

REVIEW OF THE ENFORCEMENT PLAN

Councillor Lax Cabinet Member for Regulatory, Housing & Health

Date: 4th April 2022

Agenda Item: 6

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Key Decision? NO

Local Ward N/A

Members



PLANNING COMMITTEE

1. Executive Summary

- 1.1 Planning Committee approval is sought to an updated version of the planning Enforcement Plan as set out in Appendix A.
- 1.2 An in-depth review has been undertaken of the existing adopted Enforcement Plan (2018) resulting in the attached proposed revised version of the Plan. The review has been undertaken to ensure it is in line with current National legislation and guidance, reflects the resources within the Planning Enforcement Team and be a more customer friendly document.

2. Recommendations

- 2.1 That Planning Committee agree the updated Enforcement Plan April 2022, as set out in Appendix A and that the Plan is adopted with immediate effect.

3. Background

- 3.1 The LDC Enforcement Plan was originally adopted in 2013 and was further updated in December 2018 to reflect national policy and guidance changes.
- 3.2 The National Planning Policy Framework (July 2021) states that authorities should consider publishing a local enforcement plan, it states at para 59 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 it is appropriate.”*
- 3.3 The proposed revised Enforcement Plan (April 2022) sets out how the Council carries out its planning enforcement function, explaining how we deal with complaints and enquiries about alleged breaches of planning control. The Plan outlines the main legislative powers, how enquiries will be prioritised and investigated, and how the Council shall determine whether it is expedient to take formal enforcement action.
- 3.4 The updates to the Enforcement Plan have sought to ensure that the Plan carries forward the Council and enforcement teams’ drive to be more customer focussed and transparent in its dealings with all stakeholders. Along with better use of IT systems, the Plan establishes a definitive set of performance targets in terms of responses to enquiries, site visits and inspections and responses to enquiries. It also

carries forward the existing target of seeking to conclude investigations of 80% of all enquiries received within 12 weeks of receipt.

- 3.5 The revised Plan set out a clearer set of priorities for complaints received, ensuring that those cases which pose a serious and immediate threat to the environment, historic environment and public amenity are dealt with swiftly and those trivial or technical breaches of planning control that have simpler resolution or have no harm to the environment have least priority. Nevertheless, it is important to understand that it remains a part of the Plan that all enquiries and complaints received will be followed through to a conclusion.
- 3.6 The format and design of the Plan has also been updated so it is more succinct and customer/user friendly, providing a link to more information that can be found on the Council's website.

Alternative Options	<ol style="list-style-type: none"> 1. Do not update the Enforcement Plan 2018. The current Plan is 4 years old and is out of date in terms of legislative requirements and resources. 2. Adopt a complete new Enforcement Plan. It is considered that the current Enforcement Plan was already a good basis on which to develop a revised plan and a review of the document was considered to be appropriate. Also, a complete new Plan would require widespread consultation and research with all stakeholders and would significantly delay the adoption of a new Plan to replace the out of date Plan. The proposed updated plan ensures relevant legislative matters are clearly set out. 3. Withdraw the Enforcement Plan/have no Plan. This option would be contrary to the guidance within the National Planning Policy Framework and would not meet with the objectives of the Council's Strategic Plan 2020-2024.
Consultation	<ol style="list-style-type: none"> 1. No consultations have been carried out as the priorities have not changed. Consultation with Ward Members and Parish Councils was carried out in the writing of the original plan in 2012/2013.
Financial Implications	<ol style="list-style-type: none"> 1. There are no financial implications. Although the adoption of the revised Enforcement Plan should benefit the planning enforcement team in terms of efficiencies and management of resources by following the priorities and targets set out in the Plan. 2. The proposed revised plan seeks to provide for a more responsive and transparent approach, such that this would hopefully limit corporate complaints and Local Government Ombudsman enquiries.
Approved by Section 151 Officer	N/A
Legal Implications	<ol style="list-style-type: none"> 1. Whilst there are potential legal implications in regard to the possible actions of the Enforcement Team in regard to their enforcement powers and the taking of enforcement action, there has been no fundamental change in the Enforcement Plan and there has been no change to the powers available to officers set out within the approved Scheme of Delegation.
Approved by Monitoring Officer	N/A
Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> 1. The revised Enforcement Plan seeks to deliver high level outcomes for the community of District of Lichfield. 2. The revised Enforcement Plan will enable people to better understand the planning enforcement process and help people to engage with the enforcement service. 3. The Enforcement Plan and the actions of the planning enforcement team are

