

## Summary Sheet

### Council Report

Cabinet and Commissioners' Decision Making Meeting – 11 September 2017

### Title

Planning Service: Planning Enforcement Plan

### Is this a Key Decision and has it been included on the Forward Plan?

Yes

### Strategic Director Approving Submission of the Report

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### Report Author(s)

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### Ward(s) Affected

All wards

### Summary

Following consultation on the draft Planning Enforcement Plan, this report seeks approval to adopt the plan.

### Recommendation

That the Planning Enforcement Plan be approved and adopted.

### List of Appendices Included

Appendix A: Planning Enforcement Plan

### Background Papers

None

### Consideration by any other Council Committee, Scrutiny or Advisory Panel

Draft plan considered at Cabinet on 12th December 2016

### Council Approval Required

No

### Exempt from the Press and Public

No

## **Planning Service: Planning Enforcement Plan**

### **1. Recommendation**

- 1.1 That the Planning Enforcement Plan be approved and adopted.

### **2. Background**

- 2.1 The planning system operates to regulate development and the use of land. It is important that the environment is protected through the planning process and also that the interests of residents, visitors and businesses are protected from any harmful effects of unauthorised development. The Council has a duty to investigate alleged breaches of planning control and has powers to take action, where it is appropriate to do so.
- 2.2 In order to provide a clear and transparent approach to planning enforcement, a draft Planning Service Enforcement Plan was prepared and reported to Cabinet on 12 December 2016 (minute ref 139) seeking authorisation to carry out consultation on the document. This consultation has now been completed and the document amended accordingly. The comments received are summarised and discussed in the following section.
- 2.3 A specific enforcement plan is required for the Planning Service as it is separate to the Council's General Enforcement Policy, due to the statutory regulatory powers for Planning and Building Control not being scheduled within the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

### **3. Key Issues**

- 3.1 The Planning Enforcement Plan describes: the range of powers available to remedy breaches of planning control; how decisions will be made; and the details of the enforcement process. The Plan sets out how planning enforcement will be managed and when direct action can be taken to ensure that Councillors, officers, external agencies and the community have clear information about the process and the action that can be taken to resolve issues in relation to development.
- 3.2 During the consultation period service users were asked to provide comment on the processes and procedures set out in the plan. A total of four replies were received, one from a local resident and the others from Parish Councils. A summary of the responses is as follows:
  - Dissatisfaction was expressed with the enforcement process generally and the response suggested that the Enforcement Plan would not resolve the fact the rules are not consistently applied.
  - Laughton en le Morthen Parish Council raised concerns that the Plan does not specifically refer to breaches in the Green Belt.
  - Both Ulley and Thorpe Salvin Parish Councils raised concerns in relation to the statement that anonymous complaints would not be investigated.

- 3.4 The comments have been considered and, in response, it is considered that the adoption of a Planning Enforcement Plan would ensure that a clear process and procedure would be put in place to ensure transparency and consistency throughout the enforcement process, therefore the adoption of the plan should help to address the concerns raised.
- 3.5 In respect of the comments about development in the Green Belt, the document has been amended to state that if the issue constitutes a major breach then it will be investigated as a high priority. If not, then any breach will be considered on its own merits, though as controls in the Green Belt are tighter than elsewhere it is more likely that enforcement action would be taken.
- 3.6 In relation to the comments requiring anonymous complaints to be investigated, the wording of the plan has been amended to set out that major breaches of planning control e.g. works to a listed building, protected tree or a breach causing irreparable harm to the environment or public safety will be investigated. The reason why other anonymous complaints will not be investigated is because they often result in abortive work; they can lead to criticism of the authority for reacting to vexatious complaints; they reduce the ability for further information to be collected from the complainant.
- 3.7 Having considered the comments made and the amendments proposed in relation to Green Belt development and anonymous complaints it is recommended that the Planning Enforcement Plan is adopted, as set out in Appendix A.

#### **4. Options considered and recommended proposal**

- 4.1 The Council has no statutory duty to publish an enforcement plan. However, Government advice, as set out in the National Planning Policy Framework (NPPF), is clear that a plan should be produced, to provide clarity over the Council's practices in relation to planning enforcement.

#### **5. Consultation**

- 5.1 Publicity on the Planning Enforcement Plan consisted of publicising the plan on the Council website, notifying Parish Councils, Area Assemblies and all Council Members during a six week period (13 January – 24 February 2017).

