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Planning Enforcement Sub-Committee 5 July 2012

PLANNING ENFORCEMENT FUNCTION

Report by: Development Control Support Manager

Summary

The purpose of this report is to:

- Update Members on recent changes to law and new grant award for Living in Outbuildings enforcement;
- to recommend a Planning Enforcement Policy (described as an Enforcement Plan in the NPPF) to encourage an improved standard of enforcement by following various principles, adopting good practice and to allow for monitoring to ensure the effectiveness of the Planning Enforcement function (attached as Appendix A)
- to recommend that an annual performance review on planning enforcement be reported to the Sub-Committee at the commencement of each municipal year

1.0 RECOMMENDATIONS

- 1.1 That Members note the Report
- 1.2 That the principles outlined in this report and attached paper are adopted as the policy by which the Planning Enforcement function will operate during the next year (subject to the further report on "Living in Outbuildings")
- 1.3 That an annual performance report on planning enforcement be reported to the Sub-Committee at the commencement of each municipal year for review
- 1.4 That Members note that a Report will be presented to Planning Committee recommending delegation of certain enforcement powers to officers.

2. 0 INTRODUCTION: RECENT CHANGES

- 2.1 This report updates a report presented last year as there are new members of the Sub Committee and there have been some significant changes:
 - Relevant parts of the Localism Act came into force on 6 April 2012 year which change some Planning Enforcement provisions.
 - Hounslow has received a grant of £280,000 as part of the Government's National Task Force on "Living in Outbuildings" initiative

- Following the publication of National Planning Policy Framework in March 2012 the Government has cancelled Planning Policy Guidance 18 on Planning Enforcement and recommends each authority to prepare a Planning Enforcement Plan
- 2.2 The Localism Act enforcement changes
- allow the Local Planning Authority to apply to the Magistrates court for an "Enforcement Order" where there has been concealment of a breach of planning control "in any respect". It remains to be seen how this provision will be viewed in the Courts.
- cancel the provisions previously applicable in London for removal of unauthorised advertisement hoardings and introduced a revised system of control over "display structures" where there will be a right of appeal to the Magistrates' Court.
- allow the planning authority to give an assurance that they will not be prosecuted for a breach of planning control (probably best used as a flexible negotiating provision to achieve compliance or a satisfactory end result
- provide a new power to decline consideration of a planning application where there is an existing enforcement notice.
- 2.3 The Government Task Force on Living in Outbuildings welcomes suggestions to prevent perceived abuses of Planning. Housing and Immigration laws in the United Kingdom and has grant aided some authorities where such abuses and problems have been identified. As mentioned in this report a further report will be presented to the Sub-Committee, and this is a particular aspect of enforcement for action and consideration over the next two years.
- 2.4 While formal national Planning Policies have been cancelled and replaced by the National Planning Policy Framework, Government planning guidance (in total around 6,000 pages) remains and is under review. The Enforcement Circular 10/97 and Good Practice Guide on Planning Enforcement is part of this review. The NPPF recommends that each local planning authority should have an Enforcement Plan. It is not clear whether this is any different from the guidance in the Good Practice Guide for an Enforcement Policy. This report accordingly recommends an annual performance review report at the start of each municipal year so that the Enforcement Plan/Policy can be updated each year in the light of trends and experience.
- 2.5 On the 1 April 2012, the Mayor's Community Infrastructure Levy for new floorspace came into effect. A Borough Infrastructure Levy is under preparation. The effect on enforcement activity trends is too soon to predict, however it may be consideration will have to be given to a CIL Stop Notice where there is a breach of planning control and a coordinated approach is required.

3..0 ENFORCEMENT BACKGROUND

- 3.1 The Enforcement section receives over 1,000 complaints from members of the public and councillors a year. Of these complaints around half do not involve a breach of planning control or are of a very minor nature. Some are complaints over issues that can be handled under other legislation, such as parking, noise or pollution. Some are complaints that work is being carried out, which upon investigation does have planning permission, or does not need planning permission.
- 3.2 If the complaint does refer to a breach of planning control, then a case is made up, and an investigation undertaken. All complaints that are logged as planning enforcement cases are referred to Building Control and Council Tax. It is important to stress that the decision to take formal enforcement action is discretionary and must be well founded. The Council has to decide whether it is expedient and in the public interest to take formal action following a complete investigation into an alleged breach.
- 3.3 The objective of enforcement is to achieve compliance with law or accepted standards. The quality of the environment and in some cases the quality of life for residents depends on the enforcement system being effective. The records and information gathering is vital and complainants should be encouraged to record with photographs matters of concern, and confidentiality maintained where complainants are reluctant for their identity to be disclosed. The Council's web site will play an increasingly important role in conveying relevant information and explanations in technical details.