	<p>integral to the Development Management process. The enforcement team also coordinate with other Council teams and agencies seeking to negotiate acceptable outcomes from complaints, which ensures the District is a clean place to be; that the character and amenity of the area is maintained; and that it is within the parameters of National legislation.</p> <p>4. The revised Enforcement Plan builds upon the outgoing plan by being more transparent and ensures the accountability of the service when dealing with customers. The plan identifies how the enforcement service will respond to customers, including how it deals with enquiries, setting clear priorities and targets for the service.</p>
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 1. The policies and procedures set out within the proposed Enforcement Plan 2022 do not discriminate, nor disadvantage any person or group protected under the legislation. 2. The proposed policies and procedures set out in the Enforcement Plan 2022 are consistent with Government legislation and national guidance and are considered to be compatible with the Human Rights Act 1998.
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Crime & Safety Issues	<ol style="list-style-type: none"> 1. The Enforcement Plan 2022 identifies and underpins the Council's duty in seeking to prevent crime and disorder. Whilst the majority of the planning enforcement teams' activities do not result in criminal offences, the Plan does identify those matters that include criminal activity and how these matters should be dealt with within the powers laid down in legislation and guidance.
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Environmental Impact	<ol style="list-style-type: none"> 1. There is no negative environment impact envisaged from the adoption of this updated Enforcement Plan.
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GDPR / Privacy Impact Assessment	<ol style="list-style-type: none"> 1. The Enforcement Plan 2022 sets out that customer's personal details will be held confidentially at all times, unless it would be required for investigations by the Local Government Ombudsman or in cases that are escalated to the Courts for criminal proceedings. 2. Customer's details will be kept on record indefinitely. Only in cases where the Council receives a request to erase the details shall the details be removed.
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Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
Enforcement Plan not adopted/ updated the Plan will not align with current national policy and guidance and will hold less weight. Outdated document is not customer friendly. Planning Development Manager	Impact: Yellow Likelihood: Yellow Severity: Yellow	Ensure the Enforcement Plan is updated on a regular basis or when legislation and guidance is changed. Ensure officers are fully trained and aware of the Plan and that this is provided and noted to all customers through publishing on the Council's website.	Impact: Yellow Likelihood: Green Severity: Yellow

	<p>Background documents</p> <p>Adopted Local Planning Enforcement Plan 2018. https://www.lichfielddc.gov.uk/downloads/file/1054/planning-enforcement-plan </p>
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	<p>Relevant web links</p> <p>https://www.lichfielddc.gov.uk/planning-enforcement</p>
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ENFORCEMENT PLAN

Reviewed April 2022

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1. Introduction

- 1.1 All planning decisions that are made by a local planning authority, from deciding whether to build a new shopping centre or housing development or an extension to an existing house and, whether a local planning authority should take enforcement action or not are all assessed against planning policy and guidance and other material planning considerations.
- 1.2 Planning policy includes both national and local adopted planning policy. Nationally there is the National Planning Policy Framework (NPPF). Local planning policy is contained within the development plan. The development plan comprises a series of documents, including principally the Lichfield District Local Plan, which includes the Local Plan Strategy document, Local Plan Allocations document and any relevant made Neighbourhood Plans.
- 1.3 Paragraph 59 of the National Planning Policy Framework (July 2021) states 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 it is appropriate.”**
- 1.4 This plan sets out how Lichfield DC, as the local planning authority carries out its planning enforcement function, explaining how we deal with complaints and enquiries about alleged breaches of planning control. The Plan outlines the main legislative powers, how enquiries will be prioritised and investigated, and how the Council shall determine whether it is expedient to take formal enforcement action.
- 1.5 Importantly, the Council considers that the disregard of planning regulations is a serious matter and appropriate action shall be taken in accordance with this Plan, where it is deemed reasonable and necessary. The objective of planning enforcement is about compliance, not punishment. Many breaches of planning control can be resolved effectively without the necessity of resorting to formal action through negotiation, persuasion and providing good clear advice.
- 1.6 The Council adopts a firm but fair approach to the investigation of enforcement matters. We seek to strike a sensible balance between the need for effective control and the need to be reasonable and proportionate in our response to such matters. The Council is committed to the Government’s Enforcement Concordat and the Regulators’ Compliance Code (see Appendix A). The principles set out in these codes are intended to ensure:
 - Openness about how we carry out our work
 - Helpfulness in terms of providing advice and assistance
 - Proportionality i.e. any action we take will be proportionate to the harm caused by the breach, and,
 - Consistency i.e. our duties will be carried out in a fair and consistent manner.

