

**Enforcement Plan
Draft
Supplementary
Planning
Document**

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1. Introduction

The City of London Corporation, (the City), is unique in its economic role as a business district with a world class environment. It is home to approximately 9,000 residents and 400,000 workers and host to over 10 million visitors each year. It is important that the quality of its built environment is maintained and that its character is protected. Planning enforcement has an important role to play.

The City is keen to promote sustainable development and where possible seeks to resolve breaches through negotiation rather than formal legislative action.

It is proposed that, subject to available resources, proactive enforcement projects will be identified as emerging trends arise. In identifying potential targets for action regard will be given to the views of Members, businesses, local residents and other stakeholders concerned with planning. This may be in the form of complaints, changes in planning policy and legislation, or specific issues that arise in the City. An annual report to be put before the Planning and Transportation Committee will identify future enforcement trends.

This Supplementary Planning Document (SPD) sets out the City's approach to planning enforcement. It comprises the Enforcement Plan for the City of London and explains the principles and procedures the City will follow to ensure that development is properly regulated. It contains standards and targets to be worked to and where possible the City will continue to seek a resolution without recourse to formal enforcement action. The SPD does not address enforcement in relation to CIL as this is addressed through separate CIL Regulations.

This SPD includes the approach to enforcement in relation to the protection of the City's trees, having regard to the City of London Tree Strategy SPD, to ensure the protection of a good quality sustainable environment. There are currently approximately 2,300 trees in the City.

The display of advertisements and works to listed buildings are subject to separate consent processes within the planning system and sections have been included in this SPD to deal with their enforcement. Included within the listed building section are procedures to deal with unauthorised works of demolition to unlisted buildings in conservation areas. A section on requiring land or buildings to be tidied or cleaned up has been included as this is also a separate process.

Users of the service are encouraged to provide feedback on the enforcement process in order to ensure that the City's planning enforcement service is effective. See section 5.

This document is not a statement of law and individuals should seek their own legal advice. Any action will be carried out in accordance with the current legislation as amended.

2. Legislative background and principles

Is planning permission or consent required?

- 2.1. To be effective planning enforcement must meet legislative requirements and this is often tested at appeal through the scrutiny of evidence. In this context the meaning of development is defined in the legislation as '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'.
- 2.2. Works that may require planning permission include:
 - Physical works comprising:
 - Building operations
 - Engineering operations
 - Mining operations
 - Subdivision of a building (including any part of it) used as a dwellinghouse for use as two or more separate dwellinghouses
 - A material change of use
- 2.3. Many changes of use and certain types of building works are defined as 'permitted development' and do not require planning permission. In addition certain operations or uses do not, (as a matter of law), constitute development and these are set out in legislation.
- 2.4. Other permissions and consents may be required, for example:
 - Listed building consent for works to a listed building which affect the special architectural or historic interest
 - Express Consent for the display of advertisements
 - Consent to carry out works to trees the subject of a Tree Preservation Order or trees within a conservation area
 - Scheduled Monument Consent (Administered by Historic England)
- 2.5. This list is not exhaustive. It is for the local planning authority to determine whether planning permission or consent is required. Planning officers will be able to advise on what does and does not require planning permission. If in doubt advice should be sought.
- 2.6. The planning system is separate from other systems of public control relating to land. In order to proceed some developments or uses may need other consents or licences administered for example by Building Control, Licensing and Environmental Health. The onus is on the developer or operator to comply with all relevant legislation – see City of London Corporation's web site for guidance www.cityoflondon.gov.uk. In the case of church land or buildings a faculty may be required and this would be administered by the church authorities.

What is a breach of Planning Control?

2.7. 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

2.8. It could also include but not exclusively:

- any contravention of the limitations on, or conditions associated with, permitted development rights
- unauthorised works to a listed building which affect the building's special architectural or historic interest, or failure to comply with conditions attached to a listed building consent
- advertisements displayed without the benefit of express consent or non-compliance with the standard advertisement conditions.
- unauthorised works to trees the subject of Tree Preservation Orders, trees within a conservation area and works to trees in breach of a planning condition
- untidy land or buildings
- failure to comply with a planning notice or legal agreement attached to a planning permission

2.9. Planning enforcement action cannot be taken if the works or changes of use do not require planning permission or consent; are permitted by planning legislation, unless there is a breach of any terms or conditions; or the development is immune from enforcement action. Development becomes immune from enforcement action if no action is taken within:

- 4 years of a substantial breach of planning control consisting of operational development
- 4 years of an unauthorised change to a single dwellinghouse
- 10 years for any other breach of planning control; essentially other changes of use or a breach of condition except a condition relating to the use as a single dwellinghouse where the period of immunity is 4 years.

2.10. After these time limits the use or works become lawful. A landowner may apply for a Certificate of Lawful Existing Use or Development (CLEUD) to regularise the situation, the onus of proof resting with the landowner. If an Enforcement Notice or Breach of Condition Notice is served the clock is stopped in relation to these time limits.

2.11. Government advice clearly states that it is not appropriate to take enforcement action where the breach can be addressed through non-related legislation for example the Environmental Health Acts. See City of London web page.

