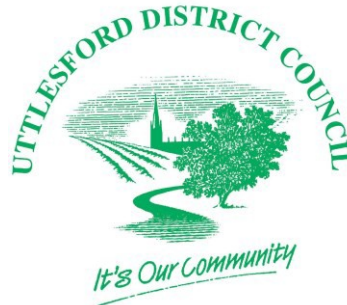


Appendix – Planning Enforcement Plan



**UTTLESFORD DISTRICT COUNCIL
PLANNING SERVICE**

**Planning Enforcement
Plan**

For Cabinet Approval [Adopted by Cabinet on XXXX 2026]

1.0 INTRODUCTION

- 1.1 This document sets out the Planning Enforcement Policy of the Council. It should be read in conjunction with the Council's Corporate Enforcement Policy, National Planning Policy Framework (NPPF) and the National Planning Policy Guidance (PPG).
- 1.2 The Council is firmly committed to effective, appropriate and proportionate enforcement of planning control and monitoring of development.
- 1.3 The planning enforcement team works closely with planning officers, building control officers and the specialist team of officers dealing with conservation of the natural and built environment.
- 1.4 There is also close coordination and assistance from other council services, such as legal services, environmental health, housing, finance, council tax and business rates as well as from officers working for organisations such as the Environment Agency and Essex County Council.
- 1.5 The aims of the Council's Planning Enforcement Team are:
- **To be effective and responsive in the control of unauthorised development to maintain the credibility of the planning system**
 - **To correct the undesirable effects of unauthorised development**
 - **To ensure development is carried out in accordance with planning approvals where possible and appropriate**
 - **To promote a service which is fair, responsive, helpful and consistent in its approach**
- 1.6 It is at the discretion of the Council, as to whether or not take formal enforcement action. It is important to remember that recommended practice is to first seek to negotiate with the owner or developer to bring about a voluntary resolution of the matter. The planning enforcement system is not designed to seek retribution but is instead intended to mitigate harm. Therefore, in all cases, regard must be paid to whether it is *expedient* to take action and to then reach a balanced view on what action is appropriate to take. In some cases the referral will be passed to the most appropriate authority (e.g. Essex County Council) for them to take appropriate action. In responding to any reported breach of planning control, the strategy will generally be to take one of the following courses of action:

- i. Establish whether or not the development constitutes a breach, and whether it is immune from enforcement action, in which case no action can be taken.
- ii. Take no further action in cases where the planning breach is of a minor or technical nature, or where the works or use, are acceptable without the need to impose any conditions.
- iii. Seek to rectify any breach through negotiation.
- iv. Invite an appropriate application or consent to regularise the works, if the breach that has occurred could be regularised. Legislation specifically provides that such retrospective applications can be made to regularise development already carried out. Alternatively, the owner may be invited to apply for a Certificate of Lawful Use or Lawful Development Certificate. If such applications are refused or not received within a reasonable timescale, the expediency for taking formal action (including issuing an Enforcement Notice, Breach of Condition Notice etc) will be considered.
- v. Immediate enforcement action to resolve or prevent irreversible breaches of planning control which require very urgent action and are causing significant damage to interests of acknowledged importance (this can include a temporary stop notice, a stop notice or an injunction).

1.7 Planning enforcement is governed by various statutory instruments, primarily the Town and Country Planning Act 1990, Planning (Listed Buildings and Conservation Areas) Act 1990, the Levelling-up & Regeneration Act 2023; the Anti-Social Behaviour Act 2003, the Localism Act 2011, the Hedgerows Regulations 1997, the Local Government Act 1972 and the Regulation of Investigatory Powers Act (RIPA) 2000.

1.8 This Enforcement Policy is in line with the Council's Corporate Enforcement Policy but specifically on Central Government Guidance in the following documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Best Practice Guidance – Section 215 Notices. ODPM January 2005.

All decisions on whether it is expedient to take enforcement action will have regard to the policies of:

- Central Government Guidance.
- Planning Policy Guidance
- Uttlesford District Council Local Plan and made Neighbourhood Plans
- Other, relevant, Supplementary Planning Guidance and draft or adopted Supplementary Documents (SPD's) and other Development Plan Documents (DPD's).

2.0 WHAT IS A BREACH OF PLANNING CONTROL?

2.1 A breach of planning control is defined in the Town and Country Planning Act 1990 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” (Section 171A).”

'Development' is defined in Section 55 of the Town and Country Planning Act 1990.

