



Walsall Council

**PLANNING, ENVIRONMENT AND
TRANSPORTATION**

LOCAL PLANNING ENFORCEMENT PLAN

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PREPARED BY:
Shawn Fleet; Group Manager: Development Management
Emma Green; Senior Planning Enforcement Officer

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EXECUTIVE SUMMARY

This is our framework for dealing with any alleged breaches of planning control received by the Council. Planning enforcement has a vital role in making the Borough a better place for those living, working or investing in the Borough and for supporting the Council's Vision for Walsall. The Vision can be seen online at the following location: <https://go.walsall.gov.uk/corporate-plan>

The Government's Planning Practice Guidance (PPG) published on-line since March 2014 provides advice on the role of planning enforcement in the section Ensuring Effective Enforcement. This guidance states that the preparation and adoption of a local enforcement plan is important because it:

- Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- Sets out the priorities for enforcement action, and which will inform decisions about when to take enforcement action;
- Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process

This Local Enforcement Plan has been the subject of public consultation and report to the Council's Planning Committee and Cabinet before adoption and is intended to meet these criteria. The plan sets out the objectives of the Planning Enforcement Service and the system and principles for the exercise of the relevant statutory powers. The local context in the plan includes the natural and historic environment. References to "the Act" mean the Town and Country Planning Act 1990, as amended. Other legislation specifically referred to relates to the Equalities Act 2010, Listed Buildings and Hedgerows and High Hedges.

Walsall Council is the responsible Local Planning Authority for the enforcement of planning control within the Borough.

There are a range of powers to be exercised in the public interest where a breach of planning control is under consideration. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and is planned and managed to achieve social, economic and environmental objectives. This Plan seeks to promote procedures which will manage enforcement issues in an appropriate way for Walsall.

Effective enforcement relies to a large degree on efficient and timely communication. Possible breaches of planning control; unauthorised works/activities/advertisements on land, buildings, trees or hedgerows are brought to notice by members of the public, Council Officers in different departments and well as by Planning and Enforcement Officers. An efficient system needs the Council's website to be a helpful source of reference and advice with a robust reporting system which is transparent about the decisions taken. References to the PPG section "Ensuring Effective Enforcement" are given particularly in Appendix 1 which describes the options and procedures available to tackle possible and actual breaches of planning control in a proportionate way. The

plan is published on the Council's web site with an on-line form for reporting planning issues and enforcement complaints.

The Plan sets out standards and proposed priorities restating and updating principles of good practice enforcement advocated by the Government but adapted to local circumstances.

INTRODUCTION AND OVERALL OBJECTIVES

This is our framework for dealing with any alleged breaches of planning control received by the Council. Planning enforcement has a vital role in making the Borough a better place for those living, working or investing in the Borough and for supporting the Council's Vision for Walsall, which can be found at: <https://go.walsall.gov.uk/corporate-plan>

The National Planning Policy Framework (NPPF) March 2012 advises that Local Planning Authorities (Local Planning Authorities) should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. The Council's previous Planning Enforcement Policy was first published in November 2012 and has now been reviewed following changes to national policy/guidance for enforcement and operational changes. The Local Enforcement Plan (LEP) also confirms the current planning enforcement powers available to the Council.

The Government also published guidance on planning enforcement contained within the Planning Practice Guidance in March 2014 which was subsequently updated in September 2015. Further information which can be found via the following web site: <http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

In assessing any enforcement case, the Council will give consideration to the national planning policy framework (NPPF) and supported by the Planning Practice Guidance, plus policies set out in the Council's Unitary Development Plan (UDP) and the Black Country Core Strategy which form the heart of the Council's Development Plan. Both of these documents are subject to review and this plan will be reviewed in light of any new adopted policies as they emerge.

Effective control over unauthorised development protects the environment, the local amenity of residents and other people, promotes confidence in the planning system and helps to revitalise our Borough. Enforcement is an essential part of the Development Management process and its integrity depends on our readiness to take proportionate enforcement action. Planning enforcement action is also discretionary; the Council must judge each case and decide if it is expedient to act (expediency is a crucial test in the legislation and its meaning is explored on page 23).

In deciding whether to take enforcement action we must have regard to local and national planning policies, in particular, the advice set out in the Council's Development Plan (see above), and Government guidance.

Much of what the Council deals with comes to us through a range of planning enforcement complaints. All planning enforcement complaints will be assessed and prioritised according to the criteria set out on pages 16 and 18.

The Council is fully committed to the Regulators Code published by the Department for Business Innovation and Skill in April 2014 which has replaced the Government's Enforcement Concordat which the previous Enforcement Plan supported. This

document sets out a range of good practice enforcement policies and procedures to deliver best practice in regulatory and enforcement work by public bodies.

SERVICE STANDARDS

Walsall Council's existing practices have sought to achieve the principles of good enforcement practice. The following standards reflect the overarching principles the Council has adopted with regard to inspecting and if appropriate, pursuing enforcement action.

These five standards are set out in the Regulators Code

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow

The purpose of the planning enforcement process is not to punish those who find themselves working outside of the planning framework and the policies of the development plan but to ensure inappropriate development does not cause harm. The Council will continue to work with individuals and businesses in a manner that assists people in understanding the planning systems and how they can best meet their aspirations.

2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will endeavour to keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

3. Regulators should base their regulatory activities on risk

We endeavour to deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any undertakings given, the history and whether time limits are approaching which would confer immunity on unlawful development.

In prioritising our cases, consideration will be given to the risk of harm that may arise in the processing phase. Where there is a potential for irreversible damage to occur to the environment for example, enforcement action will be given the highest priority.

4. Regulators should share information about compliance and risk

The Local Planning Authority will work closely with other enforcement organisations to secure effective regulation of the planning system, protect the environment and

amenity. Consideration will always be given to the nature of the information to be shared in these cases to ensure confidentiality and data security is maintained.

We endeavour to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible, a fair and equitable outcome.

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

We aim to be polite but firm with the person/peoples that are alleged to be in breach of planning or environment controls. We will meet when requested, both before and during enforcement actions, to try and achieve a satisfactory outcome and will keep complainants and Councillors informed of key stages in the process.

We already provide significant amounts of information on our website about the planning process and enforcement and we will continue to expand on this resource over time.

Dealing with Complaints

In addition to working in accordance with the five criteria set out in the Regulators Guide, the Council also takes complaints about the operation of the enforcement service seriously. Opportunity exists for complaints to be made about the operation of the enforcement through the Councils complaints procedure. Feedback from this will be used to inform future actions and improve the way in which the Council delivers this service.

THE PRINCIPLES OF PLANNING ENFORCEMENT

The use of planning enforcement powers by the Council is discretionary and the carrying out of development without planning permission, although unauthorised, is not illegal. Some actions may become illegal only following non-compliance with a formal Enforcement Notice.

All alleged breaches of planning control will be investigated by the Council except for anonymous complaints, unless there is clear evidence the resulting harm is significant.

The first consideration in any enforcement query is whether there has been a breach of planning control (details of breaches of planning control are expanded on later in this document). If there is no breach identified, and the developer has only done what they are entitled to as set out in the legislation, then the Council cannot take any action at all.

Not all work to land or building involves 'development' (see below for an explanation of development); for example, works simply amounting to maintenance or repair are not classed as development. Furthermore, a large amount of 'development' has the benefit of automatic planning permissions which are granted by the national planning regulations (commonly called 'permitted development rights'). A main part of enforcement work is assessing whether development complies with the criteria laid down for these automatic national planning permissions, criteria such as the type of development, its size, and its position.

In the first instance, the Council will seek to resolve all breaches of planning control through informal negotiation unless the breach is causing or is likely to cause imminent irrevocable harm requiring immediate action. This generally occurs in only a very small number of cases. The focus is to achieve compliance without resorting to formal proceedings which can be protracted and costly.

Where appropriate, the Council will give reasonable timescales for voluntary compliance through removal of the breach or through regularisation before seeking to take formal action.

