



Local Enforcement Plan

Adopted March 2024

1. Purpose and scope

- 1.1 This Local Enforcement Plan outlines the key principles that the Council will follow when regulating, enforcing, and litigating. The plan sets out the standards that everyone can expect from the Council's regulatory services and its officers.
- 1.2 This document outlines how Council officers consider enforcement actions, how work is prioritised, and how complaints are investigated. The Council ensures that all officers comply with this plan.
- 1.3 If there are specific strategies or procedures needed for each service area, they will be added to the general plan. If there are no specific policies or procedures for a particular service area, all regulatory functions will follow the principles outlined in the general plan.
- 1.4 The primary objective of regulations and enforcement is to guarantee the safety and well-being of the public, the environment, and different groups, including consumers, residents, workers, businesses, and the community. The Council is committed to implementing stringent regulations to ensure fair and consistent enforcement, support the local economy, and benefit the environment.
- 1.5 The Council's enforcement activities, such as investigations and formal actions, are carried out in accordance with its legal obligations. To ensure that this is the case, enforcement and investigating officers work within the limits of their delegated authority, which has been granted by the appropriate committee or Council. Any changes to these limits are reflected in the Council's constitution, which is regularly reviewed and updated.
- 1.6 Council officers play a vital role in ensuring that the enforcement decisions are fair and just. To achieve this, it's important for them to consider the principles outlined in this plan, as well as any relevant national guidance. This helps maintain consistency in actions and provide the best possible service to the communities the Council serve.
- 1.7 This document outlines how officers consider enforcement actions, how we prioritise work, and investigate complaints. The Council ensures that all officers comply with this plan.
- 1.8 The enforcement functions are carried out under the Scheme of Delegation to Officers. The Executive Director – Place has delegated authority to investigate and to take enforcement proceedings relating to environmental health, licensing, and planning functions. Many of these functions are further delegated to officers according to their qualifications and competency.
- 1.9 The scope of this Local Enforcement Plan includes environmental health and licensing functions, as well as planning development management.

2. Key principles

2.1 The Council will follow the principles of the Regulators' Code which provides a clear, flexible, and principles-based framework for how regulators should engage with those they regulate. It sets out the following:

1. regulators should carry out their activities in a way that supports those they regulate to comply and grow,
2. regulators should provide simple and straightforward ways to engage with those they regulate and hear their views,
3. regulators should base their regulatory activities on risk,
4. regulators should share information about compliance and risk,
5. regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply,
6. regulators should ensure that their approach to their regulatory activities is transparent.

2.2 Hart District Council has adopted the HART core values of:

Helpful – we will really listen to what our citizens, customers and residents want to achieve and help them reach their goals,

Approachable – we will be open, friendly, and fair, working with others and helping others to succeed,

Responsive – we will strive to do things well and look for ways to innovate and improve, and

Take Ownership – we will take responsibility, do what we say we will and see things through. People and teams will be required to work collaboratively with others both inside and outside the organisation and actively share learning and best practice.

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

2.4 Enforcement investigations will usually be kept confidential. However, any requests for information will be considered in accordance with the General Data Protection Regulation (GDPR), Freedom of Information Act (FOI) and Environmental Information Regulations (EIR).

2.5 In designing this Plan the Council have sought to embed these principles and ensure our enforcement activities are undertaken in a way that supports businesses and people to comply and grow.

3. How to contact us

3.1 If you are concerned with an environmental health or licensing matter or that there may be a breach of planning control you can raise this through one of the following channels. Our preferred method is the use of a webform or email as this enables the team to receive the information clearly and quickly.

	Webform	Email
Environmental health	Environmental health webform	eh@hart.gov.uk
Licensing	-	hartlicensing@basingstoke.gov.uk
Planning (development management)	Planning enforcement webform	enforcement@hart.gov.uk

3.2 We know that a webform or email may not be suitable for everyone, you can still contact us by post.

Hart District Council
Civic Offices
Harlington Way
Fleet
Hampshire
GU51 4AH

3.3 The quality of information and evidence provided by those reporting a breach can have a significant impact on the outcome of an investigation. You will need to provide:

- the address of the site,
- your own contact details, including your name and address,
- details of the alleged breach, including the start date, if known,
- it is also helpful to provide photographs of the development or activities,
- an indication of what harm is being caused, and to whom, and
- any details you have about the persons responsible.