#### **6. Timetable and Accountability for Implementing this Decision**

- 6.1 If approved, the document will be published on the web site and implemented within 4 weeks of the date of this report.

#### **7. Financial and Procurement Implications**

- 7.1 The Council currently incurs costs in pursuing enforcement action, primarily through planning officer time and associated legal support costs, when serving formal notices and pursuing to prosecution. These costs are managed within existing Service revenue budgets.

7.2 There are potential financial costs to the Council should action be taken by the Council to remedy a breach (by carrying out works in default). Such costs are charged to the owner of the land/property and in some cases can result in a 'charge' being placed on the property wherein costs can only be recovered when the land/property is sold. This can be some considerable time later.

## **8. Legal Implications**

8.1 There are no anticipated legal implications of the Planning Enforcement Plan. Enforcement action in planning has been undertaken for a number of years by the Planning Service, with advice from the Legal Service, as and when required. The Planning Enforcement Plan usefully codifies practices and procedures adopted over the number of years into a good practice handbook for officers.

## **9. Human Resources Implications**

9.1 There are no HR implications arising from this report

## **10. Implications for Children and Young People and Vulnerable Adults**

10.1 No implications.

## **11. Equalities and Human Rights Implications**

11.1 When considering enforcement action, the Council must also have regard to the provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14. Since every person is entitled to the peaceful enjoyment of his possessions and enforcement action is an interference with the rights of the person who has carried out the breach, in deciding whether enforcement action is taken, the Council must have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way.

## **12. Implications for Partners and Other Directorates**

12.1 The Planning Service work closely with other services of the Council however the Planning Enforcement Plan relates solely to Planning legislation and the regulatory process by which breaches of Planning can be resolved.

## **13. Risks and Mitigation**

13.1 There is no statutory duty to publish an enforcement plan. However, Government advice as set out in the NPPF is that a plan should be produced, to provide clarity over the Council's practices in relation to Planning Enforcement.

## **14. Accountable Officer(s)**

Damien Wilson  
Strategic Director of Regeneration & Environment

Approvals Obtained from:-

Legal Services:-

Sumera Shabir, Planning Solicitor

Finance and Corporate Services:-

Jonathan Baggaley, Finance Manager

Human Resources:-

John Crutchley, Senior HR Consultant

Procurement

Helen Chambers, Procurement Manager

Children and Young People

N/A

Equalities and Human Rights

N/A

# **APPENDIX A**

## **ROTHERHAM MBC**

### **PLANNING ENFORCEMENT PLAN**



## **ROTHERHAM MBC PLANNING ENFORCEMENT PLAN**

### **CONTENTS:**

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- 4. What is a breach of planning control?**
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- 6. Failure to comply with notices**

**7. What happens if an allegation is made against you**

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**9. Powers of entry onto land**

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**APPENDIX 1 – Flow chart**

**APPENDIX 2 – Potential enforcement options**

## **1. INTRODUCTION**

1.1 The Planning Enforcement Plan relates to Rotherham Metropolitan Borough Council's Planning Enforcement Service and will describe the purpose of the Service and how the Council will deliver it to the community. It sets out how the Service will help to address breaches of planning control and prioritise its work. It describes the range of powers available, how decisions are made whether or not to pursue enforcement action and the process of enforcement. The Enforcement Plan will ensure that Councillors and officers, external agencies and the community are aware of our general approach to planning enforcement.

1.2 The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to community confidence in the planning system. It is important that the interests of residents,

visitors and businesses are protected from the harmful effects of unauthorised development, in addition to protecting the local environment.

1.3 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches, where it is appropriate to do so. The Council views breaches of planning control very seriously. It is the Council's policy to exercise powers appropriately and rigorously so that development takes place in accordance with the appropriate legislation or the planning conditions and limitations imposed on any planning permission.

1.4 Many decisions relating to planning enforcement can be taken at officer level whilst more significant issues are taken by Councillors, and the details in respect of this are set out in the Council's Scheme of Delegation.

## **2. GOVERNMENT ADVICE AND LEGISLATION**

2.1 The Town and Country Planning Act 1990 (as amended) provides the main legislative background regarding breaches of planning control. Government advice is set out in the National Planning Policy Framework (NPPF) and Paragraph 207 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."

2.2 In addition to the statement made in the NPPF, the Government provides general guidance in the National Planning Practice Guidance, in a chapter titled "Ensuring effective enforcement" which is a 'live' document that is subject to regular updates and refers to all relevant legislation.