Legislation does allow planning permission to be sought retrospectively and government guidance recommends that local planning authorities seek to regularise potentially acceptable unauthorised development through granting planning permission. Where there is a breach of planning control an application will be requested by the Council where it believes consent could be granted with conditions imposed to satisfactorily control the development. This doesn't prejudice the future decisions of the Council

It should be noted that the Council has to accept all valid applications and determine these even if they have not been invited. Instances where an application has been submitted either with or without guidance from the Council, formal action will not be taken when there is an undetermined valid planning application or appeal awaiting determination except in exceptional circumstances. When determining a planning application for non-authorised development, the non- authorised/retrospective nature of the development will not influence the planning assessment.

Any action should be proportionate to the level of harm (see below for explanation of harm) involved and should take into account relevant circumstances where it is expedient and necessary to do so, i.e. in the public interest. The Council needs to consider whether it is expedient having regard to the Council's Development Plan, National legislation, policies, guidance, any other material considerations and whether it's in the public interest to undertake formal enforcement action to remedy breaches of planning control. Expediency will depend on the level of harm caused and the likelihood of achieving voluntary compliance.

This decision to undertake formal action cannot be based simply on the notion that planning legislation has been infringed. Carrying out work without the necessary planning permission is generally not a criminal offence in itself. However, there are exceptions for illegal works to Scheduled Ancient Monuments, Listed Buildings, some Advertisements, works to protected trees and demolition of buildings in a Conservation Area. If the LPA takes enforcement action simply because there is a lack of a valid planning permission in place, it may be liable to pay the appellants costs at appeal. The LPA must be able to demonstrate that harm has been caused by the development and that there is significant benefit from taking formal enforcement action. This reflects the power to act only when 'expedient' to do so and if such action is clearly in the public interest.

There is a range of enforcement powers available to the Council to address breaches of planning control and the Council will apply the most appropriate power dependant on the circumstances of each particular case.

It is unlikely that enforcement action will be pursued where a technical breach of planning control has occurred that causes no significant harm. One example would be when development has been carried out which is only a slight variation in excess of specified criteria and no harm has been caused to amenity, safety or other interests of acknowledged importance notably planning policy.

The Local Planning Enforcement Plan applies to activities carried out via the legislation enforced by the Development Management Enforcement Team. The Council also has other powers of enforcement in relation to other legislation such as highways, environmental health and public protection. This plan does not apply to these powers though contact details are provided in on the Councils website.

Planning enforcement action will not be pursued where the matter is addressed through other legislation.

People can also perceive harm when it is caused by, for example, a possible loss of value of their property, competition from another business, trespass onto their land, or a breach of a restrictive covenant. These matters are outside the scope of the planning system, although there may be redress through civil law. In such cases, the parties should consult a solicitor or seek advice from a Citizens Advice Bureau.

PLANNING ENFORCEMENT LEGISLATION

The enforcement activities in this document mainly rely on the following statutes:

- The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)
- The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by the Planning and Compensation Act 1991)
- The Planning and Compulsory Purchase Act 2004
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- The Town and Country Planning (General Permitted Development) (England) Order 2015

Guidance provided by the Government relating to planning enforcement will also be taken into account as and when it is updated or introduced. Information on the different types of Statutory Notice, or Enforcement Tools, which are available to formally remedy breaches is given below in Appendix 1: Enforcement Toolkit.

Planning legislation exists to control 'development' in the public interest and to prevent harm arising from 'development', which may be the construction or physical alteration of something, or changing the use of land and/or buildings.

WHAT IS DEVELOPMENT?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in Section 55 of the Town and Country Planning Act 1990.

'Development' includes:

- building operations (e.g. structural alterations, construction, rebuilding, most demolition);
- material changes of use of land and buildings;
- engineering operations (e.g. groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part of it) used as a dwelling house for use as two or more separate dwelling houses

The categories of work that do not amount to 'development' are set out in Section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition, but is linked to

the significance of the change which is made to a building's external appearance.

- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

Activity or work that is not classed as development under Section 55 of the Town and Country Planning Act 1990 cannot be addressed through the Planning Enforcement Service. The Council will use their best endeavours to ensure any queries for work falling outside the definition of development is passed on to the relevant Council department. If a third-party organisation is required to investigate or pursue action, the Council will use its best endeavours to identify the organisation and it will be a matter for the complainant to pursue a complaint directly.

WHAT IS A BREACH OF PLANNING CONTROL?

Breaches of planning control vary considerably and could involve such matters as the unauthorised erection of a building or extension to a building, a material change of use of land or building, or the display of unauthorised advertisements. Other breaches of planning control include the following;

Breach of planning control	<u>NOT</u> a breach of planning control
<ul style="list-style-type: none"> • Unauthorised works to a Listed Building • Unauthorised demolition within a conservation area • Unauthorised works to a tree within a conservation area or subject to a preservation order (TPO) • Unauthorised advertisements • Breaches of planning conditions • Not built in accordance with approved plans • Untidy land affecting the amenity of an area • Unauthorised engineering works, such as alteration to ground levels • Unauthorised siting of a caravan or mobile home used as an independent dwelling house • Unauthorised material changes of use of land or buildings • High Hedges 	<ul style="list-style-type: none"> • Internal works, excluding change of use to a non-listed building • Obstruction of a highway • Parking of vehicles on highway or grass verges • Parking of caravans on residential driveways or with curtilage of a dwelling, where it does not form a separate dwelling • Operation of a business where the residential use remains the main use of the premises • Land ownership or boundary disputes • Covenants contained on property deeds • Works which are 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended. • Excepted Advertisements under the Town and Country Planning (control of Advertisements) (England) Regulations 2007 as amended. • Clearing of land and over growth of bushes and non-protected trees. • Dangerous Structures • Noise disturbance and general pollution • Fly Tipping • Business competition • Blocking of a designated right of way • Party Wall Act • Loss of Property Value • Loss of View • Health and Safety • Site security.

PLANNING HARM

Planning harm is not defined in the Planning Regulations. The Oxford English Dictionary defines harm as: “Physical injury especially that which is deliberately inflicted, material damage, actual or potential ill effects or danger”.

Government guidance contained within the National Planning Policy Guidance advises that formal planning enforcement action should be taken when: *“There is a clear public interest in enforcing planning law and planning regulation in a proportionate way”*. Advice contained in now superseded Government publication (PPG1 1997) usefully explained that: *“The planning system does not exist to protect the private interests of one person against the activities of another.... but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest”*.

Harm caused by unauthorised development can be described as the injury caused to public amenity or public safety. Before taking planning enforcement action regard will be made to the policies contained within the Councils Development Plan and other material planning considerations.

Harm can include (this is not an exhaustive list) an unacceptable impact on:

- Planning Policy
- Visual amenities and the character of the area
- Privacy/overbearing/daylight/sunlight
- Noise/smells/pollution such as contamination
- Access/traffic/Highway safety
- Health and safety
- Undesirable precedent
- Ecology, Trees and Landscape
- Amenity standards of users of the development

In assessing the degree of harm that is caused will be assessed by the Council using the following table.

Harm Scoring and Threshold for Taking Further Action

Points Allocation	Scoring	Score
State of breach	Worsening (1) On-going but stable (0)	
Highway Safety Issue?	Yes (1) No (0)	
Other safety issue?	Yes (1) No (0)	
Complainant	Immediate neighbour/consultee/Councillor (2) Other neighbour(1) Anonymous/ Malicious (0)	
Age of Breach	Within 6 months of immunity (2) Less than 1 month old (1) More than 1 month old (0)	
Is the harm	Widespread / Public (2) Local (Private) (1) None (0)	
Irreversible harm?	Yes (1) No (0)	
Causes serious environmental or statutory nuisance	Yes (1) No (0)	
Breach of a condition or Article 4 Direction? (Score 1 per condition breached max score of 5) consider environmental impacts	Yes (1-5) No (0)	
Operational development or Change of use in Green Belt or Major Breach of Planning Policy	Yes (1) No (0)	
Development affecting contaminated land	Yes (1) No (0)	
Within a Flood Zone	Zone 3 (2); Zone 2 (1); Zone 1 (0)	
Affecting the setting of Conservation Area	Yes (1) No (0)	
Harming a listed building or its setting	Yes (1) No (0)	
Sensitive site e.g. SSSI; SAM; Listed Garden; Archaeological importance	Yes (1) No (0)	
Undesirable Precedent (assessing officer to specify)	Yes (1) No (0)	
Total Points (Harm Score)		

Where the score is 4 or below, the case will not be investigated further. The owner will be informed and invited to remedy or regularise any breach. Complainants will be notified that the development causes insufficient harm to warrant further action.