Is it an offence to carry out unauthorised works?

2.12. In most cases it is not a criminal offence to carry out works without planning permission. It is, however, a criminal offence to carry out the following works:

- unauthorised works to a listed building where the works materially affect the historic or architectural significance of the building, or fail to comply with a condition attached to a listed building consent
- relevant demolition of an unlisted building in a conservation area without planning permission, or fail to comply with a condition attached to the planning permission
- unauthorised works to a tree with a Tree Preservation Order or located within a conservation area
- to display advertisements without the appropriate consent or in breach of the standard advertisement conditions

2.13. In general a criminal offence arises when a notice has been served and not complied with or for example a person makes a false statement in relation to a Notice or Certificate of Lawful Existing Use or Development (CLEUD).

Principles of good planning enforcement

2.14. The SPD aims to incorporate and implement the principles and policies set out in the following documents:

National Planning Policy Framework and Planning Practice Guidance

2.15. The National Planning Policy Framework issued by the Government in 2012 states that enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. It advocates that local planning authorities should consider publishing a local enforcement plan to manage enforcement in a way that is appropriate to their area. This should set out how the local authority will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

2.16. The NPPF acknowledges that effective enforcement is important as a means of maintaining public confidence in the planning system. National Planning Practice Guidance 'Ensuring effective enforcement', published 6 March 2014 and updated regularly, provides advice which the City will have regard to in its decision making process.

2.17. The City's enforcement plan and enforcement policy are adopted as an SPD to be read in conjunction with the City's local Plan.

The Local Plan

2.18. The Local Plan, adopted 15 January 2015, sets out the planning priorities for the City reflecting the NPPF and London Plan. This establishes a presumption in favour of sustainable development and requires that when considering development proposals the City Corporation will take a positive approach and will work proactively with applicants to jointly find solutions. It sets out a number of policies which include policies to protect the amenities of local residents and townscape, the protection of trees and designated heritage assets, including listed buildings, unlisted buildings in conservation areas, scheduled ancient monuments, world heritage sites, registered parks and gardens and their settings.

The European Convention on Human Rights

2.19. Article 1 of the First Protocol, Article 8 and Article 14 are relevant to enforcement action. These Articles set out a need to look at the potential impact on the health, housing needs and welfare of those affected by the proposed action as well as those affected by a breach of planning control.

Equality Act 2010

2.20. Section 149 of the Equality Act 2010 requires the City to have regard to equality in the exercise of its functions.

The Regulators' Code

2.21. This sets out Government's expectations in respect of the provision by local authorities of clear and accessible complaints and appeal processes, for use by businesses and others that they regulate. Local authorities have a statutory duty to have regard to the Code in developing the principles and policies which guide their regulatory activities. This code is underpinned by the statutory principles of good regulation, which require regulatory activities to be carried out in a way which is transparent, accountable, proportionate and consistent and should only be targeted at cases where action is needed.

Expediency and harm

2.22. The City has responsibility for taking enforcement action necessary in the public interest. The power to issue an Enforcement Notice is discretionary and will only be issued where the City is satisfied that there has been a breach of planning control and it is expedient to do so. Expediency requires having regard to the provisions of the development plan and to any other material considerations including case law and human rights.

2.23. The City is not required to take enforcement action because there has been a breach of planning control and action will only be taken where there is harm. Planning harm is not defined in the regulations. Some of the factors that may contribute to an assessment of planning harm include:

- **Planning background** - History and related decisions, undesirable precedent, cumulative impact, age of breach
- **Policy** - Impact on planning policy
- **Amenity** - Noise, smell, daylight/sunlight, privacy/over bearing development, health and safety, fear of crime, culture/language, loss of access for disabled persons, wind mitigation
- **Visual impact** - poor design, inappropriate location, untidy sites, loss of protected trees
- **Change in character** – Sensitive sites including loss or damage to listed buildings, demolition of unlisted buildings in conservation areas, damage to a scheduled ancient monument, world heritage site and Registered Park and Garden and adverse effects on the setting of these heritage assets
- **Economic impact** – Effect on businesses
- **Impact on ecology** – Loss of bio-diversity
- **Road safety** – Access, traffic and pedestrian safety

2.24. The key tests are whether the breach of planning control would unacceptably affect public amenity and whether planning permission or other consents would have been granted having regard to the Development Plan.

2.25. The following are not material considerations: the applicant, land ownership, private rights, (e.g. access), restrictive covenants, property values, loss of private view, competition, 'better' use of site, change from a previous scheme.

2.26. It should be noted that the process, including the gathering of evidence and the potential for appeal, may mean that enforcement action may take some time to complete.

