

Report to Planning Services Scrutiny Standing Panel

Date of meeting: 18 June 2009

**Subject: Course of a Planning
Enforcement Investigation**

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Committee Secretary: Mark Jenkins (01992 56 4607)



Recommendations/Decisions Required:

To consider and comment on the Course of a Planning Enforcement Investigation and to note the Guide to Enforcement for the Public

Introduction:

At the last meeting of the Planning Services Standing Panel it was resolved that a report should be submitted to the panel setting out the possible route any planning enforcement investigation could take. This report summarises the investigation and enforcement process. Appendix 1 to the report comprises flow charts mapping the investigation and enforcement process and Appendix 2 sets out possible ground of appeal against notices. Appendix 3 to the report is a guide to planning enforcement for members of the public that was recently published to the Council's website.

Report:

SUMMARY OF INVESTIGATION AND ENFORCEMENT PROCESS

Note:

- a) In all cases, where the harm caused by a breach has been remedied no further action is taken and the investigation is closed.
- b) The decision to take enforcement action is delegated to officers with the exception of the issue of:
Discontinuance Notices in respect of the display of advertisements
Discontinuance Notices in respect of lawful development
- c) The decision to take direct action is not delegated to officers

1. Complaint received/possible breach detected:

- 1.1 Possible breach investigated to ascertain whether there is an actual breach.
- 1.2 If no breach found, no further action is taken and the investigation is closed.

2. Breach Found:

- 2.1 Evidence of whether the breach is time immune from enforcement action is considered. If found to be time immune – no further action is taken and the investigation is closed.
- 2.2 If breach not time immune, planning merits assessed. This might require consultation with other Council Directorates or with other agencies, e.g. Essex County Council as Highway Authority.
- 2.3 If breach assessed as likely to be given permission – appropriate application invited within a set timescale. Confirmation of an intention to comply with the request prior to submission
- 2.4 If breach assessed as unlikely to be given permission, contravener (and landowner if different) are requested to take specific steps to remedy the identified harm caused by the breach within a set timescale.
- 2.5 If the breach is an offence, consideration is given to whether it is in the public interest to prosecute those responsible for the breach. There are 3 possible general scenarios:
 - 2.5.1 It is not in the public interest and there is no harm to remedy – no further action is taken and the investigation is closed.
 - 2.5.2 Even though it is not in the public interest to prosecute, there is still a need and a possibility to remedy the harm caused – a solution is sought that might require enforcement action.
 - 2.5.3 It is in the public interest and there is a need and a possibility to remedy the harm caused – process for prosecution followed and a solution is sought that might require enforcement action.

3. Enforcement Action:

- 3.1 In the event of failure to comply with requests to submit an application or take steps to remedy the harm caused or, if appropriate, failure to confirm an intention to comply, the expediency of taking enforcement action is considered. A report is produced for each case. Reports recommending enforcement action is taken need to deal with the grounds of appeal open to a person served with a notice.
- 3.2 If it is not expedient to take enforcement action (In almost every case that is because it is considered likely that permission would be granted) then no further action is taken and the investigation is closed.
- 3.3 If, following consideration of a report recommending enforcement action, the Director of Planning & Economic Development or a nominated person Authorises the recommended action, the Director of Corporate Support Services is instructed to issue an appropriate notice.
- 3.4 A notice will specify what the Council alleges the breach to be, briefly set out why it is expedient to take enforcement action, specify steps required to be taken to remedy the breach and specify the timescale within which the steps should be carried out. The timescale starts when the notice becomes effective.

3.5 A notice becomes effective on a specific date stated in the notice unless an appeal is made beforehand. If an appeal is made, the notice does not become effective until the appeal is dismissed.

4. Appeals and Grounds of Appeal;

4.1 Appeals against enforcement notices and listed building enforcement notices are to the Secretary of State. Appeals against S215 notices (“untidy land notices”) are to the magistrate’s court. Appeals against the decisions of the Secretary of State or Magistrate’s court can be made to the High Court.

4.2 There are set grounds of appeal for enforcement notice, listed building enforcement notice and conservation area enforcement notice appeals. They are given letter codes which can be found in Appendix 2 to this report.

