

BABERGH DISTRICT COUNCIL

From: Head of Economy	Report Number: P114
To: Strategy	Date of meeting: 12 March 2015

NEW JOINT PLANNING ENFORCEMENT PLAN

1. Purpose of Report

- 1.1 To recommend the introduction of a joint Local Planning Enforcement Plan for both Babergh and Mid Suffolk District Councils.

2. Recommendations

- 2.1 That the Joint Local Planning Enforcement Plan attached as an Appendix to this report be adopted with immediate effect.

The Committee is able to resolve this matter.

3. Financial Implications

- 3.1 The costs of implementing the new policy will be met from existing revenue budgets.
- 3.2 Any legal action associated with individual enforcement cases will be dealt with from existing budgets.
- 3.3 The potential costs of not updating the policy on an Authority-wide basis are difficult to quantify. Failure to operate to an up-to-date enforcement policy base could have a significant resource impact on the authorities. This includes costs in the following areas:
- Aborted revenue costs in investigating breaches of planning control against unclear policy objectives.
 - Costs associated with defending legal actions against an ill-defined policy base can result in significant cost awards against the Local Planning Authority for 'unreasonable' behaviour. Such costs can vary between several thousand pounds up to six figure claims.

4. Risk Management

- 4.1 This report does not link with any of the Council's Significant Business Risks. However, there are key risks, set out below, from continuing to rely on the Council's existing, outdated Enforcement Policy:

4.2

Risk Description	Likelihood	Impact	Mitigation Measures
Pursuing inappropriate cases against an outdated system of prioritisation. This is wasteful of officer time.	2 - unlikely	2 - noticeable	Adopt the joint Local Planning Enforcement Plan and manage risks operationally.
Having a poor success rate at defending appeals against formal legal action.	3 - probable	2 - noticeable	Adopt the joint Local Planning Enforcement Plan and manage risks operationally.
Increasing the potential for awards of costs against the Council for unreasonable behaviour.	3 - probable	3 - bad	Adopt the joint Local Planning Enforcement Plan and manage risks operationally.
Attracting, via the Council's complaints system, complaints of unsystematic and inappropriate use (or non-use) of powers. Responding to complaints is resource intensive.	3 - probable	2 - noticeable	Adopt the joint Local Planning Enforcement Plan and manage risks operationally.
Failing to adopt 'learning outcomes' and embed these within the service via proper training programmes for both officers and elected Members.	2 - unlikely	2 - noticeable	Adopt the joint Local Planning Enforcement Plan and manage risks operationally.

5. Consultations

- 5.1 The draft Plan has been circulated to Members of the Political Leaders Group for comment and to Council officers who will both utilise the Plan and those who authorise and manage the relevant Officers.
- 5.2 The Council's Legal team has provided comments on the content of the draft Plan, and revisions have been made in accordance with those recommendations. The Head of Economy – Planning Sustainable Growth has also provided comments on the draft Plan, and those have been incorporated in to the document.
- 5.3 No other responses or representations have been received following the consultation on the draft Plan.

6. Equality Analysis

- 6.1 A key aim of the Enforcement Plan is to remove the possibility of any discrimination in access to and provision of an Planning Enforcement service, through the provision of a clear prioritisation and investigation process for reported incidents.

7. Shared Service / Partnership Implications

- 7.1 As mentioned above, this joint Enforcement Plan aligns the Enforcement Policies of both Babergh and Mid Suffolk District Councils. The Enforcement Plan will be presented to Mid Suffolk District Council's Executive Committee for approval on 9 March 2015.

8. Key Information

- 8.1 The draft joint Enforcement Plan in Appendix A is to replace the existing risk-based enforcement policies at either Council. The update follows changes to national planning policy; the preparation by both Councils of a joint and 'over-arching' Corporate Enforcement Statement of Policy covering all of their regulatory functions; the formation of a single officer structure; and the on-going Transformation Review of all of the Planning services. The National Planning Policy Framework states that Councils should consider publishing their own local enforcement plan to manage how and when they use their enforcement powers. The previous risk-based planning enforcement policy clarified which cases officers would prioritise and what the Council would investigate. However, the policy provided little detail on how investigations are conducted and when officers will take the decision to enforce. The prioritisation schemes and timescales for carrying out enforcement investigations are also different at the two authorities, which causes unnecessary difficulties and inefficiencies with a single officer structure. The replacement Enforcement Plan will:

- define objectives and priorities which are tailored to local circumstances;
- set out the priorities for enforcement action, which will inform decisions about when to take enforcement action and help to manage customer's expectations in respect of the progression of complaints through the system;
- explain how officers will conduct investigations of alleged breaches of planning control and the timescales for carrying out investigations;
- set meaningful indicators which can be measured to monitor performance and as a means by which to assist the processing of complaints;
- provide greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers;
- provide greater certainty for all parties engaged in the development process; and

- assist in simplifying procedures and thereby improving the efficiency of the joint enforcement team.

9. Appendices

Title	Location
(a) Proposed draft Joint Local Planning Enforcement Plan	Attached

10. Background Documents

- 10.1 National Planning Policy Framework, Department for Communities and Local Government, 2012.

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BABERGH DISTRICT COUNCIL

AND

MID SUFFOLK DISTRICT COUNCIL

JOINT LOCAL

PLANNING ENFORCEMENT PLAN

Draft Version 0.4, 19.02.2015

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1.0 INTRODUCTION

Legislative and National Policy Context

- 1.1 The aim of the planning enforcement function is to discourage unauthorised development and where planning breaches are evidenced, to take proportionate action to remedy any harm to amenity, or the built or natural environment. These aims mirror current government policy for planning enforcement, which is set out in the National Planning Policy Framework, and states:

“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”.

- 1.2 The planning enforcement function works within a legislative framework. However, there is also policy, guidance and case law which through their collective interpretation further shape how we operate our enforcement activities and make decisions. These include, but are not exclusive of the following:

- Legislative requirements (e.g. Town and Country Planning Act 1990; Planning (Listed Buildings and Conservation Areas) Act 1990; Planning and Compensation Act 1991; Police and Criminal Evidence Act 1984; and Human Rights Act 1998).
- National Planning Policy Framework and other government guidance, material in any planning (enforcement) decisions.
- The Core Strategy Local Development Framework documents of the Councils and any other material planning considerations.
- The Government’s ‘Enforcement Concordat’ which has been adopted by the Councils and the principles of which are enshrined in the Councils’ ‘Corporate Enforcement Statement of Policy’.