3.4 Reports can be made by telephone (01252 622122) but will not be dealt with unless sufficient information is provided to allow the Council to undertake an initial investigation.

3.5 If the information given is found to be false, the enquiry will not continue unless the breach is seriously harmful to the area. Similarly, anonymous complaints will not be investigated unless they are of a very serious nature, it is in the public interest to do so, and the investigation is not reliant on the evidence of the complainant.

- 3.6 The identity of a complainant will be treated as confidential. However, if the case results in legal action being taken, the success of that case may rely on evidence being given by the complainant. In such a case, the case officer will be happy to explain what may be required before taking a decision about whether to proceed with legal action.
- 3.7 If you are aware of dog fouling problems or consistent issues with littering, please report this at [FixMyStreet](#).

4. Our approach to enforcement

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



- 4.2 Formal enforcement action is usually a last resort. The Council consider facts of the case and assesses them against the consideration set out in this Plan in determining whether it is expedient to take formal enforcement action.
- 4.3 There will be cases where enforcement action is not a last resort, but is necessary as urgent action is required, for example where there are breaches of planning control which are causing serious harm, so a stop or temporary stop notice is needed or where an injunction is required.
- 4.4 The Council will not condone wilful breaches, but it will exercise discretion about taking enforcement action if it is considered expedient to do so.
- 4.5 The Council seeks to manage its finite resources to ensure that the highest priority complaints can be addressed without delay. As a result, the response, processing, and ability to take on lower priority reports will need to be adjusted accordingly. Enforcement resources are finite and the demand for enforcement investigations is usually very high, when significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where harm is the more limited.
- 4.6 The Council will not normally undertake covert surveillance for planning enforcement purposes. Should it be considered necessary to do so, surveillance will only be undertaken with prior authorisation and in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 or any subsequent legislation.
- 4.7 Where necessary, the Council will undertake interviews under the Police and Criminal Evidence Act (PACE).

4.8 The Council will also use other publicly available sources of information such as Land Registry records or information which is published on the internet.

5. What you can expect from the Council

5.1 We will aim to acknowledge any potential enforcement inquiries you raise with us within 3 working days.

5.2 We will prioritise the initial investigations based on the details outlined in the appendices. Some cases will require more urgent investigation than others.

5.3 Due to the diverse nature of the types of cases that may be brought up, it is not possible to determine the duration of each investigation. However, we will aim to give an update on the investigation within 1 month of the initial report. This update will include progress, timelines, and any potential resolutions. Please note that at this stage, we may not be able to provide a substantial update as the investigation is still ongoing.

5.4 You are entitled to expect our Officers to:

- a) be courteous, helpful, and efficient,
- b) be consistent, transparent, and accountable,
- c) identify themselves by name and show identification,
- d) provide a contact point for any communication,
- e) give clear advice in plain English,
- f) confirm advice in writing on request, explaining the action required and the timescale for compliance,
- g) clearly distinguish between what you must do to comply with the law and what is recommended as best practice,
- h) minimise the cost of compliance by requiring action that is proportionate to the risk,
- i) give you reasonable time to comply (unless immediate action is necessary in the interests of public health or to prevent evidence being lost),
- j) notify you if the matter is to be escalated to legal proceedings,
- k) advise you how to make a complaint or representation in cases of dispute about our actions,
- l) maintain confidentiality, except where there is a legal obligation to disclose information, or where witness statements are required for prosecution or other action,
- m) ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary duplication and delay, and
- n) coordinate enforcement activities and share good practice with other enforcement agencies to support compliance and to ensure consistency of approach.

5.5 The [Council's Customer Care Standards](#) are published on the Council's website.

6. What to do if you are not satisfied with our service

- 6.1 We make every effort to provide good customer service and to follow our procedures but occasionally errors will happen. If you are unsatisfied with our response, the Council has a Complaints Procedure. Full details on [how to make a formal complaint](#) are published on the Council's website.
- 6.2 Please note that the Complaints Procedure only deals with processes and procedures in making a decision, it does not deal with matters where we have followed proper procedures, relevant legislation and guidance but came to a decision that you disagree with, i.e. that it was not expedient to take enforcement action or to serve an enforcement notice.
- 6.3 If, having gone through the formal Complaints Procedure, you remain dissatisfied, you may refer your complaint to the Local Government Ombudsman. Details of how to do this are on the Council's website at the link above, or on the [Ombudsman's website](#).

