

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 21 AUGUST 2014  
title: LOCAL ENFORCEMENT PLAN  
submitted by: CHIEF EXECUTIVE  
principal author: DIANE RICE

## 1 PURPOSE

1.1 To seek Committee approval for the Council's Local Enforcement Plan.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - }
  - Corporate Priorities - }
  - Other Considerations - }
- Clear enforcement priorities and processes support the Council's ambition to protect and enhance the existing environmental quality of our area.

## 2 BACKGROUND

2.1 The Council has responsibility for enforcing planning and listed building controls within its area. The Council has one full time Enforcement Officer dealing with investigating planning (and licensing) enforcement complaints, advice about planning merits is given by the Council's Senior Planning Officer (Enforcement).

## 3 ISSUES

3.1 The power to take planning enforcement action is a discretionary power which has to be exercised in such a way as to reflect Council priorities about development in the context of available resources.

3.2 The purpose of the Local Enforcement Plan is to explain to both potential complainants and those carrying out unauthorised development how the enforcement process will be managed. The Plan aims to describe the Council's current approach rather than setting out new priorities.

3.3 The purpose of the Plan was discussed with Members at Planning and Development Committee on 8 May as part of a presentation about the Council's Enforcement work. The Plan is in four parts:

- Part A sets out the context and legislative framework.
- Part B clarifies what constitutes a breach of planning control.
- Part C sets out how the Council deals with the alleged breaches.
- Part D sets out how functions are delegated.

3.4 The Council's planning officers have had an opportunity to comment on the Plan and their comments have been taken into consideration.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources - }
- Technical, Environmental and Legal - } The Plan supports the Council's work by setting out how resources will be targeted and which matters will be taken into consideration.
- Political - }
- Reputation - }
- Equality & Diversity – The council's enforcement work is carried out by reference to the Council's equality and diversity policies.

5 **RECOMMENDED THAT COMMITTEE**

5.1 Consider the Local Enforcement Plan with attached Delegation Scheme and approve the same.

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BACKGROUND PAPERS

None.

For further information please ask for Diane Rice, extension 4418.

REF: DER/P&D/210814/EL



## Local Enforcement Plan

Approved by the

**Council's Planning and Development Committee on 21 August 2014**

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## **PART A - Planning Enforcement at the Ribble Valley Borough Council**

The National Planning Policy Framework recommends that planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.

### **1. Introduction**

The Ribble Valley Borough Council ("**the Council**") is the Local Planning Authority ("**LPA**") in respect of certain planning matters within the Ribble Valley area. The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material considerations.

Effective enforcement is important as a means of maintaining public confidence in the planning system.

This is this Council's Local Enforcement Plan, intended to cover planning enforcement. It set outs how this Council intends to:

- monitor the implementation of planning permissions;
- investigate alleged cases of unauthorised development; and
- take action where it is appropriate to do so.

Formal enforcement action is a discretionary power, and local planning authorities must act proportionately in responding to suspected breaches of planning control.

This Plan also therefore seeks to explain, in general terms, what is likely to be investigated and what is not.

### **2. Vision and objectives**

The Council aims to carry out planning enforcement in accordance with the following three key principles of good enforcement:

- Proportionality;
- Consistency; and
- Helpfulness.

The Council's objectives in carrying out its enforcement duties are to:

- remedy the undesirable effects of unauthorised development on the environment and the amenities of residents;
- ensure that any planning permission granted is not compromised by non-compliance with the approved plans or any conditions; and
- ensure that planning policies, the planning process generally and the credibility of the planning system is not undermined.

In considering any enforcement action, the decisive issue for the Council will be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

### 3. Structure

Officers in the Council's Legal Department are now principally responsible for carrying out planning enforcement at the Council.

Queries about general planning matters or recent applications should be directed to Planning reception or the planning case officer in the Council's development management department. More complex enquiries may be referred to the Council's pre-application advice service.

Details on who to contact are set out in the section on **how to report an alleged breach**, below.

For enforcement issues, the first point of contact will be the Enforcement Officer. S/he will liaise with the necessary officers at the Council in order to investigate a complaint. S/he will be supported by the Council's lawyers.

As these officers are not qualified planners, they will need to liaise with, and seek views, from officers in the Council's Planning Department, as and when necessary.

Input from Planning Officers is, for example, needed in order to:

- decide whether or not it is expedient to take enforcement action;
- decide whether or not public amenity is affected;
- decide whether or not a given development is permitted development;
- decide whether or not enforcement is not possible due to limitation;
- consider planning applications, including retrospective applications;
- consider certificates of lawfulness of proposed use or development and certificates of lawfulness of existing use or development;
- defend the Council's position on any enforcement appeal;
- consider what the appropriate planning unit(s) is/are;
- consider what uses exist on a site and whether a material change of use has taken place.

