

# PLANNING ENFORCEMENT PLAN

## 1 Aim and Scope of the Plan

- 1.1 The Planning Enforcement Plan sets out how the Council's planning enforcement service will help achieve corporate regeneration objectives, address breaches of planning control and prioritise its work. The plan describes the range of powers available to the Council, how the Council will decide whether or not to pursue planning enforcement action and the process of planning enforcement.
- 1.2 This document amends and updates the Council's Planning Enforcement Plan (PEP) to clarify approaches and processes used to manage this area of planning enforcement.
- 1.3 The re-worked PEP reflects the changes in legislation and guidance that have emerged since the adoption of the original plan and in this light sets out how the Council will largely focus its resources more effectively towards those breaches of planning control which are resulting in most harm.

## 2 Introduction

- 2.1 The Town and Country Planning system operates to regulate development and the use of land having regard to Central Government policy and advice, Local Development Plans and other material considerations.
- 2.2 Section 55 of the Town and Country Planning Act 1990 defines development as "the carrying out of building, mining, engineering or other operation in, on, under or over land or the making of any material change in the use of any buildings or other land".
- 2.3 A breach of planning control is defined at Section 171A of the Town and Country Planning Act as "the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted".

Common alleged breaches of planning control include:

- Building or engineering works that do not have planning permission and which are not development permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015, or any other Order.
- Unauthorised works being carried out to a listed building (referred to in the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 as amended).
- Material changes of use of land or building to a different use carried out without planning permission or which is not development permitted under the

Town and Country Planning (General Permitted Development)(England) Order 2015 or the Town and Country Planning (Use Classes) Order 1987 (as amended).

- Development that has not been carried out in accordance with a planning permission.
- Failure to comply with a condition (or the requirements of a legal agreement) attached to a planning permission.
- Unauthorised works to protected trees.
- Display of certain advertisements, without the necessary consent.
- Untidy Sites, under Section 215 of the Town and Country Planning Act

2.4 Effective enforcement is necessary to protect the district from harmful effects of unauthorised development and to ensure public confidence in the planning system is maintained.

The National Planning Policy Framework (NPPF) identifies that:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate”.(NPPF, para 58, Ministry of Housing, Communities and Local Government July 2018).

Planning Practice Guidance (PPG) sets out that effective enforcement is important as it:

- Tackles breaches of planning control that would otherwise have an unacceptable impact on the amenity of the area.
- Maintains the integrity of the decision making process.
- Helps ensure public acceptance of the decision making process is maintained.

A planning enforcement plan is important because it:

- Allows engagement in the process of defining priorities and objectives that are tailored to local circumstances.
- Sets out priorities for enforcement action which will inform decisions about when to take action.
- Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers.
- Provides greater certainty for all parties engaged in the development process. (PPG 2014)

2.5 The Regulators' Code sets out the Government's expectations that local authorities will ensure their approach to regulatory activities are transparent. The code came into statutory effect on 6 April 2014 under the [Legislative and Regulatory Reform Act 2006](#) and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. It sets out, amongst other things that allegations of breaches of planning control will be investigated subject to a prioritisation process and according to the Code.

The code promotes proportionate, consistent and targeted regulatory activity. See Appendix 1 for more detail on planning enforcement and the Regulators Code.

### **3 General Principles**

3.1 Planning enforcement is discretionary, (except where the carrying out of works has resulted in an offence – such as the carrying of unauthorised work to a listed building, where implications and considerations are different) and when carrying out enforcement action the Council must work within the statutory framework and follow best practice guidance and procedure.

The Council has discretion to take enforcement action when they regard it expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan. (PPG 2014)

3.2 The Council is committed to acting in a fair and consistent manner and has adopted an enforcement plan as part of this commitment.

3.3 Resources will be targeted at dealing with the most serious breaches of planning control which cause unacceptable harm to, the quality of life of residents and the natural, historic and built environments.

When exercising its enforcement functions the Council will act in a way that is:

- Transparent.
- Accountable.
- Proportionate.
- Consistent.
- Targeted only at cases in which action is needed.

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Articles 8 and 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulations in a proportionate way. (PPG 2014)

Reference to relevant documents, advice, guidance and legislation that underpin this Plan can be found at Appendix 2.

#### **4 Local Context**

4.1 The Planning Enforcement Plan is formulated to make sure that unacceptable breaches of planning control that cause the most harm are remedied and that development is carried out in accordance with the terms of any approval. This ensures that the Councils Development Plan, which in turn supports Corporate Plan objectives, are being met.

The Planning Enforcement Plan seeks to support:

- A thriving economy.
- A clean, green and safe environment.
- Healthier people and communities.
- A smarter council.

4.2 The Planning Enforcement Team operates within the parameters of the planning legislation. It's approach to investigating breaches of planning control is lead by the Development Plan in force, which conforms to corporate plan objectives. The team are responsible for investigating and resolving allegations of breaches of planning control.

4.4 Whilst the majority of planning enforcement work is reactive, the Council is committed, where practicable and appropriate, to undertake pro-active enforcement action . The Development Plan seeks to transform Dover Town Centre, in particular

so at present this pro-active approach is primarily directed at untidy sites. The Council is currently piloting a street scene improvement initiative within Dover Town Centre area. This initiative involves the Planning Enforcement Team using its powers under s215 of the Act and working in conjunction with other departments to improve and enhance the Dover Town Centre area as part of its regeneration agenda. If successful, this may be extended to cover other areas of the district.

4.3 The Council monitors the implementation of planning permissions in different ways. It monitors housing development permissions for the Councils Authority Monitoring Report. The Council has a conditions Officer who pursues outstanding conditions with developers as part of conditions submissions pursuant to permissions being granted. The planning enforcement team will be developing protocols for liaison between its internal departments, in particular Building Control, which will include further ways of co-ordinating conditions monitoring in a joined-up approach. In other cases conditions are not routinely monitored. For this type of investigation work, the most efficient use of planning enforcement resources is reactive.

## **5 How breaches of Planning Control are prioritised and what will and won't be investigated.**

5.1 Whilst the majority of alleged breaches of planning control reported will be investigated, the planning enforcement function does not serve the interests of the private individual. It only operates in the wider public interest. The Council does not exercise its planning enforcement powers as a punishment and operates a system where those matters that are considered to be most important, based on planning merits, are given highest priority.

5.2 In view of the significant numbers of complaints that are received and to ensure efficient use of resources, a more targeted and definitive approach is taken towards those breaches that are potentially most harmful.

5.3 A prioritisation approach is being developed which involves the use of a desk based matrix-based scoring and research system to carry out an initial evaluation of an alleged breach of planning control. All alleged breaches are screened, evaluated and scored against specific criteria in this way. The resultant score indicates whether a case is a high, medium or low priority for investigation purposes. The circumstances and details of each alleged breach, including material planning considerations, are taken into account in deciding what level of priority is given to a case.

The matrix and desk based assessment approach is outlined at Appendix 3.

<b>High priority cases</b> include those where:
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- Serious harm is being caused to the environment, especially within the AONB and/or to residential amenity;
- Unauthorised works are being carried out to a listed building;
- Significant harm is being caused to the character and setting of a Conservation Area;
- Unauthorised works are being undertaken causing harm or damage to protected trees.

The team will aim to undertake an initial assessment and site visit of all high priority cases within 3 working days of receipt of a valid complaint (see below and Appendix 4).

It should be noted that an allegation of works to a listed building or works being carried out to a protected tree, will usually result in an immediate initial assessment, site visit and inspection by an Investigation Officer.

**Medium priority cases** include those where:

- Development is contrary to Development Plan Policy or Government Policy AND is unacceptable, cannot be justified and which causes some level of environmental/residential harm – this could include the display of some types of advertisements or untidy sites (under Section 215 of the Act).

Cases that are allocated a medium priority will result in an initial assessment being made, which may include a site visit and inspection within 15 working days of receipt of a valid complaint.

**Low priority cases** are those which involve minor or technical breaches and / or which are judged to cause little or no harm. These cases include:

- Development which involves minor differences between an approved scheme and what has been built.
- Breaches of condition which are minor in nature and / or are likely to be resolved during the passage of time eg bricks that are a slightly different colour to those which are approved, means of enclosure which differ from details approved etc.
- Breaches of planning control which cause little or no harm to residential and / or environmental amenity eg where an extension or means of enclosure has been carried out without planning permission which is only marginally above or beyond what the permitted development criteria allow.

Where the matrix assessment and desk based research shows the alleged breach to be a low priority, it will not normally be necessary to carry out a site visit or inspection. At that point, provided the Investigation Officer is satisfied with the evidence, the case will be closed.

5.4 Other than cases which relate to unauthorised works to protected trees or to a listed building (which are always high priority and investigated as a matter of high priority) and low priority cases (which have been closed), a case will be allocated to an Investigation Officer who will carry out further investigative work, which will usually include a site visit and inspection.

5.5 It should be noted that during the course of an investigation, dependant on the evidence and details uncovered by the Case Officer, a priority given to a case at the outset, including those considered to be a low priority, may change.

What the Planning Enforcement Team will not, as a matter of course, investigate:

- Cases which are not valid complaints.
- Boundary disputes – these are civil matters not able to be resolved under the planning legislation.
- Dangerous structures, dealt with by Building Control contact: [buildingcontrol@dover.gov.uk](mailto:buildingcontrol@dover.gov.uk)
- Fly tipping, dealt with by Enviro-crime, contact [envcrime@dover.gov.uk](mailto:envcrime@dover.gov.uk)
- Noisy neighbours, dealt with by Environmental Protection, contact [envhealth@dover.gov.uk](mailto:envhealth@dover.gov.uk)
- Development that is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and/or the Town and Country Planning (Use Classes) Order 1987 (as amended)
- Development that is immune from action (eg 4 years in the case of a dwelling house or operational development and 10 years in the case of a use).
- Anonymous complaints, except where unauthorised are works being carried out to a listed building or to a protected tree.

## 6 What is a Valid Complaint?

6.1 To enable the Investigation team to establish how an alleged breach can be best investigated and what priority should be allocated to it, as much information as possible is required from a complainant at the outset. There are a number of questions and details that are required that will comprise a valid complaint.

A valid complaint is one which includes :

- Full details of the alleged breach
- The full address or geographic grid reference of the site where the breach is taking place
- Details of the amount of time the breach has been or is being carried on for
- Full contact details, including the address and telephone number of the complainant

6.2 In the course of carrying out the initial matrix and desk based assessment, except in the case of allegations of unauthorised works to listed buildings or protected trees, further information may need to be obtained from the complainant, which is why full contact details are necessary. Only valid complaints will be given a priority rating and allocated to an Investigation Officer.

## **7 Investigation of a Valid Complaint**

7.1 Once a case has been validated an acknowledgement letter will be sent. In the case of low priority investigations once the matrix and desk base research has been undertaken a letter will be sent to the complainant explaining why the Council is not going to take the investigation forward and has closed the case. In the case of high and medium priority cases, further investigations will be undertaken (usually involving a site visit). It may be that during the course of investigation, the Investigation Officer will seek further information from the complainant.

7.2 Where a case is complicated an investigation can take some while to conclude. Once a decision has been taken on any course of action, and action is taken, the complainant will be notified of the conclusions of the investigation accordingly.

See Appendix 5 in respect of the general principles behind planning enforcement investigations.

## **8 Types of Planning Enforcement Action and options.**



8.1 Taking enforcement action does not only mean issuing formal notices. Resolution of alleged breaches of planning control can be best achieved through negotiation and discussion to achieve an equitable outcome.

Different types of action include:

#### Informal Action.

- Verbal advice – where a case is dealt with through discussion with relevant parties. Where the contravener shows a willingness to remedy contraventions which could be of a relatively minor nature.
- Written advice – where a case is dealt with in writing between interested parties. This may follow the above stages, but would be better utilized where the breach being investigated is a little more complex/ serious – but none-the-less where the contravener indicates co-operation to remedy the breach.
- Negotiation – which may involve persuading the contravener to make some changes to a development which could result in the development being permitted development (and thus not requiring permission) or could result in the submission of a regularising application for a suitable development.

And

#### Formal Action.

- Formal notices – this can mean that notices requiring information relating to the breach are served and/or that a notice is served requiring certain steps to be taken to remedy any breach or to stop a breach from happening or recurring.
- Simple caution – this step taken where an offence has been committed under the legislation, such as the non-compliance with a valid notice or where unauthorised works are being carried out to a listed building or protected tree etc.
- Direct action – this step is considered where a formal notice has been served and has not been complied with, which would remedy the breach to serve the wider public interest, particularly the appearance and amenity of the area.
- Prosecution – this step is taken where it is considered proportionate to the requirements of any notice which has not been complied with and would best serve the wider public interests of the area.
- Injunction – is only sought in respect of the most serious of breaches of planning control.

8.2 Enforcement action will always be proportionate, that is to say commensurate with the type of breach and the level of harm. Where little or no harm is caused

enforcement action will not be pursued. Formal action is usually only taken as a last resort when all other avenues to resolve a breach have been exhausted. Where the balance of public interest lies in pursuing a course of action will vary from case to case.

8.3 Considerations on expediency will include where the development “conflicts” to an unacceptable degree with the Development Plan and government policies and objectives, and / or causes serious harm to public amenity and / or to an interest of acknowledged importance, such as the character or appearance of a conservation area or the setting of a listed building.

8.4 The Planning Enforcement Team works with other internal departments or external agencies to take a pro-active approach to planning enforcement in a conjoined multi-disciplinary approach.

See Appendix 7 for circumstances where enforcement action may have to be taken and Appendix 8 for details of types of actions, formal notices and when they are used.

## **9 Next steps**

9.1 Where formal enforcement action is pursued, and a notice is issued, then in most cases the contravener may appeal to the Planning Inspectorate against the notice. This does not apply to an appeal against a Breach of Condition Notice or a Notice issued under Section 215 of the Act has been served, where appeals are heard by the Courts. Whilst an appeal is under consideration the Council cannot take steps to remedy the breach set out in the notice.

9.2 In an appeal against the issue of a Notice particularly if the appeal is held at a Public Inquiry, the Council will expect that complainants to assist the Council in giving evidence as a witness.

9.3 Once an appeal has been decided upheld or there has been no appeal against the issue of an enforcement notice, the Council can consider taking steps to remedy the breach. Those steps are either to prosecute the contravener for non-compliance, against which ultimately there is a prison sentence and/or to carry out works in default (known as direct action) of all or any of the requirements of the notice. If direct action is taken to remedy the breach the owner will be asked to pay for the costs of the works. Failure to pay results in a charge being placed on the land so that costs can be recouped. These steps are serious measures and due consideration has to be given at each stage as to the most proportionate and effective course of action to remedy the breach.

## 10 Case Closure and Monitoring the Service

Our investigations are considered to be complete when one of the following points has been reached:

- The investigation identifies that no breach of planning control has occurred.
- An alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted and approved following the investigation.
- A breach of planning control has been identified but it is not considered expedient to take formal enforcement action.
- A formal notice has been complied with.
- A formal notice has been dismissed by the Planning Inspectorate or Secretary of State at appeal.

10.1 The Council has a Planning Enforcement Register available to the public which contains details of Enforcement Notices, Stop Notices, Breach of Condition Notices and Planning Enforcement Orders that have been issued.

10.2 The Council monitors its own performance and for this purpose keeps records of cases received; cases closed through negotiation; where there is no breach; where it is not expedient to take action; notices issued; compliance and appeal decisions, as well as default actions and prosecutions taken. This is subject to regular reporting to and scrutiny of Members.

A flow chart setting out the investigation process is set out at Appendix 9

## APPENDICES

### 1 – Planning Enforcement and the Regulators Code.

Although planning enforcement is a discretionary function, the Council has decided to exercise its function and accordingly does so pursuant to the Town and Country Planning Act 1990 (as amended). The Council acts in a proportionate way in tackling breaches of planning control and will take action only when it is considered expedient to do so. In considering action the Council will have regard, amongst other things to the development plan and all other material considerations when deciding their approach. The Enforcement Plan is a material consideration.

The Councils Planning Enforcement team sits within the Regulatory Services

Department, whose function is underpinned by the Regulators Code (Department for Business Innovation and Skills) April 2014. More details can be found in the code itself through the following link

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

In accordance with the Regulators code, where there is an offence, firm but fair enforcement of the law will be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the Council operates, what those regulated may expect; and accountability for the Councils actions.

## **2 - Relevant advice, guidance and legislation underpinning this plan:**

- The Development Plan
- Town and Country Planning Act 1990 (as amended).
- Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)
- Planning and Compulsory Purchase Act 2004.
- The National Planning Policy Framework (NPPF) 2018.
- Planning Policy Guidance (PPG)
- The Council's overarching Enforcement Strategy.
- Advice from the Crown Prosecution Service.
- Home Office COPS and Guidance.
- The Regulator's Code 2007.
- Human Rights Act 1998.
- Police and Criminal Evidence Act 1984.
- Criminal Procedure and Investigation Act 1996.
- Regulation of Investigator Powers Act 2000.
- Data Protection Act 1998.
- Freedom of Information Act 2000.
- The Protection of Freedoms Act 2012.

## **3 - The Matrix assessment and what it looks at in determining priorities for cases**

Priority assessments are calculated on receipt of a valid complaint. As is discussed in the main body of the plan, it is necessary for the Council to use its resources responsibly and prudently. Investigation efforts are always directed at the most serious of breaches which would cause most harm. A matrix system has been developed to ensure consistency and fairness in assessing the initial complaint. The matrix assessment will be carried out as part of a desk based exercise and is the first stage of investigating a complaint. The initial desk based exercise may also

include contacting the complainant for further details, researching the legislation and planning history and making any other enquiries to establish facts and evidence.

The initial matrix and desk based research approach is subject to ongoing review and refinement. The Council wants to ensure fairness and consistency in making its initial assessment and takes into account matters such as the level or seriousness of harm caused – such as ongoing noise or pollution, whether the harmful effects are escalating or stable, whether there is serious effects or harm to neighbour or residential amenity, where the development is located ie is it in an Area of Outstanding Natural Beauty or in a Conservation Area and so on. It is therefore necessary that as much detailed information is given in registering a complaint so that a full evaluation can be considered to a range of identified criteria in considering the priority that is given to a complaint.

The matrix assessment scoring approach and desk based research carried out gives an initial indication of the priority that is given to the investigation as well as determining whether a case can be closed.

It may be that in the course of investigations low, medium or high priority cases may have their priority altered.

#### **4 - How to report a suspected breach of planning control**

There are several ways to notify the Council of a suspected breach of planning control, which must always be in writing.

The most straightforward way is to visit the Councils web-site and complete the Planning Enforcement Alleged Breach of Planning Control complaints form. This will assist you to give the necessary information to enable a valid case to be created..

The link to this form is as follows: <https://forms.dover.gov.uk/planning-breach>

The Councils Customer Service Team will be able to complete the form for you to forward onto the Planning Enforcement team if you do not have access to the internet. The Council has a walk-in reception where you can speak to a Member of the Customer Service or you can telephone them. Their contact number is 01304 821199

You can also approach your Parish or Town Council Clerk who may be able to complete and forward the form to Planning Enforcement Team on your behalf.

The Planning Enforcement Team has a dedicated e-mail address. If you wish to make a complaint you should follow the link in the e-mail acknowledgment, which will direct you to the complaint form. Although you can register a complaint via this address, it may not be responded to as quickly as the dedicated form. It may also result in a delay as we will have to complete the complaints form on your behalf and if we do not have sufficient information then we will have to get back to you. The email address is [planningenforcement@Dover.GOV.UK](mailto:planningenforcement@Dover.GOV.UK) . You should be aware that

all information and details are treated as confidential during the course of an investigation. However it may be that should matters proceed to Court or Public Inquiry, then your details may be made public.

Dover District Council is a data controller under GDPR, your attention is drawn to our Corporate Privacy Notice at <https://www.dover.gov.uk/privacy>. This explains how we will use and share your personal information and protect your privacy and rights.

## **5 – Planning Enforcement Investigation principles**

The Town and Country Planning system regulates development and use of land, in the public interest.

Although it is not a criminal offence to carry out development without first obtaining any necessary planning permission, such action is discouraged. The fact that enforcement action is discretionary and should be used as a last resort and only when it is expedient, does not condone the wilful breach of planning control.

In considering enforcement action the decisive issue for the local planning authority is whether the breach of planning control would cause serious unacceptable harm to the environment and / or to amenity.

Any enforcement action taken will be commensurate and proportionate to the breach of planning control to which it relates. It is usually inappropriate to take formal action against a trivial or technical breach of planning control which causes no harm or where the development is acceptable on its merits and formal enforcement action would solely be to regularise the development or where the local planning authority consider that an application is the appropriate was forward to regularise a situation where for example, planning conditions may be imposed. The intention of the enforcement function will be to remedy the effects of the breach of planning control, not to punish the person(s)(contravener) carrying out the breach.

The fact that development has been carried out because the contravener believed planning permission was not needed, is not relevant in determining whether or not to take enforcement action. However, the cost to the contravener, in responding to any enforcement action could represent financial and / or human rights burdens and whilst this does not prevent action being taken, this can be a material consideration in deciding how to handle a particular case.

The starting point for any investigation is to consider negotiating a solution and to identify steps, if there are any, which could mitigate any harmful effects. In negotiating a solution and / or considering the expediency of taking enforcement action it will be necessary for the local planning authority to bear in mind the statutory time limits for pursuing enforcement action. Formal action will not be taken where:

- There is a trivial or technical breach of planning control which causes no

material harm or adverse impact on the amenity of the site or surrounding area.

- Development is acceptable on its own planning merits and formal action would be solely taken to regularise the development.
- In any assessment, the Council considers that an application is the most appropriate way forward to regularise the situation for example where planning conditions may need to be imposed.

## **6 - Circumstances where formal planning enforcement action may have to be taken**

Where the Council considers that unauthorised development may be acceptable, or could be made acceptable, a retrospective application will be invited without prejudice to the eventual determination of any such application. Section 73A of the Town and Country Planning Act 1990 allows planning permission to be given for development that has already been carried out.

In some situations, where a contravener asserts that a breach has become lawful (or immune from enforcement action), there is an expectation that the contravener will provide sufficient evidence to the Council to substantiate their claims. This will normally need to be in the form of an application for a Certificate of Existing Lawful Use or Development. A failure to submit an application supported by the necessary evidence establishing that lawful use or where insufficient evidence is available from other sources to corroborate the contravener's assertions it may result in the issue of an Enforcement Notice.

Where retrospective planning or other applications are submitted and invalidated (i.e. where there is a failure to comply with the Councils Validation Checklist, for example), the Council will not consider this sufficient reason to delay further enforcement action. The onus is upon the contravener to submit a valid application within the specified timescales.

Where a planning or other application has been submitted to "regularise" a breach, any formal enforcement action considerations will be made following determination of the application

Some breaches of planning control are unintentional. However, where a breach is identified, it is expected that those responsible will engage positively with the Council to resolve the problem, and show genuine commitment to regularising or remedying the breach. The onus is on the contravener to regularise or remedy breaches of planning control and, where the opportunity to do so is not taken up, then formal enforcement action will be considered. The Council will seek to work with contraveners, where possible, to assist in remedying the breach and advising on what action is required to do so.

A timetable will be given for the contravener to put matters right and if he or she appears unwilling to do so or does not comply with the timetable, formal enforcement action may be taken without further reference to the contravener.

Where breaches of planning control are considered so serious that there should be no delay in taking preventative action, the Council can consider whether to serve Temporary Stop Notices or use its injunctive powers. These tools are however to be used sparingly and only in those cases where there is significant and irreparable harm is likely to be caused.

## **7 - The requirements of an enforcement notice and compliance**

Once a breach of planning control has been determined as unacceptable and it is determined that it is in the public interest to pursue enforcement action, it is necessary to determine an appropriate period in which the contravener has to comply with any necessary steps to alleviate the breach of planning control. In determining periods for compliance, it is appropriate to consider matters such as, the time needed to relocate or re-organise a business, the effect of enforcement action on employment, social costs on the owner or occupier of the land, the time needed to organise and carry out physical works, and any seasonal considerations for example when planting and landscaping works are involved.

When relocation is required, for example for a business use, it is not the Local Planning Authority's responsibility to seek out an alternative site that might be more acceptable in planning terms. However, if a suitable site is known it will be suggested and a time limit for relocation agreed.

When a development provides valuable employment, the Council will advise the owner or occupier how long the activity or operation shall be allowed to continue or to be reduced to an acceptable level of intensity. An enforcement notice will usually be issued which will allow for a realistic period for compliance for the unauthorised activity or operation to cease, or its scale to be reduced to an acceptable level.

Enforcement action against unlawful and unacceptable development may result in social costs such as homelessness to the occupants. Whilst not condoning any unlawful use of land social costs may be taken into account in determining periods of compliance.

When an enforcement notice has been served which provides a reasonable time for compliance but, despite serious and evidenced efforts, the owner or occupier has not fully complied, the Council can consider whether either:

- The requirements of the notice should be relaxed to provide additional time to enable compliance; this would need to be weighed against the degree of harm caused by the unauthorised development.
- The steps that have been taken to comply are sufficient to have remedied the



harm to an acceptable degree; taking account of whether insisting on full compliance is practical and proportionate to the benefit to be gained.

If neither of the above approaches is considered appropriate the Council would take action to ensure full compliance with the Notice.

When enforcement action has been taken but compliance not achieved within the agreed period and under enforcement is not appropriate, the Council has several options, which can vary depending on the type of Notice served. The Council can bring prosecution proceedings through the Courts, seek the assistance of the Courts in obtaining an injunction or exercise default powers and use its approved contractors and agents to carry out any or all of the steps required.

Each mechanism has advantage and disadvantages. Successful prosecution proceedings will punish the contravener but will not in itself bring to an end a breach of planning control, although it may deter further contraventions. Default action is effective especially in removing structures and the total cost is normally recoverable in time. However, the primary consideration in determining the manner in which compliance with the requirements of an Enforcement Notice can be achieved will be ensuring that the harm being caused is sufficiently remedied and proper planning of the area is restored as soon as possible.

## **8 -Types of Formal Notices and Enforcement Tools**

The following table gives a summarised version of some of the more common tools and notices are available to the planning enforcement service for investigating and resolving alleged breaches of planning control. The table is not exhaustive and more comprehensive details can be found in the PPG.

No breach Take no action or no formal action	Appropriate when it is concluded either that there is no breach of planning control or that there is a breach but its impacts are not sufficient to make it expedient for the Council to take enforcement action or where the contravener takes immediate action to remedy the breach.
Ongoing Review	Take no immediate action, but monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord.
Allow Time to Remedy	Time may be given to remedy the breach or justify its retention. Such cases may include situations where there is no demonstrable harm and is not so serious as to warrant immediate action or where it may be justifiable by some other benefit. However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay formal action.
Submission of retrospective planning application	The Council can decide to invite a retrospective planning application for development where it considers this is the best way to deal with a breach of planning control. For example where it considers a development may be made acceptable subject to the imposition of planning conditions. However, in inviting an application it cannot be assumed that planning permission will be granted as any planning application will be decided in the normal way, taking into account all material planning and other considerations.
Planning Contravention Notice	This allows the Council to require information they need for enforcement investigation purposes with regards to any operation or use being carried out on the land as is used to invite the contravener to respond constructively to the Council about how any alleged breach of planning control could be remedied. This is a discretionary procedure and the Council does not need to serve a planning contravention notice before considering expediency of pursuing action. To provide misleading or false information or failure to return a notice within 21 days is an offence and could render the recipient liable to prosecution.

<p>Enforcement Notice and Enforcement Notice against breach of conditions</p>	<p>An enforcement notice can be issued where it is considered expedient to do so, against all or only part of a development that is held to be unacceptable (under enforcement). In such circumstances the remaining building or use will be deemed to have planning permission when the enforcement notice has been complied with sufficiently. There is a right of appeal to the Secretary of State against the notice, which can be upheld, quashed or amended. Non-compliance with the requirements of an enforcement notice is an offence. The penalty for non-compliance is up to £20,000 but there is no upper limit in the Crown Court.</p>
<p>Breach of Condition Notice</p>	<p>This can be used in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can only be used to secure complete compliance with a planning condition, “under-enforcement” is not an option. Also, as there are no powers for the Council to enter the land and carry out works, prosecution is the only means of enforcement. Therefore the use of a BCN may not always be appropriate. The maximum penalty on conviction is level 3.</p>
<p>Planning Enforcement Order</p>	<p>This enables the Council to take action against development that has been deliberately concealed, notwithstanding that the normal time limits (ie 4 or 10 years) may have expired or within the time limits, within 6 months of the apparent breach being drawn to the Councils attention. The process is pursued through the Courts and the Council would be required to give evidence and prove that concealment was deliberate for an Order to be made. If the Order is made, then this gives the Council time to take enforcement action, if considered expedient. There is a right of appeal against an Order.</p>
<p>Listed Building Enforcement Notices</p>	<p>A Listed Building Enforcement Notice can be served against unauthorised works that damage the character of a listed building. There is no four or ten year rule limiting time in which such an enforcement notice can be served.</p>

