



BRISTOL CITY COUNCIL

Planning Transport & Sustainable Development

THE COUNCIL'S APPROACH TO PLANNING ENFORCEMENT

June 2008

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1. Introduction

- 1.1 Planning enforcement has a key role in achieving the high standards of development being sought, and the purpose of this document is to set out Bristol City Council's approach to handling planning related enforcement matters. It will be of interest to anyone who thinks the planning rules may have been broken in their neighbourhood (often referred to as a 'breach of planning control'). For example, if you think that:
- building work is taking place without approval
 - a building is higher or in some way different from the approved scheme
 - the use of some land or a building has changed without planning permission
 - conditions of a planning permission are not being met
 - works to a listed building are being done without approval
 - a piece of land or building has become an unacceptable eyesore
 - protected trees, or those in Conservation Areas, are being felled/pruned without approval
- ...then this policy describes how the city council will respond to such situations.
- 1.2 Effectively guiding and controlling the pattern of development and change across Bristol, in accordance with both the Corporate Plan and Community Plan objectives, as well as approved planning policies is a key regulatory responsibility of the City Council. It takes this role very seriously.
- 1.3 The Development Control service is at the heart of achieving this, and it is crucial that developments are not only authorised, but are also carried out in accordance with approved plans.
- 1.4 The council has adopted¹ the government's Enforcement Concordat², and this policy is written to reflect the principles set out in the Concordat. These principles are:
- (i) setting out clear **standards on the level of service** the public can expect
 - (ii) being **open** about the way we will operate including **using plain language** for all communications
 - (iii) being **helpful** and actively working with citizens and businesses to **advise on and assist with compliance**
 - (iv) providing a well publicised **complaints procedure** for complaints about the service
 - (v) being **proportionate when considering any action** and taking into account the circumstances of the case when considering formal action
 - (vi) carrying out the enforcement duties in a **consistent and equitable manner**.

¹ Adopted by Cabinet 9 March 2001

² March 1998

1.5 To meet the principles of the Concordat, the Planning Enforcement team will :

- **set out priorities on how we will respond to breaches of planning control**
- ensure that **early decisions** are taken on the intended course of action
- **target resources** to those activities that cause the most serious problems
- resort to **robust formal enforcement** action where there is obvious harm or nuisance and where persuasion and negotiation have failed
- keep the **public informed** of progress with the investigation
- be **consistent** in responding to breaches of planning control.

2. Bristol City Council's general approach to Planning Enforcement

2.1 One of the council's key corporate aims is to provide and safeguard an attractive built and natural environment. Planning enforcement, in association with other council enforcement functions³, has a key role to play in achieving this aim.

2.2 **Bristol City Council takes breaches of planning control very seriously, particularly if it is either done intentionally, or results in significant harm. Although it will try to negotiate solutions where this is appropriate and possible, it will use all the powers available to take formal action where that is necessary.**

2.3 The Planning Enforcement team, within the Development Control service, will investigate possible breaches and take the appropriate form of action. The aim is to provide a service that is:

- Reactive to complaints made by citizens, and
- Proactive, by checking that development has taken place in accordance with approved plans and to ensure that planning conditions are being complied with.

2.4 Where appropriate, the Planning Enforcement team will liaise and work with other enforcement functions of the city council, such as Building Control and Pollution Control, and look to take a joint approach to cases.

3. What is a breach of Planning Control?

3.1 For a breach of planning control to have occurred, it must first be established that development requiring planning permission has taken place (see Appendix 2). 'Development' is a legal term and generally means building works and some changes of use.

- (i) Building works will include the erection of a building, excavations, alterations to buildings, larger fences, and so on, although often small-scale extensions to houses will not need any permission.

³ See Appendix 4 'Useful contacts'

(ii) Changes of use include a change from a shop to an office or a house to flats and so on. Some such changes of use can take place without planning permission being needed, e.g. a change from a clothes shop to a hairdressers, or a change from a doctor's surgery to a day nursery. The legal framework for this is set out in the government's Use Classes Order 2005.

3.2 The number of potential enforcement cases is extensive. There has been a year-on-year increase in the number of complaints received from 485 cases in 1998 to 813 cases in 2006. This increase in demand has made it even more important that cases are carefully prioritised.

3.3 The enforcement process is closely regulated by legal procedures, planning legislation and guidance from the government's Department of Communities and Local Government (DC&LG) (see Appendices 1 and 2). This provides the framework within which the council's Planning Policies and its enforcement priorities are applied.

