



**Melton
Borough
Council**

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Planning Enforcement Policy

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1. INTRODUCTION

- 1.1 Melton Borough Council is responsible for enforcing a wide range of legislation within the Borough. The planning system operates to regulate development and the use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of the residents, visitors and businesses from the harmful effects of unauthorised development.
- 1.2 There is an expectation that each council should develop and publish a planning enforcement strategy setting out how it will exercise its planning enforcement responsibilities and include details of:
- how and to whom a complaint about an alleged breach of planning of planning control should be made;
 - how the council will deal with alleged breaches of planning control; and
 - the timescales for dealing with different types of breaches of planning control depending upon their severity.
- 1.3 This Planning Enforcement Policy sets out the framework by which Melton Borough Council's authorised Officers will make decisions in respect of the Council's compliance and enforcement activities. It summarises how we prioritise our work, the enforcement tools available, and how complaints are investigated. The Council is committed to ensuring that all Officers abide by this policy.
- 1.4 The Council seeks to promote an efficient and effective approach to enforcement, which improves outcomes without imposing unnecessary burden. Planning enforcement is a very complex area of the planning system. It should be noted that the legal processes involved are often lengthy and complicated and an instant resolution cannot be guaranteed.
- 1.5 In Melton, the enforcement functions are carried out under the Scheme of Delegation to Officers. The Director of Growth and Regeneration has delegated authority to investigate and to take enforcement proceedings relating to Planning Enforcement. Many of these functions are further delegated to Officers according to their qualifications and competency.

2. Legislative Framework and Government Guidance

2.1	Local planning authorities have powers within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control and have powers to remedy proven breaches by statutory and other means.
2.2	The following sets out the legislative framework applicable to breaches of planning control.
2.3	The Council's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations.
	<ul style="list-style-type: none"> • The Town and Country Planning Act 1990 (as amended)
	<ul style="list-style-type: none"> • The Planning (Listed Building and Conservation Areas) Act 1990 (as amended)
	<ul style="list-style-type: none"> • The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
	<ul style="list-style-type: none"> • Town and Country Planning (Tree Preservation) Regulations (England) 2012 (as amended)
	<ul style="list-style-type: none"> • The Town and Country Planning (General Permitted Development) Order 2015 (as amended)
	<ul style="list-style-type: none"> • The Town and Country Planning (Use Classes) Order 1987(England) (as amended)
2.4	Advice from Central Government on planning enforcement is set out in the following documents:

The National Planning Policy Framework (July 2021) and National Planning Practice Guidance (NPPG) make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient to do so. Any action taken should be commensurate with the seriousness of the breach of planning control and the harm caused or harm that may be caused. Section 59 of the NPPF states that: -

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

National Planning Practice Guidance (NPPG)
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2.5	Advice from Central Government on planning enforcement is set out primarily in the 'Planning Practice Guidance' (PPG) 'Ensuring Effective Enforcement' that came into effect on 1 March 2014, and was last updated in July 2019. It emphasises the importance for local planning authorities to prepare and adopt local enforcement policies and plans because they:-
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| <ul style="list-style-type: none">• Allow engagement in the process of defining objectives and priorities which are tailored to local circumstances. |
| <ul style="list-style-type: none">• Set out the priorities for enforcement action, which will inform decisions about when to take enforcement action. |
| <ul style="list-style-type: none">• Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers. |
| <ul style="list-style-type: none">• Provide greater certainty for all parties engaged in the development process. |

2.6	The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the Council to act in a way that is incompatible with a Convention right.
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2.7	The Public-Sector Equality Duty (Equality Act 2010)
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The general equality duty is set out in section 149 of the Equality Act 2010 eliminates unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. Advance equality of opportunity between people who share a protected characteristic and those who do not.
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3. Key objectives

3.1 The main objectives of the Planning Enforcement Policy for Melton are:-

- To ensure enforcement of planning conditions in a fair and robust way
- To remedy undesirable effects of unauthorised developments
- To react proportionately and reasonably in response to notifications of breaches to planning approvals

3.2 Key Principles

The Legislative and Regulatory Reform Act 2006 sets out the following regulatory principles:

- a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent.

b) regulatory activities should be targeted only at cases in which action is needed.

3.3 The Council follows the principles of the central and local government Concordat on Good Enforcement (the Concordat). The Concordat sets out the principles of good enforcement practice. These are:

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

Helpfulness: to work with all parties to advise on and assist with compliance. To provide contact details for further information.

Consistency: to carry out duties in a fair, equitable and consistent manner.

Proportionality: to take action in proportion to the risks posed and how serious the breach is.

Complaints about the Service: to provide well publicised, effective and timely complaints procedures.

3.4 In all enforcement activity it is important that the Council adopts the legal concept that the guilt of an accused person cannot be presumed and that they must be assumed to be innocent until proven otherwise.