4.0 UNAUTHORISED DEVELOPMENT

- 4.1 Planning permission is required for development work, such as new buildings, and for a material change of use of buildings or land. The Town and Country Planning General Permitted Development Order 1995 (as amended) outlines some building work and changes of use that can take place without planning permission being required. This is known as permitted development. For example, people can make small extensions to their house subject to the limitations within this order, without needing planning permission. One of the most common causes of complaint that we receive from members of the public is that a neighbour is building an extension. This frequently turns out to be permitted development. Carrying out development without first applying for planning permission (or a Certificate of Lawful Development) is not a criminal offence and therefore cannot be treated as one, unless the property is a listed building or there has been unauthorised demolition within a Conservation Area. More often than not, complaints over neighbours' building are either permitted development, or they can be regularized by requesting that the owner submits a retrospective planning application for the work.
- 4.2 A change from one use to another does not always require planning permission. The change has to be material in planning terms and not

permitted under the statutory scheme. The Town and Country Planning (Use Classes) Order 1987 (as amended) sets out classes of use, and allows movement between different classes of use. For example, Class A1 is a retail shop. A shop can move from different uses within the A1 class without needing permission e.g. from a clothes shop to a newsagent. However, permission is required to change from a shop to a restaurant, as that is within Class A3, a different use class. Class D1 is defined as non residential institutions, and different institutions can use it without needing permission. For example, planning permission is not needed to change from a day nursery to a religious meeting place or community hall (unless there are conditions or obligations preventing such a change to the original consent)

- 4.3 Many complaints are received which arise from boundary disputes between neighbours. The Planning Enforcement team cannot get involved in private disputes, and individuals with such complaints are advised to try and resolve the dispute amicably with their neighbour, or ultimately contact a private solicitor who may be able to bring a civil action.
- 4.4 Planning enforcement action can only be taken against a breach of planning control. The Town and Country Planning Act 1990 has a detailed scheme in Part VII of the Act for planning enforcement and has additional special statutory controls in Part VIII covering protected trees, power to serve notices on land adversely affecting the amenity of a neighbourhood, and advertisements. Works to listed buildings and demolition of buildings within a conservation area are controlled and may be the subject of enforcement action under the Planning (Listed Buildings and Conservation Areas) Act 1990.

5.0 **ENFORCEMENT ACTION**

- 5.1 The statutory legislation that the Planning Enforcement team enforces is based around the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. Subsequent national planning legislation that is of relevance includes
 - The Town and Country Planning (General Permitted Development) Order 1995 (as amended) – this sets out what can be done under permitted development
 - The Town and Country Planning (Use Classes)Order 1987 this sets out the various categories of uses that land falls into, and what comprises a material change of use
 - The Town and Country Planning (Control of Advertisements) Regulations 2007 – this sets out which advertisements benefit from deemed consent (i.e. those that can be displayed without specific consent from the Council) relates to unauthorised advertisements and sets out action that the Council can take against such advertisements.