7 Cost recovery

- 7.1 Where permitted by law the Council will seek to recover its costs of investigation and enforcement proceedings. Where the Council has incurred costs, for example by carrying out remedial work or direct action, we will seek to recover the full costs incurred from the exercise of those powers. The Council will pursue the recovery of costs in the civil courts by mechanism permitted by law if deemed appropriate and / or necessary.

8 Publicity

- 8.1 In order to deter others the Council will aim to publish any prosecution or other enforcement action that it considers will achieve that aim.

9 Service specific strategies

- 9.1 The following service or team specific strategies or procedures sit under and supplement this overarching plan and are relevant to enforcement action in relation to that service or team:
- Environmental health & licensing, and
 - Planning (development management).

10. Review of the Local Enforcement Plan

- 10.1 This Plan will be reviewed every 5 years, or sooner, if necessary, to reflect statutory changes or national guidance.

Appendix 1: Environmental health & licensing enforcement

Appendix 2: Planning (development management) enforcement

Appendix 1:

Environmental health & licensing enforcement

1. Introduction

- 1.1 This appendix sets out the Council's approach to environmental health & licensing enforcement and needs to be read alongside the Council's overarching Local Enforcement Plan.
- 1.2 The plan outlines the key principles that the Council will follow when regulating, enforcing, and litigating. The plan sets out the standards that everyone can expect from the Council's regulatory services and its officers.
- 1.3 This document outlines how Council officers consider enforcement action, how work is prioritised, how cases are investigated, and what tools are available. The Council is committed to ensuring that all officers abide by this plan.

2. What we can deal with

- 2.1 The Council's Environmental Health & Licensing Enforcement Plan applies to various functions including:
 - animal welfare,
 - dog fouling,
 - environmental health including statutory nuisance, food safety, health and safety, public health, infectious diseases, and contaminated land,
 - environmental permitting,
 - fly-tipping,
 - Gambling Act premises (Shared Service with Basingstoke & Deane BC),
 - Hackney Carriage and Private Hire Vehicle licensing (Shared Service with Basingstoke & Deane BC),
 - pest control,
 - premises licensing (Shared Service with Basingstoke & Deane BC),
 - scrap metal dealer licensing,
 - street trading (Shared Service with Basingstoke & Deane BC), and
 - registration of special treatments.
 - 2.2 A list of some of the relevant legislation and guidance is included in the Annex to this Plan.
- ### **3. How we prioritise our investigations**
- 3.1 Although we appreciate that all cases are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, taking into account the significance of the incident and the level of likely harm caused.

3.2 All submitted enquiries go through an initial vetting process (undertaken by officers). This allows for the redirection of matters to ensure they are directed to the correct team and allows officers to seek additional information if required before prioritisation and allocation. Prioritisation enables the team to respond to the most harmful cases as a priority.

3.3 Any enforcement taken will aim to produce the highest reasonable standards of compliance within the shortest time. Officers will consider the following factors when determining the most appropriate enforcement action:

- a) seriousness of the breach,
- b) options for remedying the breach,
- c) degree of risk,
- d) circumstances of each case and the likelihood of recurrence,
- e) age and circumstances of the offender,
- f) date of offence,
- g) likelihood of achieving a satisfactory outcome,
- h) precedent effect,
- i) legal imperatives, e.g. statutory requirement to serve a notice,
- j) relevant guidance and codes of practice,
- k) weight and admissibility of evidence,
- l) public interest, and
- m) prevalence of the offence locally or nationally.

3.4 Our first response times are listed below: These timescales are the longest period in which we intend to respond to a complaint and in all instances the service will seek to visit as soon as possible.

Priority 1 – High priority

Investigation commenced (site visit where appropriate) in up to 2 working days

- major accident,
- notification of infectious disease,
- public health emergency,
- service of notice from date of witness of serious / urgent breach,
- stray dog, and
- notification of premises with imminent risk of health.

Priority 2 – Medium priority

Investigation commenced (site visit where appropriate) in up to 5 working days

- all other cases.

