


Agenda Item No:	7	
Committee:	Cabinet	
Date:	15 December 2025	
Report Title:	Adoption of a New Planning Enforcement Policy	

1 Purpose / Summary

- 1.1 To seek approval for the adoption of a revised Planning Enforcement Policy for Fenland District Council. The updated Policy sets out how the Council will exercise its planning enforcement functions, establishes clear priorities and provides transparency for residents, developers and landowners.

2 Key Issues

- 2.1 Planning enforcement is a critical tool for safeguarding the integrity of the planning system and ensuring that development complies with approved permissions. Although enforcement action remains a discretionary power, the Council has a statutory responsibility to investigate alleged breaches of planning control in a thorough, fair and proportionate manner.
- 2.2 Each potential breach must be carefully evaluated to determine whether formal action is justified and expedient, balancing the need to protect public amenity, the environment and community interests against the rights of landowners and developers. This decision-making process requires a consistent and transparent framework.
- 2.3 A clear and up-to-date Planning Enforcement Policy is essential to underpin this framework. It provides the Council with a structured approach to prioritising and managing enforcement cases, sets expectations for all parties involved and ensures that resources are directed towards breaches causing the greatest harm.
- 2.4 Without a robust and well-communicated policy, the Council risks inconsistent responses, delays, and erosion of public confidence in its ability to uphold planning standards. The policy also ensures that enforcement activities comply with legal requirements and reflect best practice, supporting effective and proportionate resolution of breaches.
- 2.5 The Council last adopted a Planning Enforcement Policy in 2020. Since that time Case law, national policy and government guidance have evolved. Alongside this the Local Government Ombudsman has placed increased emphasis on transparent standards and effective investigations. New planning enforcement powers have also been introduced.
- 2.6 A full review has therefore been required to ensure that the Council's policy and processes remain fit for purpose.
- 2.7 The proposed Policy has been prepared by the Planning Service, informed by operational experience, and is aimed at providing an effective enforcement

service that ensures that the most significant and harmful breaches of planning control are appropriately prioritised and resourced.

3 Recommendations

3.1 For Cabinet to approve the revised Planning Enforcement Policy.

Wards Affected	All
Forward Plan Reference	KEY/28OCT25/01
Portfolio Holder(s)	Cllr Dee Laws – Portfolio Holder for Building Control, Flooding, IDBs & Planning
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Background Papers	Local Planning Enforcement Plan (June 2020)

Report:

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 Planning permission from the local planning authority is usually needed to undertake development (that is, to carry out building works and/or to ‘materially’ change how a property is used).
- 1.2 Failure to obtain planning permission where it is required or to adhere to conditions attached to planning permission constitutes a ‘planning breach’.
- 1.3 A local planning authority is not required to take enforcement action if it discovers planning breach. It may invite the individual or developer to submit a retrospective planning application or decide it is not expedient to take action.
- 1.4 It is up to local planning authorities whether they take enforcement action and what type of enforcement action they take. The government states that “*enforcement is important for maintaining public confidence in the planning system*” but advises local planning authorities to “*act proportionately*” in responding to planning breaches.
- 1.5 Whilst there is no statutory requirement to take enforcement action there is a requirement to investigate a complaint appropriately and to come to a balanced decision. If this is not undertaken appropriately the Council can be reasonably criticised and this could be evidenced through Ombudsman complaints being upheld, or potentially, in a worst case scenario, Judicial Reviews on decisions to not take action.

- 1.6 The Council's existing Planning Enforcement Policy was approved in June 2020. Since then, there have been significant changes in legislation, national guidance, local priorities, and public expectations. The current policy is attached as Appendix 1.
- 1.7 In relation to planning enforcement policies, national guidance states:
"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should publish a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development, and take action where appropriate."
- 1.8 While the current document provides a basic overview of planning enforcement matters, it is relatively lightweight in both content and structure and is better described as guidance rather than a formal policy. It lacks the necessary detail to clearly explain how the Council will determine whether to act in response to a breach of planning control, or the circumstances in which no further action will be taken. As a result, it offers limited practical guidance to officers, Members, or members of the public and does not provide the transparency or certainty that interested parties should reasonably expect from a published enforcement policy.
- 1.9 Crucially, it does not provide any clear criteria for when cases should be expedited for action or, conversely, deemed not worthy of further investigation. This lack of clarity hampers the service's ability to manage caseloads effectively and makes it more difficult to set realistic expectations with complainants, Members, and other stakeholders. As a result, the current document does not support efficient decision-making or transparent prioritisation.
- 1.10 Historically, the volume of enforcement complaints received by the Council had remained relatively consistent; however, in recent years there has been a notable increase in the number of reported cases. This rising demand has placed significant pressure on what remains a small and resource-limited team.
- 1.11 In addition, the Council experienced staffing challenges over the last couple of years that led to a marked reduction in the number of cases being progressed to conclusion, further compounding the issue.

2 REASONS FOR RECOMMENDATIONS

- 2.1 In light of the limitations of the current document and the importance of effective planning enforcement, the Local Planning Authority has prepared a new Planning Enforcement Policy, attached as Appendix 2, which is considered to be more robust, comprehensive, and fit for purpose. The revised policy reflects current national expectations and provides clearer direction to officers, Members, and the public.