- 1.3 The purpose of the Councils’ Planning Enforcement service is to investigate alleged breaches of planning control and consider appropriate remedial action to safeguard and protect the stakeholders and environment of Babergh and Mid Suffolk in support of the extant planning policies of the Councils. This Plan makes clear what those undertaking unauthorised development and those objecting to it should expect from us and explains how we will prioritise and undertake investigations. In summary, we will place a high priority on compliance with planning law. However, we also recognise that many breaches of planning law, although unlawful, do not constitute a criminal offence (until there is non-compliance with an enforcement notice) and so we will exercise discretion in taking enforcement action only if it is considered reasonable and expedient to do so. Each breach will be considered on its own facts.

- 1.4 In considering any enforcement action, the decisive issue will be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings, or be contrary to the policies of the Development Plan and National Planning Policy, and therefore merit such action in the public interest.
- 1.5 Enforcement action is not to be taken simply because there has been a breach of planning control; it is not a "punitive" measure. In accordance with Government guidance, we will not take action in respect of a 'trivial' or 'technical' breach of planning control which causes no harm. Where there is harm we will take action to remedy that harm through negotiation and when necessary, formal action. Where formal action is taken we will set out our reasons for doing so. Likewise, where we do not intend to take action we will explain why it is not considered 'expedient'.

2.0 APPROACH – PRINCIPLES AND OBJECTIVES

Principles

2.1 This Plan is based on the following key principles for enforcement:

- All legitimate complaints regarding alleged breaches of planning control will be investigated;
- Complaints will be prioritised for investigation, dependent on their gravity, impact upon local amenity and the material planning considerations involved;
- Complainants' identities will be kept confidential unless agreements have been obtained allowing personal information to be disclosed, or subsequent court action warrants their evidence being made public. Complainants will be informed of the progress of investigations and of eventual outcomes;
- Enforcement action is discretionary and will only be taken where it is expedient to remedy environmental harm and when it is in the public interest; and
- Enforcement action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.

Objectives

2.2 The Councils establish the following objectives for implementing this Plan:

- To uphold planning law and local planning policy and to ensure that the credibility of the planning system is not undermined;
- To ensure that the undesirable effects of unauthorised development are remedied;

- To ensure the timely and thorough investigation of complaints;
- To seek a quick and effective resolution to harmful breaches of planning control;
- To strike a measured and appropriate balance between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, in accordance with the principles of the National Planning Policy Framework; and
- To carry out all enforcement duties in accordance with the principles of the Enforcement Concordat, particularly with respect to openness, helpfulness, proportionality and consistency.

3.0 RESOURCES

- 3.1 This Plan has been drawn up with regard to the availability of resources and the demands on the service.
- 3.2 The Planning Enforcement team is part of the Councils' Economy division, working alongside the Development Management, Heritage and Spatial Planning Policy teams. The Planning Enforcement team investigates around 400 cases every year across the two districts. The Councils employ 5.6 full time equivalent Planning Enforcement Officers, supported by one full time equivalent Administrative and Technical Support Officer. Officers report directly to the Corporate Manager for Planning Enforcement.
- 3.3 Due to the complex nature of enforcement and the potential legal implications it may have, cases can often take many months to fully investigate and resolve. It is therefore important that a smaller number of investigations are undertaken thoroughly, as opposed to spreading the service too thinly and as a result, risk compromising desired outcomes. With this in mind, we aim to have no more than 200 cases under investigation at any one time at either authority. This means that on occasions the investigation of some alleged planning breaches may not get first priority and may be postponed. This decision will be made in accordance with the priority system set out in Section 6.0 below.
- 3.4 There is no 'out of hours service' to investigate planning breaches that are alleged to be taking place, and require investigation, outside of normal working hours. Notwithstanding the above, officers will make best efforts to be flexible, according to the requirements of an investigation. The Planning Enforcement team will also seek support from other Council teams who more regularly work out of hours, to assist as far as possible.
- 3.5 The Councils are committed to ensuring that its officers are able to carry out their work safely and without fear and intimidation. Where appropriate, the Councils will use legal action and any other means available to prevent or respond to abuse, harassment or assault on its officers.

4.0 BREACHES OF PLANNING CONTROL

4.1 The Planning Enforcement team will investigate and where expedient, enforce against any breaches of planning legislation including the Town and Country Planning Act 1990 (as amended).

4.2 However, before discussing what a breach of planning legislation is, it is important to understand what a breach **is not**. The following is a list of activities which are commonly mistaken by the public as being breaches:

- Operating a business from home where the residential use remains the primary use and there is no significant and adverse impact upon the amenity of neighbouring residents. For example:
 - A tradesperson who parks their work vehicle on their driveway at home or other business vehicles on the public highway would not require planning permission.
 - The use of one room in a house by the occupier to carry out a business with no employees or visitors to the property in relation to that business use would not require planning permission.Other cases are investigated to assess, if as a matter of fact and degree planning permission would be required. For example, an occupier employing several staff, and receiving a number of customers in relation to that business use within a number of rooms in a house is likely to require planning permission.
- Parking of a caravan within the curtilage of a residential property, providing it is not lived in.
- Obstruction of a highway or public right of way, or parking of commercial vehicles on the highway in residential areas or on grass verges.
- Land ownership or boundary disputes (these are a civil matter).
- Adverts which have deemed consent in accordance with the Town and Country Planning (Control of Advertisement) Regulations 2007 (as amended).
- Breaches of restrictions imposed by deeds and covenants (these are a civil matter).
- Where development is 'permitted development', as defined in the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), and any subsequent amendments.
- Activities incidental to the residential use of a dwelling. Hobbies or activities within the curtilage of a dwelling are likely to be incidental to the enjoyment of the dwelling and therefore would not require planning permission. For example, a householder repairing their car on their property would not require planning permission, but a householder running a car repair business would probably require planning permission.
- Clearing land of undergrowth, bushes and trees provided they are not protected trees and are not within a conservation area or protected by a planning condition.
- Security lighting fixed to existing buildings.

Breaches of Planning Legislation

4.3 Building Works, Change of Use or failure to comply with Planning Conditions

Local Planning Authorities are primarily concerned with 'development', which is defined in the Act as either:

- Operational Development e.g. building or engineering works; or
- Material Changes of Use, or changing from one use to another e.g. residential to business.