- 5.2 If planning permission, listed building consent, conservation area consent or advertisement consent is not required from the Council, then the Council cannot take action under national planning legislation. However, another council section may be able to take action under other statutory legislation.
- 5.3 It is often assumed that breaches of planning control are a criminal offence but this is not the case other than as relates to unauthorised works to listed buildings or demolition within a conservation area or advertisements on land without the consent of the land owner. Furthermore, if it is established that a breach of planning control has taken place, it is not mandatory for the council to take enforcement action. The decisive issue for the Council to consider in deciding whether to take enforcement action is whether it is expedient to do so. In making this assessment, the Council will have regard to the relevant Unitary Development Plan and Local Plan policies, associated Supplementary Planning guidance and all other material planning considerations. The harm caused by the contravention needs to be assessed, the impact on neighbouring property and the living conditions of any residents affected. Financial considerations may also be relevant.
- 5.4 Whilst not condoning development or activity carried out without the benefit of planning permission, it may not always be considered expedient to take enforcement action against a minor breach of planning control which causes no harm to the amenity of adjoining occupiers the current and / or future owners or occupiers of the subject premises or the surrounding area.
- 5.5 Investigation, communication and negotiation are the primary actions to be undertaken when a breach is discovered to afford the contravenor a fair opportunity to remedy the breach, except in serious cases where a Stop Notice or even an Injunction may have to be considered. When the breach is not voluntarily rectified, and harm caused by the breach is identified, a report is prepared for members to authorise service of an enforcement notice. Following authorisation at committee, an enforcement notice can be served. There is the right of appeal against an enforcement notice. Following appeal, the Planning Inspectorate can determine to uphold the enforcement notice, vary the enforcement notice or quash it. The enforcement notice gives a period of time in which compliance is sought. If the enforcement notice is not complied with within the prescribed timescale an offence is committed and the Council may prosecute. If convicted, the person the subject of the enforcement notice can be fined for not complying with the enforcement notice.
- 5.6 The integrity of the development management process depends on the Councils readiness to take enforcement action when it is necessary to do so, (and prior to the breach becoming lawful due to the passage of time and immune from enforcement action), in order to remedy the

undesirable effects of unauthorised activity. Failure to take enforcement action when it is clearly required can result in the Council being investigated by the Local Government Ombudsman for maladministration and / or being the subject of an application for judicial review (together in rare cases with claims for damages) or other legal proceedings.

5.7 The procedure to be followed from first receipt of a complaint to prosecution, is attached as Appendix A to this report

6.0 COMMON TYPES OF UNAUTHORISED ACTIVITY / COMPLAINTS RECEIVED

- A number of **advertisements** are installed without consent under the Advertisement Regulations 2007. These can range from estate agent boards, to advertisement hoardings around sites, to purpose built advertisement hoardings. For advertisements, they can be assessed against two factors public safety and amenity. The harm can be that they are dangerous, usually as a distraction to traffic, and that they are unsightly to an area, affecting its character. There are particular problems with unauthorized advertisements on busy transport routes, where the advertisers know that they will be seen by large volumes of people. In particular, the A4 Great West Road, M4 motorway, and A316 Chertsey Road are under pressure, and this will increase as the roads may be seen as advertising opportunities to display to the increased numbers of travelers expected for the Olympics.
- 6.2 **Building works** being undertaken to a neighbouring property is a common complaint. Often it is discovered that the owner of a property has obtained a Certificate of Lawfulness and that the development is permitted, but the neighbours have not been informed. Sometimes there are boundary disputes involved, which is not a matter that the legislation that planning enforcement works within can have an influence. Often, an early site visit whilst the builders are on site can resolve matters. In the majority of cases, the works affect neighbours either by being too high or deep, affecting the light or outlook to a neighbouring property, or windows have been installed that affect, or are perceived to affect, privacy.
- 6.3 **Breach of condition**/not building in accordance with approved plans in these cases, planning permission has been given subject to conditions, such as the hours a shop can be open, or the plans have been specifically approved, and what has been built is different. This can be that a window or door is in a different position, or that it is bigger, or in a different place. In each case, the difference from the approval is judged, and the harm that is caused is assessed.
- 6.4 **Change of use** without planning permission is a common complaint. As mentioned above in 3.2, some changes of use do not need consent. However, the most common complaint is received when a new

residential unit is created. This can be a change of use from a single house to its use as two or more flats, or to become a House in Multiple Occupation (HMO), or an outbuilding being used as separate residential accommodation. Planning permission is needed for these changes of use. When dealing with these complaints, other agencies are involved, such as Council Tax, Building Control, Environmental Health Housing, and this is discussed in more depth in Section 6 below