- 1.7 This Plan seeks to promote efficient and effective approaches to regulatory inspection and enforcement which, in turn, improves regulatory outcomes without imposing unnecessary burdens on individuals or businesses. This is in accordance with the Regulators' Compliance Code.
- 1.8 This Plan covers all planning enforcement activities carried by the Council. The purpose is to provide an enforcement standard that respects the principles of the Enforcement Concordat and the Regulators' Compliance Code and meets with the requirements of all other relevant legislation (including those listed in Appendix B) and guidance published by central government.

This Enforcement Plan and further information on Planning Enforcement can be viewed on the Council's website at:

www.lichfielddc.gov.uk

And/or on the Planning Portal at www.planningportal.gov.uk

2. Enforcement Activities

- 2.1 The Town & Country Planning Act 1990 (as amended) gives discretion to the local planning authority in the exercise of its powers for the control of unauthorised development.
- 2.2 The enforcement of the planning regulations is one of the functions of the local planning authority. The planning enforcement team's principal duty is to investigate alleged breaches of planning control. Unfortunately, it is inevitable that breaches of planning control will occur and a purpose of this Plan is to ensure that all breaches are investigated in a consistent, balanced, transparent and fair way. The Plan has been written to ensure that the planning enforcement officers will be open about its actions, demonstrate fairness and impartiality, take a consistent, yet flexible approach, be considerate to complainants, treat matters with proportionality and assist service users whenever possible.
- 2.3 The enforcement activities referred to in this document relate to the following principal Acts of Parliament:
- Town and Country Planning Act, 1990 (as amended)
 - Planning and Compensation Act, 1991 (as amended)
 - Localism Act, 2011
 - Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended)
 - Part 8 of the Anti-Social Behaviour Act 2003 (High Hedges)
 - Human Rights Act 1998
 - Together with Regulations, Orders and guidance produced under these Acts.
- 2.4 The majority of planning enforcement related functions are delegated to Officers to deal with; as detailed in the Council's Constitution and agreed under a Scheme of Delegation, a copy of which is available on the Councils' website.
- 2.5 The planning enforcement team is part of the Development Management service and enforcement officers work closely with colleagues in Development Management,

Conservation and Urban Design, Arboriculture, Spatial Policy & Delivery and Environmental Health. This is generally in relation to the submission and determination of planning applications submitted to regularise unauthorised development; the monitoring and discharge of conditions; formal high hedge complaints, unauthorised works to listed buildings and protected trees. Enforcement Officers also work closely with the Council's legal team who provide essential support and advice, ensuring that decisions taken about whether or not to pursue enforcement action are consistent with current planning case law, that notices are served correctly and that, any notice is an appropriate response to the breach of planning control under investigation.

- 2.7 This Enforcement Plan will be reviewed when there are significant changes in national planning policy and relevant planning law. We will also review the operational delivery of the Plan following any operational experience and feedback from individuals and businesses.
- 2.8 The Council may from time to time identify priority areas or projects where proactive enforcement action and intervention could have a substantial public benefit. For example, we could carry out an area based action on untidy land and buildings, target illegal advertising and flyposting or work with colleagues in Conservation and Urban Design on a project to coincide with the making of an Article 4 direction.

3. Definitions of Enforcement Action

- 3.1 Under the provisions of Section 171A of the Town and Country Planning Act 1990, as amended, a breach of planning control is defined as:

- (a) Carrying out development without the required planning permission; or
- (b) Failing to comply with any condition or limitation subject to which planning permission has been granted.