## **3. THE PURPOSE AND SCOPE OF PLANNING ENFORCEMENT**

3.1 Planning enforcement covers the areas of planning permission, advertisement consent, listed building consent, tree preservation orders, and the hedgerow regulations. National legislation allows some minor and small-scale works to be undertaken without the need for planning permission. These works are known as “permitted development”. Any works carried out as permitted development cannot be subject to enforcement action.

3.2 The Council must act within the provisions of national legislation and take account of relevant national policy when considering enforcement matters. Enforcement options and powers range from requiring information to assess a case, through serving notices requiring action to be taken, to the Council prosecuting offenders and/or taking direct action itself. In using these powers the Council must also consider relevant policies within the NPPF, case law and local policies.

3.3 The integrity of the Planning Service depends on the Council’s readiness to take enforcement action when appropriate. The Council is committed to providing an effective Planning Enforcement service. Planning laws and policies are designed to control the development and use of land and buildings in the public’s interest. The Council will not condone wilful breaches of planning control and will exercise discretion to take enforcement action if it is considered expedient to do so. The Council will investigate alleged breaches of planning control, to determine whether a breach has, as a matter of fact occurred, and if it has, determine the most appropriate course of action.

#### **4. WHAT IS A BREACH OF PLANNING CONTROL**

4.1 The Town and Country Planning Act 1990 (as amended) sets out what constitutes ‘development’. A breach of planning control is defined at Section 171A of the Act as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”. This could involve such matters as the unauthorised erection of a building or extension to a building or a material change of use of land or buildings. Other matters that can be a breach of the relevant legislation include:-

- Unauthorised works to Listed Buildings
- Unauthorised works to trees subject of a tree preservation order (TPO) or in a conservation area
- Unauthorised demolition within conservation areas

- Breaches of conditions attached to planning permissions
- Not building in accordance with the approved plans of planning permissions
- Unauthorised engineering operations, such as raising of ground levels
- The display of unauthorised advertisements. Untidy land where it affects the amenity of the area (these are also dealt with by Environmental Health Service).

4.2 The Council often receive complaints regarding matters that could be dealt with by other Council Services/external agencies, or that the Planning Enforcement service cannot become involved in. Below are a few such examples with details of who the correct enforcing agency would be depending upon the exact nature of the complaint:

- Internal works to a non-listed building (Building Control)
- Obstruction of a highway or public right of way (Highways / Police)
- Parking of commercial vehicles on the highway or on grass verges (Highways / Police)
- Parking mobile caravans on residential driveways or within the curtilage of domestic properties (private issue only, if a Contravention of Deeds)
- Running a business from home where the residential use remains the main use of the building use and there is no negative impact on neighbours (no material change of use)
- Land ownership and boundary disputes (private legal matter)
- Covenants imposed on property Deeds (private legal matter)
- Dangerous structures or other health and safety issues (Building Control / Health and Safety Executive)
- High Hedge disputes (Environmental Health Service)

## **5. HOW WILL YOUR COMPLAINT BE INVESTIGATED**

### **Receipt of complaint**

5.1 Complaints about alleged breaches of planning control will be accepted by on line complaint form, e-mail, letter, telephone or personal caller at reception at RMBC.

Anonymous complaints will not usually be investigated and complainants who do not wish to give their personal details will be advised to contact either their Local Ward Member or their Parish Council who may then raise their concerns on their behalf. Planning Service will only investigate anonymous complaints where they are major breaches of planning control and where it is considered to be in the public interest to do so, for example where

they concern a statutorily listed building or a protected tree as there is the possibility of irreparable damage. All complaints are dealt with in strictest confidence and the details of the complainant are never revealed, unless agreed by the complainant. It is not considered appropriate to investigate all anonymous complaints as they may be related to neighbour disputes and/or be vexatious, and as there is no ability for further information to be collected from the complainant.

5.2 All enforcement complaints are logged on with a unique reference number so that each complaint can be monitored and the complainant updated on progress. The complainant will be informed of who is dealing with the complaint, and the target dates for visiting the site (where appropriate) and ultimately for closing off the complaint.

### **Prioritising the complaint**

5.3 The Council receives approximately 300 planning enforcement complaints each year. In light of the often lengthy and complex nature of planning enforcement investigations, and to make the best use of limited resources, it is necessary to give priority to those cases where the greatest harm is being caused. Priorities are directed by the significance and impact of the breach, the level of harm caused and the need to react expediently.