'Development' is **not**:

- Works which affect only the interior of the building; or
- Works which do not materially affect the external appearance of the building.

If there is no 'development' there is no breach of planning control and no further action is available to the Local Planning Authority under its planning powers.

4.4 Development needs Planning Permission.

There are two main types:

- Deemed permission granted under the GPDO, known as "Permitted Development". Some permissions under the GPDO are subject to limitations and conditions. **Provided the development falls within the terms of the GPDO, planning permission is not required from the Local Planning Authority and there is no further action that we can take.**
- Express permission (full or outline) granted following the submission of a planning application to the Local Planning Authority. Conditions need to be expressly imposed by the Local Planning Authority or Planning Inspectorate on Appeal.

4.5 In summary, a breach of planning control may result from:

- Carrying out work either without planning permission or in a way that is different to that which has been granted planning permission.
- Carrying out work without compliance with planning conditions attached to a planning permission, or not in accordance with the limitations and conditions set out in the GPDO.
- Changing the use of land or property without planning permission or without compliance with the limitations and conditions set out in the GPDO or Town and Country Planning (Use Classes) Order 1987 (as amended).

Carrying out Unauthorised 'Development' is not a criminal offence.

4.6 Cases involving Listed Buildings

Works which affect the reasons why a listed building is listed require Listed Building Consent. Where works have been carried out without consent a criminal offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to commence criminal proceedings and/or serve a Listed Building Enforcement Notice to make sure that appropriate remedial works are undertaken.

4.7 Advertisements

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of some classes of advertisements and signs without the need to get consent from the Local Planning Authority. Where an advertisement is being displayed without the appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to 'amenity' or public safety we will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time formal prosecution proceedings will be considered.

4.8 Works to trees subject to Tree Preservation Orders or within a Conservation Area

The Councils make Tree Preservation Orders (TPO) to protect visually important trees, particularly where they are threatened by development. Similar protection applies to trees within Conservation Areas. It is a criminal offence to cut down, top, lop, uproot, wilfully destroy or damage a protected tree in a manner likely to destroy it, without the Council's consent. If work is undertaken without consent we will assess the nature of the works and whether it is in the public interest to prosecute. If a tree is removed completely it will also be the duty of the landowner to plant replacement trees of appropriate size and species in the same location as soon as reasonably possible.

4.9 Unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area and we sometimes receive complaints relating to such matters. Where the condition of land or buildings is causing significant harm to public amenity, consideration will be given to serving a notice under the Section 215 of the Town and Country Planning 1990. These powers can only be used in certain circumstances and not all cases are suitable. If we decide to serve a notice it will specify measures to improve the appearance of the land or buildings. If those measures are not taken within a specified time an offence has been committed.

5.0 HOW TO REPORT A POTENTIAL BREACH OF PLANNING CONTROL

5.1 Anyone who believes that a breach of planning control has occurred can make a complaint. Our best source of information about suspected breaches is often from members of the public. The information you provide may be crucial to our investigation.

5.2 You can report a potential breach by the following means:

- In person at our offices.
- By emailing us at:

Babergh District Council: dcenf@babergh.gov.uk

Mid Suffolk District Council planningenforcement@midsuffolk.gov.uk

- By writing to the Planning Enforcement team at either:

Babergh District Council
Corks Lane
Hadleigh
IPSWICH
IP7 6SJ

Mid Suffolk District Council
131 High Street
Needham Market
IPSWICH
IP6 8DL

5.3 You will be asked for, or you should provide the following information with your complaint:

- The full address or location of the site where the development/breach is taking place.
- The nature of the alleged breach and the planning harm caused.
- If relevant, give specific examples with dates and times to substantiate your complaint.
- The name (if known) and status of the person(s) involved e.g. owner/tenant/occupier/contractor/worker.
- The date when activities first began and if they are on-going.
- If the complaint relates to a change of use, state the previous use of the site.
- Your full name, postal address and contact details, including telephone number **must** be included with your complaint and where possible an email address. Where an email address is provided we will generally use this to keep you informed of progress.

5.4 To avoid malicious complaints, **anonymous allegations of breaches of planning control are not normally investigated**. You should, however, be aware that if you give your name, address, or any other details, they will be treated in the strictest confidence so far as legislation permits.

Anonymous complaints may be accepted at the discretion of the Planning Enforcement service if the matters raised constitute a criminal offence such as works to protected trees and listed buildings, or where there is irreparable and immediate harm to public safety or the natural or built environment.

- 5.5 The Council will seek to maintain the confidentiality of complainants at all times. We will not reveal the identity of the complainant, or information which is likely to reveal the identity of a complainant, to the perpetrator of an alleged breach. We may be asked to reveal the identity of a complainant under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. However, any decision we make to reveal this information under the above legislation would need to show that the public interest in disclosure outweighed the risk in withholding the information. If formal legal action is taken, the identity of a complainant may be required to be disclosed during court proceedings.
- 5.6 The substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and potentially acting as a witness at an appeal or in Court. The investigating officer will explain what may be required in these cases. Once a breach of control has been confirmed, you may be asked to make a note of your observations and keep a log of any relevant activities. It is particularly useful to note times, dates, names, addresses, telephone numbers and registration details of any vehicles involved.
- 5.7 If you also raise your concerns with your local District Councillor or your Town or Parish Council please advise them of any contact you may have had with the Planning Enforcement team. Give them the name of the officer who is dealing with your complaint and the Council's reference number.
- 5.8 If you also raise your concerns with your local District Councillor or your Town or Parish Council before you have contacted the Planning Enforcement team please make that clear to them. The Town and Parish Councils are not the responsible authority for taking planning enforcement action, the responsibility lies with the District Council. Your local District Councillor or Town or Parish Councillor may be willing to pass on your concerns, but it is by no means certain that they will do so unless you specifically agree this with them.
- 5.9 If a complaint is received from a District Councillor or Town or Parish Council on your behalf we will respond to them. If they provide us with your contact details we will update you too. Ultimately, it will be your responsibility to ensure that your concerns are made known to the Councils' Planning Enforcement team. The priority we give to an investigation does not change because we receive it from a District Councillor or a Town/Parish Council.