5. Consequences of Appeals Against Notices

5.1 If an appeal is allowed and the notice quashed the case is reviewed. If there is an opportunity to take further enforcement action its expediency is considered and, if appropriate, further action taken. Normally there is no further opportunity for action so no further action is taken and the investigation is closed.

5.2 If an appeal is dismissed and the notice upheld or varied, the notice becomes effective on the date the appeal decision is made. The requirements of the notice must then be complied with in the timescale given in the notice.

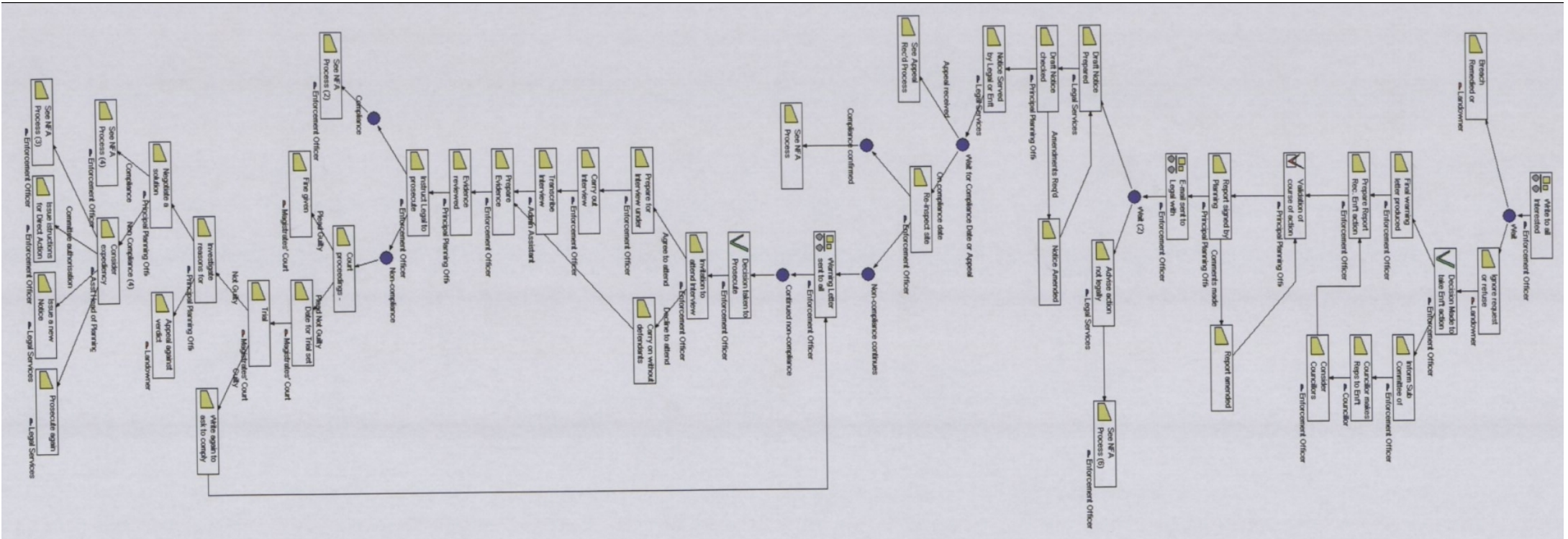
6. Failure to Comply with a Notice:

6.1 Failure to comply with the requirements of a notice within the period given for compliance is an offence. In such cases consideration is given to whether it is in the public interest to prosecute those responsible for the failure to comply. Normally it is expedient to do so.

6.2 If compliance does not take place following a successful prosecution, that consideration will be given to the expediency of applying to the high court for an injunction or taking direct action. If such action is unsuccessful it is necessary to consider the expediency of continuing with the investigation.