Some complaints and issues raised by members of the public will not be matters that the Council, or its planning enforcement team, is responsible for.

Where the Enforcement Officer is aware of another authority, or another part of the Council, that could help with a query, s/he will refer the complainant to that authority/department. Where this is not possible, and the concern relates neither to planning enforcement, nor the Council more generally, the complainant will be advised that the Council is unable to help.

Often members of the public seek advice from the Council's planning enforcement team, where the matter concerns private legal issues between themselves and their neighbour rather than planning enforcement issues. In such circumstances, the Enforcement Officer will advise the complainant to seek their own legal advice.

#### **4. Legislative framework**

The primary legislation for enforcing planning control is the Town and Country Planning Act 1990, as amended. This is supported by statutory guidance.

A key piece of guidance is the National Planning Policy Framework (“**NPPF**”). This replaced Planning Policy Guidance 18: Enforcing Planning Control.

Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements, although now dated, contains useful guidance.

The Enterprise and Regulatory Reform Act 2013 contains provisions relating to Conservation Areas.

Parliament has given Local Planning Authorities the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, within their administrative area.

## **PART B - Breaches of planning control**

Breaches of planning control can take many different forms. Different time limits and consequences apply in respect of them.

Where there has been a breach of planning control the Council's officers will decide: (i) whether or not to take enforcement action; and (ii) if they decide to take enforcement action, what form that action should take.

### **5. What is a breach of planning control?**

Below, we give some examples of what is likely to be, and what is not likely to be, a planning breach.

Decisions on planning matters are often a matter of fact and degree, i.e. there is no one-size-fits-all rule. The information is therefore intended to be indicative only.

#### **Examples of breaches of planning control**

- Carrying out building or engineering works or the change of use of a building or land without planning permission;
- Carrying out development not in accordance with a planning permission. This can be either failure to follow the approved plans or failure to comply with conditions attached to the permission;
- Carrying out works (internal as well as external) to a listed building without listed building consent;
- The display of a sign or advertisement which requires consent, without advertisement consent;
- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area; and
- The unauthorised demolition of a building in certain circumstances, e.g. in a conservation area without conservation area consent.

In addition the Council has power to act where land has become so untidy that it harms the amenity of the surrounding area.

Breaches of planning control **often occur** in respect of:

- changes of use, such as shops to offices or takeaways;
- building works;
- unauthorised advertisements;
- erection of fencing; and
- alterations to listed buildings including the installation of UPVC windows.

In the following cases, it is unlikely that enforcement action can be taken under planning legislation:

### **Examples of activities, which are not normally breaches of planning control**

- On street parking is a matter for regulation under the Highways Acts.
- Operating a business from home where the residential use remains the primary use, no staff are employed there, and visitors are kept to a minimum.
- Stationing a solitary caravan within the grounds of a dwelling provided that its use is ancillary to the dwelling i.e. it is stored or used as an extra bedroom (rather than being used as a separate unit of accommodation).
- Clearing land of undergrowth, bushes and trees provided they are not subject to a Tree Preservation Order and are not within a Conservation Area, or protected by a planning condition.

Neighbour nuisance/boundary and land ownership disputes are civil matters that the Council cannot get involved in. Advice on such matters could be sought from a solicitor or from the Citizens Advice Bureau.

Concerns about use of/or development on a highway covered by highway legislation should be referred to the Lancashire County Council, which is the Highway Authority in the Council's area.

Concerns about dangerous structures should be raised with the Council's Building Control section.

Matters covered by other substantive legislation such as noise, smell, abandoned vehicles, dog-fouling or fly-tipping, may fall within the scope of the Council's Environmental Health team.

The Council can only act within its powers. Some matters, such as caravan issues, or alcohol licensing, will require the involvement of other Council departments. Whilst the planning enforcement team will do their best to involve such departments where necessary, the role of planning enforcement officers will be restricted by the powers they have to deal with planning enforcement.

### **Time limits**

The Council does not have an unlimited window in which to act in respect of each and every planning breach.

Four years is the time allowed to take enforcement action where the breach comprises either: operational development, change of use to use as a single dwellinghouse, or breach of a condition preventing change in use of any building to use as a single dwellinghouse.

Ten years is the time allowed to take enforcement action for other breaches of planning control.

Where these time limits have passed, the Council will be unable to take enforcement action.

Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore where the Council feels



that a breach may be close to a relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.

Different time limits apply in respect of listed buildings, trees, and advertisements.

### **The difference between illegal and unauthorised**

The basic principle is that it is not an offence to carry out works without planning permission.

The following unauthorised breaches of planning control are exceptions to this. They are criminal offences:

- carrying out unauthorised works to listed buildings;
- displaying unauthorised advertisements; and
- works to protected trees.
- Carrying out certain works without Conservation Area consent.

Failure to comply with the requirements of a planning notice is also an offence.

Whilst the carrying out of development without the necessary planning permission, is not *per se* an offence, there will be implications or consequences.

The Council's officers will need to consider these implications and consequences in order to determine whether the Council should take enforcement action and, if so, what action to take.

Although such a development will be unauthorised, the Council's officers must then consider the expediency of taking formal action. Members of the public sometimes refer to "illegal" development or works. Unauthorised works, although unauthorised, will not (with some limited exceptions as explained above) be "illegal" unless and until a statutory notice is issued and the owner or occupier fails to comply.

## **PART C -**

### **Dealing with alleged breaches**

#### **6. Reporting a breach - guidance for members of the public**

##### **Managing expectations**

Some residents feel that it is incumbent upon them to advise the Council of each and every possible breach of planning control and demand that its officers take action to "enforce".

The Council and its officers have duties to all of our residents, not merely those who shout the loudest. Resources are limited and must be shared across the borough, with priority being given to the issues that officers, in their professional opinion, consider to be the most important.

Whilst we are grateful for any "tip-offs" that we receive, we would ask that all of our residents please bear in mind the following:

- Enforcement powers are **discretionary**. Before taking enforcement action, **we (i.e. legal officers in conjunction with planning officers)** must be satisfied that such action is the right thing to do (that it is "expedient").
- Government guidance does not say that councils should take action against all unauthorised development, rather a council should take action where serious harm to local public amenity is being caused;
- A necessary corollary of the above is that similar breaches are not necessarily treated in a similar manner. Whilst the Council's officers will try to be proportionate in their dealings with breachers, a high fence in one garden might have a more harmful effect on residential amenity, or highway safety, than that in another. Our officers must and will consider these factors when deciding what, if any, action to take.
- Public interest and residential amenity does **not** equate to the residential amenity or interests of one member of the public, i.e. just because it "affects" one member of the public (or them and their neighbours), does not necessarily mean it affects residential amenity, or that there will be a public interest in taking action. An officer's assessment will depend on many factors, including the type and extent of the harm caused and the nature of the area etc.;
- The Government says that councils should try informal methods of resolving the matter before considering the use of legal powers. Where we can, the Council's officer will explore this. As a consequence:
  - action may not be immediate; and
  - compliance might be quicker in some cases than in others (for example, where planning applications have been made).

##### **What information we need to investigate a breach**

The Council's officers will consider all breaches of planning control of which they are made aware. In order to do so our officers need certain key information about the breach. Pre-requisites are the **full address of the site** and **full details of the alleged breach**.

If a member of the public wishes to report a breach they are asked to please use the [planning enforcement complaints form](#). This is available from the Council's website or from its Enforcement Officer. The more information that people provide (whether on this form or to the Council's Contact Centre officers), the easier it will be for the Council's officers to deal with the complaint.

If a member of the public wishes to continue to be involved, they must also please include a [consent form](#). Further information on why we ask people to complete a consent form in these circumstances, and on how we will use your information, is set out below

Please send completed forms by email to:

[planning.enforcement@ribblevalley.gov.uk](mailto:planning.enforcement@ribblevalley.gov.uk) or by post to:

Planning Enforcement, Legal Department, Ribble Valley Borough Council, Council Offices, Church Walk, Clitheroe, BB7 2RA.

Telephone complaints can be made by calling the Council's enforcement officer on 01200 414554 or the Council's switchboard 01200 425111.

### **Anonymous planning enforcement "tip-offs"**

Some people may wish to report a breach anonymously. Anonymous allegations can be the result of private grievance or competitor based: there may be no basis to the allegation in planning terms. Our officers therefore have to be cautious in dealing with such anonymous complaints.

Investigation into anonymous allegations can be difficult to follow up if further information about an alleged breach of control cannot be obtained from an unknown complainant.

For these reasons anonymous complaints will only be investigated where the Council's officers have sufficient information. In such cases the decision whether to investigate will be made on the merits of the case, but, in general terms, anonymous complaints will be treated as low priority.