If the score is 5 or greater then it will be progressed for further consideration. An assessment will be made of the severity of the case to ensure the most significant cases are dealt with as a soon as possible.

ENFORCEMENT PRIORITIES

Planning Enforcement Officers receive a high number of enquiries regarding allegations of breaches of planning control every year. To ensure the most serious cases causing the greatest amount of harm are investigated with minimal delay, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

Many cases may require repeat site visits, negotiation, serving of notices on owners/interested parties and more formal action before the breach is resolved. When these occur, the Council will endeavour to keep original complainants informed at key stages during the process and indicate arrangements for this in the initial response letter.

Complainants will also be provided with an acknowledgement within 5 working days except for high priority cases where the acknowledgement will be within 2 days, this will include the details of the lead officer assigned to deal with the enforcement enquiries should they require further updates or have new information pertinent to the investigation.

Table 1: Enforcement Priorities

Priority	Considerations and Example Cases	Target time for visiting
High	<p>Irreversible Harm To The Environment</p> <ul style="list-style-type: none"> • Unauthorised works to a listed building • Irreversible harm to amenity of a Conservation Area • Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area • Works affecting a protected landscape included but not limited to a SAC, SSSI or SLINC 	24 hours
Medium	<p>Significant Reversible Harm To Amenity or the Environment</p> <ul style="list-style-type: none"> • Development prior to compliance with the discharging of conditions on a planning approval • Breach which results in serious demonstrable harm to amenity of neighbourhood • Unauthorised development which is in breach of planning policy • Source of significant public complaint • Unauthorised advertisements that have a detrimental impact on highway safety in the view of the Councils Highways service. 	Within 10 working days
Low	<p>Minor Reversible Harm To Amenity or the Environment</p> <ul style="list-style-type: none"> • Unauthorised development which is not the source of significant public complaint • Erection of unauthorised advertisements 	Within 30 working days

Table 2: Target Times For Initial Response To Complaint

Priority	Acknowledgement of complaint	Detailed response targets to complainant
High	Within 2 workings days	Within 3 working days
Medium	Within 5 workings days	Within 28 working days
Low	Within 5 workings days	Within 40 working days

Enforcement complaints will be assessed and prioritised by the Senior Planning Enforcement Officer or Area Manager, with supporting advice given by other Departments in the Council or Statutory Consultees where deemed necessary.

PROCEDURES

At all times, staff will follow the principles set out below and will:

- Act professionally courteously and equitably
- Endeavour to negotiate a solution to the problem where possible
- Use plain language
- Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including timescales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advice
- Keep all personal details confidential unless court action or the Freedom of Information legislation makes it necessary to release information.
- Discourage retrospective planning applications when there is no prospect of an approval
- The rights of appeal against any formal notice will be clearly explained to the person or company being investigated.
- Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent except in exceptional circumstances.
- Only take formal enforcement action where there is a breach of planning control, and where the action is proportionate and an environmental benefit is likely to result.

To initiate a planning enforcement investigation, complaints should normally be made in writing by letter, email to enforcementcomplaints@walsall.gov.uk or via the standard form on the Council's website at:

<https://go.walsall.gov.uk/planningenforcement>

For each case submitted, a case officer will be assigned to deal with the assessment. Depending on the outcome of the investigation, the case may be escalated or closed depending on the findings. You will be notified of the name of the officer dealing with the case and during the key stages in the investigation and assessment.

The Council will not tolerate any physical or verbal abuse towards its planning enforcement officers. Where necessary the Council will use legal action to prevent abuse, harassment or assaults on its Officers.

ANONYMOUS ENFORCEMENT ENQUIRIES

If enforcement enquiries are submitted without any contact details to enable the Council to seek further information or respond back to the person raising an enforcement enquiry, the Council will not normally pursue these items. Anonymous enforcement enquiries will only be investigated if the alleged breach relates to illegal works to a Scheduled Ancient Monument, a Listed Building or works to trees which

are in a Conservation Area or trees protected by a Tree Preservation Order, subject to sufficient information to be able to clearly identify the location of where the breach is allegedly being carried out.

An enforcement enquiry will be treated as being anonymous if no details are given or all the contact details provided are unobtainable. It is beneficial for as many methods of communicating as possible are provided.

HOW TO SUBMIT AN ENFORCEMENT COMPLAINT

All enforcement complaints made should include the following details:

- The identity and contact details of the complainant
- The address at which the alleged breach of planning control has taken place
- A short description of what is alleged to be the breach of planning control
- Why the complainant feels that the matter involves a breach of planning control
- When the alleged breach commenced
- Details of the type of harm considered to be caused by the alleged breach.

The more information that can be provided then the greater the chance any breach can effectively be resolved.

Where available, evidence can be submitted to support any complaint. The following forms of evidence are commonly accepted:

- Photographs
- Video clips
- Activity logs (blank copy at the end of this document)
- Notes of events
- Written statements

The name and address of all complainants is kept confidential. It may be necessary that such details are later required to be disclosed for legal reasons but prior approval will be requested if the enforcement case progresses through to the Courts.

We understand that sometimes people can feel threatened, particularly in cases which may involve keeping a log of the activities of near neighbours. Enquirers who wish to remain anonymous are advised to seek support from a Councillor who could act on their behalf and ensure their anonymity.

When an enforcement enquiry is received, it will be registered on the Council's planning database system. In most cases, not all, a site visit may be necessary before the investigating case officer can determine whether or not there has been a breach of planning control.

The enquirer will be acknowledged and will be advised which case officer will be dealing with the matter and full contact details of that officer will be given. Enquirers may contact the officer for an update and they are positively encouraged to do so

should they discover any new breaches or any material change to an existing complaint.

METHODS OF COMMUNICATION

The preferred method of communication is email (excluding temporary email addresses) as this allows a written log to be kept of steps taken to resolve any outstanding matter whilst also allowing information to be fed back without additional delay. Alternative methods of communication include post and telephone either landline or mobile.

All evidence intended for use in any subsequent enforcement action will need to be submitted to the Council in written form either by email or post. Verbal evidence cannot be accepted as ultimately, this cannot be presented before a Court if the matter is taken to prosecution.

The Council though does not have the resources in place to conduct an investigation through text or social media e.g. Whatsapp, Instagram, Twitter or Facebook.

RESPONSE PROCEDURE

After receipt of an enforcement complaint, the investigating case officer will research the planning history of the site and permitted development rights and assess whether or not the enforcement enquiry constitutes a breach of planning control.

If there has been no breach of planning control then the case will be closed and the enquirer advised of this decision.

Where it is apparent that development has taken place without the relevant valid consent in place, it is normal practice to inform the person responsible that they are in breach and to invite an application to regularise the development. This will only happen, if such an application could be looked upon favourably and follows Government guidance on ensuring effective enforcement.

Where unauthorised development is identified and is not acceptable, the case officer will prepare a report to the Planning Committee outlining the planning issues arising from the breach. The report may recommend serving a statutory notice. Where necessary, liaison will take place with the Council's solicitors to agree the most appropriate course of action. Those in breach of planning control will be informed of the decision to take the matter to the Planning Committee and advised of the date of that Committee (as will the enquirers). The requirements of any formal notice will always be the minimum required to resolve the breach of planning control.

SUMMARY OF ACTIONS WE WILL TAKE ACCORDING TO THE STATUS OF AN INVESTIGATION.