- 2.2 It is considered that the new policy aligns more closely with this guidance, by setting out a clearer framework for investigation, prioritisation, and formal action. Due to the substantial changes in format, tone, and content, a direct comparison between the new and previous documents is not considered meaningful.
- 2.3 The Policy is designed to support a more focused and efficient service, recognising that enforcement capacity is limited. It will help manage expectations and improve case throughput by:
- Clearer prioritisation of cases based on harm, enabling more efficient use of limited resources;
 - Stronger emphasis on harm-based assessment;
 - Service standards and indicative response timescales;
 - Improved transparency and consistency in decision-making;
 - Greater clarity on the factors that will influence whether or not formal action is taken;
 - Guidance on how anonymous, persistent, or vexatious complaints will be handled;
 - Formal reference to statutory powers;
 - Stronger alignment with the principles of proportionality, expediency, and public interest; and
 - Clear references to enforcement powers and tools previously omitted, including use of Proceeds of Crime Act 2002 (POCA) powers in appropriate cases.
- 2.4 The new policy is intended to better support officers in day-to-day enforcement decision-making, improve the Council's ability to defend its actions when challenged, and reinforce public trust in the planning system.

3 CONSULTATION

- 3.1 There is no statutory requirement to undertake public consultation before adopting a new Planning Enforcement Policy. However, should be adopted the Council will notifying third parties and stakeholders we engage with on planning

enforcement matters as well as informing the members of the Developers Forum.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 **Maintaining the Existing Policy Without Revision** - This option was discounted because the current policy is outdated, lacking clarity on prioritisation and service standards and does not fully reflect recent legislative changes or best practice. The lack of clarity and precision results in officers not being able to priorities cases effectively. Continuing with the existing policy risks inconsistent decision-making and reduced public confidence, whilst officers are unable to effectively manage their workloads.
- 4.2 **The provision of a more aggressive Policy** - This option was discounted because a more aggressive enforcement stance would require significantly increased staffing and financial resources to investigate and pursue a larger volume of cases, which is not sustainable within current budgets. Planning enforcement is inherently discretionary and must be applied proportionately. Pursuing formal enforcement with limited direction increases the likelihood of appeals and legal challenges, potentially resulting in additional costs and reputational damage. A balanced approach that targets serious breaches while using informal resolution for minor issues is considered more effective and sustainable.

5 IMPLICATIONS

5.1 Legal Implications

- 5.2 The Planning Enforcement Policy is framed within the statutory powers and duties set out in the Town and Country Planning Act 1990 and subsequent legislation, including the Planning and Compensation Act 1991. It reflects the Council's responsibility to investigate breaches of planning control and to decide whether enforcement action is appropriate and proportionate.
- 5.3 The policy ensures that enforcement decisions are made in accordance with current planning law, relevant case law and national planning policy, including guidance contained within the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). This alignment helps to minimise the risk of legal challenge to enforcement decisions.
- 5.4 The Policy also outlines the statutory notices and remedies available to the Council, including Enforcement Notices, Stop Notices and Breach of Condition Notices. It emphasises the need for the Council to act reasonably and fairly in all enforcement matters, respecting the rights of landowners while protecting the public interest.

5.5 Financial Implications

- 5.6 The Planning Enforcement Policy can be implemented within the Council's existing budget and staffing resources. The introduction of clearer prioritisation and streamlined procedures is expected to improve operational efficiency, enabling the Enforcement Team to focus on cases with the greatest impact and reduce time spent on low-priority or unsubstantiated complaints.
- 5.7 The General Fund Budget Estimates and Medium-Term Financial Strategy (MTFS) Report, agreed by Cabinet and Council in February, projects a financial shortfall for 2025/26 of £1.432m increasing year on year amounting to around £3.4m by 2027/28.
- 5.8 Although there are currently many uncertainties regarding the budget for 2025/26 and the MTFS, there remains a significant structural deficit which the Council will need to address

5.9 Equality Implications

The Policy promotes accessibility and transparency, ensuring that all members of the community can understand the enforcement process and what to expect. It recognises the importance of clear communication and reasonable adjustments where necessary to support those with specific needs.

The revised Planning Enforcement Policy is designed to be applied fairly and consistently to all individuals and groups. There is no anticipated disproportionate adverse impact on any protected groups.

6 SCHEDULES

Appendix 1 – Local Planning Enforcement Plan
Appendix 2 – Enforcement Policy

APPENDIX 1



Local Planning Enforcement Plan

June 2020

Introduction

- 1 The Council has an adopted **Corporate Enforcement Policy** which sets the general principle for dealing with investigations. The purpose of the Local Planning Enforcement Plan is to set out how the Council's Planning Compliance Team's deal with specific Planning Enforcement investigations.
- 2 Planning Compliance operates within the legislative framework of the Town and Country Planning Act 1990 (as amended) and all its subordinate and associated legislation. Planning Policy and Guidance contained within Local Plans, the National Planning Policy Framework and the online Planning Policy Guidance ensure decisions are open, consistent and fair.
- 3 The Planning Compliance Team must also comply with the law in the way it conducts its investigations under the Regulation of Investigation Powers Act (RIPA) and the Police and Crime Evidence Act (PACE). The Council has an adopted a **RIPA Policy**.

Effect Enforcement

- 4 The Planning Policy Guidance for planning enforcement emphasises that:-
'Effective enforcement is important to:
 - tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
 - maintain the integrity of the decision-making process;
 - help ensure that public acceptance of the decision-making process is maintained.'
- 5 An essential part of delivering effective planning enforcement is the adoption of a Local Planning Enforcement Policy. The policy:-
 - allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
 - sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
 - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
 - provides greater certainty for all parties engaged in the development process.