- 3.2 For the purposes of this Enforcement Plan, enforcement action means:

- Serving Statutory Notices
- Serving of Injunctions
- The issue of a Simple Caution
- Legal proceedings in a Court of Law,
- Taking Direct Action

4. Complaints Procedures

- 4.1 These procedures relate to all planning enforcement complaints received by the Council, including those received from Members of Parliament, Elected Councillors, Parish Councils, Officers, other agencies and members of the public.
- 4.2 During an investigation into an alleged breach of planning control, we will:

- Investigate all alleged breaches of planning control reported to the Council that have been submitted in writing, by e-mail, by telephone or in person. Where necessary, complainants may be requested to confirm their complaint in writing, provide photographs or evidence of activities taking place. Any complaints that are received anonymously will not be investigated unless the complaint refers to matters of very high priority, such as damage to a Listed Building or works/removal of trees subject to a Tree Preservation Order;
- Keep personal details of the complainant confidential at all times. The only time that we may have to disclose such details would be if it is deemed necessary to disclose them as part of Court proceedings, or to the Local Government Ombudsman. Necessary information will be kept indefinitely, unless the Council receives an erasure request. It is considered that the retention of information is justified so that the Council can fulfil its statutory duty in dealing with breaches of planning control;
- Register a complaint and provide an acknowledgement to the complainant normally within 5 working days of receipt. This will include an enforcement case reference number and a named officer as the point of contact;
- Prioritise cases in accordance with the priorities identified in Section 6 of this Plan;
- Seek to carry out a site visit or have contact with the developer responsible for the alleged breach of planning control normally within 10 working days; but this is dependent on the severity and priority of the alleged breach of planning control;
- Endeavour to keep any complainant informed of progress that is made about the case and of any decisions that are made with regard to whether to take action or explain what action will be taken and likely timescales involved;
- Seek to remedy any breach through discussion and negotiation with the contravener, providing an opportunity for them to resolve the breach themselves first i.e. by removing the unauthorised development, ceasing works or submitting an application to retain the works etc.;
- Consider serving a Temporary Stop Notice where immediate enforcement action is deemed to be expedient and necessary, where the alleged breach could have serious consequences and cause irreparable harm or where an activity is having a serious detrimental effect on an area and it would be considered to be in the public interest commence proceedings;
- Actively pursue a complaint to a conclusion. This could be that no breach has been found, that a planning application is submitted to regularise the breach, or the breach has been remedied, with or without the need for formal action.

4.3 Investigations into alleged breaches of planning control may take some time to conclude, however we seek to conclude 80% of cases within 12 weeks from the date of receipt. A conclusive result may include the receipt of a planning application to regularise the breach, a decision to pursue/not to pursue formal action, agreement of a remedial action with the developer, or close a case as there is no breach of planning control occurring/evidenced.

- 4.4 There will be cases where a breach of planning control is discovered, but the harm caused by the breach is considered to be insufficient to warrant formal action. In such cases we will notify the complainant of the reason for not taking any further action and close the case.
- 4.5 Whilst Officers will seek to negotiate with those responsible for any breach of planning control, offering them the opportunity to resolve the matters of concern before considering whether formal action would be necessary, there may be circumstances where the breach is considered to be so serious that it warrants immediate action or where our negotiations become protracted and there is deemed to be no real likelihood of a successful resolution, in such cases the matters will be considered for formal action.
- 4.6 The planning enforcement team will not take the lead in investigating complaints that relate to possible breaches of planning control that occur on Council owned land, premises or the public highway (County Council owned land). In these cases, the complaints shall be forwarded to the relevant Council service area or outside agency for their investigation and resolution.