Available enforcement and legal action

2.27. There are a number of measures available to the City when considering enforcement and legal action. These measures will be carried out in accordance with the current legislation as amended and include, (but are not exclusive to), the following:

Table 1: Enforcement and Legal Action

| Type of enforcement | Effect of action |
|--------------------------------------|--|
| Right of Entry | Authority to enter land to ascertain whether there has been a breach of planning control |
| Section 330 Notice | To require information as to interests in the land |
| Planning Contravention Notice | To request information and to set up a meeting with the 'offender' |

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|---|---|
| Enforcement Notice | To remedy a breach of planning control |
| Breach of Condition Notice | To secure compliance with the terms of a planning condition |
| Planning Enforcement Order | To remedy a breach of planning control relating to the concealment of a building |
| Repairs Notice | To secure works considered to be reasonably necessary for the long term preservation of a listed building |
| Urgent Works Notice | To secure immediate works to stop deterioration of a listed building, or an unlisted building in a conservation area with the Secretary of State's permission |
| Listed Building Enforcement Notice | To remedy a breach of planning control relating to listed buildings |
| Section 215 Notice | To require steps to be taken to clean up land or buildings where their condition adversely affects the amenity of the area |
| Tree Replacement Notice | To secure a replacement tree removed in contravention of the Tree Regulations |
| Section 225 Notice | To require the removal or obliteration of posters or placards |
| Section 225A - Removal Notice | To require the removal of structures used for unauthorised display of advertisements |
| Section 225C - Action Notices | To remedy persistent problems with unauthorised advertisements |
| Section 225F - Defacement Removal Notice | To remedy the defacement of premises by advertisements |
| Discontinuance Action | To require the discontinuance of advertisements |
| Stop Notice | To prohibit any or all of the activities which comprise the breach as specified in the related enforcement notice |
| Temporary Stop Notice | To require an activity which is in breach of planning to stop immediately |
| Injunctions | To stop breaches that have occurred or are likely to occur causing serious harm with immediate effect |
| Prosecution | Steps taken when a criminal offence is committed |
| Direct Action | Authority to enter onto land to take steps required by a Notice and to recover costs |
| Proceeds of Crime Act | To seek to recover any monies or assets gained during the time a Notice was breached |

How is this exercised?

2.28. The Chief Planning Officer and Development Director and other authorised senior officers have delegated authority to exercise a number of these enforcement powers and legal actions. Matters not within the scope of delegation are decided by the Planning and Transportation Committee.

Recording Notices

2.29. Details of enforcement notices, stop notices and breach of condition notices are recorded on an Enforcement Register

available for viewing at the Guildhall north wing reception. See section 5.5. It is proposed to convert this to an online format. There is a requirement to notify Land Charges of the service of some of these notices for inclusion on the Land Charges Register. Those registered would be revealed on a property search.

3. Managing enforcement, the complaint procedure and priorities

Managing enforcement

- 3.1. Enforcement will be managed in a way appropriate to the City having regard to the objectives of the Development Plan. Complaints will be investigated in accordance with the principles of good planning enforcement as set out in section 2.14-2.21 and to minimise costs of compliance.
- 3.2. To make the most effective use of resources enforcement may be carried out by planning officers in relation to applications or projects they are currently managing. Complaints will be prioritised, priority being given to breaches where harm is being caused and it would be expedient to take enforcement action or be in the public interest to prosecute. This may not always relate to who is complaining and how vocal they are.

Enforcement priorities

- 3.3. Enforcement priorities are set out in the following targets:

Table 2: Targets

| Targets |
|--|
| Investigate all reported alleged breaches of planning control and acknowledge receipt |
| Within 1 working day start investigation of serious breaches including irreversible or serious damage to the environment and or a building, works/uses causing substantial harm, works to protected trees and traffic hazards. |
| Within 10 working days start investigation on 90% of all complaints. |
| Following initial investigation carry out a site visit or monitor if appropriate, (City to determine if this is necessary at this stage), make an assessment and negotiate or commence action |
| At key stages during the investigation update complainant and offender in accordance with the procedures set out below |
| Aim to resolve complaints and monitor outcome in accordance with the procedures set out below |
| Notify complainants of outcome in accordance with the procedures |

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|----------------|
| Targets |
| set out below |

Who can complain, how a complaint is made and confidentiality

- 3.4. Breaches of planning control may be identified and reported in a number of ways, including by members of the public. A complaint can be reported via the City of London web page on the enforcement form, by email, telephone or in writing (See section 5.9). These will be acknowledged upon receipt and details of the case officer and how the alleged breach will be assessed and managed will be provided.
- 3.5. Every effort will be made to keep the details of any individual reporting an alleged breach confidential where requested. As far as possible, anonymous reports will be investigated and dealt with in the same way as any other. In some cases there may be a need to identify a complainant, for example where a witness statement is required to demonstrate harm from a noise disturbance or where a case is taken to prosecution. This would be discussed with the complainant before any further action is taken.

The investigation

- 3.6. An initial investigation of the alleged breach of planning control will be carried out and will include a review of the planning history and any other relevant records. Checks may be made with other departments to see if they have any relevant information that may impact on the consideration of the case.
- 3.7. This will be followed by a site inspection to view the alleged breach if required. Sometimes it may be necessary to visit the complainant's premises and they may be asked to monitor the site to gather evidence. Advice will be given as to precisely what is required.
- 3.8. Officers have powers to enter land or buildings to carry out their enforcement duties. It is an offence to obstruct officers when carrying out this duty and if this results in potential prosecution a formal interview under caution may be required. If entry is refused officers can apply for a warrant from the Magistrates' Court which would permit them to use force if required to enter the property. The police would be informed and might be in attendance.
- 3.9. Depending on the complexity of the case legal advice may be sought which may result in further investigations and monitoring. Once all the background information and evidence has been gathered a decision will be made as to whether a breach of planning control has occurred, having regard to the criteria set out in section 2 and what action will be taken.