4. Our Approach to Enforcement

- 4.1 We recognise that most people want to comply with the law. We want to cooperate with businesses and individuals to achieve compliance. If there is a problem, we want to resolve it by communicating clearly and encouraging people to behave responsibly. We will follow the '4 Es' approach to enforcement:



- 4.2 We will engage and explain how we think the person or business are not complying with Planning Legislation and encourage them to change their behaviour to reduce the risk to public health, safety, welfare or to the environment.
- 4.3 Formal enforcement action is always a last resort. The Council consider facts of the case and assess them against Planning Legislation, Local and National Policies.
- 4.4 The Council is committed to fair and objective enforcement ensuring that all its policies are applied in a non-discriminatory manner and aimed at promoting good community relations. This policy is applied in accordance with the principles of the Council's Equality Policy.
- 4.5 Melton Borough Council is a public authority for the purposes of the Human Rights Act 1998. The Council will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 4.6 Should Melton Borough Council conclude that a provision in this policy does not apply or is outweighed by another provision, it will ensure that any decision to depart from the policy will be properly reasoned, based on material planning evidence and documented.
- 4.7 Anonymous complaints, under normal circumstances, will not be actioned unless they are of a very serious nature, and it is in the public interest to do so.

5. Scope of works - What we deal with

- 5.1 The Council has a duty to investigate alleged breaches of planning control. A breach of planning control broadly means the carrying out of development without the grant of planning permission from the Council, or deemed permission by government order. A breach will also include the carrying out of development without compliance with the approved plans or any conditions attached to a planning permission.
- 5.2 The Council has powers to remedy proven breaches by statutory and other means. It is our policy to exercise these powers appropriately so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission. The purpose of this policy is to ensure that councillors and officers, external agencies and the general public are aware of the Council's approach to its planning enforcement responsibilities.
- 5.3 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders, trees within a Conservation Area and advertisements also come within the scope of planning control, but unlike the breaches identified above constitute a criminal offence.
- 5.4 The Council also investigates offences under the Hedgerows Regulations 1997 and High Hedge Complaints under Part 8 of the Anti-Social Behaviour Act 2003.

5.5 Exclusions

- Complaints where there is no supporting evidence to substantiate an allegation.
- Neighbour boundary disputes.
- Property and land ownership issues.
- Dangerous structures
- Persistent complaints that we have previously investigated, and we consider have been resolved.
- Breaches of covenants between landowners or trespass issues.
- Civil matters relating property deeds.
- Anonymous complaints
- Malicious or vexatious reports
- Fly posting.
- Loss of views.
- Alleged reduced value of property or land.
- Competition between businesses.
- Offences specifically defined under the Highways Act 1980.

6. Enforcement Priorities

- 6.1 A set of priorities are proposed for investigating alleged breaches of planning control or reported criminal offences. To make the most effective use of available resources, the Council will investigate alleged breaches of planning control in accordance with the priorities listed in Table 1 below.
- 6.2 The priorities take into account the significance and impact of the breach, the level of harm caused and also the need to react expediently. For example, unauthorised works to listed buildings often require immediate investigation in order to prevent loss of historic features which may be irreplaceable. Other complaints are minor in nature such as certain breaches of conditions which may not be causing any direct harm and therefore do not require immediate investigation.
- 6.2 As an investigation of a particular case proceeds, for example after a site visit, it may become necessary to change the priority level.

Table 1: Enforcement Priorities

Priority	Type of Breach
Priority 1 - High	<ul style="list-style-type: none">• Works to listed buildings (demolition/alteration/disrepair);• Demolition or significant development in a conservation area• Works to trees covered by a Tree Preservation Order or in a Conservation Area• Development causing serious and immediate/irreparable harm, particularly to protected ecology or causing serious danger to the public
Priority 2 - Medium	<ul style="list-style-type: none">• Operational development already in progress;• Development where potentially immune from enforcement within 6 months• Development causing serious harm to amenity;• Breaches of condition/non-compliance with approved plans causing serious harm to amenity

Priority 3 - Lower	<ul style="list-style-type: none"> • Other operational development which is complete; • Changes of use resulting in some harm to amenity; • Advertisements (other than flyposting); • Breaches of condition/non-compliance with approved plans causing non-serious harm to amenity
Priority 4 - Low	<ul style="list-style-type: none"> • Changes of Use resulting in no harm to amenity; • Untidy land (other than where comes under Environment & Health legislation)

6.4 Upon receipt of a reported breach of planning control or reported criminal offence as set out in section 2, the Council will endeavour to conduct an initial site inspection in accordance with the priorities listed in table 1 and within the timescales detailed in Table 2 (below).

Table 2 – Anticipated site inspection timescales

PRIORITY	SITE INSEPTION TIMETABLE
Priority 1 – High	Within 5 working days
Priority 2 – Medium	Within 14 working days
Priority 3 – Lower	Within 21 working days
Priority 4 - Low	Within 28 working days

6.5 We can make visits out of normal working hours where it is appropriate and considered necessary to do so, and where the breach is of substantial immediate concern.