Status of the Investigation	The Council's Actions
No breach of planning control has been identified	The Council will write to the complainant to advise them of our findings and the investigation will be closed.
A breach of planning control has been identified where it is not expedient to take action	The Council will write to the complainant to advise them of its findings and provide an explanation as to why no action will be taken in this instance. The investigation will be closed.
A breach of planning control has been identified and retrospective planning application may regularise the breach.	<p>The Council will write to the person responsible for the breach of planning control and explain why the works/use require planning permission and provide advice on how that permission can be obtained.</p> <p>The Council expects a planning application to be submitted within 28 days. If an application is not submitted, the Council will decide whether it would be expedient to pursue enforcement action.</p> <p>The Council will write to the complainant to confirm a retrospective planning application is being sort to regularise the planning breach</p>
A breach of planning control has been identified and the matter needs to be addressed.	<p>The Council will write to the complainant advising of the need for action by the owner.</p> <p>The case will be given a priority level.</p> <p>The Council will also write to the person(s) responsible for the breach to advise them what steps they need to take to address the breach of planning control and the timescales within which those steps must be taken. The Council will also advise of the consequences of not complying with its request.</p>
Further investigation is required.	<p>The Council will write to the complainant to advise them of its initial findings.</p> <p>The case will be given a priority level and further investigations will be undertaken by the case officer.</p> <p>The Council will write to the person(s) responsible for the breach to advise them of the information that it needs. This may involve issuing a Planning Contravention Notice (PCN) which must be completed and returned to the Council within 21 days. A PCN may also be issued in the above circumstances.</p>

THE EXPEDIENCY TEST

If a planning application is not submitted to regularise unauthorised works, the Council must then decide whether or not it is considered expedient to take formal enforcement action. In making this decision, the Council will have due regard to the provisions of the Development Plan and any other material considerations, to assess whether the breach causes an unacceptable level of planning harm. Matters assessed may include the location of the breach, its visual impact, its effect on neighbours' amenity or its impact on highway safety as set out on the scoring sheet above.

The Council considers it will not be expedient to pursue planning enforcement action under the following circumstances: -

- where the outcome of any enforcement action would not result in a significant environmental gain or benefit
- Where there is no evidence of a breach of planning control*.
- permission would be likely to be granted for the development without conditions**
- where the breach affects Council-owned land or is on the public highway ***

Notes

* see page 23, dealing with sporadic breaches of planning control

** those affected will be advised of the need to apply for planning permission and the fact that the owner/operator may encounter legal difficulties should they choose to sell
*** in these cases, the powers available to the council as landowner or as local highway authority are likely to be more appropriate and such cases will be passed to the appropriate part of the Council for consideration

In some cases, it may be appropriate for Officers to enter into negotiations with the alleged contravener to either secure compliance with a condition or permission, or to negotiate changes to a development to make it more acceptable in planning terms. These negotiations may negate the need for enforcement action.

IMMUNITY FROM ENFORCEMENT ACTION

Planning legislation confirms, some types of development are lawful and immune from enforcement action if they have existed for specified periods of time:

- **More than 4 years** for a building, or other construction works, external alterations to building/construction works and the use of a building as a residence
- **More than 10 years** for a change of use of land/buildings or a failure to comply with planning conditions on a planning permission.
- There is **no time limit** for the enforcement of breaches in relation to Listed Building legislation.

Officers will check planning histories, aerial photographs, and other sources, where appropriate, to test any claims of immunity. They may also invite comment from those who may know more about the issue, for example near neighbours.

If it appears that the development may be immune from enforcement action, then advice will be given on the submission of an application for a Certificate of Lawful Existing Use or Development (commonly referred to as a “CLEUD”). In such cases, the onus of proof remains with the applicant. If no such CLEUD application is made, based on the evidence before the Council, then the case will be closed as immune from enforcement, even though the breach has not been formally regularised.

HOW THE COUNCIL RESPONDS TO DIFFERENT TYPES OF BREACH

On-going breaches of planning control

Breaches of planning control involving physical works are easier to observe than occasional breaches which are often associated with changes of use.

The Council will seek to prioritise the case depending on the nature of the works and whether they are on-going or have been completed. In addition, consideration will be given to whether the development is causing any irretrievable harm which maybe increasing due to the presence of the breach for example pollution to a sensitive ecological habitat.

The Council will seek to gain evidence of the breach from a number of observation points, including neighbouring properties, where permission is granted, to fully and accurately assess the scale of harm arising.

Intermittent breaches of planning control

In some cases, it is not possible to determine whether or not there has been a breach of planning control because the activities are sporadic. Typically, this can be a business being operated from domestic properties, a breach of opening hours restrictions or a low-key change of use of premises.

In these cases, the following sequence will be adopted:

- 1) Following the initial site visit, a letter and log sheets will be sent to the complainant asking to record activities for a 28-day period and then return the log sheets to the case officer;
- 2) The log sheets will then be assessed by the case officer, senior planning enforcement officer and a Team Leader if deemed necessary;
- 3) If there is evidence of a breach of planning control, then a targeted inspection will be made to progress the investigation. Investigations like these may mean a number of inspections need to be made including outside normal working hours which will require authorisation. For these reasons log sheets completed by complainants are essential for evidence collecting and hence why they are specifically requested.

If log sheets are not completed and/or not returned to the case officer then the case will be reviewed to see if the necessary information to pursue a case or whether evidence can be secured through any other reasonable means. Where this is not possible then the case may potentially be closed down. Following investigation of the enforcement complaint, the complainant will be informed of the Council's decision including to close a case if no breach is noted or if insufficient evidence can be collected to prove a breach. Where a case is closed the information will be retained on file as a record.

Retrospective planning applications

Requesting a retrospective planning application has the advantage of the Council being able to obtain full details of the works that have been carried out and enables interested parties to be formally consulted before an informed decision is made. It may also be possible to make amendments to the scheme or impose conditions which overcome the concerns of interested parties. A period of 28 days will normally be given for such an application to be submitted, although this period may be reduced or increased depending on the merits of each case.

Any views or advice given by officers will be informal and will not prejudice the outcome of any planning application which is subsequently submitted. Where there are no reasons to oppose the development, in the pursuit of expediency the Council may exercise its discretion not to pursue enforcement action, as set out on page 23.

Where formal action is required and it will affect a business or commercial interest, full regard will be given to the Government's Enforcement Concordat. Where necessary those in breach will be referred to the Council's Economic Regeneration Officers, in order that efforts may be made to minimise the effects of any necessary enforcement action. For example, help in guiding the business to an alternative site where the business activity is better suited.

Timescales for compliance with any formal enforcement action will reflect the following:

- harm arising to the environment,
- harm to the amenity of the neighbours,
- needs of the business and impact on staff and customers
- impact of the enforcement action
- time needed to remedy the breach.

The Council acknowledge this may be unwelcome to the complainant; however, this judgement must be part of the process if enforcement action is taken. If the Council seeks to take a case to prosecution through the Courts, consideration will be given to whether the Council has acted in a reasonable manner.

If it can be successfully argued by a defendant that the Council has acted in an unreasonable manner then the case may be dismissed irrespective of the merits of the case or the harm arising.

For cases where the breach is causing significant harm, the Council will consider whether it is expedient to move directly to taking formal enforcement action rather than inviting a planning application. The type of enforcement action available for such cases is outlined in Appendix 1.

When a retrospective planning application is received, it will be determined on its own merits. Unless the breach is causing serious harm, it is normal practice to await the determination of the planning application before deciding whether to pursue formal enforcement action. The enforcement case will remain open until the planning application has been determined. If the retrospective planning application is approved, then the enforcement case will be closed subject to the applicant's compliance with any conditions requiring changes to the development to make it acceptable or overcome any harm. If the planning application is refused then the case will remain open until the breach is satisfactorily resolved.

PLANNING ENFORCEMENT OPTIONS

An objective of planning enforcement is resolving problems by negotiation and persuasion. However, there are a number of cases which require formal enforcement action to be taken.

Where it is deemed necessary to take such action, the parties will be advised of the action to be taken. The owner/operator affected by the notice will also be advised of any rights of appeal and the penalties for non-compliance.

The details and definitions of the main types of action are detailed in Appendix 1. In some cases, officers can act under delegated powers and in others the case will need to be reported to the Planning Committee by the Head of Planning, Environment and Transportation for authorisation of enforcement action.

Formal Enforcement Action

The type of enforcement action to be pursued will be dependent on the circumstances of the case. The type of action pursued must also be proportionate to the nature of the breach of planning control. There are many different forms of enforcement action which are available to the Council and these are summarised below in Appendix 1.