Negotiation

- 3.10. Negotiation has proved to be an effective means of resolving the majority of enforcement matters in the City. However, where it is not possible to negotiate a solution and harm is proven enforcement action will be taken.
- 3.11. In some cases it may not be justifiable or expedient to take formal action. If no action is to be taken interested parties will be notified of the reason why.

Submitting a planning application

- 3.12. Where a planning application could be made to regularise a breach of planning control, those in breach will be provided with an opportunity to discuss this with a planning officer and will be invited to attend a meeting if required at this stage. Advice will be given as to whether the application is likely to be recommended for approval, including whether any revisions need to be made to the works and any fees to be incurred. A Section 330 Notice or Planning Contravention Notice may be issued at this stage to seek further information or to set up the meeting. Failure to respond to any Notice is a criminal offence.
- 3.13. If an application is submitted interested parties, including the complainant, will be consulted and given the opportunity to comment on the application. A report setting out the planning history, (where relevant), planning policies, considerations and recommendation will be considered by the Planning and Transportation Committee or a nominated senior officer under delegated powers.
- 3.14. If permission or consent is granted conditions may be imposed that require alterations to works already undertaken or to the way the property is used in order to make the unauthorised development acceptable. If the application is considered unacceptable it will be recommended that planning permission or other consent be refused and reasons will be given. At the same time authorisation will normally be sought to take enforcement action. The complainant will be advised of the decision.

Enforcement action

- 3.15. In taking enforcement action the local planning authority will act proportionally. Where negotiation fails and a breach results in significant harm the City will commence enforcement action. See Table 1 for options.
- 3.16. Where the service of an Enforcement or other Notice has been authorised those with an interest in the land will be advised of the decision. Prior to service of the Notice an opportunity will be given

to remedy the breach within a reasonable period. Normally only one letter of notification will be sent prior to action being taken. If the breach is remedied and the case is closed the complainant will be notified either in writing or by telephone.

3.17. The Enforcement Notice will be served on those with an interest in the land and will set out:

- who has served the Notice
- the land to which the Notice relates
- the matters which appear to constitute the breach of planning control
- reasons for issuing the Notice
- what they are required to do to comply with the Notice
- time for compliance
- when the Notice takes effect
- their right of appeal
- what happens if they do not appeal

3.18. Other Notices vary slightly in format. See National Planning Practice Guidance – Ensuring effective enforcement – for model Notices. See Bibliography for link.

3.19. The time frame for compliance with the Notice will depend on the nature of the breach. Once an Enforcement Notice has been served the City has the power to decline a retrospective planning application if it does not accord with the provisions of the Development Plan or other material considerations including case law and human rights.

3.20. Complainants will be informed in writing of the requirements of the Notice and the timescale for compliance.

Serious breaches of Planning Control: Stop Notices, Temporary Stop Notices and injunctions

3.21. Where there is a serious breach of planning control a Stop Notice may be issued. It would be issued either when an Enforcement Notice is served, or afterwards, if the City considers it expedient that the activity should cease before the expiry of the period for compliance with the Enforcement Notice.

3.22. Where the City needs to act quickly to address certain breaches of planning control and it is expedient to do so, a Temporary Stop Notice may be issued to stop an unauthorised development or use for a period of up to 28 days. The effect of a Temporary Stop Notice is immediate and it does not have to wait for an Enforcement Notice to be issued. During this time the impact of the development or use will be assessed and consideration given to issuing a formal Enforcement Notice and Stop Notice.

3.23. An injunction may be sought to stop unauthorised works or uses. These powers would only be used where there is clear evidence that a breach of planning control has already occurred or is likely to occur and that the breach is or will cause serious harm and injunctive relief is a proportionate remedy in the circumstances of the case.

Appeal process

3.24. Anyone who has an interest in the land to which an Enforcement Notice relates or who is a relevant occupier, whether or not they have been served with a copy, has a right of appeal. A person having an interest in the building to which a Listed Building Enforcement Notice relates or a relevant occupier may also appeal to the Secretary of State. An appeal suspends the effect of a Notice. Not all Notices can be appealed. A Breach of Condition Notice is not subject to an appeal, nor is a Stop Notice or Temporary Stop Notice.

3.25. Appeals are dealt with by means of Written Representations, involving an exchange of statements, or at a Hearing, or Public Inquiry which is more formal depending on the nature of the case.

3.26. If an appeal is made to the Planning Inspectorate against an Enforcement or other Notice those with an interest in the land will be advised of the procedure, including the grounds of appeal and the timescale by the Planning Inspectorate. The City will notify the complainant and information will be provided about the appeal process and the statutory time frames. If an appeal is unreasonable the City may seek the award of costs.

3.27. Complainants should be aware that a right of appeal may substantially increase the time taken to resolve any breach and that it may result in a different decision from that of the City.