Purpose of the Planning Compliance Team

- 6 The purpose of the Planning Compliance Team is to protect the public and the environment from development that would cause harm and to ensure that the objectives of the planning system as a whole are not undermined. It is not the case that Planning compliance exists to 'punish' people who are responsible for a breach of planning control, but to prevent and remedy any harm caused. Any action taken by the Council has to be expedient and proportionate to the breach in question.
- 7 Someone who raises concerns about development is referred to as the informant. Their concerns will be investigated and they will either be reassured that what has been done is what the owner/occupier is permitted to do or entitled to do lawfully, or what action will be required to remedy the unauthorised development.
- 8 A person responsible for undertaking development will be known as the responsible person. This could be the developer, owner or occupier of the land and buildings. They will be informed as to whether they have breached planning controls or not, or whether an offence has been committed or not, and what they need to do to put it right. We will use deadlines to monitor the progress towards remedying a breach. If the agreed deadlines are not met without reason or explanation we will consider more formal action.
- 9 Unless the unauthorised development or works are completely unacceptable and the harm caused incapable of being mitigated, we will try to resolve all breaches of planning control through negotiations. We will invite a planning application to regularise the breach, which may take some time to submit, depending on the issues and/or evidence required to support the proper consideration of the application. For example, an application for a conservatory could be submitted within a few weeks where as an application for a business where an acoustic report is required could take a few months.

A Breach or a Criminal Offence

- 10 The following constitute a **breach of planning control**:
 - the carrying out of development (building works or a material change of use) without the required planning permission, or;
 - Development not completed in accordance with approved plans, or;
 - Failure to comply with conditions attached to planning permission.

11 The following works constitute a **criminal offence**.

- unauthorised works to Listed Buildings,
- substantial demolition in a Conservation Area,
- unauthorised works to trees subject to Tree Preservation Orders or tree within a designated Conservation Area, and;
- advertisements displayed without consent,
- Failure to comply with the requirements of an Enforcement Notice, Breach of Condition Notice or S. 215 Amenity Notice
- The Breach of an Injunction

In such circumstances, the seriousness of the offence is likely to dictate the nature of the response. The more serious the more likely the defendant will find themselves facing proceedings in Courts.

How we deal with allegations

12 If you have any concerns about development you should contact the Council:

By Letter

Fenland District Council
Planning Compliance
County Road
March
Cambridgeshire
PE15 8NQ

By Telephone,
(01354) 654321

By Email
Planningenforcement@fenland.gov.uk

By the Council's website
www.fenland.gov.uk

13 All concerns about development must be accompanied by the full name contact details such as address, phone number or email address. The informant's details are kept strictly confidential and will not be disclosed to anyone outside of the Authority and will only be disclosed to officers within the Authority who have the appropriate authorisation.

- 14 We will not deal with anonymous complaints. This is to discourage vexatious complaints and there may be occasions where we need the informant to provide additional information on what they have witnessed, which is especially relevant to alleged changes of use.

For example, where car repair and maintenance takes place we cannot monitor the site 24/7 and will need a log to provide details of the extent of the use such as number of cars, frequency and what works are witnessed.

- 15 Where concerns are received, we will create a file and research will be undertaken which includes checking ownership, the planning history, legislation and contact details of the responsible person.
- a) The informant will receive an acknowledgement of their concerns within seven days of the date this is received.
 - b) Where the allegation involves development that appears to have serious harm to the environment or to amenity, or a criminal offence, a site visit will take place within five days of the date of the issue being brought to our attention. Where harm arising is immediate and of sufficient significance the site will be visited immediately. In all other cases a site visit will take place within fourteen days.
 - c) Officers will determine whether a breach of planning control has taken place.
 - i) *Where a Breach is found and causes little harm*
 - We will invite the responsible person to submit a retrospective application (1st Challenge letter). They will be given 21 days to confirm what they will do to remedy the situation and we will then agree deadlines to be met specific objectives, such as submitting an application.
 - If an application is not received by the agreed deadline the Council will decide whether it is expedient to take further action.

(an appeal against a Planning Enforcement Notice where the responsible person wants retrospective planning permission is **twice** the fee of a planning application).
 - ii) *Where a breach is found and causes harm that can be controlled or reduced to acceptable levels through conditions or works to remedy the situation.*

- We will invite the owner to submit a retrospective application (1st Challenge letter). They will be given 21 days to confirm what they will do and we will agree deadlines for steps to be taken, such as the submission of a planning application.
- If no steps are taken by the agreed deadline, a second reminder letter will be sent giving the responsible person 14 days to explain the delay and to agree further deadlines.

(an appeal against a Planning Enforcement Notice where the responsible person wants retrospective planning permission is **twice** the fee of a planning application).

- If the agreed deadline is not met following the 2nd Challenge, a **Planning Contravention Notice (PCN)** will be served as a prelude to more formal action.

(a PCN requires the person who receives it to answer questions about the unauthorised development. It is necessary to establish the facts before the service of a more formal Notice)

iii) Where a Breach found and is causing significant issues and there is no apparent solution a more robust approach will be taken.

- The responsible person will be informed of the breach and that it is unlikely to receive planning permission with an explanation as to why. We will then agree a date by which they should cease the unauthorised use and/or remove any unauthorised works.
- We cannot refuse to accept a planning application if one is submitted.
- If they fail to meet the agreed deadline, a **Planning Contravention Notice (PCN)** will be served as a prelude to more formal action.