6.0 HOW WE PRIORITISE INVESTIGATIONS INTO ALLEGED BREACHES OF PLANNING CONTROL

- 6.1 The two Councils receive around 400 complaints of alleged breaches of planning control every year. Cases reported may or may not require a site inspection and may be referred to other departments or agencies as appropriate. Due to the often lengthy and complex nature of planning investigations and staff resources available, priority will be given to those cases where the greatest harm is being caused.

- 6.2 When complaints are first received each case will be assigned a priority dependent upon the nature of the alleged breach. This initial assessment will be dependent upon the information provided at the time and the harm that is identified, such as possible harm to the environment or public and/or planning significance. It is therefore very important that you tell us what impact the development is having on you or the environment.
- 6.3 All cases will be kept under review which could result in the priority assigned to the investigation changing, for example after an initial site visit has been carried out and the officer has had the opportunity of assessing the alleged breach.
- 6.4 Allegations relating to breaches of planning control will be investigated thoroughly and will be categorised as follows:

High Priority – Any immediate and irreparable harm to the natural or built environment, or public safety. For example:

- Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area) or any other development that causes irreversible demonstrable harm;
- Unauthorised works to protected trees covered by a Tree Preservation Order or in a Conservation Area, or the removal of hedgerows to which the Hedgerow Regulations apply; or
- Any unauthorised development/activity/operation, falling within planning control that presents an immediate and serious danger to the public.

Medium Priority – Any unauthorised development or activity which causes clear and continuous harm or danger to the public; or the built or natural environment, including the living conditions of residents; or where there is a risk of material harm to the environment and/or some harm to residential amenity. For example:

- Breaches of conditions precedent, or breach of a condition which results in serious demonstrable harm to amenity in the neighbourhood;
- Breaches of conditions to a Listed Building Consent;
- Dangerous vehicular access arrangements;
- Where works, or uses, have the potential to cause material long term damage to the environment; or
- Developments and uses which are clearly contrary to established policies.

Low Priority – Breaches of planning control causing limited, or no material harm to the environment, or the amenity of residents. For example:

- Unauthorised uses or development, which would be likely to receive planning permission;
- The display of unauthorised advertisements outside areas of special significance and where there are no highway safety implications; or
- Cases involving a trivial or technical breach of planning control, or where it is unlikely that there is a breach of control.

7.0 HOW WE INVESTIGATE ALLEGED BREACHES OF PLANNING CONTROL

7.1 Where an officer has a conflict of interest regarding any particular enquiry, the matter will be assigned to another officer to investigate.

7.2 We will acknowledge all requests in writing, (by email where we have been provided with an address) within three working days of receiving it, and we will provide the name and contact details of the Planning Enforcement Officer who will be involved.

7.3 When a complaint is received, we will endeavour to visit or seek to make contact with the person responsible for the activities within the following timescales:

- High Priority cases – within 3 working days, although staff will endeavour to visit the same day where resources allow.
- Medium Priority cases - within 5 working days.
- Low Priority cases - within 15 working days.

7.4 We will investigate by looking at records and visiting the site. We may also need to seek further information from the complainant or the person carrying out the unauthorised work. Matters relating to works to trees or to listed buildings may have to be referred to specialist officers.

7.5 Firstly, we have to check to see whether any ‘development’ has occurred as defined in the legislation and detailed in Paragraph 4.3 above. **If there is no ‘development’ then there is no breach of planning control and no further action can be taken under the planning legislation and we will therefore close our file.** We will write or contact you to explain this.

7.6 If it is established that there has been ‘development’, the types of questions which we will ask might include:

- Is planning permission required?
- Has permission already been given? (most planning permissions can be taken up at any time within 3 years from the date permission was granted and once partially put into action, there is no time limit on final completion).
- Is the matter serious enough to warrant action?
- Where planning permission has not been granted, are the activities generally acceptable in planning terms?
- Where the activities or development are undesirable yet controllable by the Councils’ planning enforcement powers, what is the most appropriate action to take?

7.7 A similar process will be followed in respect of alleged breaches of planning control relating to advertisements, works to listed buildings, works to protected trees, in terms of asking:

- Is consent required?
- Has the appropriate consent been obtained?
- Is the matter serious enough to warrant action?
- Where consent has not been granted, is further action necessary?
- Where the activities or development are undesirable yet controllable by the Councils' planning enforcement powers, what is the most appropriate action to take?

Enforcement Decisions

7.8 If there is a breach of planning control, we will consider what action to take. In deciding whether to take enforcement action, the Councils will have regard to the relevant Development Plan and to any other material considerations, including national policies as expressed through the National Planning Policy Framework and associated guidance.

Planning 'Expediency' and 'Harm'

7.9 Even when it is technically possible to take enforcement action, the Councils are required first to decide whether such formal action would be 'expedient'. Formal enforcement action is discretionary and the relevant planning circumstances of each case must be considered in the first instance.

7.10 The 'expediency' test is therefore whether the unauthorised activities are causing harm having regard to the Development Plan policies and other material planning considerations. In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will also be proportionate to the breach of planning control to which it relates. This approach to enforcement reflects that set out in the National Planning Policy Framework and associated guidance.

7.11 Formal action will only be taken where there is significant harm in planning terms. Harm takes many different forms. It includes the impact on visual or residential amenity, on highway safety, on the amenity of the public in general, the occupiers and users of surrounding land and buildings or the environment in general. Harm may occur through damage to the area's historic buildings and environment, for example, unauthorised work to listed buildings, or if the conditions attached to the consent are not properly complied with. The demolition of an unlisted building in a Conservation Area can also cause harm. Harm can also occur even if a development does not have any of the characteristics outlined previously.

If unauthorised development undermines the policies of our Development Plans, or could set a precedent which, if repeated, would undermine the policies of the Development Plans, then planning harm is caused.

7.12 The planning enforcement system operates to protect the public interest, rather than the interest of particular individuals, and so there are certain issues that we cannot take into account. For example:

- loss of value to property;
- competition with other businesses;
- rights to a view;
- trespass; or
- breaches of covenants.

These are not planning matters and therefore we do not include them in any assessment of harm.

7.13 In deciding whether or not to pursue enforcement action we will also make an assessment of what evidence is available to support such action and any claims that the development in question is immune from enforcement.

7.14 The main issue will be whether, if left un-addressed, the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This will involve Human Rights considerations of both the landowner and those affected by the unauthorised development. Any action taken will be confined to what is necessary and proportionate in the circumstances of the case.