In considering whether to pursue enforcement action, the Council must also take into account the Human Rights Act 1998 and the Articles contained therein with particular reference to the Right to a Fair Trial, the Right to a private family life and the protection of property.

The Council also has a duty to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of protected characteristics in the carrying out of their functions, in accordance with The Equality Act 2010.

Once the decision has been made to pursue formal enforcement action, the relevant notice will be issued by the Council. When a Notice has been issued the relevant Enforcement Public Register is updated as a matter of course. If a notice is subsequently complied with the Register is further updated. An electronic version of the Enforcement Register can be viewed on the Council's website and this is updated on a quarterly basis. Enforcement notices once served stay with the land in perpetuity and do show up on local land charge searches.

Depending on the type of enforcement action pursued, there are various rights of appeal, which may suspend the effect of a notice until the appeal is heard. Further information on this is contained within Appendix 1.

Formal notices, give the person responsible for the breach, a specified time limit in which to remedy the breach or provide relevant information for consideration in the investigation.

Once this time period has expired the case officer will check whether the notice has been complied with. Then depending on the nature of the notice, this will shape how the investigation proceeds. For example, if the notice is a PCN, the information within it may confirm a planning breach and an Enforcement Notice will then be served and the case continues.

If the planning breach is resolved, no further action will be taken by the Authority and the file will be closed.

If, however, the notice has not been complied with, the case officer, liaising with the Council's solicitor, and having regard to the constitution consider whether or not to prosecute as this is a criminal offence. The Council could utilise stop notices or temporary stop notices to cease a use or building operation. In some cases, such as Section 215 notices, the Council may take Direct Action, also known as Default Action to secure compliance. These forms of action are explained in more detail in Appendix 1.

Prosecutions

Failure to comply with any requirement of a statutory notice is usually a criminal offence and the Council will normally take legal action in such cases.

Where breaches of planning control lead to criminal offences being heard in Court, officers will ensure that all relevant evidence is put before the Court and that the disclosure obligations are complied with. The decision to prosecute will also take account of the evidential and public interest tests.

All prosecution action will be taken in accordance with the Police and Criminal Evidence Act.

Where it is considered in the public interest to do so, the Council is likely to make a costs application to the Court in order to recover its expenses in pursuing prosecution cases.

In the event of legal proceedings, a successful outcome may depend upon the willingness of complainants to appear as witnesses at Court. Whilst during the investigation period the complainant's details are kept confidentially, in order to act as a witness this anonymity is waived.

Where a criminal offence has occurred, and the Defendant(s) has been found guilty, the Local Planning Authority may request that the Court makes a Confiscation Order under the Proceeds of Crime Act 2002. The Confiscation Order will relate to any financial benefit arising from a criminal activity.

Direct Action

There are a small number of cases where Statutory Notices are issued and not complied with and successful legal proceedings fail to resolve the breach. Similarly, there are cases where prosecution will clearly not be effective.

Provision is made for the Council to take direct action in certain circumstances, to enter the land and remedy the problem (Town and Country Planning Act 1990, under section 178 and section 219)

Direct action will only be taken after full consultation has been taken with all relevant parties (and this will depend on the nature of the case) and only if authorisation has been given by the Planning Committee. Reports to Planning Committee on such matters will be considered in private session in accordance with the Local Government Act 1972 to ensure that the case is not prejudiced.

If direct action is taken the cost to the Council can be considerable. A charge in favour of the Council for the cost of the action will be registered on the land to ensure that money raised by any future sale will be used to recoup the Council's costs. Other actions to recover the money will be considered, where appropriate.

APPENDICES

APPENDIX 1 – ENFORCEMENT TOOLKIT

APPENDIX 2: REVIEW OF THE LOCAL ENFORCEMENT PLAN

APPENDIX 3: REFERENCE SOURCES

APPENDIX 4: LOCAL PLANNING ENFORCEMENT PLAN RESIDENTS GUIDE

APPENDIX 5: ENFORCEMENT LOG SHEETS

APPENDIX 1 – ENFORCEMENT TOOLKIT

The following section of this Local Enforcement Plan provides a summary of the various tools available to deal with alleged breaches of planning control. The Local Planning Authority must assess, in each case, which power (or combination of powers) is best suited to dealing with any particular anticipated/apprehended, or actual, breach of control to achieve a satisfactory, lasting and cost effective remedy, having regard to the circumstances of the case.

It should also be noted that the type of enforcement action taken should be commensurate and proportionate with the breach of planning to which it relates.

OBTAINING INFORMATION

There are three 'requisition' powers for planning enforcement purposes:

- Section 330 of the Town and Country Planning Act 1990 (as amended)
- Section 16 of the Local Government (Miscellaneous Provisions) Act 1976
- Section 171C of the Town and Country Planning Act 1990 (as amended)

Section 330 of the Town and Country Planning Act 1990 (as amended)

This power may be used in order to obtain relevant information at an early stage of the enforcement process. It involves serving a notice on either the occupier of the premises or the person receiving rent for the premises. This form of notice may also be used for investigating enforcement under the Planning (Listed Buildings and Conservation Areas) Act 1990.

Section 16 of Local Government (Miscellaneous Provisions) Act 1976

These provisions are primarily intended to enable an authority to establish the facts about ownership of land.

Section 171C of the Town and Country Planning Act 1990 (Planning Contravention Notice)

The main method for Local Planning Authorities to obtain information about activities on land, when it appears to the Local Planning Authority that a breach of planning control has occurred, is to serve a Planning Contravention Notice (PCN). A PCN takes the form of a series of questions relating to the suspected breach of planning control. It is an offence to fail to respond to the notice within 21 days, or to make false or misleading statements in reply. This notice however is not available for use in respect of suspected works to Listed Buildings or protected trees.

POWERS OF ENTRY FOR ENFORCEMENT PURPOSES

In addition to the investigative powers outlined above, case officers also have powers to enter land, specifically for enforcement purposes. This right is limited to what is regarded as necessary, in the particular circumstances, for effective enforcement of planning control. A notice period of at least 24 hours is required before entry can be demanded to a dwelling house. Prior notice is not required for access to domestic outbuildings or garden land, industrial, commercial or farmland.

A new Code of Practice introduced in April 2015 recommends that contact should be made with owners/occupiers before exercising powers of entry, unless it is impracticable to do so or would defeat the purpose of the inspection. The full version of the code can be found at:

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

Powers of entry also exist in accordance with a warrant, and procedures in respect of those matters can also be found within the above Code of Practice.

The following section refers to types of formal enforcement action which may be taken by the Local Planning Authority in order to require a particular use or development to cease or for works to be removed or modified:

ENFORCEMENT NOTICE

An Enforcement Notice can only be served when the Local Planning Authority is satisfied that there has been a breach of planning control and when it is considered expedient to do so. An Enforcement Notice requires specific steps to be taken which may include a use to cease or for a structure to be removed. It must also specify the period for compliance.

An Enforcement Notice must contain an explanation of the reasons it is being issued. The reasons should be carefully considered and be specific to the case. Failure to comply with an Enforcement Notice is a criminal offence.

The recipient of an Enforcement Notice has a right to appeal to the Secretary of State. Such an appeal will suspend the effect of the Notice until the appeal is determined. If an appeal is lodged all complainants and interested parties will be advised of the appeal details and how to make representations.

LISTED BUILDING ENFORCEMENT NOTICE

A Local Planning Authority may serve a Listed Building Enforcement Notice if unauthorised works have been or are being carried out to a listed building. Like an Enforcement Notice the recipient of this type of Notice has a right to appeal to the Secretary of State.

BREACH OF CONDITION NOTICE

This form of notice may be used as an alternative to the Enforcement Notice to remedy against failure to comply with any condition attached to a planning permission or limitation specified in the Town and Country Planning (General Permitted Development) Order 2015. It does not apply to breaches of conditions attached to listed building consent or advertisement consent. There is no right of appeal against a Breach of Condition Notice.

STOP NOTICE

When the effects of unauthorised activity are seriously detrimental, a Stop Notice may be served to ensure that an activity does not continue if an appeal is lodged against the Enforcement Notice. A Stop Notice can only be served where an Enforcement Notice has been issued. A Stop Notice can relate to any, or all, of the uses or activities specified in the Enforcement Notice. It does not apply to works to a Listed Building.