4. Service Commitments⁴

4.1 The Enforcement team will investigate all written (including email) and telephone complaints⁵ relating to unauthorised development and changes of uses, and non-compliance with planning consents and conditions.

4.2 A certain amount of information is needed (eg: location, nature of activity and its harm) in order that the complaint can be registered. A set of registration criteria and guidance is available; this is so we can quickly check whether there is a breach of planning control⁶. Once a complaint has been registered, progress in addressing it will enable it to be monitored by the complainant on the city council's website (www.bristol.gov.uk)

4.3 Complaints can be made in person at Brunel House, OR by phone (see Useful Numbers in Appendix 4) OR by letter OR via the Internet.

4.4 To make the most effective use of resources, all incoming enforcement cases are prioritised when registered, based on information provided, assessment of any planning history and early site visits for deemed Emergency and High Priority cases. This will determine mainly the speed at which the cases are investigated and actioned, and will be affected mainly by the assessment of the type and extent of the harm caused. There are three enforcement priorities:

(a) Emergency – ie: where irreversible harm is likely to be caused if the council do not act immediately. For example:

- Unauthorised works to listed buildings;
- Unauthorised felling/pruning of protected trees.

⁴ See flow chart at Appendix 1

⁵ We will not normally investigate anonymous complaints unless there are specific reasons why anonymity is needed

⁶ We have available a 'Complaint form', and if this is completed it should ensure that the complaint can be registered – available on line at www.bristol.gov.uk

(b) High Priority – ie: where there is significant public concern or where there is (or is the potential for) significant harm to be caused to residential amenity in the surrounding area. For example:

- Breaches of planning conditions specifically identified to meet expressed public concerns, such as hours of operation;
- unauthorised uses/activities which are causing significant harm;
- illegal advertisements, particularly larger scale advertising on hoardings.

(c) Lower Priority – ie: smaller scale infringements which do not result in significant immediate or irreversible harm. For example:

- unauthorised building of walls/fences;
- unauthorised erection of satellite dishes

4.5 Our service targets in responding to complaints about potential breaches of planning control are:

Action	Priority		
	Emergency	High	Lower
Register and allocate to case officer	Immediate background/history check	Within 2 working days	Within 3 working days
Site Visit	As soon as possible, and certainly within 24 hours	Within 2 working days	Within 15 working days
Contact complainant with case assessment and commence negotiations	As soon as possible, and certainly within 24 hours	Within 5 working days	Within 20 working days
Commence legal action or resolve	As soon as possible if irreversible harm is being done, and certainly within 10 working days	Within 10 weeks	Within 20 weeks

4.6 We will respect the confidentiality of anyone who complains, but details of the complaint itself will be publicly available via the council's website.

4.7 We will carry out our duties in a fair, equitable and consistent manner, and many cases will be able to be resolved by negotiation. This will give the person complained against the opportunity to change or stop what they are doing. This might result in the use or development being modified to remove any harm, or the use ending. It might result in a retrospective planning application being made to regularise the situation. If a retrospective planning application is received we will let anyone who has complained know immediately so as they can comment on the proposal. This will help inform the assessment of the application in the context of the Bristol Local Plan

policies. Complainants will be kept informed of any negotiations that are taking place.

- 4.8 If attempts to negotiate an acceptable solution fail (eg: the person responsible for the breach of control refuses to modify what they are doing, or simply does not respond to approaches to discuss the case), there is a presumption that formal legal action will be taken as a means to resolve the complaint. Such decisions will be made by either officers using delegated powers, or by the appropriate Development Control Committee and will have regard to national legislation and guidance (see Appendix 2).
- 4.9 We will advise both the complainants and the person who has broken the planning rules of what action the Authority has decided to take, and the reasons for the action. We will also indicate the priority given to individual cases wherever possible and reasons will be given when further action is not pursued.
- 4.10 Every effort will be made to deal with all complaints as quickly as possible, and the Enforcement team will work positively towards achieving an acceptable solution to the problems. The Enforcement team will work to the priorities and timescales described in para 4.5. However, timescales can be affected by the following:
- (i) Some stages of the process must adhere to statutory and procedural timescales, including:
 - statutory legal timescales for the return of legal questionnaires;
 - minimum periods to comply with some types of legal notices;
 - Development Control Committee deadlines
 - (ii) The process for the formal consideration of any retrospective planning application and any appeal resulting from a planning refusal, will often delay the enforcement process.