6.6 Planning Enforcement Officers are not empowered to physically stop unauthorised works on site but can issue enforcement proceedings which can

lead to prosecution. Considerable back office support is required to administer enforcement proceedings and accordingly investigations are contained to normal office hours.

7. Expediency

- 7.1 When it is technically possible to take enforcement action the Council is required to decide whether such formal action would be 'expedient'; this means that formal action is discretionary as defined within National Policy and Guidance, and all the relevant planning circumstances must first be considered.
- 7.2 In considering "expediency" the decisive issue is whether the breach would unacceptably harm public amenity. Any enforcement action should be proportionate to the breach. This duty means that we would not be acting correctly if we enforced against every breach of planning control in the Borough. There will be cases where there is a breach of planning legislation, but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.
- 7.3 In cases where it has been established that a breach of planning control has occurred at the initial stage, the planning enforcement officer will undertake an assessment of expediency to determine which course of action should be taken. This expediency test will take account of:-
- Whether the breach is in accordance with the policies of the Melton Local Plan.
 - The breach against any other material planning considerations.
 - Whether, had a planning permission been submitted before the development occurred, permission would have been likely to be granted.
 - Whether the breach unacceptably affects public amenity.
 - Whether the breach unacceptably affects any existing land use or buildings.
 - Which merit protection in the public interest.
 - Whether action would be proportionate with the breach to which it relates.
 - Whether action would be in the public interest.
- 7.4 In deciding, in each case, what is the most appropriate way forward, the Council will refrain from taking formal enforcement action where: -
- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area.
 - Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development.
 - In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

- 7.5 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier. According to the Council's adopted approach, formal action only takes place where it is expedient to do so and where other means to resolve the problem have failed. Ordinarily formal action will only be taken as a last resort and when the breach of planning control is causing significant or irreparable harm to the amenity of the area or is a breach of local planning policy.
- 7.6 The impact of some development is more harmful than others and therefore enforcement action must always be appropriate to the seriousness of the breach of planning control.
- 7.7 The focus of our service is to remedy serious breaches of planning control not to punish those who are in breach of legislation. It is therefore acceptable that those concerned are given the opportunity to remedy any identified breach. This may be through a retrospective planning application or negotiating a solution acceptable to the Council in line with national guidance, best practice and local planning policies. Just because something is a breach of planning control is not, in itself, a justifiable reason to take enforcement action.
- 7.8 Whilst not condoning wilful breaches of planning control, the Council will not take disproportionate action and will not seek to 'punish' those responsible by taking action against technical breaches that cause no serious harm to public amenity.

8. Feedback, compliments and complaints handling

- 8.1 Customer feedback is very important to us, whether it's a general comment or observation about a service we provide, a compliment about something we've done well or a complaint about something you are not happy with.
- 8.2 The Council is committed to listening to your feedback and acting on what we hear, to continually improve the quality of, and access to, the services it provides.
- 8.3 We will use your views to look at our services and see how we can continue to build on the good aspects and how we can improve those you feel are not as good as they could be.
- 8.4 Feedback, compliments and complaints are part of our Customer Services processes, and the information you give to us is covered by the Customer Services Enquiries Privacy Notes.
- 8.5 Please note that if your complaint is about a data protection matter, this will be referred to the Council's Data Protection Officer.
- 8.6 Details on our Complaints Policy can be found here: <https://www.melton.gov.uk/strategies/digital-customer-service-and-communications/customer-feedback-and-complaints-policy/>
- 8.7 Conduct Towards Officers

The Council is committed to ensuring that its Officers are able to carry out their work safely and without fear and will use legal action to prevent abuse, harassment or assaults on Officers.

9. Equality Impact Statement

- 9.1 The Planning Enforcement Policy has been subject to an Equality Impact Assessment to ensure that the objectives and actions contained in the Plan fully consider positive outcomes on the grounds of age, disability, gender, race, religion/belief, sexuality and socio-economic circumstances.
- 9.2 If you need this information in large print, Braille or another language please telephone 01664 502502 or email contactus@melton.gov.uk

10. Review and Monitoring

- 10.1 This policy will be reviewed and updated with changes in legislation, guidance or other circumstances which may impact on the principles set out in this document. It will be routinely reviewed every five years.
- 10.2 The performance of the Planning Enforcement Policy will be monitored in accordance with the Council's performance management framework. Quarterly updates will be provided to the Cabinet on corporate measures and an annual update will be presented at the meetings of Planning Committee as well as the Council on the performance of agreed indicators.

11. Record Keeping Protocols and Data Management

- 11.1 In accordance with section 188 of the Town and Country Planning Act 1990, we hold a register of all enforcement notices, stop notices and breach of condition notices served. This is available for inspection by the public. Anyone wishing to view the register via prior appointment, should do so by contacting the Council's Planning Development Manager.
- 11.2 In accordance with the General Data Protection Regulation (and Data Protection Act 2018), Freedom of Information Act 2000 and Environmental Information Regulations 2004, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have informed the Council.