4.4 The Council seeks to manage its finite resources to ensure that the highest priority complaints can be addressed without delay. As a result, the response, processing, and ability to take on lower priority cases will need to be adjusted accordingly the demand for enforcement investigations is usually very high and when significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where harm is more limited.

5. Enforcement options

5.1 A variety of enforcement options are available to the Council and are set out below:

a. Advice

In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given, it will normally be put in writing unless the breach is very minor, or the matter is rectified on the spot.

b. Warning letters

In certain circumstances it may be appropriate to issue a warning letter highlighting alleged offences to the person responsible for the alleged breach on how to avoid committing similar offences in the future. A warning letter will set out what should be done to rectify the breach and the timescale required for compliance. There must be sufficient admissible evidence available to substantiate the offence before a warning letter is issued.

c. Voluntary undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and formal enforcement action is likely to result to secure compliance.

d. Statutory notices

Subject to the specific rules governing the use of different statutory notices, they would generally be used where: there is a clear breach of the law, the degree of risk or environmental impact or harm from the situation is significant, and a remedy needs to be secured within a set period of time. In some instances, the service of a notice will be mandatory, for example, abatement notices under the Environmental Protection Act 1990. Subject to consideration of the evidence, it is likely that the negligent or wilful non-compliance with a statutory notice will result in prosecution.

Statutory notices may also be used to escalate enforcement action where a warning letter has been issued in relation to a breach but has not been complied with.

e. Seizure and detention of property, document and equipment

Officers will, on occasion, require evidence for their investigation and will use their statutory powers to seize property, documents, samples and/or equipment. A receipt will always be given to the relevant person detailing what has been taken and why.

f. Fixed penalty notices

Fixed Penalty Notices (FPNs) can be issued for a variety of different offences. Prior to service, the officer must have sufficient evidence to support a prosecution should the FPN not be paid. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted and receiving a criminal conviction. If a fixed penalty is not paid, the Council will commence criminal proceedings or take other suitable enforcement action in respect of the breach. FPNs will not normally be considered where the breach is more serious or recurrent, for example, the offender has already received a FPN for the same offence in the same year.

g. Simple caution

The Council may issue a Simple Caution where there is sufficient evidence to prosecute but where the public interest is not served by prosecution. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

h. Prosecution

The Council will consider the criteria set down in the Code for Crown Prosecutors, when deciding when to prosecute. The Council will also consider whether there is a reasonable prospect of conviction based on the strength of the evidence against any statutory defence, mitigation and any other factors which may preclude a successful conviction.

i. Criminal Behaviour Orders

The Council has the power to apply to the court for a Criminal Behaviour Order (CBO) where there has been successful conviction of a breach under the Anti-social Behaviour, Crime and Policing Act 2014. A CBO is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The court can issue a CBO where it is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm, or distress to any person, and it considers that making the order will help in preventing the offender from engaging in such behaviour in future.

5. Implementation

- 5.1 When considering formal enforcement action, the officer will discuss the circumstances with those suspected of a breach and take these into account when determining the best approach. This will not apply where immediate action is required to prevent or to respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 5.2 The officer will give clear reasons for any formal enforcement action to the relevant person or business at the time of the action. The reasons will be confirmed in writing at the earliest opportunity. The complaints and relevant appeals procedure for redress will also be explained.
- 5.3 If a business has a Primary Authority, the officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety, or the environment. officers will abide by OPSS guidance to Local Authorities in relation to the Primary Authority scheme.
- 5.4 When the officer takes the view that enforcement action is required this will be discussed with their line manager who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the Executive Director - Place.

Annex

All enforcement activities, including investigations and formal actions, will be conducted in compliance with delegated statutory powers and in accordance with formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities.