- 6.5 Works to a Listed Building require listed building consent. If works are undertaken which affect the character of the listed building without consent, then it is an offence. Buildings that are recognised as being of special architectural or historical interest are listed to afford them extra protection. If a report is received that works are being undertaken without listed building consent then it is important that a visit is made at the earliest opportunity to prevent damage to the character of the building. A person who is found to carry out unauthorised works that affect the character of the listed building can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000. A Listed Building Enforcement notice can be served against unauthorised works. There is no four or ten year rule limiting time in which such an enforcement notice can be served.
- 6.6 A number of complaints are received each year over works being undertaken to trees, or trees being felled. If someone wishes to do works, or fell, a tree in a Conservation Area then they should give the Local Planning Authority (LPA) 6 weeks notice of their intention to do such works. If it is considered that the works proposed would not harm the amenity and character of the Conservation Area, then the Local Planning Authority issue a decision not objecting to the works. If it is considered that the works proposed would damage the tree in a way that would affect the amenity of the Conservation Area, then a Tree Preservation Order (TPO) can be placed on the tree. When a tree is subject to a TPO, permission is required to do any works to the tree. If works are being carried out to a tree in a Conservation Area, a prompt visit is required to assess whether, had prior notification been given, the LPA would have issued a TPO to prevent the works. If works are carried out to a tree protected by a TPO, this is an offence. A prompt visit is required to identify who is doing the works, as a prosecution can result, and to instruct them to cease works, under caution.
- 6.7 Complaints come in a variety of forms. Residents who perceive that an infraction affects their property can become genuinely distressed and equally many owners subject to enforcement complaints believe that they have done no wrong. Negotiation skills are an essential part of planning enforcement life, and it is considered that a good enforcement section is one that can negotiate settlements without having to resort to formal action.
- 6.8 The majority of complaints received can be resolved through negotiation, without recourse to formal enforcement action. If formal

enforcement action is sought, this is a last resort as it is accepted that this is a lengthy process. Following authorisation by Enforcement Sub Committee to serve an enforcement notice, the subject of the enforcement notice has the right of appeal within 28 days of the notice being served. This extends the process by at least 6 months and takes time and resources. If the appeal ultimately upholds the enforcement notice, the period of compliance with the notice begins again from the date of the appeal decision. If the enforcement notice is still not complied with, then a prosecution can be brought against the owner, with a fine as the penalty for non compliance with the enforcement notice, up to £20,000. However, it must be noted that a prosecution does not secure compliance with the enforcement notice – it just has a financial penalty. It is always hoped that the financial penalty will be sufficient to secure compliance with the enforcement notice, and thus remedy the harm caused. The Localism Act 2010 inserts section 70C of the Town and Country Planning Act to give the Local Planning Authority the power to decline to determine an application if there is a valid enforcement notice on that property.

7.0 AREAS IN WHICH TO FOCUS RESOURCES

- 7.1 An effective planning enforcement service is essential to uphold the planning function of the council. All complaints received that are breaches of planning are investigated. However, of necessity, action against some breaches is undertaken before others. For example, if unauthorised building work is being undertaken which harms neighbours amenity, it is more likely to be able to achieve a remedy of this breach whilst the builders are still on site, so such complaints are dealt with soon after receipt. Other complaints which have less impact on amenity of neighbours, such as the unauthorised installation of a satellite dish, will have less urgency in terms of investigation with limited resources.
- 7.2 For allegations of change of use, more substantial investigation and evidence gathering is required, to establish whether a change in the use has taken place. Such investigations will necessarily be more time consuming to gather evidence.
- 7.3 As well as being reactive to complaints, planning enforcement can be pro-active.
- 7.4 Numerous complaints are received about outbuildings being used for separate residential accommodation. Upon investigation, some of these are not being used as separate residential accommodation. An outbuilding can be used for accommodation as long as it is ancillary to the main residential dwelling. Such as for a member of the family to sleep in, as long as this is ancillary to the main use of the house. A change of use that requires planning permission has taken place when the outbuilding is used as a self contained dwelling, with no links to the

- house (that is, the outbuilding is being used as a separate residential unit and that use is not ancillary to the use of the main house).
- 7.5 Neighbours frequently complain about this, concerned with overlooking, noise and the disturbance that results from additional accommodation in a garden. However, this whole issue has major implications for the Council as a corporate body, which must when taking decisions ensure that there is no breach of the Council's duties under the Equality Act 2010 or the Human Rights Act 1998. If a family is displaced as a result of planning enforcement, then alternative accommodation can be required to be provided. In addition, Building regulations may be needed for the accommodation, Council Tax should be paid, there may be issues of fraud, there may be health issues through inadequate building standards for residential accommodation. These are corporate issues, that need to be addressed by the Council as a corporate body. Planning Enforcement regularly meet with Housing, Council Tax, Building Control and Fraud officers to ensure a joined up response to complaints.
- 7.6 Recent publicity over "Living in Outbuildings" in adjoining and nearby boroughs has highlighted this issue. The government has awarded this council a sum of £280, 000 to tackle the problem of dwellings being created without planning permission. This is an issue that has corporate implications, and a report is being produced corporately to recommend a way forward.