5.4 The following sets out the Council's priorities for investigating alleged breaches of planning control. As the enforcement process is closely regulated by legal procedures, planning legislation and government guidance this provides the framework for the Council's enforcement priorities.

#### **High priority (Category A)**

- Demolition or alterations to a listed building;
- Works to trees subject to a tree preservation order or within a conservation area;
- Demolition in a conservation area and any other works which are considered to cause significant and immediate harm to the character and appearance of the area;
- Any breach of planning control causing immediate and irreparable harm to the environment or public safety

#### **Medium priority (Category B)**

- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months.

- Development causing serious harm to the amenities of neighbours or to the environment;
- Development not in accordance with the approved plans, during the construction process.

#### Low priority (Category C)

- Any other allegations which have not been classified as high or medium priority, including:
  - Advertisements;
  - Businesses being operated from home;
  - Fences;
  - Satellite dishes;

The results of an investigation into a particular case may result in a change to the priority level.

### **Targets**

5.5 The Council aims to deal with complaints within the following targets:

Acknowledge complaint - within 3 working days.

Undertake site visit:

Category A – within 2 working days

Category B – within 10 working days

Category C – within 15 working days

Days to close complaints – Target is 70% within 13 weeks

5.6 'Closing' a complaint would take place if it is determined that: there is no breach; or that it is not expedient to take action if there is a breach; if the serving of a formal notice (such as Enforcement Notice) is authorised; or if an application for the development (such as a planning application) is received. If enforcement action is authorised then the appropriate Notice is served and the matter pursued. If a planning application is submitted to regularise the breach but is subsequently refused then formal enforcement action has to be considered and the case is re-opened. These options are discussed further below.

## **Process of investigating an enforcement issue**

### **Desktop Analysis**

5.7 Research will take place into the site in question to ascertain any relevant previous enforcement and planning history. This may involve interrogation of the Council's planning records, internet searches and liaison with other Council Departments or external agencies. It may be apparent from this initial analysis that no breach has occurred and the case will be closed and the complainant will be notified accordingly.

### **Site visit**

5.8 If the initial assessment does not clarify whether a breach of planning control has occurred then a site visit will normally be required. The visit will be carried out in accordance with the timeframes set out in this Enforcement Plan.

### **Further investigation following the site visit**

5.9 On completion of the initial site visit, the findings will be assessed and a decision taken as to how the investigation will proceed. Each case will be judged on its own merits. There are cases where the initial site visit does not provide sufficient evidence to prove whether a breach of planning control has taken place. An example of this would include complaints of businesses operated from residential properties and whether this constitutes a material change of use. This will often depend on the level of intensity and this may not be immediately apparent from the initial site visit. Further investigation may involve additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control, or the persons responsible for the land or building.

5.10 In some cases, the Council may ask the person reporting the suspected breach for further details, which could be in the form of a log setting out details of when breaches occur. If the person reporting the suspected breach of planning control is unwilling to assist, this may result in the Council being unable to pursue the investigation due to insufficient evidence.

5.11 If another agency or internal department is better placed to handle the issue, then the complaint will be referred to the relevant authority and complainant informed.

### Planning Contravention Notice

5.12 Section 171C of the Town and Country Planning Act (as amended) provides the power to issue a Planning Contravention Notice (PCN). This can be served where a suspected breach of planning control exists. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Therefore, it may be several weeks until the appropriate evidence can be collected. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine of £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000. Additional information can also be obtained by the service of a 'Requisition for information' notice, or by a Section 330 Notice.

### If no breach of planning control is established

5.13 A significant number of investigations are closed as no breach of planning control can be established. This can occur for a number of reasons, for example where there is no evidence of the allegation; where the works do not require planning permission; or where the development already benefits from planning permission granted by the Council.

5.13 Where this is the case the complainant reporting the suspected breach of control will be notified either verbally or in writing that no further action will be taken. The complainant will be provided with an explanation of the reason(s) and the case will be closed. Cases will be re-opened and re-investigated if further evidence subsequently comes to light.

### Where there is a breach of planning control

5.14 There is a common misconception that breaches of planning control are a criminal offence and should automatically attract enforcement action however, the NPPF clearly sets out that enforcement action is a discretionary power. It is for each local planning authority to determine when action is necessary and the type of action that is appropriate. In making these decisions the authority should be mindful of maintaining public confidence in the planning system.