Private disputes between neighbours and boundary disputes etc where there has been no obvious breach of planning control will not be pursued.

There will however, be cases where the breach of planning control brought to our attention anonymously is causing demonstrable harm. In these cases, appropriate action will be taken.

If a member of the public wishes to make an anonymous allegation, they are asked to please download and complete the [planning enforcement complaints form](#) and to write ANONYMOUS in the personal details section. They should be aware that their involvement will end when they send us the planning enforcement complaints form.

Alternatively, a complainant may wish to refer the matter to either their local ward member or Parish Council representative who can put forward a complaint on their behalf.

### **Tip-offs or allegations from a named "complainant"**

Alternatively, members of the public may wish to provide their name and details.

In these circumstances, they are asked to read the information below regarding how we will treat the information they provide to us.

This is not intended to "put off" people who wish to alert the Council to possible breaches; rather it is intended to make such people aware that the Council cannot guarantee that information provided to it will not have to be disclosed to the alleged breacher at some point in the proceedings.

### **How we will treat information from members of the public if they provide their name and address**

We are grateful when people spend time alerting us about possible breaches.

However, as a public authority the Council is obliged to comply with the provisions of the Freedom of Information Act in respect of any information it holds.

A person's initial contact to us will be treated as implicitly confidential (unless they advise us in writing that they are happy for it to be disclosed). Should we receive a request for this information from someone else (e.g. from alleged breacher, or from any other member of the public), we will advise the complainant of this request, liaise with them, and will, in so far as the law allows us to, respect their wishes in terms of whether or not we disclose such information, i.e. if the complainant does not want their personal details to be disclosed we will try to ensure that they are not disclosed.

Unless the complainant advises us to the contrary, we will assume that they are happy for your involvement in the matter to end with this first contact.

If the complainant wishes to continue to be involved in this matter, we would ask that they please also sign and return a consent form. If we do not receive this form back, we will assume that they are happy to leave the matter in the hands of our officers from this point onwards.

If the complainant either returns the form and/or continues to send correspondence to, or telephone, the Council after this initial contact, they are asked to please be aware of the following:

- In some cases our investigations may lead to criminal proceedings. As a result criminal procedure disclosure obligations may apply to the Council in respect of the documents it holds. If correspondence between the complainant and the Council exists which may prejudice or help the defendant's case, this might have to be disclosed.
- Third parties (including the Property owner/breacher) might ask to see such correspondence before the case gets to Court. The Council would then have to make an assessment as to whether these documents should be disclosed pursuant to the provisions of the Freedom of Information 2000.
- We will endeavour to treat complainants and their information fairly. However, in some cases, when we contact the alleged "breacher", it becomes clear that a neighbour dispute exists between "complainer" and "breacher". In some cases it will be obvious to the "breacher" who the "complainer" is. Officers will be mindful that enforcement action must not be used in an attempt to settle neighbour disputes in such cases.

Although the Council will (up to a point) try to respect your wishes in terms of confidentiality, it must also bear in mind the competing rights of the person about whom you have complained (e.g. their right to a fair hearing).

In some circumstances we may even ask complainants to give evidence at the Magistrates' Court or Inquiry.

## **7. Dealing with a report of an alleged breach - First Steps**

### **Evaluating the complaint**

The Council's officers will consider all breaches of planning control of which they are made aware.

In order to do so our officers need certain key information about the breach.

Pre-requisites are the full address of the site and full details of the alleged breach. For example, an anonymous phone-call that someone has removed some windows somewhere near an off-licence on Smith Street, may well not be sufficient for our officers to investigate.

Further information on how to advise the Council that a breach is taking place is set out in section 6, above.

In order to assess alleged breaches our officers may do the following:

- carry out desktop research;
- review the planning history of the site;
- contact the "breacher" and seek further information from them;
- discuss the site with officers from other Council Departments who have knowledge of it, or visit the site themselves, and, where deemed necessary, take photographs or make measurements.

The Council does not have unlimited resources. Its officers therefore have to assess and to prioritise in order to determine what, if any, action to take according to the overall impact of the breach.

Resources will be targeted at pursuing cases where there is demonstrable harm.
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Some Councils allocate a formal "priority" rating to suspected breaches of planning control. The Council's planning enforcement team will follow an informal triage system with serious breaches, or breaches close to the statutory time limit, being treated as higher priority.

As the Council has a wide geographical area and is a small Council, we propose to tackle lower priority matters, such as unauthorised advertisements, in tranches, using an area-specific approach. This should ensure a proportionate response, but may mean that some "problem areas" continue to exist until that area is targetted for action.