COMMENTS OF THE ASSISTANT DIRECTOR CORPORATE 8.0 **GOVERNANCE**

8.1 The Assistant Director Corporate Governance supports the recommendations in the report

9.0 COMMENTS OF THE DIRECTOR OF FINANCE

- 9.1 The Director of Finance comments that this report seeks to agree the Planning Enforcement policy for the Council. Within the existing budget there is already adequate provision for staffing this function. Depending on how vigorously the policy is enforced may mean that additional unbudgeted income will be generated. At present it is not possible to determine how much this might be.
 - 9.2 The use of any additional income will need to be considered at a corporate level.

10.0 EQUALITIES DUTIES IMPLICATIONS

10.1 The Council has had due regard to its Equalities Duties and in particular with respect to its duties arising pursuant to the Equality Act 2010, section 149. Following a relevance test, which is available at:

http://www.hounslow.gov.uk/index/council_and_democracy/equality/eias/environment_eias.htm it is considered that there will be no specific implications with regard to the Council's duty in respect of its equalities duties and that in recommending enforcement action following complaints the Council will be acting in compliance with its duties.

APPENDIX A

PLANNING ENFORCEMENT POLICY

1.0 BACKGROUND

- 1.1 If planning permission, listed building consent, conservation area consent or advertisement consent is not required from the Council, then unfortunately the Council cannot take any action under national planning legislation. However, another Council section or department may be able to take action under other statutory legislation.
- 1.2 The Planning Enforcement Team can only enforce the national planning legislation, and therefore cannot get involved in private disputes, for example breaches of restrictive deeds or covenants, or boundary disputes. Individuals with such concerns such contact a private solicitor who may be able to bring a civil action.
- 1.3 The national legislation is supplemented by a number of documents providing clarification and guidance on planning enforcement. These documents include National Planning Policy Framework, Department of the Environment Circular 10/97, entitled 'Enforcing Planning Control' (July 1997), and the accompanying 'Good Practice Guide' for Local Authorities.
- 1.4 It is often incorrectly assumed that breaches of planning control are a criminal offence, but this is not the case. Furthermore, if it established that a breach of planning control has taken place, it is not mandatory for the Council to take enforcement action. The decisive issue for the Council to consider in deciding whether to pursue enforcement action is whether it is expedient to take enforcement action. When considering expediency, the Council will consider the facts, for example: whether the breach of planning control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest; whether planning permission would be granted if an application were to be submitted and if so, whether conditions would be imposed; and whether the breach has become lawful through passage of time and therefore immune from enforcement action. In making this assessment, the Council will have regard to the relevant Unitary Development Plan / Local Plan policies, associated Supplementary Planning Documents and all other material planning considerations.
- 1.5 Whilst not condoning development or activity carried out without the benefit of planning permission, it is usually inappropriate to take enforcement action against a minor breach of planning control which causes no harm to the amenity of adjoining occupiers or the surrounding area.

1.6 However, the integrity of the development control process depends on the Councils' readiness to take enforcement action when it is necessary to do so, in order to remedy the undesirable effects of unauthorized activity. Failure to take enforcement action when it is clearly required can result in the Council being investigated by the Local Government Ombudsman for possible 'maladministration', or being challenged by way of an application for judicial review or in other legal proceedings.

2.0 **HOW WE DEAL WITH COMPLAINTS**

2.1 Most breaches of planning control are reported to the Council directly by members of the public. The procedure outlined below is a guide to how we will respond to these complaints:

2.2 Complaint received and logged.

To make a complaint about a suspected breach of planning control, we will need as much information as possible. An e-form can be found on the council website following the link https://eforms.hounslow.gov.uk/ufs/ufsmain?formid=A105 PLANNING **ENFORCEMENT** or choosing planning enforcement from the report it section on the front page of the website.

- The address or detailed location of the site.
- Precise details of the alleged breach.
- When the alleged breach started/took place.
- The nature of any building work/uses of the property.
- The previous and current uses of the property.
- Names, addresses, telephone numbers of persons responsible, if known
- Photographs, if possible
- Name, address and contact details of the Complainant
- Anonymous complaints will not, in general, be investigated unless they relate to works to a listed building, tree works or dangerous structures. It is in our experience that such complaints can be frivolous or motivated by neighbour disputes. Members of the public who are reluctant to give their details, because they fear repercussions, are advised that their details are treated with the strictest confidence, but if they are still reluctant we would advise them to use their local Councillor to act on their behalf.