7.15 Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In accordance with the Human Rights Act 1998, if there is any question of enforcement action interfering with that right then Councils will consider in each case whether the wider impact of the breach overrules the owner's right to the peaceful enjoyment of his property.

7.16 Circumstances may also arise where there are conflicting priorities between the amenity and environmental aspects of a breach of planning control. In reaching such a decision we will balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm, but whose progress might be delayed as a result. Due regard will be given to the conflicting priorities when making decisions on whether or not it is expedient to take enforcement action.

7.17 In summary, we will only take enforcement action when it is considered expedient to do so, even if there is a clear breach of planning control:

- Enforcement action will not be taken if the breach of planning control does not unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

- Enforcement action will not be instigated solely to overcome a trivial or technical breach of planning control which causes no significant harm to amenity in the locality of the site.

In these circumstances we will close the case file and notify everyone who has been involved in the investigation. We will also, without prejudice to the outcome, notify the owner that they can make an application to seek regularisation.

Staged Approach to Enforcement

7.18 We will give those responsible for a breach of planning control the opportunity to undertake required actions, or attempt to reach a negotiated solution that suits all parties. Where it proves necessary to resolve a significant breach of planning control, and in accordance with the with the Councils' scheme of delegation, officers will consider whether it is appropriate to issue a statutory notice, prosecute and/or carry out works in default. The choice of action in each case will be:

- No further action - no breach has occurred.
- Breach is immune from any planning enforcement action, the work or use is "lawful" (see Paragraphs 7.22 - 7.27 below).
- Not expedient to take action. It is a trivial or technical breach or there is no significant harm to amenity or the environment.
- Regularisation - cessation of use/works, retrospective application, discharge of conditions.
- Formal action - enforcement or other formal notice, Simple Caution, prosecution, Injunction, works in default.

7.19 Where a breach of planning control has been identified, unless circumstances require immediate action, a staged approach to formal enforcement action will always be adopted by a combination of the following, as appropriate in each case:

Step 1

- Give advice e.g. informal letter.
- Seek to negotiate, allowing an opportunity for cessation of works/use or reinstatement of land.
- Invite a planning application if permission may be forthcoming, non-material minor amendment or to discharge of conditions.

Step 2

- Formal letters, written warnings.
- Issue a Planning Contravention Notice to obtain more information.
- Request an application for a Lawful Development Certificate, which requires information from the applicant to establish that the development is immune from enforcement action.

Step 3

- Where a breach of planning control has been identified and no action has been taken to address the breach it will be necessary to consider formal action in the form of an Enforcement Notice and Stop, or Temporary Stop Notice. Where formal action is taken then every effort will be made to explain to the recipients what is required of them, the consequences of non-compliance and the available rights of appeal.
- Where an enforcement notice has not been complied with this will include consideration of prosecution proceedings or direct action.

In High Priority cases, Steps 1 and 2 may be omitted.

Retrospective Planning Applications

- 7.20 An investigation will first establish whether a planning permission or consent is required and whether it is likely that a permission or consent would be granted. Planning legislation specifically allows for retrospective applications to be made and more often than not, unauthorised developments can be regularised through a retrospective application. Where necessary the Local Planning Authority can impose conditions to make the development acceptable.
- 7.21 Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible will normally be invited to submit a retrospective planning application.

Where a breach has taken place and a retrospective planning application submitted, this will be treated in the same manner as a prospective planning application. For matters requiring immediate attention a planning application should not hold up any urgent action. The Councils may decline to determine an application in relation to any part of an application on which an enforcement notice has been served and relates to the identified breach, as long as the notice is served before the application is received.

Immunity and Lawful Development

- 7.22 There may also be cases where it will be too late for us to take any further action. A breach of planning control becomes immune from enforcement action if no action has been taken within certain time limits set out in the Town and Country Planning Act, namely:
- Four years from the substantial completion of operational development and from the change of use of any building to a single dwelling house, including use as flats.
 - Ten years for all other breaches (i.e. change of use or breach of conditions, other than those related to use as a single dwelling house).

In essence if operational development i.e. building works took place more than 4 years ago or a change of use of land or buildings took place more than 10 years ago, then such development would become 'lawful' and immune from any planning enforcement. The planning merits do not fall to be considered in such cases.

- 7.23 The reasons for the time limits are that if a building has been in situ for more than 4 years without complaint or a use continued for 10 years, then it is unlikely that such development has resulted in any harm.
- 7.24 In cases where the development may be immune from planning enforcement action we will invite an application for a Lawful Development Certificate for an existing use or operation or activity, including those in breach of a planning condition. The onus is on the applicant to demonstrate through the submission of evidence such as sworn statements, photographs, receipts etc. that the development is lawful. The test is 'on the balance of probability'. The planning merits of the case do not fall to be considered.
- 7.25 Where the person (subject) of an investigation disputes that a breach has or is taking place, they have the opportunity to apply for a Lawful Development Certificate to determine the matter.
- 7.26 Certificates granted for an existing use, operation or activity will set out the precise nature of the use, operation or activity which is certified as lawful. The Certificate does not protect against the Local Planning Authority taking enforcement action if the use 'materially' changes without making a planning application for it. Any significant change from what is specified may result in some enforcement action against it.
- 7.27 It is also possible to apply for a Certificate for a proposed use or operation. This will confirm or otherwise that the development proposed is permissible without the need to make a planning application for it, for example because the works would be 'Permitted Development'. Again the planning merits do not fall to be considered.

Formal Enforcement Action

- 7.28 Whilst we will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set by the investigating officer, commensurate with the priority accorded to the case.
- 7.29 Where an informal approach fails, negotiations will 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 (bearing in mind the statutory time limits for taking enforcement action). We will not allow prolonged negotiation to delay essential enforcement action and will use the powers available to us if informal methods have not succeeded, or if there is a serious breach of planning control.

7.30 In considering formal enforcement action, we will have regard to the particular circumstances of each case and the degree of harm or potential harm resulting from the breach of planning control and will use enforcement powers commensurate with the seriousness of the breach.