Appropriate enforcement action will be taken where it can be demonstrated that there is significant harm caused through:

- the loss of residential amenity;
- loss of character of an area;

- development/use being contrary to Local Plan Policy;
- an unacceptable precedent.

In all cases it will be for the Council's officers to determine how the breach should be treated and what action is appropriate (residents and councillors own concerns or views, whilst relevant, are only one factor in a raft of considerations that an officer might have to take account of).

The following factors are some of the other things that will be borne in mind:

- Guidance recommends that enforcement action must be seen as a last resort. Officers are often able to resolve minor cases of unauthorised development through negotiation. They may well therefore try to do so as a first course of action in appropriate cases.
- There will be instances where rapid action will be the only appropriate response. Prosecutions will therefore be pursued, where appropriate, including where negotiations fail to yield results.
- Enforcement action must not be used to regularise a breach where no harm is caused, or in an attempt to settle neighbour disputes.

### **If no breach of planning control is established**

A significant number of investigations are closed because no breach of planning control is established. This can be for a number of reasons. For example:

- There is no evidence that a breach exists;
- Development has taken place but planning permission is not required, usually because the development benefits from permission granted under the Town and Country Planning (General Permitted Development) Order 1995, as amended. These rights are referred to as permitted development or "PD" rights.
- The development already benefits from planning permission granted by the Council.
- There is evidence that the time-limits for taking enforcement action have passed.

It may also be the case that, whilst a technical breach of planning control has taken place, the breach is so minor that it has little, or very little impact on amenity. Such a breach will be considered *de minimis* in planning terms and no formal action could be taken in this respect.

### **Responding to complainants**

If a complainant/breach reporter provides contact details and indicates that they are happy to be contacted by the Council, a Council Officer will write to them once (by email or by post) to confirm receipt of the complaint.

Whether the Council remains in contact with that person, will depend upon whether or not they have indicated that they wish to continue to be informed. Even where they do wish to be kept informed, the Council has limited resources and is not able to provide regular updates to complainants. Our officers will endeavour however, to let people know when we have:

- successfully prosecuted someone; and
- taken a decision to take no further action.

We would respectfully ask that residents do not repeatedly visit our offices or call/email our officers requesting updates. This distracts us from doing our job and slows progress.

## **8. Dealing with an alleged breach – Stage Two**

### **Dealing with persons responsible for the alleged breach**

Before determining what action is to be taken in respect of an enforcement enquiry, the person responsible for the alleged breach of planning control will be given the opportunity to explain his/her position and to put forward any mitigating circumstances.

Usually, the Enforcement Officer or Principal Planning Officer will discuss the matter with the person responsible who will be advised in writing of the Council's intended course of action.

Unless the breach is causing irreparable harm to amenity, officers will often try, as an initial step, to negotiate a solution without recourse to formal enforcement action. Where we are unable to negotiate an acceptable solution within a reasonable timescale, or where it is clear from the outset that the breach is not capable of being remedied through negotiation, formal enforcement action will be taken.

### **Not taking enforcement action**

In some cases it may not be expedient for the Council to take enforcement action. For example:

- Where the complainant believes that there has been a planning breach but all, or the majority of the development, is covered under permitted development legislation;
- Where retrospective planning permission or a certificate of lawfulness is likely to be granted.
- Where a technical breach of planning control has taken place, but the breach is so minor that it has little, or very little impact on amenity. Such a breach will be considered *de minimis* in planning terms and no formal action could be taken in this respect. For example, a 2.1 metre high fence which was not adjacent to the highway and did not affect the visual amenity or character of the area, might be considered to be *de minimis*.
- Where the time limits for taking action for that type of breach have been exceeded.

### **Taking enforcement action**

The Council will take prompt and appropriate enforcement action where serious harm to the amenity of local residents or specially designated areas is identified.

Enforcement action may only be taken in the public interest and should not be used to resolve disputes of an essentially private nature between, for example, adjacent land-owners or competing businesses.

In some cases, further investigations will be required in order to gain sufficient evidence to prove whether or not a breach of planning control is taking place.

Once a decision to take formal action has been made, Council officers will consider the full range of powers to ensure the most proportionate and expedient response. The powers available are outlined briefly below. The use of these can vary depending upon the nature of the breach and the level of harm caused.

### **Stop notices**

In appropriate circumstances, i.e. where the continuation of unauthorised development is significantly harmful, the Council may issue a Stop Notice or a Temporary Stop Notice as deemed appropriate. A stop notice must be served at the same time as or after the service of an enforcement notice. This will require the immediate cessation of the unauthorised operation or use of land or buildings.

### **Planning contravention, and other information gathering, notices**

In circumstances where there's uncertainty as to whether or not a breach of planning control has occurred, or where it needs to establish the facts, the Council may issue a Planning Contravention Notice (**PCN**). This does not constitute formal enforcement but it is an information-gathering tool. Alleged transgressors can also be invited to attend a meeting to discuss possible breaches of control through this Notice. There is a legal requirement to respond, in writing, to the questions posed in the Notice within 21 days of receipt of the Notice.

A PCN will be served in most cases as a precursor to an enforcement notice to seek to obtain all relevant information.

A similar tool to a PCN is a formal Requisition for Information served under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. This is generally used where Council officers need to find out about interests in land and property. Another type of notice can also be served pursuant to powers under section 330 of the Town and Country Planning Act 1990.

### **Enforcement notices**

In certain circumstances the Council may issue an enforcement notice.

The service of an Enforcement Notice will normally only be considered as the last resort and when negotiations have failed to resolve a breach of planning control. In appropriate cases consideration will first be given to other remedial options, for example:

- requesting the submission of a retrospective planning application;
- reaching an agreement that the breach can be remedied with a reasonable timescale; or
- negotiating the relocation in respect of certain uses of land or buildings.

Enforcement Notices must specify clearly the nature of any breach of planning control, the reasons for issuing the Notice and steps which must be taken in order to remedy the breach. A reasonable timescale for taking the required steps must also be specified. There is a right of appeal against such a Notice



where all of these matters can be challenged. If an appeal is lodged, the requirements of the Notice must be held in abeyance until such a time as the appeal is determined by the Planning Inspectorate.

We are required to serve enforcement notices on the owner, occupier and any other person with an interest in the land which is materially affected by the notice.

Non-compliance with an Enforcement or Stop Notice is a criminal offence and the Council will view a continued breach very seriously. Court proceeding will almost inevitably follow.

The Local Planning Authority has powers to enter land and take such steps as are necessary in order to secure compliance with the terms of an Enforcement Notice and seek to recover costs incurred from the transgressor.

### **Breach of condition notices**

Where a breach of planning condition is identified a Breach of Condition Notice (**BCN**) may be issued. The minimum time for compliance with a BCN is 28 days. There is no right of appeal against this Notice and non-compliance can result in prosecution.

### **Section 215 notices**

In cases where the amenity of an area is adversely affected by the condition of land or buildings, and the Council's officers consider it appropriate to do so, the Council will consider serving a notice under Section 215 of the Town and Country Planning Act 1990 (as amended). This will specify the steps taken to remedy the condition of the land or buildings, the time period within which the steps must be taken, and the date that it takes effect.

### **Prosecutions**

As explained in section 5, not all unauthorised development will be criminal. However, where the Council considers that a criminal offence has been committed, including in circumstances where an enforcement notice, or another type of notice, has not been complied with, the Council will consider commencing a prosecution.

Before commencing any legal proceedings the Council's officers will need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

### **Direct action**

Where any steps required by an enforcement notice or a section 215 or 225 notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council's officers will consider whether it is expedient to exercise their powers to take direct action. In most cases, the Council will seek to prosecute the failure to comply with a notice before seeking to initiate direct action.

### **Injunctions**

We will consider applying for an injunction in the appropriate circumstances. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing, or is likely to cause, exceptional harm.

## **Advertisements displayed in contravention of the Regulations**

Unlike most spheres of planning control, the display of advertisements without consent is an offence. The Council therefore has power to initiate prosecutions without the need to issue a notice.

In respect of the display of a sign or advertisement which needs but does not have advertisement consent, the council's officers will contact any person deemed to display the advertisement and give them one opportunity to remove the advertisement voluntarily.

If the sign is not removed within a reasonable timescale the Council's officers will then consider:

- initiating a prosecution of such person or persons; and/or
- removing or obliterating the advertisement after serving the appropriate notices and recouping their costs from those served with the notice.

The Localism Act has introduced new provisions to deal with advertisements: removal notices, action notices and powers to remedy the defacement of property. The Council's officers will consider the use of these powers where appropriate.

## **Trees**

The Council's Countryside Officer is responsible for initial investigations concerning unauthorised felling of, or other works to, trees which are the subject of tree preservation orders or are within a conservation area.

## **How long will enforcement action take?**

One complaint that Councils receive in respect of planning enforcement is that officers do not act quickly enough or that results take too long to achieve.