Under Parts 1 and 2 of Schedule12A of the Local Government Act 1972 (as amended), enforcement files are not public documents and Complainant details are confidential

2.3 The complaint is logged in the I-Plan database. Planning and Building Control records are also logged in this sytsem to give a more complete property record.

Planning history check of the site carried out.

- 2.4 Where we are notified that building works have commenced at a property, these will, in the first instance, not be registered as potential enforcement cases, until research has been undertaken to establish whether there is planning permission or it is permitted development. Aerial photographs will be checked to see if there is any indication of when building work started, and what was on the site previously.
- 2.5 Other checks will be made with council departments, such as Building Control, Pollution, Licensing, Food, Trading Standards, Streetscene, Highways, Environmental Health Housing, Council Tax. This desk top study helps establish any background to the case, if building works have started, when they started, have complaints been received by other sections, has Council Tax been paid, are there tenants of the property being paid Housing Benefit?
- 2.6 From this research, a desktop case can be made up. In some instances, this will indicate that planning permission has been given for the building work / activity that is the subject of the complaint. If this is the case, an officer will visit to make sure that it is being carried out in accordance with the approved plans.

Initial Site Visit

- 2.7 After the relevant planning history has been researched, the first step of the enforcement investigation normally taken by the Case Officer is a site visit to the location where the alleged breach of planning control is taking place. It is standard procedure for the Officer not to visit the complainant immediately after visiting the site of the alleged breach, as this could reveal to anyone present at the site the identity of the complainant. If a complainant wishes for the Case Officer to visit their property, they should contact the Officer in order to make this request.
- 2.8 The Case Officer's initial site visit is of vital importance and the Officer will seek to obtain as much information as possible. In some cases the Case Officer may be accompanied by another colleague or a Council Officer from another department. The Case Officer will not usually notify the owner or occupier of the site where the alleged breach of planning control is taking place, and has the legal right under Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended), to enter any land at any reasonable time to ascertain whether a breach of planning control has occurred.

- 2.9 If no-one is present when the Case Officer first visits the site where the alleged breach of planning control is taking place, the Officer will leave a business card asking the owner or occupier to contact them.
- 2.10 Should the owner or occupier of this land be unwilling for the Officer to enter the land, the Officer will seek to agree a mutually convenient time for a site visit to be undertaken. If the owner or occupier refuses to arrange a suitable time for a site visit to be carried out, the Council will serve a Right of Entry Notice, stating, with at least 7 days advance warning, a time when the Case Officer will expect to be able to enter the land, without being impeded, to ascertain whether a breach of planning control has occurred.
- 2.11 If the Case Officer is still not able to enter the land, the Council will apply to the Magistrates Court for a warrant to be issued authorising officers to enter the land. Wilful obstruction of an authorised Officer(s) at this stage is a criminal offence subject to a maximum fine of £1,000. If considered necessary, the authorised Officer(s) may be accompanied by a Police Officer(s) when exercising this warrant.
- 2.12 Once a site visit has been completed, the Case Officer will write to both the owner/occupier of the site and the complainant to advise of his or her findings and how the investigation will be progressed.
- 2.13 If a breach is established an assessment will be made of the harm caused by the breach. If it is considered that no or limited harm is being caused by the breach, the owner will be asked to submit a planning application to rectify the breach. If it is considered that harm is being caused by the breach, officers will negotiate to try and remedy the breach. If the owner is unwilling or unable to rectify the breach, then officers will write a report seeking members authority to serve an enforcement notice. In circumstances when it is considered that enforcement action should take place promptly and before the next meeting of the Planning Enforcement Sub-Committee and there are grounds of urgency, using Urgency Powers, the Chair of the Planning Enforcement Sub-Committee may agree that the Chief Officer is authorised to take enforcement action without the matter being presented to the Sub-Committee first.
- 2.14 Other Notices, such as Breach of Condition Notices, can be agreed at Senior Officer level under the Council's Adopted Scheme of Delegation

Enforcement Options

Ongoing Review	Take no 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
	which are unlikely to create a precedent or which
	may be remedied of their own accord