7.31 Having decided to pursue formal enforcement action, the following options are available to us, although not all of these will be suitable in every case:

- To serve statutory notices (including: Planning Contravention Notices; Enforcement Notices; Listed Building Enforcement Notices; Stop Notices; Temporary Stop Notices; Breach of Condition Notices; Untidy Sites Notices; Hedgerow Retention/Replacement Notices, High Hedges Remedial Notices);
- To issue Simple Cautions;
- To prosecute (including prosecution for: non-compliance with a statutory notice; unauthorised display of an advertisement; unauthorised works to a listed building; non-compliance with a requirement to replace a protected tree or for unauthorised work to a protected tree);
- To take direct action; or
- To apply for an Injunction.

Further details of the enforcement tools are given in Appendix 1. In determining what type of enforcement action to pursue in each case, we will have regard to our joint 'Corporate Enforcement Statement of Policy', as supplemented by this Plan.

Delegated Decisions

7.32 The authority to serve planning contravention and enforcement notices has been delegated to Planning Enforcement Officers under the Councils' Constitution and Scheme of Delegation. Enforcement Notices will only be served with the prior approval of the Corporate Manager – Planning Enforcement or the Senior Planning Enforcement Officer. Reasons for these decisions will be recorded in writing.

7.33 In a similar manner, cases will only be closed with the prior and recorded approval of the Corporate Manager – Planning Enforcement or the Senior Planning Enforcement Officer, following recommendation of the case officer, who will be required to evidence and justify their reasons for doing so.

Appeals against Enforcement Notices

7.34 Appeals may be lodged against enforcement actions to the Secretary of State. When appeals are lodged, each case will be reassessed having regard to the grounds of appeal and at that stage account will be taken of the cost implications.

- 7.35 In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account. It will however, be expected that on the planning merits that led to the enforcement action, cases will be defended by the Councils at appeal.

8.0 MONITORING CONDITIONS AND AGREEMENTS

Planning Conditions

- 8.1 The Councils do not have dedicated officers to monitor compliance with planning conditions. However, the discharge of conditions will be overseen by the assigned Development Management Officer as part of a 'total case management' approach. Non-compliance of conditions will only be referred to the Planning Enforcement team if developers or owners are not responding to approaches made by the Development Management Officer, or the breach occurs following the completion of the development and it has been brought to our attention.

Legal Agreements

- 8.2 Where obligations are not being met, legal action will be taken if negotiations or identified dispute procedures do not result in agreement. Where a financial contribution is not paid then the Councils' debtor systems will be used to recover funds owed.

9.0 INFORMATION, REPORTING AND PUBLICITY

Keeping complainants informed

- 9.1 Planning issues can evoke frustration and it is in everybody's interest for matters to be resolved as quickly as possible. However, every case is potentially different and a timescale target for resolving cases is not an appropriate tool for monitoring progress. One of the main frustrations of customers is not being kept informed of what officers are doing, or how the case is progressing towards a resolution.
- 9.2 In many cases due to protracted negotiations, inability to access property or make contact with the parties involved, there is nothing to report. It may seem in such cases, that no action is being undertaken, but this is not the case. Complainants will be kept informed as regularly as resources allow.
- 9.3 At each stage of our investigation we will update the person(s) who have drawn the matter to our attention. We will provide an initial response to all cases, other than low priority, with an explanation of our findings within **28 days**; low priority may take longer, up **42 days**. Thereafter potential stages of notification may include:
- After the site inspections to advise of the enforcement officer's findings and what the next actions will be;

- That the investigation stage is complete and the case has been closed. The reasons for closing the case will be given;
- If an application is submitted to regularise a breach;
- That formal action is being considered and a report is being prepared. Advice is given as to the decision-making process and the timescales involved;
- When a decision to take no further action has been made and the case has been closed. The reasons for closing the case will be given;
- That an enforcement notice has been served, the content of the notice and compliance period;
- If an appeal is lodged; and
- The outcome of any compliance site inspections following the enforcement notice taking effect, either with or without appeal.

Recording Alleged Breaches of Planning Control

- 9.4 The Planning Enforcement team will keep full and up to date records of all investigations undertaken, to inform and justify any future action, and to compile evidence as necessary e.g. for prosecutions.
- 9.5 All complaints and allegations received, subject to the anonymity clarification, will be recorded onto the Councils' Enforcement databases. The database will be updated as necessary during the course of an investigation. When a breach has occurred this will be recorded on the relevant database and the information retained.

Repeated Complaints

- 9.6 Where an alleged breach has been investigated and concluded, any enquiry relating to the same site, which is not materially different to the previous allegation or does not raise any new issues, will not be investigated. In addition, regular unfounded complaints from the same source may be considered vexatious and not investigated.

Public Register

- 9.7 Every local planning authority must keep an Enforcement Register. Details of all Enforcement Notices, Stop Notices and Breach of Condition Notices issued must be entered in the register. Every entry must be made within 14 days of the occurrence to which it relates. The details required to be entered are stipulated by the Town and Country Planning (Development Management Procedure) Order 2010 (as amended). The Register must be available for inspection by the public at all reasonable hours and indexed to allow a person to trace any entry by reference to the address of the land to which the notice relates.
- 9.8 Further information on the planning enforcement function is provided on the Councils' websites and is updated regularly. Copies of all notices served are available to view on request each Council's office headquarters.

- 9.9 Good publicity is important in deterring others from committing serious planning breaches, and reassuring members of the public of the Councils' commitment to enforcing against serious breaches in planning regulations. We will work with appropriate media to publicise the Planning Enforcement team's work and positive outcomes, including details of impending court cases and their outcome.

Comments and Complaints

- 9.10 The Councils are committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the service should first discuss any concerns with the Corporate Manager for Planning Enforcement.
- 9.11 If still dissatisfied, the Councils have a formal complaints procedure, details of which can be found on the Councils' websites. A leaflet can also be provided on request explaining how to make a complaint. The Councils regularly monitor complaints received through this procedure.
- 9.12 If anyone considers that we have not sufficiently investigated an issue, or that the decision not to initiate enforcement action is not well-founded, they may also, in certain circumstances, refer the matter to the Local Government Ombudsman, or apply to the High Court for judicial review. A leaflet explaining how to complain to the Local Government Ombudsman about possible Council maladministration is available on request, but it may be necessary to consult a solicitor about the possibilities of a legal challenge.

Monitoring and Review

- 9.13 All outstanding cases will be reviewed at three monthly intervals with the objective of determining whether it is expedient to continue with the investigation or action. The factors to be taken into account when such decisions are taken will include:
- The extent of harm caused to local amenity or acknowledged planning interests;
 - The impact on Development Plan policy;
 - The existence of other remedial powers; and
 - The threat to the integrity of the development control system.
- 9.14 This Plan and its standards will be reviewed every 3 years.