5.15 A breach of planning control in itself is not sufficient reason to take enforcement action. *Whilst such action may be unlawful, as it is in breach of the Town and Country Planning Act, it is not illegal.* The Council must firstly decide, having given regard to policies contained within the Rotherham Local Plan, guidance contained in the National Planning Policy Framework (NPPF), and all other material planning considerations, whether or not it is 'expedient' to take formal action. Expediency is a test of whether the

unauthorised activities are causing harm to the environment or amenity of the area. Therefore enforcement action is discretionary and each case must be assessed on its own merits. Most planning enforcement investigations will involve one of the following courses of action:

#### Retrospective planning application invited

5.16 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development. In determining retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise permission was required. A retrospective planning application enables the Council to regularise acceptable development without penalising the applicant.

Generally, the Council will not seek a retrospective planning application if it considers that the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. Once an application is received it would allow for a full assessment of the planning merits of the case.

5.17 Should the retrospective application be refused the enforcement action will be considered as part of the determination of the application.

#### Negotiation

5.18 Where it is considered that the breach of planning control is unacceptable, officers will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm to amenity. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised development.

In carrying out negotiations officers will have regard to the specific circumstances of the individual case. For example, where there is an unauthorised business activity, officers will consider whether relocation is possible and if so will seek to put a reasonable timescale in place that reflects the individual circumstances of that business.

5.19 Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, formal action will be considered to prevent a protracted process.

### Not expedient to take action

5.20 'Expediency' is a test of whether the unauthorised activities are causing serious harm, having regard to the Development Plan policies and other material planning considerations, to justify further action. There are some cases where it would not be expedient for the Council to take enforcement action, for example, there may be cases where development requires planning permission but it is clear that retrospective planning permission is likely to be granted; or there may be a technical breach of planning control but that breach is so minor that it has no or very little impact on amenity, for example a domestic television aerial or the construction of a fence which is slightly higher than that allowed under permitted development rights.

While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice would not be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought.

5.21 Any action should also be proportionate to the breach. It would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without permission. The expediency test for taking action would not be met in these cases.

5.22 In such circumstances the Council will seek to persuade an owner or occupier to seek permission. However, it is generally regarded as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control and it is not proportionate to take action.

### Lawful use

5.23 Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, or the change of use of any building to a single dwelling house. Other unauthorised changes of use and breaches of conditions are subject to a ten year time limit.

5.24 After these periods the Council cannot take action and the development becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period to regularise the situation. This involves providing evidence that proves, on the balance of probability, that the breach of planning control has occurred for the relevant time period.

5.25 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits.

#### Formal enforcement action is justified

5.26 It is open to the Council to take formal action, where it is expedient to do so. The decision on what enforcement action should be taken will depend on the individual circumstances of the case.

5.27 A flow chart showing potential options in respect of a complaint is attached at Appendix 1 and the various enforcement powers available to the Council are summarised at Appendix 2.

## **6. FAILURE TO COMPLY WITH NOTICES**

6.1 Where a notice has been served and has not been complied with, there are generally three main options available to the Council to attempt to resolve the breach.

### **Prosecution**

6.2 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of a relevant Notice (which would include an enforcement notice; a listed building enforcement notice; a planning contravention notice; a breach of condition notice; or a stop notice.) However, before commencing any legal proceedings the Council needs to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

### **Direct action**

6.3 Where any steps required by a relevant notice have not been taken within the compliance period the Council will consider whether it is expedient to exercise our powers to enter the land and take the steps to remedy the harm; and recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

## **Injunction**

6.4 Where an enforcement notice has not been complied with, and the special circumstances of the case suggest direct action or prosecution would not be an effective remedy, the Council will consider applying to the Court for an injunction under section 187B of the Town and Country Planning Act (as amended). An injunction can be applied for where there is clear evidence that a breach of planning control has happened or there is clear evidence that it is anticipated. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing or likely to cause exceptional harm. Defendants risk imprisonment if they do not comply with a court order.

## **7. WHAT HAPPENS IF AN ALLEGATION IS MADE AGAINST YOU?**

7.1 If a complaint is received that affects you then the first thing that will happen is either you will be contacted (where your details are known to the Council) or the site in question will be visited by a Council officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may also be undertaken without any prior notification.

7.2 If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. If you have no involvement with the identified breach no action will be taken against you. You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through amicable negotiations or the submission of a retrospective planning application formal action may be instigated.

