

Planning (Listed Buildings) Prosecution Policy Guidance

1 Introduction

Listed buildings are a finite resource and an irreplaceable asset and Cheltenham Borough Council is committed to protecting our historic environment. One of the ways that the Council can achieve this is to prosecute offenders as a deterrent to others.

This document sets out the Council's policy in respect of prosecutions and cautions and ensures that everyone knows what principles the Council applies when carrying out its work.

The aim of this policy is to ensure fair, proportionate and consistent treatment to those persons who may have committed an offence.

2 The evidential test

The first matter the Council will look at when considering a caution, administrative penalty or a prosecution is whether there is enough evidence to prosecute the matter. This is the evidential test. If the case does not pass the evidential test it must not go ahead no matter how serious or important the case may be. In order for a case to pass the evidential test there must be enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge.

As part of the process the Council must consider what the defence case is and how it is likely to affect the prosecution case.

Note: A realistic prospect of conviction is an objective test; it means that a jury or a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and also whether or not it is reliable.

If the evidential test is satisfied then the most appropriate way of dealing with the matter will be assessed, these options are outlined below.

3 The options

3.1 Caution

The purposes of a formal caution are:

- to deal quickly and simply with less serious offenders
- to divert them from unnecessary appearance in the criminal courts: and
- to reduce the chances of them re-offending.

The following conditions should be met before a caution can be administered:

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- the offender must admit the offence
- the offender must understand the significance of the caution and give informed consent to being cautioned (Note: these guidelines reflect National Standards for Cautioning (Revised)).

3.2 Prosecution

The Council can also institute criminal proceedings against a claimant. Prosecution will be considered in the most serious cases. The Council can prosecute for a number of different offences. When deciding what a defendant should be charged with, the Council will select charges which:

- reflect the seriousness of the offending;
- give the court adequate sentencing powers; and
- enable the case to be presented in a clear and simple way.

The Council will not charge more offences than are necessary.

When considering which course of action is the most appropriate the Council will consider the factors outlined below. This is called "the Public Interest Test"

4 The public interest test

The more serious the offence is the more likely it is that a prosecution should take place however the Council will weigh public interest factors carefully.

The following lists of public interest factors are not exhaustive. The factors that apply will depend on the facts in each case.

4.1 Public Interest factors in favour of prosecution:

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a conviction is likely to result in a significant sentence
- the defendant was in a position of authority or trust
- the evidence shows that the defendant was a ringleader or organiser of the offence
- there is evidence which shows that the offence was premeditated
- there is evidence that shows that the offence was carried out by more than one person acting alone
- the defendant's previous convictions or cautions are relevant to the present offence
- the evidence shows that there was an element of corruption
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- the defendant is alleged to have committed the offence whilst under an order of the Court
- the offence, although not serious in itself, is widespread in the area where it was committed
- the offence was committed over a significant period of time
- the feature that was altered or destroyed was important
- the feature cannot be replaced or replicated

4.2 Public Interest factors against prosecution

A prosecution is likely to be less needed if:

- the court is likely to impose a very small or nominal penalty
- the offence was committed as the result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- there has been a long delay between the offence taking place and the date of the trial unless the offence is serious, the delay has been caused in part by the defendant, the offence has only recently come to light or the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- the defendant is elderly or is, or was at the time of the offence suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated; or
- the defendant has put right the loss or harm that was caused (but the defendant must not avoid prosecution simply because they have repaired the damage)

Conclusion

This policy is designed to ensure that everyone knows the principles the Council applies when carrying out its work in relation to prosecution of listed building offences.

The policy is intended to ensure that defendants involved in the criminal justice system are treated fairly but prosecuted (or dealt with in other ways) effectively.