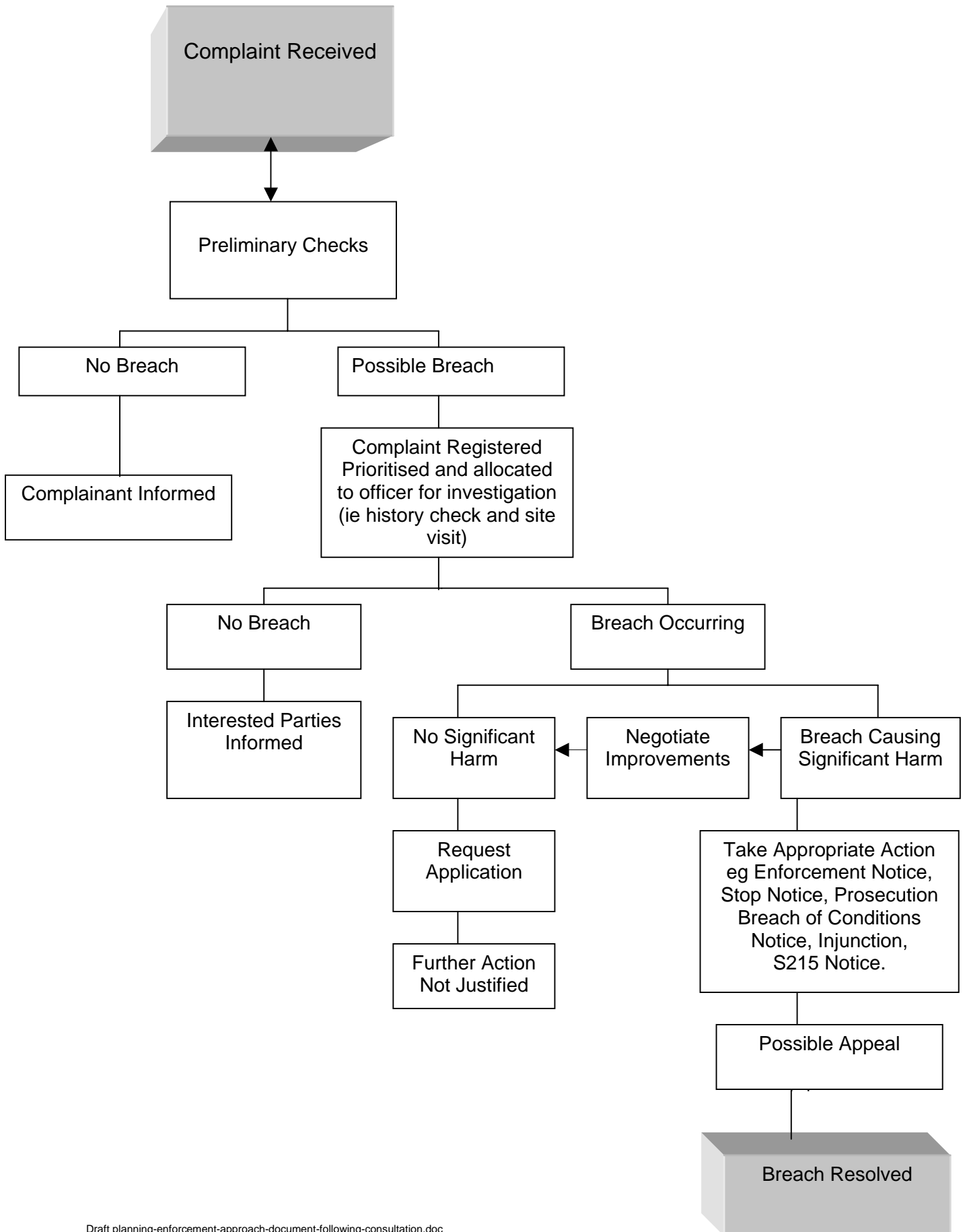
5. Conclusion

- 5.1 This document provides the framework for delivering the Planning Enforcement Service within the available resources. Additional funding has been made available for the appointment of two monitoring officers. The purpose of these two new posts is to promote a more proactive approach to planning enforcement and in particular to monitor planning permissions to ensure they are implemented in accordance with approved plans and conditions.
- 5.2 The city council will continue to seek to improve its Planning Enforcement service by regularly monitoring, reviewing and updating this Policy and Procedures document as a matter of good practice, and consult with stakeholders to ensure “Best Value” in the delivery of the service.
- 5.3 An annual performance report will be prepared. This will review service standards and performance in the context of available resources, workloads and outcomes.

