevant subsequent offence. The existence of a previous formal caution

may influence the court in deciding the severity of the sentence for any future similar offence.

There is no set time limit to the validity of a formal caution, but in practice they will be retained on the Council's records for a minimum of five years.

In order for a formal caution to be given in a case:

- There must be enough evidence to prosecute;
- The offender must admit the offence;
- The offender must agree to the caution of their own free will, with a full understanding of the implications.

Formal cautions will only be used where:

- A prosecution could properly have been brought;
- The offender freely admits the offence;
- The offender freely agrees to the caution.

Sometimes, following consideration of the facts against the criteria listed above, we may decide that the offence is too serious to disregard, but there are other considerations indicating that prosecution may not be appropriate, for example, where there has been a sustained and significant improvement in

Direct Action

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

8 WHAT YOU CAN DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT

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

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

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

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

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

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

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

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

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

9 UNTIDY LAND OR BUILDINGS (SECTION 215 NOTICES)

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

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

In assessing the harm, guidelines for which are set out in the Council's Constitution, we will consider both the site and its surroundings.

Where we will serve Notices

As with all enforcement investigations, we will allocate resources where they can be most effective and where the greatest harm is being caused. We will not use these Notices where there are more specific powers available to address the concern. It is likely we will use a Section 215 Notice in connection with a prominent and derelict site, particularly if it has started to attract fly tipping, or an important town centre street frontage that has fallen into disrepair, particularly if it falls within a Conservation Area. We would also serve a Notice where the condition of a piece of land impacts upon the wider landscape, especially if it is in an area of countryside that is officially noted for its landscape value or beauty.

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

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

Scope of the Notice

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

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

Action available to us

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

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

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

The course of action will vary from site to site, and in some cases we can pursue both direct action and a prosecution.

Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.

10 CONTACTS AND FURTHER INFORMATION

You can contact our enforcement team at the following address:

Planning Enforcement
East Suffolk Council
East Suffolk House
Riduna Park
Melton
Suffolk
IP12 1RT
Phone: 01394 444297
Email: d.c.enforcement@eastsoffolk.gov.uk

The following are useful contact details that will offer further advice and information on planning enforcement.

■ The Ministry of Housing, Communities and Local Government

(The Government Department with overall responsibility for planning)

2 Marsham Street
London
SW1P 4DF

<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>

■ Planning Aid

(Provides free, independent, and professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees.)

Royal Town Planning Institute
41 Botolph Lane
London
EC3R 8DL

Phone: 020 7929 9494

www.rtpi.org.uk/planningaid

■ Planning Inspectorate

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

Room 4A Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

www.gov.uk/government/organisations/planning-inspectorate

■ Planning Portal

(The Government's online planning resource where you can learn about the planning system and research the latest government policy.)

<https://www.planningportal.co.uk/>

11 NATIONAL GUIDELINES:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance – Ensuring Effective Enforcement
- Enforcement Concordat, published by the Cabinet Office;