16 Any retrospective application will be assessed in accordance with the Council's established procedures, as with any planning application. We consult neighbours with shared boundaries in accordance with the Council policies and procedures. If the informant is not a neighbour then they may

not be consulted on the application as this may identify them. Our first objective would be to maintain the confidentiality of the informant unless their written consent is received to do otherwise. The Local Plan Policies and other supplementary Guidance can be found using the following link:

<https://www.fenland.gov.uk/planningpolicy>

- 17 If a retrospective planning application is not received, the Council will have to decide whether it is expedient to take formal action. The online Planning Policy Guidance is clear that:-

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

The guidance goes on to state that Councils should avoid taking action in the following circumstances:-

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

However, the failure to have the relevant planning permission could result in substantial cost and delay when the property is for sale. Planning Applications and application for Certificate of Lawfulness can take eight weeks or more to determine.

- 18 Those that submit retrospective planning applications or receive Planning Enforcement Notices have a right of appeal to the Secretary of State via the Planning Inspectorate. In such cases the Council has no control over the time taken to deal with the matter and it can take several months for the Appeal to be determined.

19 Where a criminal offence has occurred;

- i) The responsible person will be informed of the offence and what action will be taken against them. Any action will be proportionate to the seriousness of the offence they have committed.
- ii) A responsible person may be invited to the Council offices to do an Interviewed under Caution. The responsible person should seek their own legal advice or representation in the circumstances. The interview will be taped, where such equipment is available.
- ii) Depending on the seriousness of the offence, one of two options will be available to the Council.
 - 1) Minor matter causing minimal harm –

The offender may be offered a 'caution' which will stay on record for two years and may be brought to the courts attention if future offences are committed.
 - 2) Major Offence causing significant harm –

The offender may be prosecuted in the courts or injunction proceedings taken.

20 Following any conviction or where matters are so serious in their impact, the Council can take Injunction Proceedings or Direct action (where the Council does the works in default).

21 There are a number of Notices that can be served depending on the seriousness of the breach of planning control, which are listed below:-

Stop Notice

These are used in the most serious of cases, where harm to amenity and the character of the land are severe.

Temporary Stop Notice

These are used to stop the unauthorised use whilst the Council considers the most appropriate course of action. These are used where harm to amenity and the character of the land are substantial.

Planning Enforcement Notice (EN)

These are used either on their own, or in serious case, in conjunction with a Stop Notice. The Notice will tell you what you have done wrong and what you need to do to put it right. There is a right of Appeal against the Notice.

Breach of Condition Notice (BoCN)

Where a planning permission has been given conditionally for development, a BoCN can be used to ensure conditions are complied with. There is no right of appeal against the Notice.

Injunctions

The Council can use injunction proceedings to restrain a breach of planning control, but only where harm to amenity and the character of the land are severe.

Keeping People Informed

- 22 All reports of planning breaches are taken seriously and we will keep you informed of any key stages in the investigation. We do provide contact details and you can contact officers for an update on progress during normal office hours.
- 23 Please note that some investigations can take some time so you may not hear from the planning compliance team on a regular basis, but as aforementioned, you are able to contact the case officer during normal working hours for an update at any time.

Terms

- 24 Proportionate

Where the punishment/requirements are balanced against the seriousness of the offences /harm that is being caused.

Expediency

The reasons for taking action are considered carefully, with an assessment of the effects of the unauthorised development such as the harm caused to individuals or the wider community and/ or against policy objectives weighed against the benefits of the development.

Informant

The person or persons who have raised their concerns over development with the Council

The Responsible person

The person or persons responsible for the unauthorised development and/or offence that has/have been committed. This may be the owners, occupiers or developers.

Development

This is either a material change of use or operational development (buildings and structures), or a mixture of both as defined by Section 55 of the Town & Country Planning Act (1990) (as amended).

Permitted Development

These are rights given to developer, owner and occupiers to undertake works and changes of use so long as they are in accordance with the criteria as set out in the Town & Country Planning (General Permitted Development) Order 2015 (as amended)

Useful Websites

- 25 The following site contains useful information and advice.

<https://www.fenland.gov.uk/>

<https://www.gov.uk/government/collections/planning-practice-guidance>

<https://www.gov.uk/guidance/national-planning-policy-framework>

<https://www.gov.uk/government/organisations/planning-inspectorate>

<https://www.legislation.gov.uk/ukpga/1990/8/contents>

APPENDIX 2

1 Introduction

- 1.1 Fenland District Council is committed to maintaining the integrity of the local planning system. Effective enforcement seeks to ensure that development is carried out in accordance with planning permissions and that unauthorised development, which is likely to cause harm to the environment or local amenity, is appropriately addressed.
- 1.2 The Local Enforcement Plan for Fenland is produced by the Council in accordance with, and to directly reflect the aims and objectives of the National Planning Policy Framework (NPPF) and to outline the Council's approach to planning enforcement, ensuring transparency, consistency, and fairness in handling breaches of planning control.
- 1.3 It is at the discretion of the Council as to whether it would be necessary, in the public interest, for it to take formal enforcement action. The objective of planning enforcement is about compliance, not punishment. Many breaches of planning control can be resolved effectively through negotiation without the necessity of resorting to enforcement action. Nevertheless, the Council views the disregard for the planning regulations a serious matter and where it is deemed appropriate and expedient, proportionate action shall be taken.
- 1.4 The Town and Country Planning Act 1990 (the Act) provides the legislative framework for dealing with breaches of planning control. The Act provides the Council with the necessary powers to deal with breaches of planning control whilst the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG), provides guidance on how the Council should deal with breaches of planning control and other enforcement matters.
- 1.5 Three important points must be made:
 - It is not an offence to carry out development without first obtaining planning permission (except in certain instances – see paragraph 3.9).
 - The taking of enforcement action and serving a notice is not an instantaneous remedy to unauthorised development.

- The taking of enforcement action cannot be used to require the submission of a planning application.