Note: Complaints about the service. *If you are unhappy about the advice given or action taken or the level of service you have received from the Planning Service in relation to how it carries out its enforcement functions you can make a complaint using the city council's Fair Comment – Complaints Procedure. Details are available on line at www.bristol.gov.uk/faircomment or from all council offices.*

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PLANNING ENFORCEMENT POLICY AND PROCEDURES



The Law

The enforcement of planning law is a particularly complex aspect of planning activity. This is because the government has tried to strike a balance between the rights of individuals to use or alter their property in the way they wish, and the need to safeguard the character and quality of neighbourhoods and to uphold the planning policies for the local area.

In general, the system tends to give the benefit of the doubt to anyone undertaking the unauthorised development, and councils are expected to give those responsible for undertaking unauthorised development the chance to put matters right before serving a formal notice.

If the council's action are considered too harsh or hasty or legally incorrect, it can be ordered to pay costs or have its decisions overturned by the Planning Inspectorate or the courts. However, the Local Government Ombudsman has held, in a number of investigated cases, that there is maladministration if a local authority fails to take effective enforcement action which was plainly necessary. Such a failing can lead to a compensatory payment to the complainant.

The council's power to take enforcement action comes from laws passed by Parliament, mainly by the Town and Country Planning Act 1990 and the Planning and Compensation Act 1991. These laws give council's power to take action against those responsible for breaches of planning control, such as the erection of buildings or changes of use without the necessary planning permission.

Not all development requires planning permission. The main source of guidance on what requires permission include:

- The Town & Country Planning General Permitted Development Order 1995;
- The Town & Country Planning Use Classes Order 1987;
- The Town & Country Planning Control of Advertisement Regulations 1992.

These documents, which are published by the government, contain schedules which list instances where consent is not required. For example, certain structures do not need permission because of their size, height, volume, location, etc. This is called 'permitted development' and specific guidelines are given in the General Permitted Development Order (the GPDO).

The Use Classes Order places most types of use into classes (eg retail, business, etc.) and, in general, permission is required to change from one class to another.

In considering whether it is appropriate to take action the Authority will be guided primarily by the following⁷:

⁷ All of these documents are available to inspect in Planning Reception at Brunel House or on the Internet.

- (a) The Town and Country Planning Act 1990 (T&CPA).
- (b) The Town and Country Planning (General Permitted Development Order 1995 (GPDO)
- (c) Planning Policy Guidance Note 18 (Enforcing Planning Control - Dec 1991 – see below)
- (d) Planning Policy Guidance Note 19 (Outdoor Advertising)
- (e) DOE Circular 10/97 Enforcing Planning Control - July 1997
- (f) Enforcing Planning Control Good Practice Guide for Local Authorities
- (g) Enforcement Concordat Cabinet Office - March 1998
- (h) Best Practice Guide on the use of Section 215 – Jan 2005
- (i) The Development Plan – Adopted Bristol Local Plan - Dec 1997

Planning Policy Guidance note (PPG 18) para 5 says -

“The General Approach to Enforcement

Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

- (1) *Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);*
- (2) *the Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;*
- (3) *in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;*
- (4) *enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and*
- (5) *where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop (LPAs should bear in mind the statutory time limits for taking enforcement action).”*

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Powers Available to the Local Planning Authority

Where negotiations fail we may decide to instigate formal legal proceedings. This could result in one or more of the actions set out below being pursued.

(i) **Planning Contravention Notice (PCN)**

The main purpose of a PCN is to gather initial information so that the Authority can establish whether there is a prima facie case for taking Enforcement Action.

It is an offence if the recipient of the notice fails to provide the required information. If convicted of such an offence the offender would be liable on conviction to a fine currently not exceeding £1,000.

(ii) **Breach of Condition Notice (BCN)**

This type of notice can only be used where planning consent has been granted subject to conditions.

The Authority can issue a BCN to ensure full or part compliance with planning conditions. As with the Enforcement Notice a BCN would specify the breach and steps required to secure compliance with the notice. Unlike the Enforcement Notice a BCN must allow a minimum of 28 days in which to comply with the requirements.

There are no rights of appeal against a BCN. If any person is found to be in breach of a valid BCN he or she shall be guilty of an offence with a maximum fine currently not exceeding £1,000 on conviction.