5. Targeting Resources

- 5.1 Taking formal enforcement action can be complex, time consuming and expensive. Where a breach of planning control has been discovered, resources will be targeted primarily towards unauthorised development which is considered to give rise to serious harm to public interests.
- 5.2 In deciding whether to take enforcement action the Council will have regard to national and local planning policy and guidance and any other material planning considerations. Enforcement action will only be taken where it is expedient to do so and, the action taken will be proportionate to the nature of the breach. Where a trivial or small technical breach of planning control has occurred, consideration will be given to the impact of the unauthorised development on public amenity and/or interests. In taking a decision on whether or not to pursue enforcement action, each case will be assessed in accordance with its' individual planning merits.
- 5.3 Perceived harm caused to private interests, for example, the loss of value of a neighbouring property; competition to or from another business; loss of an individual's view or trespass onto someone else's land, are not matters which can be taken into account as part of the planning process, although in certain circumstances there may be redress through civil laws. Such civil matters would need to be pursued by the private individual/s involved.

6.0 Enforcement Priorities

- 6.1 When complaints and enquiries are received alleging unauthorised development they will be prioritised initially according to the criteria set out below. A case may be given a higher or lower priority once a site visit or discussion with the developer/contravener has been undertaken, depending on the nature of the breach.

6.2 **Level 1 – High Priority**

This applies where the breach relates to unauthorised development which poses a serious threat to the environment or public amenity, for example, by causing a serious traffic hazard, or it poses permanent damage to the environment, for example, unauthorised work affecting a Listed Building or the loss of a protected tree.

In such circumstances a member of the team will visit the site as soon as practicable (usually within 48 hours) after the receipt of the enquiry to identify the appropriate course of action; which could be commencing injunctive or legal proceedings or issuing statutory Notices.

High priority cases can include:

- Breaches that impact Listed Buildings.
- Breaches affecting trees subject of Tree Preservation Orders or trees that are protected due to Conservation Area status, where those tree/s are likely to be lost or permanently damaged.
- Breaches of Conservation Area control where the breach would cause immediate irreparable damage.
- Breaches of planning control or conditions within 6 months of a 4 or 10 year immunity deadline.
- Breaches of planning control or conditions that result in serious harm or loss of amenity to a neighbourhood.
- Existing cases that are the subject of appeal deadlines or court action.

6.3 **Level 2 – Medium Priority**

Cases where the breach of planning control relates to development where planning permission is unlikely to be granted without substantial modification or removal, for example, development in Sites of Special Scientific Interest, the Green Belt and/or Conservation Areas.

We will seek to contact the relevant owners and occupiers as soon as possible (usually within 10 working days of the receipt of the complaint) to arrange to meet to discuss the matter and negotiate a solution.

Formal enforcement action will generally only be considered if negotiations and measures taken to remedy the issues fail to address the harm arising from the development. Examples of medium priority cases include:

- Breaches of planning control that are contrary to policies of the development plan.
- Breaches of planning control that may cause demonstrable nuisance to the residential enjoyment of neighbouring properties.
- Advertisement control in Lichfield City Centre or Conservation Areas.
- Advertisement control concerning large fly-posting campaigns in the District.
- Other breaches of planning control not included in other priority categories.

6.4 **Level 3 – Low Priority**

Technical and trivial breaches of planning control and unauthorised development which give limited rise to problems that may be simply resolved by limited modification, for example, by the imposition of conditions on a planning approval, where the complaint relates to untidy land or buildings and simple breaches of conditions on existing planning permissions. Such cases also include matters that would be granted unconditional planning permission on the submission of an application.

In these circumstances, Officers will contact the owners and occupiers and give advice on what measures are required to address the issues, and give a reasonable timescale (usually 28 days of the meeting) for them to carry out any necessary work or submit a planning application to rectify the matter. Examples of low priority cases include:

- Individual advertisement problems not covered in Level 2.
- Technical breaches of planning control where there is no significant harm to adopted development plan policies or objectives.
- Temporary breaches of planning control that will resolve themselves without formal action.
- Breaches of planning control that would be recommended for unconditional approval if a regularising application were submitted.

6.5 **Level 4 – Pro-active Investigations**

These investigations have no specific priority, but will be undertaken as and when required and if resources allow. Such investigations may be checking compliance with conditions (where no complaints received), monitoring developments and targeted area based projects.