Appendix 1(b)

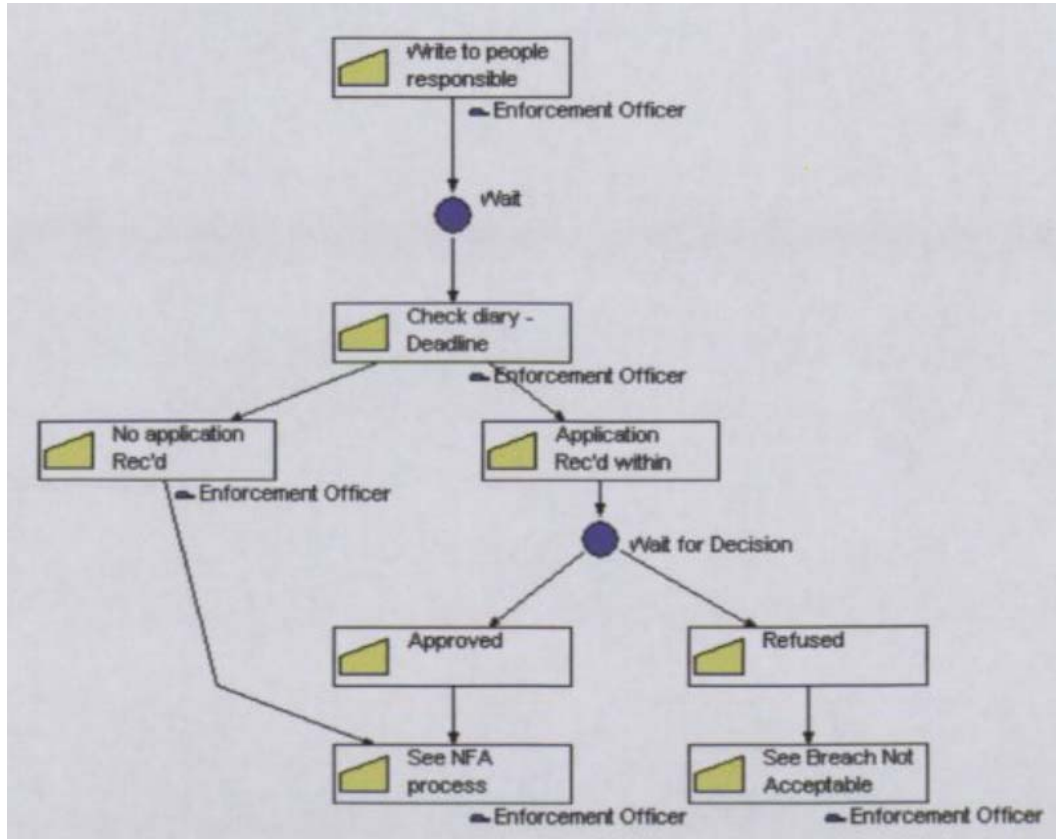
Breach Unacceptable Process:



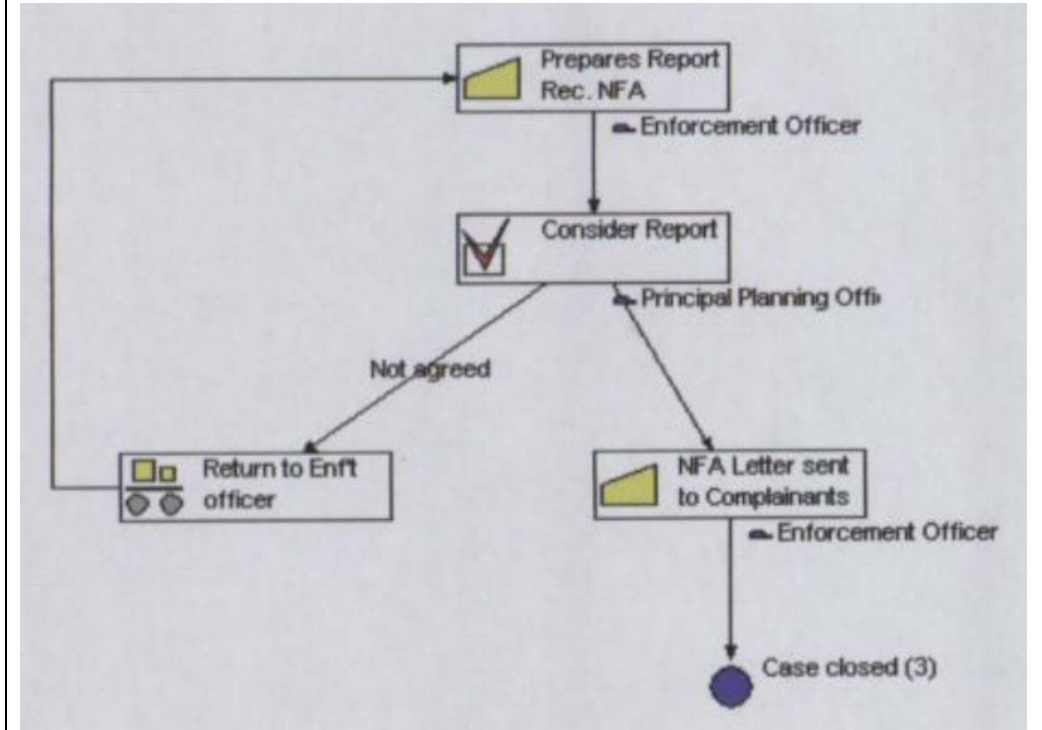
Appendix 1(c)