Legislation and guidance include, but is not limited to:

- Anti-Social Behaviour, Crime and Policing Act 2014
- Code for Crown Prosecutors
- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order)
- Crime and Disorder Act 1998 – Community Safety
- Criminal Justice and Police Act 2001 – Community Safety
- Criminal Procedure and Investigations Act 1996
- Data Protection Act 2018
- Human Rights Act 1998
- Legislative and Regulatory Reform Act 2006 (LRRRA)
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- Police and Criminal Evidence Act 1984
- Primary Authority: A guide for Local Authorities
- Protection of Freedoms Act 2012 (Code of Practice – Powers of Entry December 2014)
- Regulation of Investigatory Powers Act 2000
- Regulators' Code, April 2014
- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act)
- Regulatory Reform Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009SI665/2009 (The CRE Enforcement Order)

Appendix 2: Planning (development management) enforcement

1. Introduction

- 1.1 This appendix sets out the Council's approach to planning enforcement and needs to be read alongside the Council's overarching Local Enforcement Plan.
- 1.2 The plan outlines the key principles that the Council will follow when regulating, enforcing, and litigating. The plan sets out the standards that everyone can expect from the Council's regulatory services and its officers.
- 1.3 This document outlines how Council officers consider enforcement action, how work is prioritised, how cases are investigated, and what tools are available. The Council is committed to ensuring that all officers abide by this plan.

2. Breach of planning control

- 2.1 The integrity of the planning service depends on the Council taking effective enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unauthorised development is accepted without any apparent attempt by the Council to intervene.
- 2.2 The basic principle of planning law is that it is generally not an offence to carry out works without planning permission. Whilst such development remains unauthorised, unless regularised, Councils must consider the expediency of taking action whilst having regard to the development plan and any other material planning considerations.
- 2.3 A criminal offence will only arise in relation to the above matters when a statutory notice has been issued and the owner or occupier has failed to comply – or in certain specific cases, such as unauthorised works to a tree that is the subject of a Tree Preservation Order, works to a listed building without the necessary consent, or the display of an unauthorised advertisement(s).

3. What we can deal with

- 3.1 The Council's planning local enforcement plan applies to various types of development including:
 - unauthorised building works,
 - unauthorised changes of use,
 - internal and external alterations to listed buildings carried out without consent,
 - unauthorised demolition in Conservation Areas,
 - unauthorised works to trees covered by a Tree Preservation Order or within a Conservation Area,

- works not being carried out in accordance with the approved plans,
- breaches of planning conditions,
- the stationing of a caravan or mobile home for use as a primary place of residence,
- unauthorised advertisements,
- unauthorised engineering work i.e. a change in ground levels, and
- untidy sites - failure to properly maintain land so that it adversely affects the amenity of an area.

4. What we can't deal with

4.1 The Council's Planning Enforcement team is unable to deal with the following matters:

- works that do not require planning permission,
- minerals and waste planning enforcement matters (these are dealt with by Hampshire County Council),
- works that have not yet started (except in exceptional circumstances where a serious breach can be prevented),
- boundary disputes,
- obstruction of a highway or public footpath (this is dealt with by Hampshire County Council),
- trespass on land,
- operating a business from home where the residential use of the dwelling remains the primary use,
- internal works to a non-listed building,
- clearing land of vegetation (unless there is a breach of condition, or a hedgerow is covered by the Hedgerows Regulations 1997),
- the Party Wall Act,
- parking a caravan within the residential boundary where its use is ancillary to the dwelling house,
- advertisements on the highway or on street furniture (these are dealt with by Hampshire County Council),
- enforcement of deeds or covenants (these are enforced by the landowner or other person benefiting from the covenant),
- fly-tipping (this is dealt with by the Council's Environmental Health and/or Street Scene service),
- noise issues (this is dealt with by the Council's Environmental Health team, unless a planning condition is being breached), and
- anonymous complaints unless they are of a very serious nature, and it is in the public interest to do so.