7. **Management of the Investigation Process**

7.1 Planning Enforcement officers will follow the following basic principles when deciding how and when to investigate an alleged breach of planning control:

- All legitimate complaints regarding breaches of planning control will be investigated
- Complaints will be prioritised, dependent on their urgency and potential environmental harm (as identified above).
- Complainant's identities will be kept confidential, unless subsequent Court action warrants their evidence being made public. Complainants will be kept informed of progress of investigations and of eventual outcomes.
- Enforcement action is discretionary and will only be taken where it is expedient to remedy environmental harm and when it is in the public interest to do so.
- Any formal action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.
- All aspects of the process will follow the principles of the "Enforcement Concordat".

- The Council will be pro- active in initiating investigations where it is clear that a serious breach has occurred and in ensuring compliance with conditions imposed on planning permissions.

7.3 Complainants will be kept informed:-

- All complaints will be acknowledged within 5 working days.
- With priority cases, a site visit will be undertaken and the Council will try to advise the complainant of how it intends to deal with the matter within 10 working days of receiving the complaint. However, it may not be possible at this stage to state precisely what action can be taken.
- For urgent cases, officers will seek to respond within 20 working days of receiving the complaint.
- For non-urgent cases, a response or update will be provided within 30 working days.
- Further updates will be sent when progress is made in a case thereafter.

7.4 If it is clear and likely that a breach has occurred upon checking the Council's records, Officers will visit the site and establish if a breach is actually occurring. Advice will be given to the developers regarding the need for planning permission and/or compliance with conditions, where appropriate. This will be followed up in writing and timescales will be set for any relevant actions, for example, ceasing any activity; removing the development; or submitting a planning application.

7.5 In the correspondence, informal advice will be given about:

- the case officer dealing with the matter and their contact details
- the nature of the breach and ways in which it can be resolved
- follow up actions and timescales
- the likelihood of planning permission being granted
- the type of enforcement action which could be pursued.

7.6 Where a breach of planning control cannot be resolved and the unauthorised development is causing material harm, formal enforcement action may be taken, in line with the Councils' procedures and officer delegated authority. The action will be reasonable and proportionate to the breach that is occurring. The details of the types of Notices and the rights of appeal, and other powers which may be used, are set out below in this Plan.

7.7 Where it is appropriate, officers will try to resolve the matter through negotiation or by the submission of a planning application, which can control the impact of the development through the imposition of conditions. If further information is required about the ownership of the land or the nature of the breach, a Planning Contravention Notice or Requisition for Information may be served.

7.8 Where a breach of planning control is occurring, but there is no resulting harm to public amenity or interests, a decision will likely be taken that it is not expedient to take enforcement action, in line with the Councils' procedures and delegated authority. Ward Members will be

notified of these decisions. The approach set out above is consistent with Government guidance entitled:<https://www.gov.uk/guidance/ensuring-effective-enforcement> “Enforcement and post-permission matters – Responding to suspected breaches of planning control”.

- 7.9 All investigations will be carried out in accordance with other relevant legislation, which cover privacy, surveillance and evidence.

8. Enforcement Investigation Procedures

- 8.1 On receipt of a complaint, it will be prioritised and a preliminary investigation carried out in accordance with the timetable stated above, to establish if a breach of planning control has occurred.

- 8.2 Initial Desktop investigation includes:

- Input complaint on computer database.
- Check planning/enforcement/building control history for the site including conditional requirements of planning permissions and Section 106 Agreements.
- Check site constraints by reference to digital mapping systems and computer based records.
- Identify the main planning policy considerations relevant to the alleged unauthorised development.
- Check legislation i.e. does the alleged breach constitute “development”? Could it be “permitted development”? What needs to be checked/measured on site?

- 8.3 Initial site visit

The first site visit is crucial and the approach should be carefully considered and sensitively handled. Often more information can be gained on this visit than later when attitudes may have hardened.

- Enforcement officers will identify themselves when on site, and explain the reason for the visit. (NB. if it is suspected that an offence has been committed the investigating officer must have regard to the provisions of Section 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning suspected offenders).
- Obtain the identity of owner/occupier/person responsible for the activity/development taking place and interview, if possible.
- Record names and addresses of all persons who have a material interest in the land.
- Take and record any necessary measurements/photographs.
- Record a brief site description including a description of the alleged unauthorised development.
- Identify neighbouring properties likely to be affected by the activities/development.