It is an offence to contravene a Stop Notice. Whilst there is no right of appeal against a Stop Notice, the validity of a Notice or the decision to issue the Notice can be challenged in the Courts by an application for Judicial Review.

TEMPORARY STOP NOTICE

Where the Local Planning Authority considers that a breach of planning control should stop immediately it may serve a Temporary Stop Notice. Such a notice expires 28 days after it has been served and during this period the Council must decide whether it is appropriate to take further enforcement action. Once a Temporary Stop Notice has been served it is not possible to serve further Temporary Stop Notices for the same breach of planning control.

There are restrictions on the use of temporary stop notices; for example, such a notice cannot prohibit the use of a building as a dwelling house and may not prevent the continuance of an activity which had been carried out for a period of four years.

DISCONTINUANCE NOTICE

The Town and Country Planning (Control of Advertisement) Regulations enable a Local Planning Authority to take discontinuance action against any advertisement, which normally has the benefit of any of the categories of deemed consent.

A Discontinuance Notice may only be served if the planning authority is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. There is a right of appeal against a Discontinuance Notice.

SECTION 215 NOTICES /UNTIDY LAND NOTICE

Under Section 215 of the Town and Country Planning Act, a Local Planning Authority may serve a notice on the owner or occupier of the land, if it appears that the amenity of a part of their area, or an adjoining area is adversely affected by the condition of the land. A Section 215 notice may deal with 'buildings' as well as land. There is an appeal provision, where the recipient may challenge the notice in the Magistrate's Court.

Dilapidated buildings may also be open to action under the Building Act 1984 and these cases will be referred to Building Control immediately following a site inspection. These are frequently also vacant, and can quickly generate a lot of concern for neighbours. The issues vary a lot between different sites, and the Council needs to decide whether or not the land and/or buildings are detrimental to the amenity of the area (as this is the test set out in the legislation).

High priority cases may, for example, be where:

- A significant part of the land or the exterior of the building is seriously visually damaging to the area (for example the roof and the façade may be damaged or missing, or demolition rubble left in place)

AND

- The land is in a prominent location

It will not normally be possible to take action simply because the building is not secure or because of the presence of graffiti. Nor will it be possible to take action where the problem relates to the accumulation of a small amount of materials that may attract vermin. In these cases other parts of the Council may be able to act. Where a referral is considered necessary, this will be done as soon as possible.

COMPLETION NOTICE

A Completion Notice may be served if the Local Planning Authority is of the opinion that development (which has started within the statutory 3-year period) will not be completed within a reasonable period. For this type of Notice, the period for compliance has to be a minimum of 12 months. The Local Planning Authority must also refer the Notice to the Secretary of State for confirmation. There is a right of appeal against a Completion Notice.

INJUNCTION

A Local Planning Authority can apply to the High Court or County Court for an Injunction to restrain an actual or apprehended breach of planning control. An Injunction can be sought whether or not other enforcement action has been taken and when the identity of the person responsible for the breach is unknown.

When a planning obligation (Section 106 agreement) has not been complied with the Council may apply for an Injunction to secure compliance with the legal agreement. A Local Planning

Authority may also apply for an injunction to restrain a breach or apprehended breach of tree preservation or Listed Building control.

The decision whether to grant an injunction is always in the absolute discretion of the Court. The Court will need to be satisfied in the case of every injunction application that enforcement action in this form is proportionate.

TREE REPLACEMENT NOTICE

In the case of protected trees, it is a criminal offence to:

- Cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order (TPO) or;
- Wilfully damage, top or lop a tree protected by a Tree Preservation Order in a way that is likely to destroy it.

If any of these works are carried out, the Council must decide whether or not to prosecute. A Local Planning Authority may issue a Tree Replacement Notice requiring the owner to plant a tree or trees of appropriate size and species if a tree has been removed in contravention of a TPO or if a protected tree has been removed because it was dead or dangerous.

The cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of trees within a Conservation Area is also a criminal offence. A Tree Replacement Notice can also be served in respect of the unauthorised removal of tree(s) in a Conservation Area. An appeal can be lodged against a Tree Replacement Notice

HEDGEROW REPLACEMENT NOTICE

It is a criminal offence to intentionally or recklessly uproot or otherwise destroy a hedge protected by the Hedgerows Regulations 1997 (which includes hedgerows on or adjacent to agricultural, equine or common land etc.). If any of these works are carried out, the Council must decide whether or not to prosecute.

A Local Planning Authority may issue a Hedgerow Replacement Notice requiring the owner to replant a hedgerow of appropriate size and species if a hedgerow has been removed in contravention of these Regulations. An appeal can be lodged against a Hedgerow Replacement Notice.

HIGH HEDGE REMEDIAL NOTICE

The Local Planning Authority may issue a High Hedge Remedial Notice if an evergreen/semi evergreen hedge is found to be a 'nuisance' when assessed in accordance with the Anti-Social Behaviour Act 2003, part 8, High Hedges. If an owner or occupier of the land where the hedge is located fails to comply with the Notice the owner or occupier will be guilty of an offence. An appeal can be lodged against a High Hedge Remedial Notice.

DIRECT ACTION /DEFAULT POWERS

Section 178 of the 1990 Act allows Local Planning Authorities to enter land and carry out any of the requirements of a Notice themselves. The Local Planning Authority may recover any expenses reasonably incurred with the direct action from the owner of the land. Such expenses, until recovered, become a charge on the land, binding on the successive owner.

LEGAL AGREEMENTS

Legal agreements under Section 106 of the Town and Country Planning Act can be used to restrict development or the use of land. They may also be used to require specific operations or activities to be carried out. The advantage of this approach is that the legal agreement goes with the land and not an individual and therefore remains in perpetuity.

Should a site be sold on, the requirements of the legal notice have to be taken on by the new owners. The requirements of the notice also apply if the land is rented or leased.

SECTION 225A: REMOVAL NOTICES

Section 225A allows a Local Planning Authority to remove, and then dispose of, any display structure in their area which, in the Local Planning Authority's opinion, is used for the display of advertisements in contravention of the regulations. This power is subject to the Council first serving a 'Removal Notice' upon the persons who appear to be responsible for the structure. There is a right of appeal against a Removal Notice to the Magistrate's Court.

In 2014 new powers were introduced for Councils through the Anti-Social Behaviour, Crime and Policing Act 2014. Those powers which can be used to deal with planning enforcement enquires relating to the following:

- illegal hoardings;
- fly-posting;
- graffiti; and
- unauthorised advertisements alongside highways.

COMMUNITY PROTECTION NOTICE (CPN)

This can be used where the behaviour of a person, business or organisation is considered to have a detrimental effect on the quality of life of those in the locality. The behaviour has to be of a persistent or continuing nature. This form of action can be used as an alternative approach to Section 215 notices referred to above. There is a right of appeal and the failure to comply with a CPN is a criminal offence.

In April 2012 new powers were introduced through the Localism Act 2010 which includes the following requirements:

- someone to stop doing specified things
- someone to do specified things
- someone to take reasonable steps to achieve specified results.

Due to their wide scope, CPN's can be issued by a number of departments in the Councils and each case will be determined on the particular circumstances.

SECTION 70C: DECLINE TO DETERMINE A RETROSPECTIVE APPLICATION

A Local Planning Authority may decline to determine a retrospective application for development which is the subject of an Enforcement Notice served after 6 April 2012.

SECTION 171BA –PLANNING ENFORCEMENT ORDER

A Local Planning Authority may apply to the Court for a Planning Enforcement Order if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from formal enforcement action if it has been deliberately concealed.

APPENDIX 2: REVIEW OF THE LOCAL ENFORCEMENT PLAN

This document will be reviewed annually to ensure that it remains current and consistent with best practice. Reviews will take into account any changes to current legislation and/or guidance and also comments received from residents, customers, businesses and visitors to the Borough.

To enable continuous improvement of the enforcement function, the key elements of this Local Enforcement Plan will be reviewed. These key elements include:

- relevant policies
- type of breaches of planning control
- resources available
- procedures for investigating complaints
- tools available to enforce breaches of planning control

The operational review of these elements will enable the Council to identify where best to target resources and meet the obligations imposed upon changing legislation, procedures and practices.