5. About planning enforcement

- 5.1 There is no duty under the Town and Country Planning Act 1990 to take planning enforcement action - powers given to Councils are discretionary. In deciding whether to take enforcement action, the Council must decide whether it is expedient to do so having regard to the development plan and any other material considerations.
- 5.2 Expediency can be defined as a decision-making process to establish the appropriateness of formal enforcement action using legislation, government advice, the development plan, previous planning and appeal decisions and advice from other professionals.
- 5.3 When assessing whether formal action should be taken, the Council will ensure that any proposed action is reasonable, proportionate and is in the public interest to remedy a breach or remedy any injury to amenity that has been caused by the breach. The Council will consider what the effect of formal action will be and if it will have a meaningful outcome. It must also take into account the development plan and any material considerations.
- 5.4 It is an important principle in planning that breaches of planning control are not automatically subject to enforcement action but that this power is used only when expedient, proportionate and in the public interest according to the law and guidelines. Therefore, when the Council exercises its discretion and decides not to enforce against a breach of planning control this is entirely in accordance with how the NPPF intends this form of regulation to operate.
- 5.5 The Council starts from a position of trying to resolve breaches of planning control through dialogue and negotiation, formal action is usually a last resort. However, when the breach is causing unacceptable serious harm or, formal action will be taken to remedy any injury to amenity. Enforcement action will therefore always be commensurate with the seriousness of the breach.
- 5.6 It is important to remember that, in general, it is not a criminal offence to carry out development before first obtaining planning permission. However, failure to comply with an enforcement notice, beyond the period for compliance, is an offence. However, there are exceptions to this in that unauthorised works to listed buildings, carrying out works to protected trees and the display of advertisements without the necessary consent all give rise to criminal offences which are liable to prosecution. (See further information below).
- 5.7 Planning enforcement can be a lengthy process, particularly where evidence needs to be collected or where formal notices are served and the right to appeal is exercised. A satisfactory outcome can take many months or even years to achieve. There are also time limits after which enforcement action cannot be taken although these do not apply in the case of listed buildings.

6. How we prioritise our investigations

- 6.1 Although we appreciate that all allegations of breaches of planning control are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, considering the significance of the breach and the level of harm caused.
- 6.2 All submitted enquiries go through an initial vetting process (undertaken by officers). This allows for the redirection of matters to ensure they are directed to the correct team and allows officers to seek additional information if required before prioritisation and allocation. Prioritisation enables the team to respond to the most harmful breaches of planning control as a priority.
- 6.3 The priority categories for unauthorised works are listed below. These timescales are the longest period in which we intend to respond to a complaint and in all instances the service will seek to visit as soon as possible, dependant on the risk posed.

Priority 1 – High priority

Investigation commenced (site visit where appropriate) in up to 2 working days

A breach of planning control causing, or likely to cause, serious harm to the natural or historic environment or to public safety unless an immediate response is made, for example:

- demolition or alteration of a Listed Building,
- demolition of a building within a Conservation Area,
- works to trees protected by a Tree Preservation Order or within a Conservation Area, and
- any unauthorised development/activity/operation, falling within planning control that presents an immediate and serious danger to the public.

Priority 2 – Medium priority

Investigation commenced (site visit where appropriate) in up to 10 working days

- development not in accordance with the approved plans or material breaches of planning conditions during the construction process,
- development causing serious harm to the amenity of nearby residents, e.g. through impact on privacy or outlook,
- unauthorised development that has a significant adverse impact on the character of an area,
- commencement of works without clearing conditions precedent,
- advertisements in sensitive areas,
- non-compliance with planning conditions, and
- untidy sites.

Priority 3- Low priority

The team's ability to pursue low priority cases will be dictated by the total number of cases under investigation and the number of pending high and medium priority cases. During periods that the team have a large number of cases or significant number of high/medium priority cases the team will be unable to progress those reports deemed to be low priority. The team will set out indicative timeframes for progressing low priority investigations in their communications with you.

Breaches of planning control that cause limited or no harm to the environment or residential amenity, for example:

- residential and other development marginally above permitted development tolerances,
- minor works including fences, walls, small extensions,
- boundary treatments,
- aerials and antennae on dwelling houses,
- development not being built in accordance with approved plans, where the differences are less significant and less likely to result in amenity problems, and
- unauthorised advertisements in less sensitive locations.

6.4 The Council seeks to manage its finite resources to ensure that the highest priority complaints can be addressed without delay. As a result, the response, processing, and ability to take on lower priority cases will need to be adjusted accordingly. The demand for enforcement investigations is usually very high and when a significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where the planning harm is more limited.

7. How we investigate breaches of planning control

7.1 We aim to acknowledge all complaints within three working days and to visit the site in the timescales set out above.

7.2 In most cases it will be quite clear from a site visit and the planning history whether a breach has taken place. However, there are some cases, particularly involving changes of use, where a number of site visits will be needed or more information will be required.

7.3 Authorised officers have statutory powers to enter land and buildings to investigate breaches of planning control. Officers will produce evidence of their authority, identity and the purpose of their visit when requested. It is an offence to obstruct an authorised person exercising their right of entry.