10.0 WHAT HAPPENS IF SOMEONE COMPLAINS ABOUT YOU?

- 10.1 We understand that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. Don't delay. It is in the interests of all parties if an identified breach can be addressed at an early stage.

- 10.2 The Local Planning Authority has a duty to investigate legitimate complaints alleging a breach of planning control, even if they prove to be unfounded. If you are contacted about an alleged breach you are entitled to know what the allegation is and to have the opportunity to explain your side of the case. However, we do not disclose the identity of the complainant to you. It may be that the matter can be resolved quickly if there is no breach. In other cases a resolution may be negotiated, however this does not mean that you can delay any response or action. We expect you to respond within the stated timescales and we will pursue prosecutions for failures to respond to formal notices.
- 10.3 We will not allow long drawn out negotiations to hold us back from taking appropriate action. In many cases, particularly where the works are likely to be acceptable, we may invite you to submit a retrospective planning application without prejudice to any decision the Council may take. In cases where planning permission has been obtained and the deviation from the approved plans is very minor, you may be entitled to apply for a non-material minor amendment. In cases where pre-commencement conditions have not been discharged, you may still be able to apply to discharge the condition or alternatively you may need to submit a new planning application.
- 10.4 You should be aware that development which requires, but does not have planning permission, is unauthorised. If you subsequently wish to sell a property which has been subject to unauthorised works or a change of use, you may find the sale is delayed or lost as a result when would-be purchasers carry out searches. You should also be aware that we usually make mortgage providers aware of breaches of planning permission and we will send them a copy of any formal notice or decision about planning enforcement.
- 10.5 The Planning Enforcement team will advise the Councils' Land Charges team of those sites where formal notices have been served, decisions have been made and where potential enforcement action remains outstanding.
- 10.6 You should be aware that Planning Enforcement Officers have legal rights of entry to land and property in order to investigate alleged breaches of planning control or compliance with enforcement notices. The enforcement officers will make themselves known to the landowner/developer when they enter a site. It is not always appropriate or possible to give advance warning of a site visit, although generally we will try to do so. In most cases a letter will be sent to you to alert you to a potential breach of planning control as soon as we are made aware of it and asking you to contact the officer dealing with the case.
- 10.7 An enforcement officer's visit may be unaccompanied; you do not have to be present. If it is necessary to enter your house, (as opposed to just the garden) you are entitled to 24 hours notice. If you actively prevent an enforcement officer from entering onto your land we will obtain a warrant to enter the site. Once we have secured a warrant, any obstruction to access the site will be considered a criminal offence.

- 10.8 We will use the information we get from a site visit to help assess the harm being caused and what further action we may need to take. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience.
- 10.9 You may be served with a Planning Contravention Notice or a Requisition for Information Notice, both of which require information concerning the alleged development. These notices are used to establish the facts of what has occurred and the details of those with an interest in the land, so that we may determine whether a breach has taken place and who is responsible.
- 10.10 If there is a breach, we will contact you to explain what the breach is and what needs to be done to resolve it. We will follow the procedures detailed in Section 7.
- 10.11 Planning Enforcement Officers will be happy to explain the different notices, and to help you understand the implications. We will endeavour to advise on the planning merits or otherwise of a development. However, Planning Enforcement Officers will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a qualified planning consultant or another appropriate property professional. If you cannot afford to employ a consultant you can contact 'Planning Aid', which is a voluntary service offering free independent, professional advice: www.rtpi.org.uk/planning-aid/.

GLOSSARY OF ENFORCEMENT TERMINOLOGY

Amenity

This is not defined in legislation, but in planning terms is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as:

- the types of land uses;
- the quality of the buildings;
- the juxtaposition of buildings;
- the provision of open land or trees; and
- the inter-relationship between all the different elements in the environment.

For example, an area with well-maintained houses that gives occupants space and privacy would be said to have better amenity than houses that are overlooked by their neighbours or are located next to a noisy factory.

Specifically residential amenity may take into consideration privacy – whether there is overlooking, over and above that which already exists, any overbearing impact or overshadowing or loss of light. There is no right in planning law to a particular view and we cannot take into consideration loss of monetary value of a property. Neither can we take into consideration matters which may be controlled under other legislation, for example light pollution from security lighting.

Expedient/Not Expedient

The Council does not have to take planning enforcement action even if there is a breach of planning control as enforcement action is discretionary. In deciding whether or not to take enforcement action we will balance the seriousness of a breach of planning control, the level of any harm that it causes and the likely chances of success in pursuing enforcement action against the seriousness of other enforcement complaints and the available resources. Having weighed up these factors we will make a decision as to whether we will take action i.e. if it is expedient to take action.

APPENDIX 1

SCHEDULE OF PRINCIPAL ENFORCEMENT TOOLS AND POWERS

Planning Contravention Notice (PCN)

The power to issue a PCN lies in Section 171C of the Town and Country Planning Act 1990, as amended. This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool. The notice requires details and information on an alleged breach of planning control to be submitted to the Local Planning Authority to clarify whether a breach has occurred. Failure to respond within 21 days, or submission of false or misleading information may result in prosecution and a potential fine.

Breach of Condition Notice (BCN)

The power to issue a BCN lies in Section 187A of the Town and Country Planning Act 1990, as amended. This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A BCN cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice. There is no right of appeal against a notice. Failure to comply with a BCN is an offence liable to prosecution and a fine of up to £1,000.

Enforcement Notice

The power to issue an enforcement notice lies in Section 172 of the Town and Country Planning Act 1990, as amended. The Local Planning Authority may issue a notice where it considers there has been a breach of planning control and it is expedient to do so i.e. the development is likely to be unacceptable in policy terms, or could not be made acceptable by the imposition of appropriate planning conditions. An Enforcement Notice requires rectification of the breach within a specified timescale and must specify:

- the land to which the notice relates;
- the reasons why it is expedient to take such action;
- the breach of planning control complained of;
- the steps required to remedy the breach;
- the date on which the notice comes into effect; and
- the period for compliance.

There is a right of appeal. An appeal may be made to the Secretary of State before the notice is due to come into effect, usually not less than 28 days after the date of issue. An appeal will suspend the notice until the appeal is determined.