- If breach of control has clearly taken place then (depending on the nature of the breach) the owner/occupier/person responsible should be informed straight away and advised to stop until the matter is resolved. They should be advised that any further activity/development carried out would be entirely at their own risk and may be subject to enforcement action.

8.4 Action following the initial site visit

- Advise owner/occupier/person responsible for the alleged unauthorised development of intended action or options available to resolve the matter or seek further information to determine whether a breach has occurred.
- Advise complainant in writing of findings and proposed action (if any).
- Where appropriate ask complainant to take photographs or keep a diary of events for use as evidence if matter proceeds to formal enforcement action.

8.5 Further investigation/obtaining information

- Monitoring to collect further information or evidence about an alleged breach may be undertaken.
- A Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information requested, within 21 days, relating to any breach of planning control alleged by the Council.
- Land Registry search to establish ownership of the land (if registered).
- Seek information and advice from Parish Council's, Councillors, neighbouring residents and other agencies, if deemed appropriate.
- A requisition for information (Section 330 Notice) may be served in order to identify all owners, occupiers and any other persons with an interest in the land.
- Liaise with other service areas/external agencies within or outside the Council as deemed appropriate.
- Any covert surveillance, directed or use of a covert human intelligence source, will be undertaken strictly in accordance with the provisions of the Corporate Policy and Procedures based upon the Regulation of Investigatory Powers Act 2000 (RIPA) and the Home Office Codes of Practice on Covert Surveillance and Acquisition of Communications Data. (It is extremely rare that a local planning authority would consider the need for covert surveillance measures and any such surveillance must have the relevant RIPA Authorisation)

8.6 Results of Investigations

- Complaints may relate to a non-planning matter. In which case, no action will be taken. Such non-planning matters include disputes over land ownership and boundaries; covenants and legal agreements; moral and ethical concerns; and competition and private interests.
- In any case where a non-planning complaint can be dealt with by another Council service or another authority then the relevant information will be passed on to the appropriate organisation.

- A complaint may relate to an activity, building or operational works that constitute a matter of “permitted development” or are lawful in planning terms. In these circumstances, no further action can be pursued.
- Complaints may relate to a very minor or trivial breaches of planning control, which could be regarded as being “de-minimis” which means that there would be no grounds to justify any formal action.
- Investigations may conclude that a breach of planning control has occurred and further investigation needs to be taken.

9. **Monitoring the Implementation of Planning Permissions.**

9.1 Many planning permissions are granted subject to conditions which are required to be complied with before the development commences on site. Compliance with these conditions is important as they can have a major impact on the form of the completed development. These conditions may include, for example:

- the erection of protective fencing around important protected trees, shrubs and hedges which must be retained as part of the development;
- the approval of external materials;
- the approval of joinery details, mortar, external finishes and materials (particularly in regard to the development of Listed Buildings and developments taking place in Conservation Areas);
- the survey for and removal/remedial measures of contaminated material on previously developed or brownfield sites;
- protected species surveys and protection/mitigation measures.

9.2 The Enforcement Team do not routinely monitor ongoing developments owing to the significant resource implications. Where it is deemed appropriate Officers may identify sites with planning permission that include important pre-commencement conditions and write to the developer to advise about the importance of complying with the conditions before work commences on site.

9.3 Where it is noticed that works have commenced on a site without pre-commencement conditions being complied with, either by site visit or via complaint, the developer will be contacted and at that stage may be advised that works should cease, depending on the nature of the breach of condition, for example, if tree protection in the form of protective fencing is required for trees covered by a Tree Preservation Order and the continuation of the works threatens the long term life of the trees or if the works affect a Listed Building or a Conservation Area. If a developer ignores requests to stop work voluntarily then officers may consider serving a Temporary Stop Notice. Any action considered or taken will be proportionate to the breach and a clear explanation will be given why action is being considered or pursued.