## **8. PROACTIVE COMPLIANCE**

8.1 In addition to the Service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the Council looks to provide a

proactive approach where possible to ensure compliance with planning permissions and other consents, though this is limited to available resources.

8.2 It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission. However, failure to comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission in the first instance. Proactive action encourages and enables compliance with conditions to safeguard that development remains acceptable in planning terms.

8.3 The benefits of proactive compliance can be felt by the Council, community and the development industry. However, resources are limited and the Council relies on the general public to notify it in respect of potential breaches.

## **9. POWER OF ENTRY ONTO LAND**

9.1 Under the provisions of Section 196A the Town and Country Planning Act (as amended) officers have the right of entry onto land and buildings to ascertain whether there is or has been any breach of planning control on the land or any other land; to determine whether any of the powers conferred on a local planning authority should be exercised in relation to the land, to determine how any such power should be exercised and to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land. Officers also have a right of entry to determine whether an enforcement notice should be issued on that or any other land.

9.2 Twenty four hours' notice must be given for access to a residential property. If access is denied, or the matter is urgent, a warrant can be applied for from the Magistrates Court. Officers will exercise these powers where appropriate, particularly where their use is essential to the collection of evidence relating to an alleged breach of planning control. An obstruction of these powers is an offence which is subject to prosecution.

## **10. COMPLAINTS ABOUT THE SERVICE**

10.1 If you are unhappy about the level of service you have received from Planning Services or how the process has been managed then you may firstly discuss your concerns with the Development Manager or take it further through the Council's Corporate Complaints Procedure. If you remain unhappy then you may write to the Local Government Ombudsman who may investigate your concerns.

**APPENDIX 1 – FLOW CHART OF POTENTIAL OUTCOMES FOLLOWING A COMPLAINT.**



## **APPENDIX 2 – POTENTIAL ENFORCEMENT OPTIONS**

### **Enforcement Notice**

Section 172 of The Town and Country Planning Act (as amended) allows the service of an enforcement notice where it is expedient to do so and one of the following has occurred: unauthorised operational development, material change of use or breach of condition.

The Council is required to serve enforcement notices on the owner, occupier and any other person with an interest in the land which is materially affected by the notice. An enforcement notice specifies the steps which are required to be taken, or the activities which the Council requires to cease, in order to remedy the breach.

The notice will specify time periods for compliance from the date on which the notice comes into effect. A notice comes into effect after a minimum period of 28 days following service. Appeals can be made against enforcement notice and these are dealt with by the Planning Inspectorate. Once the Planning Inspectorate has received a valid appeal, the enforcement notice has no effect until the appeal has been determined.

This is the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. The Council may choose to "under-enforce" to remedy a specific problem. In such circumstances the remaining building or use will be deemed to have planning permission when the Enforcement Notice has been complied with sufficiently. The penalty for non-compliance is currently up to £20,000 but there is no upper limit in the Crown Court

All enforcement notices are placed on the Council's enforcement register which is available to view on request.

### **Breach of Condition Notice**

Section 187A of the Town and Country Planning Act (as amended) provides the power to serve a Breach of Condition Notice (BCN) where a planning condition has not been complied with. The BCN will specify the steps required to comply with the condition, the

date that it takes effect and the time period for compliance. The period for compliance is a minimum of 28 days from the date the notice was served. There is no appeal to the Secretary of State against a BCN. As there is no right of appeal against a BCN and as it can only be used to secure complete compliance with a planning condition, “under-enforcement” is not an option. Also, as there are no powers for the Council to enter the land and carry out works, prosecution is the only means of enforcement. The maximum penalty on conviction is level 4 (currently £2500)

### **Listed Building Enforcement Notices**

If the breach of planning control relates to a listed building, the Council will consider the expediency of serving a listed building enforcement notice and where appropriate, commence a prosecution in the Courts. The listed building enforcement notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance. There are no time limits for issuing listed building enforcement notices, although the length of time that has elapsed since the apparent breach is a relevant consideration when considering whether it is expedient to issue the notice.

Unauthorised works to a Listed Building is an offence in its own right. The Council will consider whether it would be expedient to prosecute for these works rather than issuing a notice on a case by case basis. A person who is found to carry out unauthorised works that affect the special architectural character or historic interest of a Listed Building can be prosecuted, and imprisoned for a term not exceeding 6 Prosecution months, or fined up to £20,000 or, on conviction by indictment, to an unlimited fine.