Failure to comply with an Enforcement Notice within the time specified is a criminal offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Listed Building Enforcement Notices are similar to Enforcement Notices, but used where works have been carried out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such consent.

Stop Notice

The power to issue a stop notice lies in Section 183 of the Town and Country Planning Act 1990, as amended. A Stop Notice may be issued to support an Enforcement Notice. It has the effect of requiring a breach of planning control to cease. A Stop Notice is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the Enforcement Notice. It cannot be used to prohibit the use of any building as a dwelling house nor require the cessation of any activity which has been carried out for a period of more than four years prior to the service of the notice. Compensation may be payable by the Local Planning Authority if the Enforcement Notice to which the Stop Notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Temporary Stop Notice

The power to issue a Temporary Stop Notice lies in Section 171E – 171H of the Town and Country Planning Act 1990, as amended. It does not have to be accompanied by an Enforcement Notice. A Temporary Stop Notice can require the immediate cessation of a breach of planning control for a period of up to 28 days. During this 28 day period an Enforcement and Stop Notice can be served. There is no right of appeal. Failure to comply is an offence subject to prosecution, either in the Magistrates' Court where conviction can result in a fine of up to £20,000, or in the Crown Court where conviction can lead to an unlimited fine or even imprisonment.

Planning Enforcement Order

The Localism Act 2011 introduced the power for Local Planning Authorities to apply to a Magistrates' Court for a Planning Enforcement Order. The Local Planning Authority can apply for a Planning Enforcement Order if it discovers a breach of planning control that has been concealed from the Authority. If the Order is made by the Court, the Local Planning Authority then has a further year in which to take formal action such as serving an Enforcement Notice. A Planning Enforcement Order is useful in situations where a use or development would become immune from enforcement action due to the passage of time and where the Local Planning Authority can prove that the use or development has been deliberately concealed.

Injunction

The power to seek an injunction is conferred by Section 187B of the Town and Country Planning Act 1990, as amended. Where the Local Planning Authority considers that a serious actual or intended breach of planning control is likely to take place it may seek an injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction. The granting of an injunction is at the Court's discretion. The Injunction is generally sought where an operator continues to ignore an Enforcement or Stop Notice, or where there are irreversible consequences i.e. the threatened demolition of a listed building. Failure to comply with an Injunction constitutes a contempt of court and may lead to imprisonment.

Direct Action

The power for a local planning authority to take direct action to address non-compliance with an Enforcement Notice lies in Section 178 of the Town and Country Planning Act 1990, as amended. If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the Local Planning Authority may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

Section 215 Notice

Under Section 215 of the Town and Country Planning Act 1990, as amended, a Local Planning Authority can serve a '215 Notice'. This can require land to be cleared and tidied up when its condition adversely affects the amenity of the area. The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works shall be completed. Appeals are made to the Magistrates' Court. Failure to comply is an offence subject to prosecution and a fine of up to £1,000 or daily penalties if the nuisance persists. The Local Planning Authority may resort to direct action and seek to recover the costs of remedial works from the land owner. This may be done by registering a charge on the land at HM Land Registry, so that costs are recovered when the property is sold.

Unauthorised Advertisements

Advertisements which are displayed in breach of the Town and Country Planning (Control of Advertisements) Regulations 2007 constitute an offence and render those responsible and the owner of the land liable to immediate prosecution and a potential fine.

Where an advertisement is displayed with deemed consent under the Regulations, the Local Planning Authority can require its removal by issuing a Discontinuance Notice. Such a notice can only be issued to remedy a substantial injury to an amenity in the locality or a danger to members of the public. This requirement is more stringent than the normal power to control advertisements.

Simple Cautions

A Simple Caution may be offered as an alternative to prosecution when there is an admission. A Simple Caution may be offered if the offence is:

- the first;
 - of a minor or technical nature, or;
 - not sufficiently serious to proceed to court;
- but in every instance where the case could be proved in court.

Prosecution

Decisions to prosecute will be made in accordance with the Councils' 'Corporate Enforcement Statement of Policy' in force at the time. The Councils' legal advisors will be consulted on the quality and adequacy of evidence and other legal issues that might be raised.

We can commence court proceedings where a formal notice has been breached. In some instances we can also commence legal proceedings for unauthorised works without the need to have first served an enforcement notice e.g. unauthorised works to a listed building or a protected tree or an unauthorised advertisement. Various fines apply currently:

- Cutting down, uprooting or wilfully destroying a protected tree £20,000 or other works: £2,500.
- Display of an advertisement in contravention of advertisement regulations: £1,000, with a further fine of £1,000 a day for continuation of the offence.

In deciding whether to prosecute, the Code for Crown Prosecutors will be applied. The Code is a public document issued by the Director of Public Prosecutions which sets out general principles to follow when deciding whether or not to prosecute.

We will apply two tests in cases where a prosecution appears likely, in consultation with our legal advisors:

The **evidential test**: is there admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction?

The **public interest test**: is a prosecution in the public interest?

As a general rule, prosecutions will not be instituted without due warning.

Rights of Entry

Section 11 of the Planning and Compensation Act 1991 introduced sections 196A and 196C into the Town and Country Planning Act 1990 relating to powers to enter land for planning enforcement purposes.

Section 196A (1) states that:

“any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land (except a dwelling house where 24 hours notice of intended entry must be given to the occupier) ... to determine whether there is or has been a breach of planning control”.

Any person authorised to enter land in pursuance of such a right of entry or under warrant is required to produce evidence of such authority and also state the purpose of entry, if requested, under Section 196C (1) (a) of the Act before entering. It is an offence to wilfully obstruct entry where the correct procedures have been followed.

Sections 324 and 325 give more general rights of entry for planning purposes. Other corresponding legislation enables similar rights of entry in connection with Listed Buildings, trees and hedgerows, advertisements and Hazardous Substances matters, together with various powers within the Local Government (Miscellaneous Provisions) Act.

All Planning Enforcement Officers carry identity cards bearing their name, post title and photograph and a Form of Authorisation permitting them to enter land for the purposes of investigating planning enforcement complaints. Councillors do not have rights of entry. Discussions on site between Members and parties to a planning enforcement issue are not encouraged under the Councils' planning procedures and Code of Practice. It is appropriate for Members to enter land and/or buildings by prior invitation at a formal site visit duly authorised by the Planning/Development Control Committees.