Urgent Work Notice	This enables the Council to execute any works which appear to them to be urgently necessary for the preservation of a listed building.
Listed Building Repairs Notice	This enables the Council to serve a notice upon the owner of a listed building specifying the works it considers reasonably necessary for the proper preservation of the building.
Listed Building and Conservation Area demolition Prosecution	A person who is found to carry out unauthorised works that affect the special architectural character or historic interest of a statutorily listed building or carries out unauthorized demolition in a Conservation Area without planning permission, is committing an offence and can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000 or, on conviction by indictment, to an unlimited fine
Temporary Stop Notice	<p>A temporary stop notice can be issued to seek immediate cessation of the breach of control. Unlike a Stop Notice, it does not require an enforcement notice to be served first. It is only valid for a period of 28 days, by which time the Local Planning Authority can decide whether or not to serve an enforcement notice. There is no right of appeal against a Temporary Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000.</p> <p>A Temporary Stop Notice should only be used where the Council is satisfied that there has been a breach of planning control and that the breach has to be stopped immediately. It can only be used where it is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area.</p> <p>Compensation may be payable if the LPA later issues a lawful development certificate.</p>

Stop Notice	<p>The Council can issue a Stop Notice where a breach of planning control alleged in an Enforcement Notice is causing serious or irreparable harm ahead of the deadline in the related enforcement notice. It can only be served if an enforcement notice has first been served. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000.</p> <p>However, a Stop Notice should only be served when the effects of the unauthorised activity are sufficiently serious and it is considered essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. Accordingly, a decision to issue a Stop Notice must be fully justified as there are consequences for the Council if the related Enforcement Notice is quashed or varied on appeal, or the Stop Notice is withdrawn the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice.</p>
Court Injunction	<p>This may be taken in the most serious cases where irreparable harm is being incurred and where other actions have failed.</p> <p>There are significant costs involved in bringing such action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.</p>
Right of Entry	<p>Entry onto land can be authorized by Councils and Justices of the Peace for enforcement purposes. It is limited as to what is considered as essential in the particular circumstances for effective enforcement of planning control. It is an offence to willfully obstruct an authorized person acting in exercise of a right of entry.</p>
Direct Action	<p>The Council may enter land to take the necessary steps to secure compliance when an Enforcement Notice or s215 Notice has not been complied with. This may have to be at the Council's cost if the contravener does not pay for the remedial works to be undertaken. However a charge can be placed on the land and costs are recoverable from the landowner when it is sold.</p>

Section 215 Notice	Such a Notice requires steps to be taken to remedy the condition of land or buildings that is considered to be adversely affecting the amenity of the surrounding area. Non-compliance is subject to a maximum penalty of level 3. Non-compliance after conviction attracts further fines.
Section 225A Notice	Such a Notice requires the removal of a display structure in respect of unauthorised advertisements which are considered to adversely affect amenity or public safety. There is a right of appeal to the Magistrates Court. The display of an unauthorized advertisement is an offence and the contravener can be prosecuted in the Magistrates Court.
Discontinuance Notice	Such a Notice requires the removal of an advertisement displayed with the benefit of 'deemed advertisement consent', i.e. an advertisement that would not normally require consent from the Council to be displayed.
Tree Preservation Orders/Protected Trees	It is an offence not to comply with a tree preservation order and or cut down or lop trees in a conservation area without the necessary consent. The Council will consider the proportionality of proceeding straight to prosecution through the Magistrates court in respect of such cases.

## 9- The planning enforcement process flow chart.