Prosecution action

3.28. Once an Enforcement Notice takes effect and no appeal has been made, there is a set period within which the requirements of the notice must be complied with. A criminal offence is committed if these requirements are not met. Some unauthorised works can also lead to a prosecution. See section 2.12.

3.29. In deciding whether to bring a prosecution the Code for Crown Prosecutors will be followed. The City will consider whether there is sufficient evidence to provide a realistic prospect of conviction and whether it is in the public interest to bring the prosecution.

3.30. The offender will be given notice of the offence and if the non-compliance continues, or other factors determine that the tests for prosecution have been met, prosecution action will be pursued.

Prior to service of the summons, those in breach will be informed in writing what is required, the time scales involved and options available. The complainant will be notified at the same time of the decision to take prosecution action and will be notified of the outcome of the court's decision.

Direct action

3.31. If the offender fails to comply with the Enforcement Notice Direct Action may be considered. This is where the City would undertake remedial action to ensure compliance with a Notice. Costs incurred would be recovered from the owner and would become a charge on the property via the Land Registry. Chargeable costs would include officer time, pre-application advice, notices served, costs of any compliance visits and cost of remedial action.

Proceeds of Crime Act 2002

3.32. Where it appears that there has been significant financial benefit in failing to comply with a Notice the City may use the Proceeds of Crime Act 2002 to seek to recover any monies or assets gained during the time the Notice has been breached. In most cases it will be necessary to obtain a criminal conviction before confiscation can be sought.

4. Other enforcement processes

Tree protection

- 4.1. The National Planning Practice Guidance for Tree Preservation Orders (TPO) and trees in conservation areas advocates that local planning authorities should consider publishing tree protection enforcement policies and have clear written procedures to deal with cases.
- 4.2. Trees are an important asset in the City and are protected by planning legislation if they are the subject of a Tree Preservation Order or lie within a conservation area. Trees may be protected by means of conditions attached to permissions, consents or legal agreements.
- 4.3. The City of London Tree Strategy Supplementary Planning Document (SPD) sets out what works require consent and the exemptions. Consent continues to be required if permitted development rights impacts on protected trees. Anyone proposing works to a tree is advised to refer to the SPD prior to undertaking any works and should consult a qualified arboriculturalist or tree surgeon.

- 4.4. There are additional controls on the felling of trees however a felling licence is currently not required to fell a tree within the City. Advice on this issue should be sought from the Forestry Commission before undertaking any works.
- 4.5. Common breaches of tree protection include:
- the unauthorised removal of a protected tree
 - unauthorised works to a protected tree
 - breach of a condition on a consent for works to a TPO'd tree or planning permission
- 4.6. Anyone who contravenes an Order by damaging or carrying out work on a protected tree without consent, or breaches a condition on a consent for works to a tree the subject of a Tree Preservation Order, or carries out works to a tree in a conservation area without notifying the City, subject to some exemptions, is guilty of an offence.
- 4.7. If it appears that an offence has been committed those committing the offence will be identified and cautioned. Anyone carrying out works likely to destroy a protected tree or any other unauthorised works are liable if convicted to a fine.

Investigation

- 4.8. Cases should be reported in the same way as other complaints, (with urgency if felling is involved) and will be investigated and dealt with in a similar manner to a planning enforcement complaint. See section 3.
- 4.9. The initial investigation will check whether the tree is protected, whether any consent or permission has been granted, who is the owner and who is carrying out the works. This will be followed by a site inspection. Officers have a right of entry and it is an offence to refuse entry. If entry is refused a warrant can be sought.

Options for action

- 4.10. The City will consider the following options when determining action in relation to unauthorised works to a protected tree:
- Consider whether action is justified by the particular circumstances. The City will normally require replacement trees to be planted whether or not a person is prosecuted.
 - Negotiate with the owner to remedy the breach to the City's satisfaction ensuring that remedial works to repair or reduce the impact of the unauthorised works are carried out
 - Consider issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such works may lead to prosecution

- Seek an injunction to stop on-going works and prevent anticipated breaches
 - Consider whether the test for commencing a prosecution are met i.e. whether there is a realistic prospect of prosecution and that it is in the public interest
- 4.11. Other related action that will be considered includes the issuing of Enforcement Notices, Breach of Condition Notices, Stop Notices and Temporary Stop Notices which will be carried out in accordance with the procedures as set out in section 3 including direct action and recovery of costs.
- 4.12. The City takes very seriously any unauthorised loss or damage to any tree and will take action to ensure their protection. In considering individual cases regard will be had to the impact that such works have had on the visual amenity of the tree and its resulting impact on the townscape, including conservation areas and bio-diversity of the area.
- 4.13. Landowners have a duty to replace a tree removed, uprooted or destroyed in contravention of the Tree Regulations. This duty applies also if a tree, (except a tree protected as part of a woodland), is removed, uprooted or destroyed because it is dead or presents an immediate risk of harm, the onus of proof rests with the person who carries out the works. In the case of a tree the subject of a Tree Preservation Order the replacement tree is automatically protected by the original Order except where it is lawfully removed and the replacement tree is planted under a condition of the consent.
- 4.14. The City's power to enforce tree replacement is discretionary. When serving a Tree Replacement Notice the City will consider:
- The impact on amenity of the removal of the trees and whether it would be in the interests of amenity to require their replacement. Amenity is not defined in law but guidance is given in the National Planning Practice Guidance on Trees
 - Whether it would be reasonable to serve a Tree Replacement Notice in the circumstances of the case
 - The possibility of a wider deterrent effect
- 4.15. If a Tree Replacement Notice is breached consideration will be given to entering the land and planting the tree(s) and any expenses reasonably incurred will be recovered. Chargeable costs could include officer time, notices served, cost of compliance visits and advice, costs of replacement trees and associated work.
- 4.16. Where a new TPO consent or Section 211 Notice is required for works to rectify damage to a tree, or in the case of a breach of condition on a permission or consent requiring, for example, details of the means of protection of trees, the installation of a root protection zone or the planting of a replacement tree, the same