### **Temporary Stop Notice**

Section 171E of the Town and Country Planning Act (as amended) provides councils with the power to serve a Temporary Stop Notice. A TSN can be issued without the need to issue an enforcement notice and is designed to immediately halt breaches of planning control for a period of up to 28 days by which time the Local Planning Authority can decide whether or not to serve an enforcement notice. There is no right of appeal against a Temporary Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000. Compensation may be payable if

the LPA later issues a lawful development certificate. Unlike a Stop Notice, it does not require an enforcement notice to be served first.

Whilst TSNs also carry some compensation provisions these are significantly lower than with a Stop Notice and therefore the risk to the Council is reduced. All Stop Notices are placed on the Council's enforcement register.

### **Stop Notice**

Section 183 of the Town and Country Planning Act (as amended) provides for the service of a Stop Notice

The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. It can only be served if an enforcement notice has first been served. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000. However, a Stop Notice should only be served when the effects of the unauthorised activity are seriously detrimental to the amenities of occupiers of affected property. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice.

### **Planning Enforcement Orders**

The Localism Act introduced a new enforcement power in relation to time limits. This allows councils the possibility to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired. The Council can, within six months of a breach coming to their attention, apply to the Magistrate's court for a Planning Enforcement Order. A planning enforcement order would give the Council a further year to take action.

### **Section 215 Notice**

The Council can serve an 'amenity' notice on the owner of any land or building which is in an unreasonably untidy condition and it considers has an adverse affect on the amenity of the area. This is done under section 215 of the Town and Country Planning Act 1990 (as

amended). This notice is used to maintain and improve the quality of the environment, to assist in tackling dereliction and retaining land in a productive use as well as contribute to the regeneration of an area and respond positively to public concerns.

S215 Notices relating to residential properties/gardens are generally carried out by the Environmental Health Service, whilst those relating to commercial sites are generally carried out by Planning Service.

## **UNAUTHORISED ADVERTS**

The display of advertisements without consent is an offence. Therefore, the Council has the power to initiate prosecutions without the need to issue a notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken without further correspondence.

### **Section 225 of the Town and Country Planning Act (as amended)**

Provides powers to remove or obliterate posters and placards. The Council will consider using these powers as appropriate as an alternative or in conjunction with prosecution action.

### **Removal Notices**

Provide the power to seek removal of any structure used to display an advertisement. Where the notice is not complied with works in default may be carried out and the Council can recover the expenses for doing so.

### **Action Notices**

Can be used where there is a persistent problem with unauthorised advertisements and can specify measures to prevent or reduce the frequency of the display of advertisements on the surface. Again where the notice is not complied with the Council may undertake the works in default and recover the expenses for doing so.

### **Power to remedy defacement of premises**

Where a sign has been placed on a surface that is readily visible from somewhere the public have access, and is considered by us to be detrimental to the amenity of the area or

offensive, a notice may be issued requiring the removal or obliteration of the sign. Failure to comply with the notice will allow the Council to undertake the works in default and recover costs

### **Discontinuance Notice**

Require the removal of advertisements displayed with the benefit of deemed advertisement consent, i.e. an advertisement that would not normally require consent from the Council to be displayed.

## **UNAUTHORISED WORKS TO TREES/HEDGEROWS**

The Town and Country Planning Act 1990 (as amended) requires appropriate consent to be gained for works to trees which are protected by a Tree Preservation Order (TPO) or within a Conservation Area. The Planning Enforcement Service is responsible for the investigation of suspected breaches of this legislation.

An offence will be committed should these works be conducted without following the relevant procedures. Therefore, a prosecution can be sought without the requirement to issue a notice. However, such action would not remedy the harm caused. It is open to the Council to issue replacement notices, requiring trees to be replanted.

The Hedgerows Regulations 1997 protect most countryside hedgerows from being removed (including being uprooted or otherwise destroyed). They do not protect hedgerows that form the boundary between the countryside and residential/ commercial properties. A person who intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow in contravention of the Regulations is guilty of an offence.

### **Tree Replacement Notice**

Sections 207/211 of the Town and Country Planning Act (as amended) provide the powers to require replacement planting in relation to trees covered by a TPO/within a Conservation Area respectively.

### **Hedgerow Replacement Notice**

Regulation 8 of the Hedgerow Regulations 1997 provide the powers to require replacement planting in relation to the unauthorised removal of a protected hedgerow.