(iii) **Enforcement Notice**

This is the most common form of notice used to deal with unauthorised development, operations and/or uses. Before such action is embarked upon the Authority must be satisfied that it is appropriate to issue the notice having regard to the nature of the unauthorised development and in the light of Government guidance.

An Enforcement Notice will specify the alleged breach, the steps that must be taken to remedy the breach, and a time period in which to comply.

The recipient of the notice has a right of appeal to the Secretary of State. If any person is subsequently found to be in breach of an Enforcement Notice the Authority will consider whether to prosecute. If found guilty in any court hearing that person would be liable on conviction in the Magistrates Courts to a maximum fine of £20,000.

(iv) **Stop Notice**

The Authority can, when appropriate to do so, serve a Stop Notice requiring activities to cease immediately. Such a notice can only follow the service of an Enforcement Notice. There are limitations on the service of this notice and additionally compensation may be payable by the Authority in some circumstances if the recipient makes a successful challenge. It is used very selectively and it is not necessarily an instant solution.

(v) Injunction

Where the Authority considers a breach of planning control to be a serious and immediate risk to health and safety, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction.

This can be extremely expensive, but can be effective in appropriate circumstances.

(vi) Temporary Stop Notices

Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the Town and Country Planning Act 1990 enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition, the effect of the temporary stop notice will be immediate, it will not have to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately. For more information please refer to the ODPM Circular 02/2005.

(vii) Section 215 Notice

The condition of certain buildings or land often causes serious harm to the visual amenity of an area. Should the Local Planning Authority consider it appropriate to do so they may serve on the owner and occupier a Notice under Section 215 of the Town and Country Planning Act, 1990.

Such a notice would require steps for remedying the condition of the land or buildings and specify a period of time for complying but in any event not less than 28 days. This Notice can be appealed via a magistrates' hearing.

If any person is subsequently found guilty of an offence of not complying with the requirements of a 215 Notice they shall be liable on conviction to a fine currently not exceeding £1,000.

(viii) High Hedges

If a complaint has been properly made and we decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This is known as a remedial notice.

This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although we cannot require such action, the hedge owner is free to go further than the remedial notice requires.

The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners

(ix) Signs and Advertisements

Where an advertisement is not lawfully displayed and causes harm to the amenity or public safety, and it is considered that express consent would not be granted, the owner/occupier shall be requested to remove the offending

sign. If the sign is not removed by agreement the Authority does have the power to Prosecute (see (x) below).

If a person is found guilty of an offence under The Control of Advertisement Regulations 2007 he or she could be liable to a fine not exceeding £1,000. The Council also has the power to serve a Notice requiring the discontinuance of a lawfully displayed advertisement if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Recipients of a Discontinuance Notice do have a right of appeal.

(x) Prosecution

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.

- (a) Enforcement Notice
- (b) Listed Building Enforcement Notice
- (c) Conservation Area Enforcement Notice
- (d) Breach of Condition Notice
- (e) Section 215 Notice
- (f) Stop Notice

The Council will also consider commencing a prosecution in the Courts where:

- unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- an advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored
- unauthorised works have been carried out to a Listed Building
- unauthorised demolition has been carried out in a Conservation Area
- the recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information.

Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

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Contact Details

Bristol City Council website: www.bristol.gov.uk

- **Information about Planning Enforcement, including an on-line complaints form available via Environment and Planning homepage.**
- **Planning Enforcement Team**
 - Phone Number: - 0117 922 3863
 - Email: - planning.enforcement@bristol.gov.uk

Other Useful Contacts

- **Building Control – Including dangerous structures**
 - Phone Number: - 0117 922 3080
 - Email: - building.control@bristol.gov.uk
 - **Waste Services and Street Scene Group – Including litter, graffiti and flytipping**
 - Phone Number - 0117 922 3838
 - Complaints form available via Environment and Planning homepage
 - **Licensing – Including taxis, late night food and drink establishments**
 - Phone Number: - 0117 914 2550
 - Email: - licensing@bristol.gov.uk
 - **Pollution Control – Including noise, air and land pollution**
 - Phone Number - 0117 922 3810
 - Email: - pollution.control@bristol.gov.uk
- Out of hours Service can be contacted via the Emergency Control Centre**
- Phone Number: - 0117 922 2050
- **Parking Services**
 - Phone Number: - 0117 922 2198
 - Email: - parking.services@bristol.gov.uk