7.4 In some cases we might need to ask complainants to help by keeping a log of activities to help provide evidence of a breach. If complainants are unwilling to do this, the Council may be unable to pursue the case.

- 7.5 To obtain further information the Council will, where necessary, serve the following notices:
- 7.6 A *Planning Contravention Notice* (PCN) is used to gather information concerning a development being carried out so that the Council can determine if a breach of planning control has occurred. It is a criminal offence not to complete and return the PCN within the specified timescale or not to comply with any aspect of the PCN. To knowingly or recklessly provide false or misleading information on a PCN can result in a fine.
- 7.7 A notice, under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 can be used to establish information about the ownership of land. It is an offence to fail to respond to the notice or to knowingly or recklessly provide false or misleading information and can result in a fine.
- 7.8 A notice under section 330 of the Town and Country Planning Act 1990 can also be served (the Power to require information as to interests in land).

8. Enforcement options

- 8.1 A variety of enforcement options are available to the Council and are set out below.
- 8.2 **No action** – if it is found that an application for planning permission is not required, or the breach is very minor and causes little or no harm to the environment or nearby residents, then no further action will be taken.
- 8.3 **Negotiate solution** – we will try to negotiate a satisfactory solution within 12 weeks of the start of an enforcement investigation wherever possible. This approach avoids the time and cost of serving notices, defending appeals, and pursuing legal action. If building works or an unauthorised use is considered to be unacceptable, the developer will be given a realistic deadline by which to remove the building/cease the use. If this deadline is not met, then the expediency of formal enforcement action will need to be considered. Clear timescales for compliance will be given to the landowner and other interested parties at all stages.
- 8.4 **Retrospective application** – where a development is in line with policies in the development plan and the development is causing little or no harm, or where planning conditions can be used to make a development acceptable, the Council may invite the developer to submit a retrospective planning application depending on the nature of the breach of planning control and the expediency of doing so. This would only be appropriate in cases where formal enforcement action has not been taken. N.B homeowners/developers may make an application for retrospective permission even if not invited to do so. It is normally advantageous to allow this process to conclude before continuing with enforcement action.

- 8.5 **Invite an application for Lawful Development Certificate** – if it appears to the Council that a use or development might have become lawful by passage of time, the developer will be invited to submit an application for a Lawful Development Certificate. If the application is approved, no further action will be taken. If it is refused, and no appeal is lodged, the Council will decide whether formal enforcement action is expedient.
- 8.6 **Breach of Condition Notice** – where a planning condition has not been complied with, and the condition is enforceable and reasonable, a Breach of Condition Notice can be served. The notice sets out what steps are needed to comply with the condition and by what date this action must be taken. There is no right of appeal against a Breach of Condition Notice and failure to comply can result in prosecution.
- 8.7 **Enforcement Notice** – if a development is causing harm to the surrounding area, or is contrary to development plan policies, and attempts to negotiate a solution have failed, then an Enforcement Notice can be served. An Enforcement Notice will set out the reasons for issuing the notice, what steps are needed to remedy the breach and the timescale in which these steps must be taken.
- 8.8 **Stop Notice** – in cases where urgent action is needed to remedy harm being caused, a Stop Notice can be served in addition to an Enforcement Notice. The purpose of a Stop Notice is to require activities to cease before the date for compliance set out in the Enforcement Notice. These are only used in exceptional circumstances where serious harm is being caused to public amenity.
- 8.9 **Temporary Stop Notice** - These take effect immediately and do not have to be accompanied by an Enforcement Notice. They last for a period of 56 days during which the local authority must decide whether any further action is needed. They cannot be used in certain situations, e.g. the use of a building as a dwelling, on a listed building or in some cases involving use of a caravan where it is the occupant's main residence (although there are exceptions to this).
- 8.10 **Section 215 notice** – provides the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area.
- 8.11 **Injunction** - in very serious cases, where irreparable harm and serious danger is being caused, or where all other methods of enforcement have failed, the Council can seek an injunction in the County Court or High Court to restrain or prevent a breach of planning control. Failure to comply with an injunction is a contempt of court and can lead to a fine, imprisonment or assets being seized. This is only used in exceptional circumstances.
- 8.12 **Prosecutions** - The Council may prosecute responsible parties for carrying out illegal work to a listed building, displaying unauthorised adverts and any unauthorised work to a protected tree. Additionally, if any of the statutory notices are not complied with by the required date for compliance, the first step in seeking compliance is to formally write to the relevant parties to remind them of their

responsibility to comply with the notice. Failure to act on this correspondence could lead to prosecution. In deciding whether to prosecute, the Council will take into account whether it is in the public interest and whether there is sufficient evidence to prove the case beyond reasonable doubt. As referred to above, this may be dependent upon complainants being willing to assist with the provision of evidence and by appearing in court.