Help us to help you

We are constantly looking at ways to improve our services and welcome comments on this Enforcement Policy and any other matter relating to our Service. Contact details are given below:

By Post

Development Management
Planning, Environment and Economy
Civic Centre
Darwall Street
Walsall,
WS1 1DG

By Telephone

Planning Help Line: 01922 652677

By E-mail

enforcementcomplaints@walsall.gov.uk

Advice on how to make an enquiry about unauthorised development or what to do if you carry out works or a change of use without planning permission can be obtained from the Councils Planning web site at:

<https://go.walsall.gov.uk/planning>

APPENDIX 3: REFERENCE SOURCES

National Planning Policy Framework/National Planning Policy Guidance

Information on planning enforcement can be found on the Governments website at www.planningportal.gov.uk.

Walsall Planning Policy Framework

The strategic planning aims of the Council are set out in the Development Plan, which is a group of documents comprising the following:-

The Black Country Core Strategy:

https://go.walsall.gov.uk/Portals/0/images/importeddocuments/black_country_core_strategy_final.pdf

The Unitary Development Plan (UDP):

[https://go.walsall.gov.uk/Portals/0/images/importeddocuments/annotated_2011_udp - february 2011.pdf](https://go.walsall.gov.uk/Portals/0/images/importeddocuments/annotated_2011_udp_-_february_2011.pdf)

The Emerging Walsall Site Allocations Document and Town Centre Area Action Plan:

https://go.walsall.gov.uk/planning_2026



Walsall
Council

Planning, Environment and Transportation

**Local Planning Enforcement
Plan -
Residents Guide**

13th DECEMBER 2017

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1.0 WHAT IS PLANNING ENFORCEMENT

This is a guide for residents and the local community to greater understand the Planning Enforcement procedures and the approach of the Council to alleged planning breaches.

The planning system operates to regulate development and the use of land. It has regard to the development plan, other material planning considerations and the community interest. Planning enforcement is a technically and legally complex element of the planning system, which means that action is not always straight forward. Whilst the investigation of an enquiry is mandatory, enforcement action is a discretionary power of the Local Planning Authority and not all breaches of planning control result in formal enforcement action.

To ensure that the community can have confidence in the planning system there needs to be effective and proper enforcement of planning controls. Fair and effective planning enforcement is therefore important to protect the quality of life for the people who live and work in Walsall, and the quality of the Boroughs built and natural environment. The Council's focus will be on these cases where the impacts are significant and or irreversible.

2.0 BREACHES OF PLANNING CONTROL

2.1 What is a breach of planning control?

Breaches of planning control can vary considerably and could involve matters such as the unauthorised erection of a building or extension of a building, a material change of use of land or a building or the display of unauthorised advertisements. The following table gives greater guidance on what is and is not a breach of planning control.

The planning breaches which are underlined in table 1 do carry a criminal liability. Whilst other planning breaches are **not** a criminal offence.

There are time limits as to when enforcement action can be taken. Action has to be instigated within **4 years** in relation to the erection of buildings or the change of use of a building for use as a single dwelling house. In the case of any other breach of planning control, including breach of condition, action must be taken within **10 years**. There is, however, no time limit for the enforcement of breaches in relation to Listed Building legislation.

Table1: What is a breach of planning control?

Breach of planning control	NOT a breach of planning control
<ul style="list-style-type: none"> • <u>Unauthorised works to a Listed Building</u> • <u>Unauthorised demolition within a conservation area</u> • <u>Unauthorised works to a tree within a conservation area or subject to a preservation order (TPO)</u> • <u>Unauthorised advertisements</u> • Breaches of planning conditions • Not built in accordance with approved plans • Untidy land affecting the amenity of an area • Unauthorised engineering works, such as alteration to ground levels • Unauthorised siting of a caravan or mobile home used as an independent dwelling house • Unauthorised material changes of use of land or buildings • High Hedges 	<ul style="list-style-type: none"> • Internal works, excluding change of use to a non-listed building • Obstruction of a highway • Parking of vehicles on highway or grass verges • Parking of caravans on residential driveways or with curtilage of a dwelling, where is does not form a separate dwelling • Operation of a business where the residential use remains the main use of the premises • Land ownership or boundary disputes • Covenants contained on property deeds • Works which are 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended. • Excepted Advertisements under the Town and Country Planning (control of Advertisements) (England) Regulations 2007 as amended. • Clearing of land and over growth of bushes and non-protected trees. • Dangerous Structures • Noise disturbance and general pollution • Fly Tipping • Business competition • Blocking of a designated right of way • Party Wall Act • Loss of Property Value • Loss of View • Health and Safety • Site security.

3.0 HOW TO MAKE AN ENFORCEMENT COMPLAINT

3.1 Making an enforcement complaint

It is useful when raising a complaint to include as much detail relating to the breach as possible, including the exact location of the site or property, the nature of the breach and the harm it is causing.

To assist the Council and prevent misunderstandings it is preferred for enquiries to be submitted in writing or online at <https://go.walsall.gov.uk/planningenforcement> or by emailing enforcementcomplaints@walsall.gov.uk

The following information is necessary to conduct an enforcement enquiry:

- Your name, address, email and phone number
- Location/address of the complaint, where the planning breach is occurring
- Details of the complaint, including when it started
- Details of the harm that is occurring due to the breach

The fullness of these details is important in enabling officers to prioritise enquiries. In some cases, we may ask you to submit evidence of the breach such as activity logs, photographs, notes of events.

If we do not receive sufficient information about an enquiry, for example the location, then we may not be in the position to accept the enquiry.

3.2 Confidentiality

The name and address of all complainants is kept confidential. We require contact information in order to keep you informed of the process and to contact you to assist use in our investigation. It may be necessary for legal reasons such as Freedom of Information requests that details need to be disclosed, however this information will only be revealed if the information is shown to be in the public interest.

Whilst we do accept anonymous enquiries, these are not priorities. If you feel threatened and therefore unable to provide your details it is recommended to seek support from your Local Councillor who can act on your behalf and protect your anonymity.

3.3 Methods of communication

The Council prefers to use email as this allows for a written log of the steps taken to resolve matters, and allows for information to be fed back without delay.

3.4 How enquiries will be dealt with

At all times, staff will follow the principles set out below and will: -

- Act professionally courteously and equitably
- Negotiate a solution to the problem where possible
- Use plain language
- Be available to handle queries during normal office hours
- Keep all personal details confidential, unless court action or the Freedom of Information legislation makes it necessary to release information.
- Discourage retrospective planning applications when there is no prospect of an approval
- Only take formal enforcement action where there is a breach of planning control, and where the action is proportionate and significant benefit is likely to result.

4.0 TIMESCALES

All enquiries will be registered and acknowledged within 5 working days, with the exception of High Priority cases. You will receive confirmation of the enforcement case number and the officer dealing with your enquiry.

Given the large number of enquiries received it is necessary to prioritise cases. Site visits will be undertaken within with 24 hours or 30 days depending on the priority of the enquiry. Table 2 below details the priority bandings.

Following the visit, you will be notified of the course of action that the Local Planning Authority intends to take next.

Table 2: Enforcement Priorities

Priority	Considerations	Target time for visiting	Response time to enquirer
High	Irreversible Harm to The Environment <ul style="list-style-type: none"> • Unauthorised works to a listed building • Irreversible harm to amenity of a Conservation Area • Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area • Works affecting a protected landscape included but not limited to a SAC, SSSI or SLINC 	24 hours	Within 3 working days
Medium	Significant Reversible Harm to Amenity or the Environment <ul style="list-style-type: none"> • Development prior to compliance with the • discharging of conditions on a planning approval • Breach which results in serious demonstrable harm to amenity of neighbourhood • Unauthorised development which is in breach of planning policy • Source of significant public complaint • Unauthorised advertisements that have a detrimental impact on highway safety in the view of the Councils Highways service. 	Within 10 working days	Within 28 working days
Low	Minor Reversible Harm to Amenity or the Environment <ul style="list-style-type: none"> • Unauthorised development which is not the source of significant public complaint • Erection of unauthorised advertisements 	Within 30 working days	Within 40 working days

The timing of enforcement action will also depend on:

- Time limit for enforcement action to be taken.