There are various factors which can slow the process down, for example:

- Exercise of the right to appeal against an enforcement notice;
- The use of informal methods to try to resolve the matter which do not yield the results hoped for;
- Submission of a retrospective application for planning permission.

Whilst the Council's officers will do what they can to achieve a given result in a specific case, they have to look at the big picture and frequently have to divide limited resources across a broad range of matters. It would help us to progress matters as swiftly as possible if we are not interrupted by "update" phonecalls, emails or visits from complainants unless these are absolutely necessary.

## **9. Retrospective planning applications**

A person or persons responsible for a breach of planning control has the right to seek to regularise the matter through the submission of an application for retrospective planning permission.

Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce

the harm to amenity, a retrospective planning application will normally be granted for development.

In determining such applications the Council cannot refuse an application simply because the development has already been carried out.

The Council will not encourage such applications in respect of serious breaches of planning control where the granting of retrospective permission is considered to be unlikely.

There are cases where it is initially unclear as to whether a development is acceptable in planning terms. In those cases (particularly where it is clear that the development could not be carried out under permitted development rights), an application may be necessary to obtain full details of the intended development.

It is, of course, preferable for people to obtain planning permission before carrying out development. Where they have not done so, an enforcement notice should not be issued solely to regularise development which is acceptable on its planning merits. In such circumstances the Council will seek to persuade an owner or occupier to seek permission. However, it is generally regarded as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control.

Where a retrospective application has been submitted, enforcement action will not be held in abeyance pending the outcome of the application where there is a serious breach of control. However, it may be the case that prosecutions have to be adjourned in certain circumstances pending the result of such applications.

In the case of less serious breaches of control, formal enforcement action may be held in abeyance pending the outcome of a retrospective application, but, if the application is refused then formal action will be taken in all cases where there is expediency and negotiations have proved ineffective and, if an appeal has been lodged, the Council will in appropriate cases continue to take enforcement action against the refusal of planning consent.

## **10. Monitoring conditions**

Every year the Council determines numerous applications for planning permission, listed building and advertisement consent, the majority of which are approved subject to conditions.

The Council does not have the resources to monitor each and every condition but its officers will investigate alleged breaches of condition reported to it and will deal with these in the same way as other alleged breaches of planning control .

Where resources permit planned, subject based monitoring of conditions will be carried out eg to check compliance with holiday let or agricultural occupancy conditions.

## Recommended Delegation of Functions – Planning Enforcement

Matter to be dealt with	Member involvement	Officers	Comments
<b>Authorisation and investigation</b>			
Authorisation of officers (where not already authorised by Officer Delegation Scheme)	Full committee		The Officer Delegation Scheme delegates to certain post holders.  Additional delegations to be approved by Planning Committee
Establishing whether there has been a breach without a warrant (usual checks and visits)	N/A	Enforcement Officer (Planning) Taxi Enforcement Officer All planning officers Head of Legal and Democratic Services Chief Executive Director of Community Services Solicitor Countryside Officer	Council has power without a warrant at any reasonable time. Section 196A TCPA 24 hour notice required for entry to a dwelling. Section 214B TCPA (trees) Officers should be authorised by Committee if not already authorised by Officer Delegation Scheme (see above)

Matter to be dealt with	Member involvement	Officers	Comments
Seeking a warrant to establish breach	Chair or Vice Chair	Enforcement Officer (Planning) All planning officers Head of Legal and Democratic Services Chief Executive  Director of Community Services Solicitor Countryside Officer	Section 196B
<b>Decisions as to enforcement action, general</b>			
Decision to take no further action at that time	N/A	Enforcement Officer (Planning) Head of Legal and Democratic Services Solicitor Chief Executive	Officers should record reasons for decision: e.g. <ul style="list-style-type: none"> <li>• Immunity due to time limits (s171B TCPA and s 191(2) and (3));</li> <li>• Not expedient and why (proportionality, /amenity, personal circumstances);</li> <li>• Compromise reached.</li> </ul>
Decision to serve a planning contravention notice ( <b>PCN</b> )		Head of Legal and Democratic Services Planning Enforcement Officer Solicitor	Used by Council to obtain information on possible breaches of planning control (section 171C TCPA)

Matter to be dealt with	Member involvement	Officers	Comments
Decision to serve a notice under section 330 TCPA		Head of Legal and Democratic Services Planning Enforcement Officer Solicitor Chief Executive Director of Community Services	
Decision to serve a notice under section 16 of the Local Government Miscellaneous Provisions Act 1972		Head of Legal and Democratic Services Planning Enforcement Officer Solicitor Chief Executive Director of Community Services	
Decision to grant a CLEUD		Head of Planning Services /Planning Officers Director of Community Services	Section 191 TCPA