1.6 There are various ways that the Council can enforce planning control, and they should always act in a proportionate way. The NPPF and NPPG make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient to do so. Any action taken should be commensurate with the seriousness of the breach of planning control and the harm caused or harm that may be caused.

1.7 Paragraph 60 of the NPPF states:

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

1.8 The Council adopts a firm but fair approach to the investigation of planning enforcement matters. We seek to strike a sensible balance between the need for effective control and the need to be reasonable and proportionate in our response to such matters.

2 The Aims of Planning Enforcement in Fenland

2.1 The Council aims to provide an efficient, effective and timely planning enforcement service within the resources available, whilst treating our customers with courtesy, respect and fairness. We will seek to operate our service in accordance with service standards and performance targets. We will regularly review these standards taking account of the views of customers and stakeholders.

- 2.2 The Council aims to remedy the undesirable effect of unauthorised development and to strike a balance between protecting amenity/environment and other interests. This Plan seeks to promote efficient and effective approaches to the investigation of enforcement matters which, in turn, improves outcomes without imposing unnecessary burdens on individuals or businesses.
- 2.3 The Council will, when it is considered appropriate and proportionate to do so, take a robust approach to enforcing against confirmed breaches of planning control.
- 2.4 The Council is committed to delivering enforcement services that comply with national standards within the Regulators' Compliance Code. The Council has adopted a Corporate Enforcement Policy that sets out the Council's approach to bring about compliance with the regulatory requirements it enforces. The aims and principles set out in these codes are intended to ensure:
- Openness about how we carry out our work;
 - Helpfulness in terms of providing advice and assistance;
 - Proportionality i.e. any action we take will be proportionate to the harm caused by the breach; and,
 - Consistency i.e. our duties will be carried out in a fair and consistent manner.

3 What is a Breach of Planning Control?

- 3.1 A breach of planning control is defined as the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.
- 3.2 Planning enforcement action can only be considered where the development has taken place and it involves a breach of planning control: i.e. planning permission, Listed Building Consent or advertisement consent would be required but has not been secured. In addition, an important consideration is whether the development is causing or has resulted in planning 'harm'.
- 3.3 'Development' is defined in Section 55 of the Town and Country Planning Act 1990, it means 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.
- 3.4 Certain types of development can be carried out as 'permitted development'; this means that planning permission from the Council is not required. Determining whether a planning permission from the Council is required in such circumstances depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) Order 2015 (As amended).
- 3.5 Breaches of planning control (unauthorised development) can sometimes cause serious harm to the way people live or to the environment. A key objective of the Planning Enforcement Service is that harmful activities are dealt with effectively where it is expedient to do so. However, it is important to note that any action taken by the Council to rectify a breach of planning control must be proportionate and carried out in a fair, balanced and impartial way.
- 3.6 Planning laws are designed to control development and the use of land and buildings in the wider public interest. They are not meant to protect the private interests of one person or party over another.
- 3.7 Examples of breaches of planning control include:

- Carrying out of operational development (building or other works) without the required planning permission.
- Unauthorised material change of use of land or buildings.
- Failure to comply with the conditions attached to a planning permission.
- Untidy land that has a serious adverse impact on local amenity.
- Failure to comply with Section 106 Agreements/undertakings.
- Unauthorised works to listed buildings.
- Unauthorised display of advertisements.
- Not building in accordance with the approved plans (following the granting of planning permission).
- Unauthorised works to a protected tree.

3.8 Examples of activity that are unlikely to result in a breach of planning control include:

- Internal alterations to a building which is not a listed building.
- Obstruction of a highway or public right of way.
- Land ownership disputes and boundary disagreements.
- Parking of vehicles on the highway or on grass verges.
- Operating a business from home, where the residential use remains the primary use of the property and there is no significant impact on the residential amenity or the character of the area.
- Covenants and restrictions on Deeds and Land Registry enquiries.
- Any development already approved by the government and therefore deemed to be "Permitted Development" by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015

3.9 Most breaches of planning control are not, in themselves, criminal offences. Under current legislation a criminal offence arises when an Enforcement Notice has been served, has taken effect and the requirements of such a notice have not been complied with in the time required within the notice. There are also a number of breaches of planning control that do constitute a criminal offence from the outset. Such breaches include:

- Unauthorised works to a Listed Building.
- Unauthorised works to a Protected Tree or tree within a Conservation Area.
- The unauthorised display of Advertisements.

3.10 Under the provisions of the Act, a time limit is placed upon a local planning authority to take enforcement action. The time limit is ten years from when an unauthorised operational development is substantially completed, a material change of use commences or when any other breach of planning control begins. If evidence proves, on the balance of probability, that the above limits are met, the development would be immune from enforcement action.

4 How We Prioritise Complaints

4.1 The Council receives a high number of new planning enforcement complaints every year. Because of the often lengthy and complex nature of planning investigations and limits on resources, it is necessary to give priority to those cases where the greatest harm is being or, is likely to be, caused. Individual cases may be reprioritised as an investigation progresses where new and relevant information comes to light.

4.2 Complaints classified as '**Category A**' – High priority investigations.

This applies where the breach relates to unauthorised development which poses a serious threat to the environment or public amenity, for example, by causing a serious traffic hazard, or it poses permanent damage to the environment, for example, unauthorised work affecting a Listed Building or the loss of a protected tree.

In such circumstances a member of the planning service will visit the site as soon as practicable (usually within 48 hours) after the receipt of the enquiry to identify the appropriate course of action, if necessary, which could be commencing injunctive or legal proceedings or issuing statutory Notices. High priority cases can include

- Works to listed buildings.
- Works to protected trees.
- Demolition of important unlisted buildings in conservation areas.
- Significant unauthorised building works.
- Breach of conditions where there is likely to be irreversible harm.
- Existing cases that are subject to appeal deadlines or Court proceedings.
- Vulnerable development in Flood Zone 1 that could endanger members of the public.