- Previous case history.
- The availability of any witnesses and their willingness to co-operate.
- Blatant disregard of the law involved in the breach or if it was a genuine misunderstanding.
- Willingness of the contravener to put right the breach.
- Likelihood of the offence being repeated.
- The overall probable public benefit of formal action.

5.0 PLANNING ENFORCEMENT OPTIONS

An objective of planning enforcement is resolving problems by negotiation and persuasion. However, there are a number of cases which require formal enforcement action to be taken. Where it is deemed necessary to take such action, the parties will be advised of the action to be taken. The owner/operator affected by the notice will also be advised of any rights of appeal and the penalties for non-compliance.

The Council has adopted a harm assessment form which provides a 'score system' to assist in the prioritisation of cases and help to determine whether it would be expedient to pursue an identified breach of planning control, on a case by case basis. Cases which score below a specified threshold will not normally be pursued, though a retrospective planning application may be invited.

Table 3: Planning Enforcement Actions

Status of the Investigation	The Council's Actions
No breach of planning control has been identified	The Council will write to the complainant to advise them of our findings and the investigation will be closed.
A breach of planning control has been identified where it is not expedient to take action	The Council will write to the complainant to advise them of its findings and provide an explanation as to why no action will be taken in this instance. The investigation will be closed.
A breach of planning control has been identified and retrospective planning application may regularise the breach.	<p>The Council will write to the person responsible for the breach of planning control and explain why the works/use require planning permission and provide advice on how permission can be applied for.</p> <p>The Council expects a planning application to be submitted within 28 days. If an application is not submitted, the Council will decide whether it would be expedient to pursue enforcement action.</p> <p>The Council will write to the complainant to confirm a retrospective planning application is being sought to regularise the planning breach</p>
A breach of planning control has been identified and the matter needs to be addressed.	<p>The Council will write to the complainant advising of the need for action by the owner.</p> <p>The case will be given a priority level.</p> <p>The Council will also write to the person(s) responsible for the breach to advise them what steps they need to take to address the breach of planning control and the timescales within which those steps must be taken. The Council will also advise of the consequences of not complying with its request.</p>
Further investigation is required.	<p>The Council will write to the complainant to advise them of its initial findings.</p> <p>The case will be given a priority level and further investigations will be undertaken by the case officer.</p> <p>The Council will write to the person(s) responsible for the breach to advise them of the information that it needs. This may involve issuing a Planning Contravention Notice (PCN) which must be completed and returned to the Council within 21 days. A PCN may also be issued in the above circumstances.</p>

6.0 PLANNING ENFORCEMENT POWERS

6.1 Enforcement Actions

This is a summary of the main possible actions; more details can be found in the Local Planning Enforcement Policy.

- **Planning Contravention Notice (PCN)** – in most cases this will be the first step in resolving a breach of planning control. It is the main method for gathering information, possibly including a formal meeting, regarding suspected breaches of planning control. The intention of a PCN is also to send a clear warning that further formal action is being considered once the facts of the case have been established.
- **Enforcement Notice:** this is the most common form of action taken. The notice will specify what the breach of planning control is and the steps needed to put matters right. It also specifies a time before it comes into effect during which time an appeal can be made.
- **Stop Notice:** in exceptional circumstances where a breach continues to cause serious harm to either amenity, public safety or the environment, the Council may in addition to an enforcement notice consider serving a Stop Notice.
- **Temporary Stop Notice:** recently introduced by the Government, can be served without an accompanying Enforcement Notice and can halt activity for a maximum period of 28 days where there is serious harm that needs to be stopped immediately.
- **Breach of Condition Notice:** used when certain conditions placed on a planning permission have not been complied with.
- **Section 215 Notice** when the condition of land or a building is adversely affecting the amenity of an area
- **Prosecution** for unauthorised works to protected trees or listed buildings or where adverts are displayed without consent.

6.2 Proceeds of Crime Act

Any benefit derived from a breach of planning control which has continued in breach of a formal notice, in the form of financial gain or income, may be forfeit under the provisions of the Proceeds of Crime Act. Act.

7.0 WHAT IF A COMPLAINT IS MADE ABOUT YOUR PROPERTY OR DEVELOPMENT?

If a complaint is received about your property or development then the Local Planning Authority (LPA) has a duty to investigate the complaint in order to establish whether or not there has been a breach of planning control. It is often the case that breaches of planning control are not intentional and may arise from a misunderstanding or the person involved being unaware of planning regulations, and in many cases, it is established that there has been no breach of planning control.

7.1 Your responsibilities

If you receive a letter or a visit from an enforcement officer then we would encourage you to respond quickly, positively and to provide any required information so that the matter can be resolved quickly to the benefit of all parties.

The LPA will not reveal the details or identity of the complainant(s) to you. The investigating enforcement officer will confirm to you as soon as practicable whether or not it is considered that there has been a breach of planning control, and in cases where there has been no breach the matter will usually be resolved quickly.

In cases where a resolution may be negotiated, the enforcement officer will be happy to enter into discussions; however, we will not accept undue delays to required actions or responses during these negotiations and will expect you to respond within stated timeframes.

In some cases, however the unauthorised development or activities will not be considered acceptable and you will be requested to cease/remove the works in order to avoid a formal notice being served upon you.

7.2 Consequences of unauthorised development

Property owners should be aware that development that does not benefit from the necessary planning permission is unauthorised. Any unauthorised development could delay or potentially prevent a future sale of the property if the relevant permissions do not show up on searches. Additionally, any formal enforcement notices served will be registered with the Councils land charges section and will appear during any searches on the property. Consequently, it is in the owner's interest to have all necessary planning permissions in place and any enforcement issues resolved.

7.3 The Investigation

The planning enforcement officers have a right of entry onto any land without warrant in order to investigate an alleged breach of planning control. If it is necessary to enter your house (and not just the garden) then you are entitled to 24 hours' notice. It is an offence to wilfully obstruct an enforcement officer

exercising their right of entry and further action will be taken should this be the case, including if necessary a warrant being secured from court.

Upon receipt of a complaint the enforcement officer will usually visit the site concerned without advanced warning being given. The site visit may be unaccompanied and the land owner or developer does not have to be present. At the site visit the enforcement officer will make themselves known to any person(s) present and show the appropriate identification when they enter the site. Should the land owner or occupier not have been present at the time of the initial site visit and it was not possible to gain access, or should it be necessary to contact the land owner or occupier after establishing that there is a breach of planning control on the site then a letter will be sent to the owner and/or occupier. The letter will request contact to be made with the enforcement officer and in some cases requiring specific actions taken within a specified timeframe. It is recommended that you respond to this correspondence as soon as possible.

8.0 PHYSICAL AND VERBAL ABUSE TOWARDS OFFICERS

The Council will not tolerate any physical or verbal abuse towards its planning enforcement officers. Where necessary the Council will use legal action to prevent abuse, harassment or assaults on its Officers.

9.0 FURTHER INFORMATION

This guidance gives a brief overview of planning enforcement, further details such as legislation and greater detail on powers and actions of enforcement can be found in the Local Planning Enforcement Plan. [Local Planning Enforcement Plan](#)



Walsall Council

Economy and Environment, Development Management

RECORD OF WITNESS IN CONNECTION WITH A BREACH OF PLANNING CONTROL

ALLEGED BREACH OF PLANNING CONTROL:

ADDRESS:

DATE	TIME (FROM AND TO)	Explain what is happening and where it is happening	Note any vehicle registrations involved and persons present (e.g. male)

I certify that the entries on the sheet are true and are made at the time of observation of the events stated.

I would be willing to act as a witness in court or at a planning inquiry Yes/ No (please circle)

Signed..... **Name**.....

Date.....

Walsall Council, Development Management , The Civic Centre, Darwall Street, Walsall, WS1 1DG
Telephone: 01922 652677, Textphone: 0845 111 2910, Website: www.walsall.gov.uk/planning
Email:enforcementcomplaints@walsall.gov.uk