Matter to be dealt with	Member involvement	Officers	Comments
Decision to serve stop notice		Head of Legal and Democratic Services Solicitor Chief Executive Director of Community Services Head of Planning Services	Section 183 TCPA (can only be served with EN) Must be registered (s 188(1)(b))
Decision to serve an enforcement notice ( <b>EN</b> ) Unauthorised development Material change of use Failure to comply with condition.		Head of Legal and Democratic Services Solicitor Director of Community Services Chief Executive Head of Planning Services Planning Enforcement Officer Senior Planning Officer (Enforcement)	Sections 171, 172 and 173 TCPA. Entry should be made in register (s188(1)(a) TCPA.
Appeal against enforcement notice		Senior Planning Officer (Enforcement) Head of Planning Services Head of Legal and Democratic Services	Section 174

Matter to be dealt with	Member involvement	Officers	Comments
Decision to serve a temporary stop notice		Head of Legal and Democratic Services Solicitor Chief Executive Director of Community Services Head of Planning Services	Section 171E TCPA Compensation may be payable to the recipient of the TSN if the TSN is withdrawn or the activity prohibited is lawful
Decision to obtain an injunction		Head of Legal and Democratic Services Solicitor Chief Executive Director of Community Services Head of Planning Services	Application to High or County Court. S187B TCPA. Section 214A TCPA (trees)
Decision to serve a breach of condition notice ( <b>BoCN</b> )		Head of Legal and Democratic Services Planning Enforcement Officer Solicitor Chief Executive Director of Community Services	Section 187A TCPA Section 187(2)(a) and (b) and Section 187A(7) TCPA Must be registered (s188(1)(c)) No right of appeal against BoCN but shouldn't be used where any legal doubt about validity of condition.



Matter to be dealt with	Member involvement	Officers	Comments
Decision to withdraw any notice served		Head of Legal and Democratic Services Chief Executive Director of Community Services	e.g. 173A TCPA
Decision to seek a Planning Enforcement Order		Head of Legal and Democratic Services Solicitor Chief Executive Director of Community Services	Application to Magistrates'
Prosecution for contravention of stop notice		Head of Legal and Democratic Services Chief Executive Director of Community Services	Section 187(1) TCPA
Prosecution for breach of enforcement notice		Head of Legal and Democratic Services Chief Executive Director of Community Services	

Matter to be dealt with	Member involvement	Officers	Comments
Decision to take direct action		Head of Legal and Democratic Services Chief Executive Director of Community Services Head of Planning Services Planning Enforcement Officer	Section 178 TCPA
<b>Enforcement of listed building control</b>			
Prosecution under section 9		Head of Legal and Democratic Services Chief Executive Director of Community Services Solicitor	Planning (Listed Buildings and Conservation Areas) Act 1990 ( <b>PLBCAA</b> )
Decision to serve a listed building enforcement notice ( <b>LBEN</b> ) or a conservation area enforcement notice		Head of Legal and Democratic Services Solicitor Director of Community Services	Section 38 PLBCAA
Decision to seek an injunction (e.g. for an anticipated breach)		Chief Executive Head of Planning	Section 39 PLBCAA

Matter to be dealt with	Member involvement	Officers	Comments
Appeals against LBEN		Services Planning Enforcement Officer Senior Planning Officer (Enforcement)	
<b>Tree Preservation Orders</b>			
Decision to serve a tree replacement notice		Head of Legal and Democratic Services Solicitor	Section 207 onwards TCPA
Appeal against TRN		Director of Community Services	TCPA
Prosecution for contravention of TPO		Chief Executive Head of Planning Services Countryside Officer Planning Enforcement Officer Senior Planning Officer (Enforcement)	Section 210 TCPA
<b>Advertisements</b>			
Prosecution under section 224		Head of Legal and Democratic Services	Section 224 TCPA
Decision to serve 225 notice and to take direct action		Chief Executive Solicitor	Section 225 TCPA
Decision to use section 225A powers		Director of Community Services	Power to remove structures used for unauthorised display

Matter to be dealt with	Member involvement	Officers	Comments
Decision to use section 225C powers		Planning Enforcement Officer	Persistent problems with unauthorised advertising
<b>Section 215</b>			
Decision to serve a s215 Notice		Head of Legal and Democratic Services	Section 215 TCPA
Appeals against 215 Notice		Solicitor	Section 217 TCPA
Prosecution for non-compliance		Chief Executive	
Decision to take direct action		Director of Community Services	
		Planning Enforcement Officer	