2.2 For the purposes of this policy breaches of planning control can include:

- Building work, engineering operations and material changes of use carried out without planning permission.
- Development that has planning permission but is not carried out in accordance with the approved plans.
- Non-compliance with conditions or the terms of planning obligations (Section 106 obligations) attached to permissions.
- Works carried out to a listed building, which affect its special architectural or historic character, without listed building consent being granted.

- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
- Display of advertisements (including fly posters) which need express consent, under the Advertisements Regulations and are displayed without consent.
- The state of land or a building adversely affecting the amenity of the neighbourhood under (Section 215 of the Town and Country Planning Act).

What Planning Enforcement Cannot Investigate

- 2.3 The Council does not have the remit to investigate civil matters such as breaches of the Party Wall Act, trespass or land grabbing, breaches of covenants, matters enforceable by other bodies, or activities that are occurring on the public highway. The planning enforcement team cannot become involved in a neighbourhood dispute.

3.0 PROCEDURES FOR DEALING WITH PLANNING ENFORCEMENT CASES

- 3.1 The enforcement team can be contacted by letter, telephone, website or e-mail. Written referrals are generally required and in all cases the following information is needed:
- The precise location / address of the site or property to which the referral relates.
 - The exact nature of concern, i.e. the potential breach of planning control.
 - The date the unauthorised development or works began / were observed and if they have been completed or are ongoing.
 - An indication of any planning harm caused to the reporter

- Where it is known, details of the identity of the person / organisation responsible.

Anonymous Complaints and Confidentiality

- 3.2 Anonymous requests to investigate an alleged breach of planning control will not be investigated, unless there are exceptional circumstances, including justification for the reporter remaining anonymous. This will be considered on a case by case basis. Anonymous evidence usually carries little weight in Court, and without robust, reliable evidence, most formal enforcement action is likely to fail. If the person still wishes to remain anonymous they should contact their Ward Member or Parish Council who may agree to submit the referral on their behalf.
- 3.3 All investigations are carried out on a strictly confidential basis and the details of the person raising the matter will not be revealed to third parties. There may be occasions where this is not possible, such as when the person who made the referral wants to take part in the appeal process, or the matter leads to prosecution or the Council has to comply with a court order or required to meet any other statutory requirements. In such cases, the Enforcement Team will notify the person involved.
- 3.4 The Council reviews all referrals before a new investigation is opened to ensure that the matter being reported is a matter for planning enforcement, that it requires an investigation e.g. is it development? Is there planning permission? Is there sufficient information to act? In very few cases if the breach is so minor or technical that the Council cannot justify the resources to investigate that matter, the team will not open an investigation. An explanation as to why an investigation is not being opened will be provided to the person who made the referral.
- 3.5 Where it is confirmed that the referral requires an investigation the Council will enter all the information on the database, and a unique reference number will be created so that the progress of each investigation received can be monitored. Only if the referral leads to formal action will it form part of the Council's online (public) enforcement register. Referrals will be acknowledged within 5 working days of receiving the information.

Site visits

- 3.6 In cases where a site visit is required this will be carried out by a Planning Enforcement Officer to establish what development, if any, is occurring, the level of activity and if the works constitute a breach of planning regulations. It is not usual practice for the case officer to attend the person who requests the investigation's property unless it is absolutely necessary and this will be at the discretion of the case officer. The officer will use their discretion if they feel it is necessary when carrying out a site visit to view the development from a neighbouring property.
- 3.7 Site visits and action will be prioritised according to the harm to amenity likely to be caused and to the degree of departure from development plan policies represented by the alleged breach.

Case Prioritisation and Response Targets

- 3.8 Due to the level and nature of cases being investigated by the Planning Enforcement Team it is essential for some cases to be prioritised. The Council has adopted the following standard for prioritising the initial action into the following categories:

Top Priority - A

Unauthorised work causing significant damage to listed buildings, felling of protected trees/hedgerows, works to ancient monuments/site of special scientific interest (SSSI) likely to cause irreversible harm to the natural or historic environment. Developments affecting the highway to the extent that it causes immediate danger to life.

Target: Initial investigation and site visit carried out within one working day of the referral being received.

High Priority - B

Unauthorised developments causing significant harm to the quality of life of local residents, causing or potentially causing significant harm to the landscape or the quality of conservation areas etc, or harm to listed buildings causing lesser harm than top priority cases.

Target: Initial investigation and/or a site visit carried out within five working

days of the referral being received.

Medium Priority - C

Unauthorised developments which cause limited harm (*e.g. works not in general public view, advertisements*). Minor householder developments, minor works (e.g. sheds, fences, extensions), satellite dishes which appear to limited harm to interests of planning importance.

Target: Initial investigation and/or site visit will be carried out within 10 working days of the referral being received.

Information Gathering and Rights of Entry

- 3.09 When Enforcement and other Officers visit a site they will identify themselves and explain the reason for their visit. The owner/occupier or people working on site may be interviewed to obtain factual information, and photographs and measurements may be taken if required. If necessary the owner/occupier or people working on the site may be cautioned by the officer if it appears to them that a criminal offence is taking place.
- 3.10 It should be noted that under the various Planning Acts, Planning Enforcement Officers have the right of entry onto non-residential land and buildings. They have further powers to enter residential property after giving notice and can apply for a warrant from the Magistrates' Court to gain access if initial attempts to gain entry are unsuccessful. Warrants can also be obtained where it is necessary to gain entry with no warning to avoid works being concealed from officers.

Communication Following a Referral

- 3.11 Once the initial site visit and/or desk top assessment has been undertaken a decision will be made by a senior officer with delegated powers to do so. This will establish which course of action to pursue (see paragraph 1.06 above). This will require a period of professional consideration of the case. The team cannot provide a running commentary of consideration of cases, which may involve consultation with other specialist officers / consultees. Natural justice requires the alleged offender to know of any likely action / case closure before

other parties. However, the Council will aim to keep a person who made a referral informed of progress at the following key stages:

- When the initial desktop assessment or site visit has been undertaken and the breach has been confirmed;
- When a planning application has been submitted;
- When any enforcement or other notice is issued;
- When any appeal has been lodged with the Planning Inspectorate;
- When the matter is to proceed to the Magistrates Court or High Court;
- On the final closure of the matter.

Ward Members and Parish Council Clerks will be notified of the investigation and will be informed of the progress of the investigation at key stages as well. Enforcement investigations can take a protracted period of time. In cases ongoing for an extended period, the case officer will provide the person who has made the referral (and the Parish Council and any interested Ward Member) an update every **3 months**, if there is no 'key stage' update within that time. For the most high-profile cases, **enhanced communication arrangements** will be agreed with the relevant Ward Councillor and communicated to the Parish Council. It should be noted that, in some instances, updates may confirm that there has been no substantive change.

- 3.12 In more complex or controversial cases or where it has not been possible to establish the facts through normal investigation, or where co-operation from the owner/occupier is not forthcoming, a formal **planning contravention notice**(under Section 171C of the Act), can be served relating to any breach of planning control alleged by the Council. This requires the recipient to provide specific information. Failure to respond satisfactorily to a notice within the required timescale is a criminal offence. The Council can also issue a requisition form for ownership details (under section 330 of the Act) to obtain details of all parties who have a legal interest in the land.

Decision Outcome: Closure

- 3.14 The officer will make a recommendation to close the investigation, providing justification and an officer with delegated powers will review the recommendation.

If the recommendation is agreed, then the investigation will be closed. In most cases, the owner of the property, the person who made the referral and the parish or town council will be notified of the closure. There is no right of appeal against this decision. The decision can only be challenged through the council's complaints process.

- 3.15 It must be noted that the majority of breaches of planning control are resolved informally by negotiation with the owner/occupier or by the submission and approval of a retrospective application (normally with conditions to control the development). Legislation and central government guidance requires that all formal action must be commensurate with the risk or harm associated with the breach, and formal action is not always appropriate. The Council will, however, take effective enforcement action when it is essential to protect the amenity of the area, public, and to maintain the integrity of the development control process within the district.
- 3.16 Decisions about the issue of any enforcement or other notice or the pursuit of other legal actions will generally be taken by the Planning Enforcement Team leader, the Head of Development Management and Enforcement the Strategic Director of Planning and where necessary in consultation with the Council's legal department, in accordance with the Council's constitution scheme of delegation. Local district councillors will be informed where such action is taken.

Decision: Service of a Notice and Right of Appeal

- 3.17 If a formal notice is issued officers will provide robust justification. A planning enforcement notice, and other notice types, can be appealed to the Planning Inspectorate. Appeals need to be made before the date on which the notice takes effect; which in turn must be at least 28 days from the date on which the notice is served. Appeals can be lodged on a number of grounds and the appellant can request that their appeal is dealt with by a written procedure, an informal hearing or public inquiry. The decision as to which procedure is followed is made by the Planning Inspectorate.
- 3.18 A criminal offence occurs where an owner/occupier fails to comply with the requirements of a valid notice. The Council will usually seek to bring the matter

to a successful conclusion as quickly as possible through the pursuit of action in the Courts. The investigation into non-compliance with the requirements of any enforcement notice will be carried out having regard to the Codes of Practice to the Police and Criminal Investigation Act 1984, the Criminal Procedure and Investigation Act 1996, the Human Rights Act 1998, the Codes of Practice to the Regulation of Investigatory Powers Act 2000 and the Home Office Guide to Prosecution.