principles will apply as set out in section 3. There is a right of appeal in respect of a refusal of TPO consent and any conditions on a TPO consent or planning permission. See sections 3.24 -3.27.

4.17. In all cases the City will consider and may pursue compensation and replacement costs to the full Capital Asset Valuation for Amenity Trees (CAVAT).

4.18. CAVAT is a system of expressing the value of individual trees according to their public amenity value which enables compensation and replacement costs to be awarded at a more realistic level. Information can be found on CAVAT at the following link: <https://www.ltoa.org.uk/resources/cavat>

Advertisements

4.19. The display of advertisements is subject to a separate consent process within the planning system and there are 3 categories of advertisement consent:

- Those permitted without requiring either deemed or express consent from the local planning authority subject to standard conditions
- Those which have deemed consent subject to standard conditions
- Those which require the express consent of the local planning authority

See Bibliography for link to the National Planning Policy Guidance Advertisements

4.20. The City has for many years sought to exercise careful control over the display of advertisements and seek improvements where appropriate. In order to protect and enhance the character of the City's streets, the City considers that advertising material should be restrained in quantity and form.

Investigation

4.21. Cases can be reported in the same way as other complaints and will be investigated and dealt with in the same manner as a planning enforcement complaint. See section 3.

4.22. The initial investigation will check which of the above three categories the advertisement falls within. This will be followed by a site inspection to determine the owner and identity of the person responsible for displaying and benefiting from the advertisement. If consent is required and the advertisement is considered to be in accordance with the Local Plan policies an application will be sought.

Options for action

- 4.23. The City is required to exercise control on advertisements having regard to visual amenity and public safety and has at its disposal a number of options for enforcement action see Table 1. The City's Street Enhancement Officers will ensure the removal of unauthorised advertisements on the public highway and some fly posting etc. mainly under the Highways Act 1980.
- 4.24. The advertisement regulations state that where an advertisement is displayed with the benefit of deemed consent and it results in substantial injury to the amenity of the locality or a danger to members of the public the City can take discontinuance action. There is an appeal process for those responsible for its installation. See section 3.24--3.27.
- 4.25. If an advertisement is displayed without the benefit of express consent or a person fails to comply with a discontinuance notice or the standard conditions, it is an offence. Those in breach will be asked to remove the advertisement or comply with the standard conditions if applicable. If they fail to do so, or other factors determine that it is in the public interest, consideration will be given to taking prosecution action. See sections 3.28-3.30.
- 4.26. There are a number of other actions which can be used to remedy a breach of the Advertisement Regulations where for example there is a need to:
- remove or obliterate a poster or placard,
 - remove structures used for unauthorised display of advertisements
 - resolve persistent problems with the display of unauthorised advertisements
 - remedy the defacement of premises by advertisements
- 4.27. Some of these actions are subject to the appeal process and the advertiser will be advised of any rights of appeal see sections 3.24-3.27. Consideration may also be given to serving an injunction and to recovering costs. Each complaint will be considered having regard to the most appropriate action. See Table 1 section 2.27 and sections 3.23 and 3.32.

City Sign Byelaws

- 4.28. The City operates The City Sign Byelaws. These control street projections for securing the safety and protection of the public and amenities of the street. Any person who erects any street projection so as to project into or over any street, except in accordance with byelaws is liable to a fine and the City may remove the street projection and recover its expenses in doing so.

Designated Heritage Assets: listed and unlisted buildings in conservation areas

- 4.29. The City currently has 607 listed buildings and 26 conservation areas which are designated heritage assets that contribute significantly to the townscape and contribute positively to visual amenity. The City takes very seriously any unauthorised works or damage to a listed building or an unlisted building in a conservation area and will take action to safeguard any building at risk. In assessing individual cases consideration will be given to the impact on the special architectural or historic fabric of the listed building and its setting or on the impact on the character and setting of any unlisted building in a conservation area, in line with local and national planning policies.
- 4.30. Carrying out work without the necessary listed building consent, demolishing an unlisted building in a conservation area without the required planning permission and failing to comply with a condition attached to that consent or planning permission, is a criminal offence – whether or not an Enforcement Notice has first been issued. Both large fines and custodial sentences can be applied on successful prosecution.