Allow Time to	Time may be given to remedy the breach of justify
Remedy	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.
Planning Contravention Notice	This can give an opportunity to formally regularize the position or to persuade the Council that further action is inappropriate. Such a Notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. This is often used when there is an allegation that a separate residential use has commenced.
Enforcement Notice	These will be the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice, which can be quashed or amended. The Council may choose to "underenforce" to remedy a specific problem. In such circumstances the remaining building or use will be deemed to have planning permission when the Enforcement Notice has been complied with.
Breach of Condition Notices	These can be used in addition or as an alternative to an enforcement notice where the unauthorized 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
Listed Building and Conservation Area Enforcement notices	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. A Conservation Area Enforcement Notice can be served against unauthorised demolition in a Conservation Area
Listed Building and Conservation Area Prosecution	A person who is found to carry out unauthorised works that affect the character of the listed building or demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

Temporary Stop Notice	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 either decide 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, being up to £20,000. Compensation may be payable if the LPA later issue a lawful development certificate
Stop Notice	The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. It can only be served if an enforcement notice has first been served. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, being up to £20,000. However, the Council are advised that a Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice.
Court Injunction	This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bring such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.
"Works in Default" Powers	The Council may enter land to take the necessary steps to secure compliance when an Enforcement or advert notice is in effect. This is at the councils cost. However, although the cost can be recovered from the landowner, experience has shown that this is not often forthcoming, and is rarely cost effective
Section 215 Notice	Such a Notice requires steps to be taken to remedy the condition of land which is considered to be adversely affecting the amenity of the surrounding area
Section 225A Notice	Such a Notice requires an unauthorised advertisement to be removed

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
CIL Stop Notice	This is a new kind of stop notice, to be issued to require development works to cease where development has commenced and the required Community Infrastructure has not been paid in accordance with CIL Regulations

- 2.15 The action taken should be proportional to the level of harm involved and that, taking relevant circumstances into account, it is expedient and necessary to do so. Therefore, any action taken by the Authority to achieve compliance will be proportionate to the seriousness of the harm involved in any breach.
- 2.16 Once an enforcement notice is served, there is the right of appeal against this, as long as the appeal is submitted within 28 days. Experience has shown that appeals are submitted against the majority of enforcement notices served, and around 80% of these are informal hearings or public inquiries. Following the appeal, the decision of the Inspector can be to uphold the notice, in which case the owner has a set period of time in which to comply: to vary the notice, or to quash the notice, in which case the owner can continue the works. / activity.
- 2.17 If there is a failure to comply with, then the appropriate action as shown above will be engaged. In the case of non compliance with an enforcement notice, the next step is to prosecute. The owners can be fined in court for non compliance with an enforcement notice. However, it is possible that the fine be paid, and the breach of planning be continued. In such cases, further prosecutions can be undertaken or where appropriate a court Injunction may be sought.
- 2.18 There is no right of appeal against a Breach of Condition Notice (which may be challenged by an application for judicial review) or a Planning Contravention Notice. An appeal can be made in the Magistrates Court against a Section 215 Notice.

No Breach, or Immune

2.19 If it is established that no breach of planning control has occurred, or that the activity is immune from enforcement action due to the length of time that the activity has been taking place, the Council will be unable to take any further action. In such circumstances, the Council will write to both the complainant and the owner of the site explaining in full the reasons why no action is to be taken and formally confirming that the matter has been closed.

Action to remedy the breach

If the owner or occupier of the site takes prompt action to remedy the breach of planning control, the Case Officer will subsequently visit the site and then confirm in writing to both the owner/occupier and the complaint that the breach of control has been remedied and that no further action will be taken.