4.3 Complaints classified as '**Category B**' – Medium priority investigations.

Cases where the breach of planning control relates to development which is clearly contrary to the Development Plan and is unlikely to be granted planning permission without modification or removal, for example, development in Sites of Special Scientific Interest, the open countryside or Conservation Areas.

Officers will endeavour to visit the development and contact the relevant owners and developers as soon as possible (usually within 15 working days of the receipt of the complaint) to discuss the matter and negotiate a solution.

Formal enforcement action will generally only be considered if negotiations and measures taken to remedy the issues fail to address any significant harm arising from the development. Examples of medium priority cases include:

- Councillor or MP complaints and formal Parish Council complaints.
- Unauthorised built development or material changes of use causing significant harm to residential amenity, highway safety, the environment or on the wider community.
- Operational development within conservation areas.
- Where immunity rules are likely to shortly apply if action is not taken.

4.4 Complaints classified as '**Category C**' – Low priority investigations.

These are breaches of planning control and unauthorised developments which give limited rise to problems that may be simply resolved. For example, small domestic works, by imposing conditions on a planning approval, where the complaint relates to untidy land or buildings and simple breaches of conditions on existing planning permissions. Such cases also include matters that would be granted unconditional planning permission on the submission of an application.

In these circumstances, Officers will endeavour to visit and seek to contact the owners and developers within 30 working days of the receipt of the enquiry.

Officers will give advice on what measures are required to address the issues and give a reasonable timescale (usually within 30 working days of the meeting) for them to carry out any necessary remedial work or submit a planning application to rectify the matter. Examples of these cases include:

- Technical breaches of planning control where there is no significant conflict with objectives of the policies of the adopted development plan.
- Breaches of planning control that would be recommended for unconditional approval if a regularising application were submitted.
- Temporary breaches of planning control that will resolve themselves without formal action.
- Display of advertisements and other small minor developments such as satellite dishes, in most instances.

4.5 There will be occasions, albeit seldom, where the Planning Enforcement Service receives a complaint that is exceptional and requires greater engagement of officers' time and resources. Examples of such are sites that are subject to a significant number of different unauthorised developments and complicated material changes of use, sites with complex planning history requiring extensive investigation, breaches that require legal advice and sites that generate a significant amount of public interest. In the event of such cases being reported, resources will have to be allocated accordingly, as these cases are likely to require additional time to fully investigate and to progress.

4.6 In order to give the best possible service and to manage the limited resources within the Council, there are some cases that will not be investigated. These include:

- Neighbour disputes – Unless clear planning issues are identified.
- Anonymous complaints – Unless what is alleged is a priority level Category A breach of planning control.
- Trade complaints – Unless clear planning issues are identified.

- Business uses from residential properties where no evidence is provided
 - In line with Public Protection procedures, a log sheet will be sent out to the informant to record times, dates, activities and impacts prior to such cases being formally investigated, usually for a period of at least 28 days. Once the log sheets have been returned to the Council with sufficient information, the case would then be formally investigated.
- Complaints that would appear, from the information provided, to fall under a different legislative framework e.g. Environmental Health or the Highway Authority. In such cases, where possible, the complaint will be passed onto the relevant service area.
- Issues that are clearly not planning related e.g. matters regarding deeds or covenants, boundary disputes, torts of trespass etc.

5 Complain to the Council

- 5.1 All initial complaints are dealt with in confidence and the details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases, it may be necessary to rely on evidence from complainants to enable the Council to take enforcement action and the complainant will need to consider whether they are willing to actively assist the Council by collecting evidence and/or acting as a witness at an appeal or in Court.
- 5.2 If someone believes that a breach of planning control has occurred, the best way to notify the Council's Planning Enforcement Service is by using the Council's online breach of planning control reporting form which can be found at <https://www.fenland.gov.uk/article/15187/Report-a-breach-of-planning-control>.
- 5.3 Anonymous complaints will not be investigated. If complainants do not wish to give their personal details, they will be advised to contact either their Local Ward Councillor or their Parish Council who may be prepared to contact the Planning Enforcement Service on their behalf.

6 Engaging with the Customer

6.1 Customers of the Planning Enforcement Service will be kept informed as the case progresses, especially as enforcement cases can be lengthy. The complainant will be advised of significant case developments by the investigating officer and normally this will be when a material event occurs in the investigation (i.e. where a breach has been identified and what the most appropriate remedy/action has been considered; or alternatively no breach has occurred or identified on the basis of the available information). Officers will endeavour to keep complainants informed as follows:

- All complaints will be acknowledged within 5 working days of receipt.
- In Category A cases, a site visit will be undertaken, and the Council will try to advise the complainant of how it intends to deal with the matter within 10 working days of receiving the complaint. However, due to the complexity of such cases, it may not be possible at this stage to state what action can be taken.
- In Category B cases, officers will endeavour to respond within 25 working days of receiving the complaint.
- For non-urgent cases, a response or update will normally be provided within 40 working days.
- Further updates on cases will be sent when significant progress or steps are made in a case thereafter. Unfortunately, sometimes pressures on the limited resources within the Planning Enforcement Service mean that prompt updates and records of progress of ongoing investigations is not always possible.

6.2 It is important for customers to understand the process, procedures and remit of enforcement. There is a need to match the customers' expectations with what the Planning Enforcement Service can deliver. To address this the Council will look to explain planning enforcement and the compliance process and how it refers to their case whenever possible.