Breach Acceptable and No Further Action Processes:

Breach Acceptable



NFA



APPENDIX 2

Grounds of Appeal Against Enforcement Notices: (source: *Planning Portal*)

- Ground (a):** That planning permission should be granted for what is alleged in the notice. Section 174(2)(a) of the Town and Country Planning Act says “that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged”.
- Ground (b):** That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
- Ground (c):** That there has not been a breach of planning control (for example because permission has already been granted, or it is “permitted development”).
- Ground (d):** That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- Ground (e):** The notice was not properly served on everyone with an interest in the land.
- Ground (f):** The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. Section 174(2)(f) says “that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”.
- Ground (g):** The time given to comply with the notice is too short.

Grounds of Appeal Against Listed Building Enforcement Notices: (source: *Planning Portal*)

- Ground (a):** That the building is not of special architectural or historic interest. That is to say that although the building is listed, it is not outstanding and worthy of preservation. This ground, in effect, invites the Secretary of State to remove the building from the statutory list. In the case of a conservation area enforcement notice, ground (a) reads “that retention of the building is not necessary in the interests of preserving or enhancing the character or appearance of the conservation area in which it is situated”; (see SI 1990 No 1519 reg 12 and Schedule 3).
- Ground (b):** That the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred. That what is alleged in the notice has not taken place as a matter of fact.
- Ground (c):** That those matters (if they occurred) do not constitute such a contravention. This ground argues that listed building consent is not needed – for example, because the works do not affect the character of the listed building, or because the works concern a building which is not part of a listed building.
- Ground (d):** That works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that

the works carried out were limited to the minimum measures immediately necessary. All 3 tests must be met. It may be argued here, for example, that the works in question were urgently necessary because parts of the building were unsafe.

- Ground (e):** That listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted. This ground covers any arguments on the merits of the case.
- Ground (f):** That copies of the notice were not served as required by section 38(4).
- Ground (g):** Except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. An appeal on this ground will claim that the steps said to be required for restoring the building to its former state are excessive. *If an appellant chooses this ground they cannot also choose (i), (j) or (k)*
- Ground (h):** That the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
- Ground (i):** That the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose. An appeal on this ground would claim that the steps required by the notice would not restore the character of the building to its former state. This is different from an appeal on ground (g) which would claim that the steps required are excessive. This ground of appeal is not available for appeals against conservation area enforcement notices alleging the demolition of an unlisted building in a conservation area. *If an appellant chooses this ground they cannot also choose (g), (j) or (k)*
- Ground (j):** That steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building. Where restoration of the building to its former state has not been required, the works required go beyond what is necessary to alleviate the effect of the works done. Section 38(2)(b) enables an authority which considers that restoration of the building to its former state would not be reasonably practicable or would be undesirable, to specify steps “for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent”. Please state how the requirements should be varied. *If an appellant chooses this ground they cannot also choose (g), (i) or (k)*
- Ground (k):** That steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with. As above, but relating to cases involving a breach of condition attached to a grant of listed building consent. Section 38(2)(c) enables an authority to specify steps “for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which had been granted for the works had been complied with”. *If an appellant chooses this ground they cannot also choose (g), (i) or (j)*