- 3.19 The Council will also consider taking direct or default action to remedy a breach of planning control when it has been established that the requirements of notice have not been complied with. This may involve the use of contractors to enter a site and physically remove or correct unauthorised building work.
- 3.20 In such cases the Council will seek to recover its costs. The Council will write to the relevant party seeking payment, if that payment is not received, the Council then notifies the relevant party that they will be registering a charge on the land to recover the money and invite submissions. Once those submissions are dealt with, the Council registers the charge on the property.
- 3.21 The Council, when prosecuting for an offence can consider making a confiscation order to recoup money that has been gained from a criminal lifestyle under the Proceeds of Crime Act (POCA) 2002. This will be considered where an offender profits from non-compliance and where fines incurred are not a sufficient deterrent.

Types of Formal Action / Notices

3.22 Enforcement Notices

It should be noted that in the majority of cases it is not an offence to carry out development without planning permission. An offence in law only occurs if the Council has taken formal civil action (e.g., by serving a notice) and the recipients have failed to comply. It is thus necessary for the Council to first issue a formal enforcement notice. The recipient of a notice has a right of appeal to the Secretary of State against the issue of the Notice or its terms, and to make an application for costs in the course of doing so. If either party acts unreasonably they may have a costs order made against them. It must be appreciated that if an appeal is made, this inevitably leads to delays in

bringing a matter to Court. If someone is found guilty of failing to comply with the terms of an enforcement notice a maximum fine of £20,000 may be imposed by the Magistrates' Court and an unlimited fine can be imposed if the matter goes to the Crown Court.

An Enforcement Notice is a complex notice with seven grounds of appeal,

- Ground A - Planning Permission Ought to be Granted
- Ground B - The Alleged breach has not occurred
- Ground C - The alleged breach does not require planning permission
- Ground D - Outside of the time limits for taking enforcement action
- Ground E - Copies of Enforcement Notice not appropriately served
- Ground F - Steps required for compliance are excessive
- Ground G - The period for the compliance is too short.

As such serving of a notice can require further investigation, careful drafting, and liaison with council lawyers even if already agreed to be appropriate action. This process may take some weeks.

Any Enforcement Notice must consider any other breaches on the site. Any breaches excluded from an Enforcement are by default authorised, so additional investigations are also required prior to the serving of a notice. Any notice can only require the remedy of harmful breaches.

3.23 Enforcement Orders

These can only be granted by Magistrates Court where the Council provides sufficient evidence that a breach of planning control has been deliberately concealed. The Council can then take enforcement action against the breach.

3.24 Enforcement Warning Notices

This notice can be used in order to formalise the invitation of a retrospective planning application if the Council is confident that a development is likely to be granted permission.

3.25 Stop Notices

A stop notice can be served at the same time as an enforcement notice in

appropriate cases as explained in the chapter “Ensuring effective enforcement” in the NPPG. In particular a cost/benefit assessment needs to be carried out to ensure that the requirements do not prohibit anything more than is essential to safeguard amenity or public safety in the neighbourhood or prevent serious or irreversible harm to the environment in the surrounding area and to mitigate against any possible compensation claim.

3.25 Temporary Stop Notices

In exceptional cases where an enforcement notice has not been or cannot be served immediately a temporary stop notice can be served which can prohibit any activity, which is in breach of planning control for a period for up to 56 days. This provides an opportunity for the Council to serve an enforcement notice before the 56 days or the specified time has lapsed.

3.26 Listed Building Temporary Stop Notices

The Council can issue a temporary stop notice if works are being carried out to a listed building without consent required by the Act. This notice can also be issued if the works to the listed building are contrary to the conditions of a consent and, having regard to the effect of such works on the character of the building as one of special architectural or historic interest, it is considered expedient that such works, or part of them, be stopped immediately.

3.27 Injunctions

In certain exceptional cases the Council will seek to obtain an injunction using powers laid out in Section 187B of the Town and Country Planning Act 1990. Such applications are made to the county or high court, and it is for the court to decide what is appropriate to restrain any breach of planning controls.

Failure to comply with such an Injunction can result in an unlimited fine or imprisonment. An Injunction can be issued against a person whose identity is unknown.

3.28 Untidy land (S215 Notice)

If the state of land or a building is harming the amenity of the surrounding area the Council can take action under S215 of the Town and Country Planning Act 1990 to make the person with a legal interest in the land bring it up to a level where the harm has been remedied. Works can involve clearing

the land or carrying out works to the exterior of a building. The Council will only serve a S215 notice as a last resort and will encourage the land owners to carry out the works without the need for issuing the notice. There is a right of appeal under several grounds to the Magistrates Court.

It is an offence under S216 of the Town and Country Planning Act 1990 not to comply with the requirements of the notice within the time frame.

3.29 Breach of condition notices

Where a breach of a planning condition(s) attached to an approved planning permission has occurred the Council can issue a breach of condition notice. The notice will require the person with a legal interest in the land to ensure the condition(s) is complied with. It is an offence not to comply with the requirements of the notice and the person that commits the offence “shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”. The only way to challenge a Breach of Condition Notice is to judicially review it in the High Court.

3.30 High Hedges

The Planning Enforcement Team is responsible for dealing with referrals under the Anti-Social Behaviour Act 2003 regarding high hedges. Where appropriate, remedial notices can be issued, requiring a hedge to be reduced in height or to be managed in accordance with a long term maintenance plan. The Council will obtain specialist arboricultural advice before issuing any remedial notice. This note can be appealed to the Planning Inspectorate. Informal negotiation is often quicker than the formal route.

3.31 When Planning Breaches Constitute a Criminal Offence

(a) Listed Buildings

A person is guilty of an offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 if unauthorised works to a listed building which would affect the character of the listed building as a building of special architectural or historic interest are carried out without the Council’s consent or if works are carried out without complying with a condition attached to a consent. There is no time limit on bringing a prosecution, although this would only be against those

who carried out the work or who caused it to be carried out.

Thus those who have a legal interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether listed building consent is later obtained or the unauthorised works are later made satisfactory. The current owner of a listed building may be served with a listed building enforcement notice even if they were not responsible for the works being carried out.

In addition, the Council may consider it expedient to issue a listed building enforcement notice, to require remedial works to be carried out. The decision whether to prosecute and or issue an enforcement notice will be based on guidance in the government's document "Best Practice Guidance – Listed Buildings Prosecutions" December 2006.

(b) Advertisements

Anyone who displays an advertisement without the appropriate consent is open to a prosecution in the magistrates' court for an offence under Section 224(3) of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Council may not consider it necessary to prosecute for an advertisement offence. The maximum fine on conviction is currently £2,500 with an additional daily fine of one-tenth of the maximum penalty if the offence continues after conviction.

Any form of fly posting (that is, displaying an advertisement on land without the consent of the owner) is an offence.

In certain circumstances, advertisement discontinuance notices can be issued against advertisements that are being displayed with the benefit of express or deemed consent and which are considered to now have a detrimental impact on the amenity of the area in which they are displayed. These notices can be the subject of appeal and compensation claims.

(c) Trees and Hedgerows

The enforcement team works closely with the Council's specialist tree

officer on all arboricultural matters. The tree officer should be consulted for advice before any works are carried out to all protected trees, hedgerows and to all trees in a conservation area.

Unauthorised works to trees protected by a tree preservation order is a criminal offence. Notices can also be served by the Council requiring the replacement of protected trees that have been felled.

Formal notice must be given to the Council before works are carried out to most trees in a conservation area, and before any works are carried out to the majority of hedgerows in the countryside. In these cases the Council has powers to serve notices requiring replacement trees or hedgerows. In particular, the Council has power to issue a hedgerow retention notice. The Council can prosecute persons who remove hedgerows or in any other way fail to comply with any retention notice.

4.0 REVIEW AND AUDIT

- 4.1 It is anticipated that this policy will be reviewed on a rolling two-year basis or sooner if there is a significant change in legislation, national or local policy. The status of this policy is guidance and if there is a conflict between this policy and national legislation or policy, then the national legislation or policy will prevail.

5.0 EQUAL OPPORTUNITIES

- 5.1 The Council will ensure that all persons involved in enforcement and compliance matters, including both formal and informal action and advisory visits, whether as the person who requests to investigate, witnesses, developers or landowners, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, religious beliefs or any disability.

6.0 CONTACT DETAILS

- 6.1 If you need this document in large print, braille, audiotape or other format please contact us. Copies of this document can be obtained from the Council's website.

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