6.3 All customers, including complainants and the developer, individual or business that has allegedly breached planning control, will be informed when the case has been resolved. The resolution of a case means:

- The case has been investigated and there is no breach of planning control; or
- There is a breach of planning control which has been remedied, either by the submission of an application, or the works have been removed, or use has ceased; or
- There is a breach of planning control, but it is not considered expedient to pursue the matter any further; or
- A remedial notice has been issued.

6.4 When a remedial notice has been issued, there will be a compliance period within which the contravener is required to carry out steps remedy the identified breach. The length of compliance period varies depending on the nature, severity, scale and complexity of the breach.

6.5 In some circumstances the recipient of a notice has the right of appeal which will be decided by a third party, such as the Planning Inspectorate or the Courts, who may uphold or dismiss the requirements of the notice. This part of the process has an indeterminate timescale, as it follows processes determined by bodies outside of the Local Planning Authority (Planning Inspectorate/Judiciary). The complainant will be kept updated with all processes and procedures at this stage, although they may have to correspond directly with the third-party body.

7 Enforcement Investigation Outcomes

- 7.1 On receipt of a legitimate complaint, it will be prioritised (A, B or C), and a preliminary desktop investigation will be carried out, after which a site inspection will be carried out where it is deemed necessary. Following the initial investigation, the findings will be assessed, and a view taken on how the investigation will then proceed in line with the timescales given above.
- 7.2 When the breach of planning control is determined to be causing serious harm or nuisance, or likely to cause irreparable harm and damage to buildings and land, consideration of formal action will not be delayed by protracted negotiations or a request for the submission of a planning application when it is obvious that it would not be supported and a refusal is likely to be the outcome. Similarly, if a point is reached in an investigation where the instigation of formal enforcement action is considered appropriate, proportionate and expedient, a decision will be taken in a timely manner.
- 7.3 Formal enforcement action is a last resort and those responsible for a breach of planning control will normally be given the opportunity to remedy the breach, by removing the unauthorised development or submitting an application seeking to retain it.
- 7.4 The table below offers a summary of what actions the Council will consider taking according to the status of the investigation:

Status of the Investigation	The Council's Actions
No breach of planning control has been identified.	The Council will write to the complainant to advise them of our findings and the investigation will be closed.
A breach of planning control has been identified, but it is considered that it would not be expedient to take action.	The Council will write to the person responsible for the breach of planning control and explain why the works/use require planning

	<p>permission and provide advice on how that permission can be obtained. The Council expects a planning application to be submitted within 28 days. The Council will write to the complainant to advise them of its findings and provide an explanation as to why no action will be taken in this instance. The investigation will be closed.</p>
<p>A breach of planning control has been identified and retrospective planning application seeking planning permission may regularise the breach.</p>	<p>The Council will write to the person responsible for the breach of planning control and explain why the works/use require planning permission and provide advice on how that permission can be obtained. The Council expects a planning application to be submitted within 28 days. If an application is not submitted, the Council will decide whether it would be expedient to take enforcement action.</p>
<p>A breach of planning control has been identified and the matter needs to be addressed.</p>	<p>The Council will write to the complainant to advise them of its findings. The Council will also write to the person(s) responsible for the breach to advise them what steps they need to take to address the breach of planning control and the timescales within which those steps must be taken. The Council will also</p>

	advise of the consequences of not complying with those steps.
Further investigation is required.	The Council will write to the complainant to advise them of its initial findings. The Council will write to the person(s) responsible for the breach to advise of the information that it needs. This may involve issuing a Planning Contravention Notice (PCN) which must be completed and returned to us within 21 days.
Formal Enforcement Action	<p>Where it has been established that a breach of planning control has occurred, planning harm is being caused, and the developer fails to remedy the breach, the Council will consider using statutory notices to take action to remedy the breach. The issuing of a notice is discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control and may include 'under enforcement'.</p> <p>The complainant will be notified of the Council's decision, whatever that may be. If the decision is to take formal action, the complainant will be notified upon service of the notice.</p>

Prosecution	<p>Where the Council has served a statutory notice (including a PCN) in an attempt to remedy the breach of planning control and the required action has not been undertaken, where it is considered to be in the public interest, the Council will take appropriate legal action.</p> <p>The authority will seek full recovery of costs, where possible in these instances.</p>
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7.5 It should be noted that although “the taking of further enforcement action” is defined in the Town and Country Planning Act 1990 to mean the issue of an Enforcement Notice or the service of a Breach of Condition Notice, enforcement action in regard to this Plan includes the service of other Notices used to elicit information and the use of other enforcement powers:

7.6 Gathering Information

During a planning enforcement investigation, it is often necessary to gather the details of the owners of the land, any person with an interest in the land and/or details relating to the alleged breach of planning control being investigated, using one of three methods:

Planning Contravention Notices

The use of Planning Contravention Notices (PCN) is primarily investigative and enables the Council to gather facts and information in respect of alleged breaches of Planning Law when it “appears” that a breach may have occurred.

Section 330 Notices

These notices allow the Council to require from a person as to the nature of their interest in the land, the purpose of the use of the land, when the use

began, details of anyone having used the land for that purpose and when activities began.

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

These notices are not often used in the line of enforcement investigations. They are similar to section 330 notices in the information, although they cannot seek details of use or activity.

7.7 Enforcement Warning Notice

An enforcement warning notice formalises the process for a local planning authority to invite a retrospective planning application where it is considered that the unauthorised development has a reasonable prospect of being acceptable in planning terms, more than likely subject to conditions.