- 8.13 **Direct action** - Where any steps required by an Enforcement Notice or a Section 215 notice (see section 178 and 219 of the TCPA 1990) have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether to exercise its power to enter the land and take the steps to remedy the harm; and to recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. If the costs cannot be recovered, a charge will be registered on the property with the Land Registry.
- 8.14 **Planning Enforcement Order** - A Council can seek a Planning Enforcement Order through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the immunity periods for taking enforcement action. Its use will depend on whether or not there are other remedies available but also on whether or not any "concealment" was deliberate.
- 8.15 **The Proceeds of Crime Act 2002** (also known as POCA) provides for the confiscation or civil recovery of the proceeds from crime in the UK. The Council may be able to seek an award under the Act if relevant criteria are satisfied and the offence resulting from the breach of planning control has resulted in monetary or other gains being made by the individual/developer concerned.

9. Trees

- 9.1 Trees are protected when they are covered by a Tree Preservation Order (TPO) or trees above a certain size in a Conservation Area.
- 9.2 Anyone who permits or undertakes unauthorised works to protected trees with a TPO is guilty of an offence.
- 9.3 For a tree to be protected in a Conservation Area it must have a trunk of at least 75mm in diameter measured at 1.5m above existing ground levels; or in limited circumstances, 100mm in diameter to clear saplings away from specimen trees.
- 9.4 A person wishing to cut down or carry out works to protected trees in a conservation area is required to give 6 weeks' notice to the Council. This is to give the Council the opportunity to make a Tree Preservation Order if they consider the tree contributes to the amenity of the area. Anyone who carries out such work without serving a notice on the Council is guilty of an offence.⁸
- 9.5 If we receive information to suggest that a protected tree is being felled, we will treat this as a high priority and visit the site as soon as possible. The planting of

replacement trees in the next planting season will normally be required irrespective of whether or not any further action is taken. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance.

10. Advertisements

- 10.1 Certain types of advertisement can be erected without express permission from the Council. These classes of advertisement are defined in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 10.2 It is an offence to display any other type of advertisement without express consent. If the Council consider that an application for the advertisement would probably be granted, then a retrospective application will be requested. Where the advertisement causes serious harm to amenity or public safety, a request will be made for its removal within a specific period. The Act also gives the Council the power to remove and dispose of structures (such as placards and posters) which are being used for unauthorised advertisement displays, but not on buildings to which there is no public right of access.
- 10.3 Where an advertisement benefits from consent under the Advertisement Regulations, the Council can take action to remove it if it is considered to be seriously harmful to the appearance of the area or poses a danger to public safety.

11. Listed Buildings

- 11.1 Listed Building Consent is required for the demolition of a listed building or for its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest. It is an offence to carry out such works without listed building consent.
- 11.2 The Council can prosecute and serve a Listed Building Enforcement Notice requiring the unauthorised work to be remedied. There are no time limits for taking enforcement action in respect of listed buildings. In deciding whether to serve a Listed Building Enforcement Notice, or to prosecute an owner, the Council will take into consideration the length of time that has passed since the work took place, who was responsible for carrying out the unauthorised work, and whether the historic fabric has been lost that cannot be replaced.
- 11.3 The Council will invite the owners to regularise the breach by submitting applications for listed building consent to either retain or amend authorised works. However, if negotiations fail, then the Council may serve a Listed Building Enforcement Notice. As with a general Enforcement Notice, this identifies the works required and the timescales.

12. Demolition in conservation areas

- 12.1 The demolition of some unlisted buildings in a conservation area requires planning permission. This can either be applied for in conjunction with a planning

application for redevelopment of a site, or a separate application for 'relevant demolition' can be made. It is an 'offence for a person to carry out or cause or permit to be carried out the demolition of an unlisted building within a conservation area without the required planning permission. Similarly, it is also an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted.