



MALDON DISTRICT  
COUNCIL

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**PLANNING ENFORCEMENT  
POLICY**

**DECEMBER 2020**



# 1 Introduction

- 1.1 The local enforcement plan for Maldon is produced by the Council in accordance with, and to directly reflect the aims and objectives of the National Planning Policy Framework (NPPF). 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 seek to negotiate with the owner or developer to bring about a voluntary resolution of the matter.
- 1.2 Planning enforcement action can only be considered where the building work or change of use involves a breach of planning control: i.e. planning permission, Listed Building Consent or advertisement consent would be required. In addition, an important consideration is whether the development is causing or has resulted in 'harm' (described in paragraph's 3.2 below). Certain types of building works or changes of use (development) are defined as 'permitted development'; this means that planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) Order 2015 (As amended).
- 1.3 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) 2019 and National Planning Practice Guidance (NPPG), provides guidance on how the Council should deal with breaches of planning control.
- 1.4 Three important points have to be made:
  1. It is not an offence to carry out development without first obtaining planning permission (except in certain instances – see paragraph 3.6)
  2. The taking of enforcement action/serving a notice is not an instantaneous remedy to unauthorised development.
  3. The taking of formal enforcement proceedings cannot be used to require the submission of a planning application.

- 1.5 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.
- 1.6 Paragraph 58 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.”*
- 1.7 This plan sets out the Council’s approach to the delivery of enforcement services relevant to planning, listed buildings and conservation areas.

## **2 Aim of Planning Enforcement in Maldon**

- 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.
- 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

### **.3 Breach of Planning Control**

- 3.1 A breach of planning control broadly means the carrying out of development without the grant of planning permission or other form of planning control. A breach will also include the carrying out of development without compliance with the approved plans or any conditions attached to planning permission. Planning enforcement action can only be considered where the building work or change of use involved needs planning permission or other formal planning consent and/or has resulted in harm to amenity or the environment.
- 3.2 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.
- 3.3 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 against another.
- 3.4 Examples of breaches of planning control include:
- Carrying out of operational development (building or other works) without the required planning permission.
  - Carrying out of material changes of use without planning permission.
  - Failing to comply with a condition or limitation subject to which planning permission was granted.
  - The neglect of land or buildings (untidy site) to an extent which causes harm to the amenity of the area.
  - Failure to comply with Section 106 Agreements/undertakings.
  - Engineering operations such as the raising or lowering of ground levels and formation of earth bunds.

- Not building in accordance with the approved plans (following the granting of planning permission).

3.5 Examples of activity that may not be breaches 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.

3.6 Most breaches of planning control are not, in themselves, criminal offences. Under current legislation a criminal offence only 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. However, certain breaches of planning control do constitute a criminal offence from the outset. Such breaches include:

- Unauthorised works to a Listed Building, without the necessary consents.
- Unauthorised works to a Protected Tree or tree within a Conservation Area.
- The display of Advertisements which do not benefit from deemed consent.

## **4 Cases which will not be investigated**

4.1 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 identified.
- Anonymous complaints – Unless what is alleged is priority level 1 in nature
- 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 is sent out to record times, dates and activities prior to the case being formally investigated. Once the log sheets have been returned with sufficient information, the case will 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.
- Issues that are clearly not planning related e.g. matters regarding deeds or covenants.

## 5 How we prioritise complaints

- 5.1 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 caused. Individual cases may be re-prioritised as the investigation progresses where new and relevant information comes to light.

Complaints classified as **'Immediate'** – investigation (with initial site visit to ascertain facts) within 1-2 working days:

- 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

Complaints classified as **'Urgent'** – investigation (with initial site visit to ascertain facts) within 15 working days:

- Councillor or MP complaints and formal Parish Council complaints
- Operational/building works/change of use/compliance with conditions/obligations affecting residential amenity where ongoing severe neighbour distress being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken

Complaints classified as '**Non-Urgent**' – investigation (with initial site visit to ascertain facts) within 25 working days

- Other changes of use (not falling in the above category)
- Other building works/condition of land/compliance with conditions (not falling in the above category)
- Advertisements and satellite dishes in most instances

## **6 Service Standards**

- 6.1 To operate the planning enforcement service in accordance with the service standards and performance targets below, which set out the level of service and performance the public and businesses can expect. We will regularly review these standards taking account of the views of stakeholders.

### Openness

- 6.2 To provide information and advice in plain language on the policies and procedures of the service, and to communicate this mainly by electronic means whilst giving access for all. We will maintain confidentiality for those persons who wish the Council to investigate a breach of planning control.

### Partnership

- 6.3 To work with the community on compliance with planning controls on the basis that prevention is better than cure, and to ensure that our efforts are coordinated with other enforcement agencies within and outside the council.



### Helpfulness

- 6.4 To provide a courteous, efficient and responsive service with appropriate publicised contact points.

### Feedback about the service

- 6.5 To operate the council's compliments, suggestions and complaints procedure in an accessible, effective and timely manner.

### Consistency

- 6.6 To use the council's planning enforcement powers in a fair and consistent manner.

- 6.7 The Council has committed itself to performance targets in order to achieve the above aims in order to secure the social, economic and environmental interests of the district, its residents and businesses and in compliance with national policies in the National Planning Policy Framework (NPPF) 2019 and the Maldon approved Local Plan 2017. We aim therefore, to achieve no less than an 80% target in all areas of enforcement set out below.

- Enquiries for enforcement investigation will be registered and acknowledged in writing within 5 working days of receipt (1-2 days where the complaint is classified as 'urgent' including site visit).
- Initial site visit undertaken in accordance with the prioritisation of the case as set out in section 5.1 above.
- Cases will be resolved, as defined within section 9.3 below, within 20 weeks of initial site visit being undertaken (processes described in the table below at 8.1 up to Formal Action).

## **7 Enforcement Investigations**

- 7.1 All initial complaints are dealt with in confidence and 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 in order to take 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.

- 7.2 If someone believes that a breach of planning control has occurred, they should notify the Council's Planning Enforcement Team using the online reporting form which can be found at:

[https://www.maldon.gov.uk/info/20051/planning\\_enforcement/9571/make\\_an\\_enforcement\\_complaint](https://www.maldon.gov.uk/info/20051/planning_enforcement/9571/make_an_enforcement_complaint)

- 7.3 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 then contact the Planning Enforcement Team on their behalf.

## **8 Enforcement Outcomes**

- 8.1 Following the initial investigation, the findings will be assessed, and a view taken on how the investigation will proceed. It is key to decide as quickly as possible whether enforcement action is proportionate and then clearly document the decision reached and why. Formal action is a last resort and those responsible will normally be given the opportunity to remedy the breach. However, when the breach is causing serious harm or nuisance, formal action will not be delayed by protracted negotiations or a request for the submission of a planning application when it is obvious a refusal is likely to be the outcome.

Summary table of what actions we will consider taking according to the status of the investigation

Status of the Investigation	The Council's Actions

<p>No Breach of planning control has been identified</p>	<p>The Council will write to the complainant to advise them of our findings and the investigation will be closed.</p>
<p>A breach of planning control has been identified where it is not expedient to take action</p>	<p>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 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 advise of the consequences of not complying with its request.</p>

<p>Further investigation is required.</p>	<p>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.</p>
<p>Formal Enforcement Action</p>	<p>Where it has been established that a breach of planning control has occurred, 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>
<p>Prosecution</p>	<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>

	The authority will seek full recovery of costs, where possible in these instances.
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## **9 Engaging with the customer**

- 9.1 One of the customer's key concerns in relation to enforcement is to be kept informed as the case progresses, especially as enforcement cases can be lengthy. The complaint will be updated as to case progress by the investigating officer and normally this will be when a material event occurs in the investigation (i.e. breach has been identified and the most appropriate remedy/action has been considered; or alternatively no breach has occurred or identified on the basis of the available information).
- 9.2 A second concern relates to the understanding of the process, procedures and remit of enforcement. There is a need to match the customers' expectations with what the Service can deliver. To address this issue a booklet will be made available on the Council's website that explains the planning enforcement and compliance process; a copy of this will be sent to all complainants as part of their acknowledgement letter.
- 9.3 All customers, including complainants and the 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 further; or
- An enforcement notice has been served.

9.4 Where an enforcement notice has been served, there is a compliance period within which the contravener is required to remedy the identified breach. The length of compliance period varies depending on the nature, severity, scale and complexity of the breach. The contravener has the right of appeal against the notice which will be decided by the planning inspectorate who may uphold or dismiss the enforcement notice. If the appeal goes against the contravener there may be a prosecution raised against the contravener if the notice is not complied with. This part of the process has an indeterminate timescale, as it would follow 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.

## **10 OTHER PLANNING ENFORCEMENT POWERS**

10.1 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 policy where appropriate.

10.2 These include:

- Listed Buildings
- Advertisements
- Trees
- Anti-Social Behaviour Order (ASBO)
- Condition of land or buildings affecting the amenity of an area (Untidy Site)
- Proceeds of Crime (POCA)

10.3 Where the legislative requirements are the same, this enforcement policy will

form the basis for any action taken by the Council on these matters.

### **Listed Buildings**

10.4 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 historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. 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 retrospectively, or the unauthorised works 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.

10.5 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 an offence, where a financial penalty may be imposed.

### **Advertisements**

10.6 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.

10.7 Advertisements are divided into three main groups:

- Those advertisements that are expressly excluded from local planning authority control
- Those that have 'deemed consent' so that the local planning authority's consent is not required provided the advertisement is displayed under certain rules

- Those advertisements that require the local planning authority's consent

10.8 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended). The Council also has some powers in relation to the display of advertisements under the Anti- social, Crime and Behaviour Act 2014.

10.9 Some advertisement may be displayed on highway land in which case there are powers that Essex County Council (ECC) has to remove these directly. The Council will seek ECC to remove these where complaints are received but, in some cases, such as fly posting joint action may be necessary.

10.10 The only two reasons local authorities can take into account in dealing with advertisements under the Advertisement Regulations are public safety and amenity.

#### **Anti – social behaviour orders (ASBOs).**

10.22 This was a new measure introduced in 1999. Graffiti and fly-posting are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of impending action. This type of action is considered more appropriate where there is an extensive problem of illegal fly posting.

#### **Trees**

10.23 Under Section 198 of the Town and Country Planning Act 1990, the 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.



10.24 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, similar penalties apply.

### **Land or buildings that adversely affect the amenity of an area**

10.25 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 cleaned 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.

10.26 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, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

### **Proceeds of Crime Act - POCA**

10.27 The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme 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.

10.28 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.

## 11 Legislation

- 11.1 When investigating breaches of planning control, the Council will act in accordance with the provisions of both primary legislation (Acts of Parliament) and secondary legislation (Statutory Instruments).

### Primary Legislation

- The Town and Country Planning Act 1990 (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

### Key Secondary Legislation

- Localism Act 2011
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- Planning and Compensation Act 1991
- Planning and Compulsory Purchase Act
- Planning Act 2008
- Local Government (Miscellaneous Provisions) Act

### Key Guidance

- The National Planning Policy Framework (Feb 2019)
- The National Planning Practice Guidance (online)
- Town And Country Planning (Control Of Advertisements) (England) Regulations 2007

### Other Legislation, Guidance and Codes of Practice

- Regulators' Code
- Code for Crown Prosecutors
- Human Rights Act 1998
- Equality Act 2010
- Police and Criminal Evidence Act 1984 and Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

Key terms:

## **Harm**

Harm resulting from a breach of planning control could concern amenity or highway safety issues which includes noise nuisance from inappropriate uses, loss of daylight or privacy, or danger from increased traffic flows. Harm to the visual amenity of an area could occur for example through unauthorised work to a listed building; demolition within a Conservation Area or work to a protected tree or inappropriate development in the Green Belt. Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken. This harm would not, for example include: • loss of value to a neighbouring property, • competition to another business, • loss of an individual's view or • trespass onto someone else's land.

## **De Minimus:**

It may be that whilst a technical breach of planning control has been found the breach is so minor that it has no or very little impact of any consequence. Such breaches would be considered "de minimus" in planning terms and no formal action would be taken in this respect. Examples would include the following:

- A domestic television aerial.
- Walls and fences which are over the permitted development height but where there are no significant harmful impacts on the appearance of the street scene, residential amenity or highway safety.
- Domestic extensions which exceed the permitted development limits but where there are no significant harmful impacts on residential or visual amenity.
- Advertisements which are not significantly harmful to either visual amenity or highway safety