The notice will set out the matters that appear to be a breach of planning control and state that, unless an application is made by a specified date, further enforcement action may be taken. There is no power to compel the developer of the unauthorised development to apply, this is only a warning that, in the absence of an application, enforcement action will be considered.

7.8 Enforcement Notice

An Enforcement Notice may require a wide range of steps to be taken to make a development comply with the terms of a planning permission or for removing or alleviating any injury to amenity caused by the unauthorised development. There is a right of appeal against the service of an Enforcement Notice to the Planning Inspectorate.

7.9 Breach of Condition Notice

Where there has been a failure to comply with the requirements of a condition attached to a planning permission the authority may choose to serve a Breach of Condition Notice (BCN).

7.10 Stop Notice

When the effects of unauthorised activity are seriously detrimental, a Stop Notice can be used to ensure that the unauthorised activity does not continue should an appeal be lodged against the Enforcement Notice. There is no right of appeal against a Stop Notice. A Stop Notice must be served at the same time as an Enforcement Notice or thereafter, but it may not be served where the Enforcement Notice has taken effect.

7.11 Temporary Stop Notice

Where a local planning authority considers that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, they may issue a Temporary Stop Notice.

7.12 Section 215 (Untidy Land) Notice

The local planning authority can investigate complaints of untidy land and buildings. They have the power to issue a notice under section 215 of the Act, to seek remedial works to 'tidy' land and buildings, if the amenity of an area is being adversely affected by the condition of land. There is a provision for the owner or occupier of the land appeal against a s215 notice to a Magistrates' Court.

7.13 Prosecutions

Failure to comply with any requirement of a statutory Notice is a criminal offence. There are a number of options available to the Council depending on the harm caused and the circumstances of the case, although prosecution is generally the most common form of initial further action.

7.14 Direct Action/Action in Default

Provision is made in the Town and Country Planning Act 1990 (as amended), for the Council to take 'Direct Action' to enter the land and remedy the

problem, if the requirements of a Notice served have not been complied with. Direct Action will only be taken after consultation with and authorisation from the Council's Planning Committee.

7.15 Injunctions

Legal powers are available for the local authority to apply to the Courts for an injunction to restrain an actual or alleged breach of planning control.

8 **Other Planning Enforcement Powers**

- 8.1 Some breaches of planning control are the subject of separate legislative codes. Investigations of breaches of planning control under these legislative codes will broadly be undertaken in accordance with the Plan where appropriate.
- 8.2 At times it may be appropriate to act under these powers without any prior warning of the Councils' intention to do so.

Listed Building Control

The Council attaches particular importance in ensuring that any alterations to Listed Buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historical interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is a criminal offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character.

- 8.3 The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained for the works, or that the unauthorised works are later made satisfactory. A person found guilty of an offence may be liable to a fine and/or a term of imprisonment. There is no time limit upon the District Council to pursue listed building enforcement action.
- 8.4 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is a criminal offence, .

Advertisements

The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 and the Anti-Social Behaviour Act 2003 (part C) Penalty Notices for Graffiti and Fly Posting.

- 8.5 Any person who displays an advertisement, without the relevant consent, is acting illegally and is committing an offence. Where there is sufficient

evidence, the Council could, if deemed necessary, seek prosecution of those persons deemed to display the unauthorised advertisement under the provisions of Section 224 of the Town and Country Planning Act 1990 (as amended).

- 8.6 Unless the offence is particularly flagrant or repeated, the Council may not initially consider it necessary to prosecute for an advertisement offence. Instead, we may invite the advertiser to apply for the consent they need, and, if refused, there will be a right of appeal the decision. Displays of an advert after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution.
- 8.7 The Council also has power under the Anti-social, Crime and Behaviour Act 2014 regarding graffiti and fly-posting. The carrying out of these acts are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of any such impending action. This type of action is generally considered more appropriate in circumstances where there is an extensive problem of illegal fly posting campaigns. The Planning Enforcement Service will work with colleagues in the Council's Streetscene Team in appropriate cases.

Unauthorised Works to Protected Trees

Under Section 198 of the Town and Country Planning Act 1990, a local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it.

- 8.8 Trees in Conservation Areas are similarly protected subject to them being of such a size that they fall within the definition of a tree and, under Section 211 and Section 212 of the Act, similar penalties apply where unauthorised works are carried out.

Hedgerows

8.9 Section 7 of the Hedgerow Regulations 1997 makes the removal of certain hedgerows without Local Authority consent, an offence (subject to a number of exceptions).

8.10 Land Adversely Affecting the Amenity of an Area – Untidy Sites

Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be tidied up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period.

8.11 The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, or there is no appeal, the notice then takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council may consider prosecution proceedings or they may enter the land and carry out the required works. The reasonable costs incurred in carrying out the works will be recovered from the owner of the land.

8.12 The Council also have powers under Environmental Health legislation that can also be used to resolve untidy site problems. The Planning Enforcement Service will normally liaise with other sections within the Council to ensure that the most appropriate and effective remedy is sought.

8.13 The Proceeds of Crime Act 2002 (POCA) sets out the legislative framework for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

8.14 Consideration will be given to the appropriateness and expediency of the use of POCA powers, including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle.

9 Review of the Enforcement Plan

9.1 In common with most formal documents, regular reviews of this Enforcement Plan will be necessary to ensure its status remains current, within the framework of the most up-to-date legislation and guidance issued by Government.

9.2 Reviews will take place when:

- Current legislation and/or guidance changes or;
- Comments received from residents, customers, businesses and visitors to the District can improve how the Plan is being developed and used.
- In any case, every two years.