Retrospective applications

- 2.21 The owner/occupier of any site where a breach of planning control has occurred has the legal right to submit a retrospective planning application in an attempt to regularise the breach. Such an application will be considered by the Council in the same way as all other planning applications, i.e. with regard to the provisions of the Unitary Development Plan /Local Plan and associated Supplementary Planning Documents, and all other material planning considerations, and with each application being determined on its own planning merits. Section 70C was introduced by the Localism Act whereby a Local Planning Authority has the power to decline to determine an application if there is a valid enforcement notice in place. This is to be used to stop delays to enforcement by the submission of applications that propose minor changes to the subject.
- 2.22 Neighbouring properties, and any complainants who first raised their concerns with the Planning Enforcement Team, will be formally notified of the application in accordance with the Statement of Community Involvement, and the details of the application will be published on the council website. Representations will be taken into account when the planning application is determined.
- Any enforcement action that is proposed or has already been taken by 2.23 the Council may be put on hold pending the determination of the relevant planning application, but in some circumstances it may be considered appropriate to continue enforcement action, for example where the harm caused by the unauthorised activity is seriously detrimental to the surrounding area or where there is the potential for the development to become immune.
- If a retrospective planning application has to be presented to a Committee meeting, and the Officer recommendation is to refuse the application, a recommendation to take enforcement action will normally also be included within the Officer's report for determination by the Elected Members sitting on the Committee. Agreement to refuse a retrospective planning application and to serve an Enforcement Notice at the same time does not remove the right of the owner/occupier to appeal on a number on different grounds. Following legislative changes brought into force under the Localism Act 2011, if an enforcement notice is issued before the time for determination of the retrospective planning application has expired, then while the owner

- may appeal against the enforcement notice on a number of grounds, they may not appeal under ground 'A' (a ground A appeal asserts that planning permission ought to be granted or that the condition or limitation should be discharged).
- 2.25 If the application is subsequently approved, the activity will then be lawful and no enforcement action will be taken. The decision will be published so that anyone who made representations on the relevant planning application can see the outcome of the application.
- 2.26 If the application is refused, the Council will then pursue enforcement action to remedy the breach of planning control.

Prosecution

- 2.27 The enforcement notice gives a period for the work to be done to remedy the breach. When this period has expired, enforcement officers will visit the site again to check that the enforcement notice has been complied with. If it has, and the breach of planning has been remedied, then the owner will be written to and told that the enforcement notice has been complied with. This letter will be put on the Statutory Register of Enforcement Notices, held on the Council website.
- In some cases, works have been done to make the development fall within the boundaries of permitted development. For instance, the roof of an outbuilding may have been removed to reduce the height to less than 2.5m, so it would be permitted had an application been made. If a works have been undertaken to such an extent that a lawful certificate would have been issued, then generally enforcement officers will no longer pursue further compliance. It would not be expedient for the structure to be demolished, and rebuilt as permitted development, as the part of the structure that caused the most harm (in this example, the roof) has been removed.
- 2.29 In some cases, works have been undertaken to remedy the breach, but not every action required on the enforcement notice has been done. An assessment must be made of the harm caused by the remaining structure / use, and the likelihood of it gaining planning permission. In some cases, if it is considered that the works undertaken overcome the harm caused by the breach, then no further action will be taken. In these cases, however, the enforcement notice is kept on the file, so further action can be taken should the breach recur.
- 2.30 If, following the period to comply with the enforcement notice, no remedial works, or insufficient remedial works have been carried out. then the Council will prosecute against non-compliance with the enforcement notice in the Magistrate Court. Non-compliance with the enforcement notice is an offence, liable to a fine of up to £20,000. The council will also seek to recover its costs arising from non compliance with the enforcement notice. If the financial penalty given by the court

- does not achieve compliance with the enforcement notice, then further prosecutions will be undertaken to achieve compliance to overcome the harm of the breach of planning.
- 2.31 The Council will publicise successful prosecutions for non compliance with enforcement notices
- 2.32 The Council will use other legislation in an attempt to remedy a breach of planning that is causing harm to residential amenity or interests of acknowledged importance. This includes Environmental Protection Act, Housing Acts and Proceeds of Crime Act

3.0 LEGISLATIVE FRAMEWORK

- 3.1 The statutory legislation that the Planning Enforcement Team enforces is based around the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. This piece of legislation forms the fundamental basis of the planning system today in England and Wales.
- 3.2 Subsequent national planning legislation that is of particular relevance to the Planning Enforcement Team includes the following:
 - The Town and Country Planning (General Permitted Development)
 Order 1995 (as amended) this sets out what can be done under 'permitted development rights', i.e. without requiring planning permission from the Council.
 - The Town and Country Planning (Control of Advertisements)
 Regulations 2007 (as amended) this sets out which
 advertisements benefit from 'deemed advertisement consent', i.e.
 those advertisements which can be displayed without requiring
 consent from the Council.
 - The Town and Country Planning (Use Classes) Order 1987 (as amended) this sets out the various categories that different uses of land fall into, and what comprises a 'material change of use' requiring planning permission.