Investigation

- 4.31. Cases can be reported in the same way as other complaints and will be investigated and dealt with in a similar manner to a planning enforcement complaint, although urgency is key with irreplaceable fabric. See section 3.
- 4.32. The initial investigation will check relevant facts, whether any consent or planning permission has been granted, who is the owner and who is carrying out the works. A site inspection will be carried out. Officers have a right of entry and it is an offence to refuse entry.

Options for action

- 4.33. The City will consider the following when determining the course of action to take:
- Whether action is justified by the particular circumstances
 - Negotiating with the owner to remedy the breach to the City's satisfaction ensuring the remedial works to repair or reduce the impact of the unauthorised works are carried out
- 4.34. If remedial works are considered to be in accordance with the Local Plan policies.
- Seeking an application for consent or planning permission. [However, listed building consent and planning permission for relevant demolition cannot be granted retrospectively]

4.35. If the works are considered to be detrimental to the special architectural or historic character of the listed building and its setting or the character and setting of the unlisted building:

- taking enforcement action in accordance with the procedures as set out section 3.
- issuing a Stop Notice, Temporary Stop Notice or seeking an injunction to stop on-going works or to recover listed items removed without consent from a listed building or to prevent anticipated breaches
- issuing an informal warning to impress on the owner or others suspected of unauthorised works that such works may lead to prosecution
- commencing prosecution if the relevant tests are met i.e. if there is a realistic prospect of prosecution and is it in the public interest

4.36. There are no time-limits for issuing listed building enforcement notices or enforcement notices in relation to a breach of planning control relating to demolition. The length of time that has elapsed since the apparent breach may be a relevant consideration when considering whether it is expedient to issue a Listed Building Enforcement Notice or planning Enforcement Notice.

4.37. Where a Listed Building or planning Enforcement Notice is not complied with direct action will be considered enabling the City to enter the land and carry out the works. Costs will be recoverable see section 3.32.

4.38. Where a listed building is under threat consideration will be given by the City to serving a Repairs Notice and this will set out the repairs needed for the proper preservation of the building. See section 3 for general principles. This procedure is designed to ensure that a listed building is properly preserved and not allowed to deteriorate. There is no right of appeal.

When served with a Notice the owner has the option to:

- comply with the Notice
- do the works which he or she considers necessary

4.39. If the building is not repaired within 2 months a Compulsory Purchase order can be served. This would enable the City or the Secretary of State to acquire the building.

4.40. Where there is a need to secure immediate works to arrest the deterioration of a listed building consideration will be given by the City to serving an Urgent Works Notice in parallel to the Repairs Notice. This will enable the City to execute any works which are urgently necessary for the building's preservation. There is no right of appeal and the City will seek to recover costs. See section 3 for general principles.

4.41. There is no provision to serve a Repairs Notice on an unlisted building in a conservation area. Where there is a need to secure immediate works to stop the demolition of an unlisted building in a conservation area, in order to maintain the character or appearance of an area, an Urgent Works Notice can be served with the Secretary of State's permission. If these circumstances arise the City will give consideration to obtaining the necessary permission to proceed with the service of an Urgent Works Notice. See section 3 for general principles.

Section 215 Notices

4.42. A Section 215 Notice provides the power, in certain circumstances, to require land and buildings to be cleaned up when their condition adversely affects the amenity of an area including neighbouring land and buildings.

4.43. The City takes very seriously the amenity of its area and will serve such a Notice if it is considered that the condition of the site or building is detrimental to the amenity of the area. Their use is discretionary and it is for the City to decide whether a Notice under these provisions would be appropriate taking into account all the local circumstances for example:

- the condition of the site
- the impact on the surrounding area
- the scope of their powers

4.44. In some circumstances a section 215 Notice may be used in conjunction with other powers for example Repair Notices in respect of listed buildings or Dangerous Structure Notices.

Investigation

4.45. Cases can be reported in the same way as other complaints and will be investigated and dealt with in the same manner as a planning enforcement complaint. See section 3.

4.46. The initial investigation will check who owns the land or building and who is responsible for the works or mess in the case of land. This will be followed by a site inspection. Officers have a right of entry and it is an offence to refuse entry. If entry is refused a warrant may be sought.

Options for action

4.47. If action is not taken to remedy the situation to the City's satisfaction a Section 215 Notice may be served on the owner requiring the situation to be remedied. It will set out the steps to be taken and the time within which they must be carried out. See section 3 for general principles. There is a right of appeal to the Magistrates' Court.

4.48. In the case with non-compliance of the Notice the City has a number of options, the power to undertake the clean-up works and to recover the costs from the landowner and or prosecution. See sections 3.31, 3.32 and 3.28-3.30.

5. Reactive and proactive enforcement, monitoring and working relationships

Reactive/proactive enforcement

5.1. The City aims to provide an effective planning enforcement service i.e. to be reactive and effective in dealing with complaints that arise in relation to breaches of planning control.

5.2. The use of residential premises in the City as temporary sleeping accommodation is one issue. Temporary sleeping accommodation is defined as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights. The Deregulation Act 2015 created a new section which provides that the use of any residential premises in Greater London as temporary sleeping accommodation does not constitute a material change of use for which planning permission would be required if certain conditions are met as set out in the Act. This includes a ceiling of ninety nights per calendar year. Often the lettings exceed the permitted number of nights and are therefore in breach of planning control. If expedient the service of an Enforcement Notice is an option for which it is an offence not to comply. For further guidance refer to the City of London Corporation web site.

5.3. The use of residential premises in the City as temporary sleeping accommodation is one issue. Temporary sleeping accommodation is defined as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights subject to compliance with a number of conditions as set out in the relevant Act. The use of premises in compliance with the terms and conditions of this definition would not involve a material change of use. However, often the lettings exceed the permitted number of consecutive nights and are therefore in breach of planning control. If expedient the service of an Enforcement Notice is an option for which it is an offence not to comply.

Monitoring enforcement

5.4. The City deals with over 1,100 planning cases annually. Given the scale of development and resources available, it is not possible to monitor all the cases. The City has to rely on local people, its officers and ward Members to identify breaches.

5.5. Monitoring of serious breaches, as listed in Table 1, will be a priority. In addition checks will be made of:

- enforcement cases to ensure the breach has ceased
- enforcement cases where there is a potential for the breach to reoccur
- Notices issued to ensure compliance
- temporary planning permissions or consents to ensure that they are still valid
- works dealt with by the District Surveyor to identify breaches of planning
- legal agreements or obligations attached to any permissions or consents to ensure compliance

The City will monitor its own performance by preparing an annual report to be submitted to the Planning and Transportation Committee which will review priorities, targets and scope for charging. Any charges will be notified on the City's web page.

Working relationships

- 5.6. Particular care will be paid in working with small businesses by advising on and assisting them with compliance to help support activities which contribute to economic growth. Care will be taken to ensure that residents and others are protected from substantial harm. The City aims to continue to foster good working relationships with developers to help them deliver the high quality buildings that the City is renowned for and to continue fostering good working relationships with residents to protect their amenity.
- 5.7. Regular communication will occur with those in breach with regular updates for those who have complained. Comments will be sought and views incorporated into enforcement practices. The annual monitoring report will be used to encourage Members to engage with officers on enforcement matters.
- 5.8. Co-operation between City of London Corporation service areas such as Environmental Health, District Surveyors, Licensing, Safety Thirst, Police, Fire Authority, Comptroller and City Solicitor and Open Spaces, are essential to deliver an effective enforcement service and will continue to be fostered and protocols will be drawn up as and when required. Working parties such as the Licensing Liaison Partnership Group and the Built Environment User Panel will be used to seek views on enforcement and to provide enforcement advice.
- 5.9. Contacts will be maintained with other authorities and Government web sites accessed to keep abreast of good practice, national policy and recommended best guidance.

Feedback on the enforcement process

5.10. If you would like to comment on the enforcement process or web site in order to ensure its continuing effectiveness see contact details below.

Dissatisfied with the Planning Enforcement Service?

5.11. Every effort will be made to ensure that you receive a good quality service. If you have a complaint about our service please contact us directly. If you continue to be unsatisfied please contact the Performance and Standards Officer at the Department of the Built Environment. Your complaint will be investigated and you will receive a written response within ten working days with an explanation or a progress report if it has not been possible to deal with your complaint within that period. If you are still dissatisfied you may make a complaint under the City of London Corporation's Complaints Procedure as set out on City's web page. www.cityoflondon.gov.uk

How to contact us

The Department of the Built Environment
City of London Corporation
PO Box 270
Guildhall
London EC2P 2EJ
020 7332 1710
PlanningEnforcement@cityoflondon.gov.uk

Counter service

Between 9.15am-4.30pm Monday to Friday at Ground Floor of Guildhall, North Wing (entrance from Basinghall Street and Aldermanbury). You can find a map and directions on the 'How to find us page' on the City of London web site. See above.

Bibliography

This SPD is mostly acting under, but not exclusively, the following documents. The bibliography covers current legislation and any subsequent amendments

Acts

- Town and Country Planning Act 1990
- Localism Act 2011
- Planning and Compensation Act 2008
- Planning and Compulsory Purchase Act 2004
- Planning Act 2008
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Housing and Planning Act 2016
- Building Act 1984
- Scheduled Ancient Monuments & Archaeological Areas Act 1979
- Police and Criminal Evidence Act 1984
- Proceeds of Crime Act 2002
- Regulation of Investigatory Powers Act 1984
- Human Rights Act 1988
- Equality Act 2010

Orders

- Town and Country Planning (General Permitted Development) (England) Order 2015

Regulations

- Town and Country Planning (Use Classes) Order 1987
- Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Policy, Guidance and Byelaws

- National Planning Policy Framework – Department for Communities and Local Government
- National Planning Practice Guidance 2014 – Government publications
Link: planningguidance.communities.gov.uk
- Planning Inspectorate website
- London Plan 2015 – Mayor of London website
- City of London Local Plan Adopted 15 January 2015 – City of London website
- City of London Corporation Sign Byelaws
- Department for Business Innovation and Skills: Regulators' Code
- Stopping the Rot A Guide to Enforcement Action to Save Historic Buildings – Historic England website
- Scheduled Monuments Guide for home owners and occupiers - Historic England website