10. Planning Enforcement Powers (see Appendix C)

10.1 The planning enforcement team investigates the following breaches of planning control;

- unauthorised advertisements,
- unauthorised use of houses for multiple occupancy/flats etc,
- the unauthorised running of a business from home,
- unauthorised development domestic e.g. house extension,
- unauthorised development taking place within commercial premises,
- works being carried out contrary to that approved by determined planning applications,
- potential breaches of planning conditions,
- the unauthorised commencement of development,
- unauthorised development within Conservation Areas,
- unauthorised development taken place to, at or in the grounds of a Listed Building.
- High Hedge complaints

Note- this list is not exhaustive, as the remit of the Town and Country Planning Act covers many different types of breaches of planning law associated with development and use.

10.2 Following the identification of a breach of planning control there are likely to be a number of options available for the authority. These include: -

- The Local Planning Authority will take no further action;
- The Local Planning Authority will request the submission of a planning application and will determine it accordingly in conjunction with various consultees;
- The Local Planning Authority will negotiate a resolution of the breach of planning law;
- The Local Planning Authority will instigate the taking of further enforcement action.

It should be noted that although “the taking of further enforcement action” is defined in the Town and Country Planning Act to mean the issue of an Enforcement Notice or the service of a Breach of Condition Notice, enforcement action may include the service of other Notices to elicit information.

10.3 During a planning enforcement investigation, it is often necessary to gather the details of the owners of the land, any person with an interest in the land and/or details appertaining to the alleged breach of planning control being investigated. In order to gather information relating to the breach, a local planning authority may use one of three methods:

Planning Contravention Notices

The use of Planning Contravention Notices (PCN) is primarily investigative and enables the Council to gather facts and information in respect of alleged breaches of Planning Law. Through the effective use of the Notice a warning can be served on a person responsible for a breach that formal action is being considered whilst also offering them an opportunity for

an application to be submitted or for compliance with the Council's requests/requirements for remedial action.

Planning Contravention Notices can be served when it "appears" that a breach may have occurred. The notice shall specify the alleged breach and make specific requests for information to ascertain if such a breach has occurred. A PCN cannot be used as a fishing exercise to obtain information which does not relate to the alleged breach of planning control to be taking place.

Section 330 Notices

These notices allow the Council to require information from the occupier of any premises and any person receiving rent therefrom, for the purpose of enabling the Local Planning Authority to make any order or to issue or serve a Notice. The details that can be sought are the nature of the interest in the land, the purpose of the use of the land, when the use began, details of anyone having used the land for that purpose and when activities began.

Section 16 Notice (Local Government (Miscellaneous Provisions) Act 1976

These notices are not often used in the line of enforcement investigations. They are similar to section 330 notices in the information, although they cannot seek details of use or activity.

10.4 Enforcement Notice

An Enforcement Notice may require a wide range of steps to be taken to make a development comply with the terms of a planning permission or for removing or alleviating any injury to amenity caused by the unauthorised development. It is important that a delegated officer report is written in regard to any proposed enforcement action and this must cover the alleged breach, reasons for expediency for action and consideration and impact on the developer's rights. A notice shall: -

- (1) specify the breach of planning control;
- (2) specify the measures to be taken to remedy the breach;
- (3) specify the date on which it is to take effect (this must be more than 28 days following service);
- (4) specify the period for compliance;
- (5) specify the authority's reasons for requiring compliance with the notice;
- (6) identify the land on which the breach has occurred/ is occurring
- (7) specify that the householder's property may be at risk if the Notice is not responded to.

The wording of notices must clearly state the measures to be taken to remedy the breach of planning control to enable the recipient to understand what the breach of planning control is, why the enforcement notice has been served, what is required to comply with the enforcement notice and the timescales to comply.

There is a right of appeal against the serving of an Enforcement Notice on any of the following grounds: -

- (a) in respect of any breach of planning control, which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the Enforcement Notice were not served as required by Section 172,
- (f) that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach,
- (g) that any period specified in the notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

A fee may be payable for an appeal submitted under ground (a) (deemed application for planning permission).

10.5 **Breach of Condition Notice**

Where there has been a failure to comply with the requirements of a condition attached to a planning permission the authority may choose to serve a Breach of Condition Notice (BCN). Alternatively, formal action can be taken in the guise of an enforcement notice alleging that breach of the condition. The service of a BCN is considered to be a more simple alternative to the use of an Enforcement Notice to ensure compliance with a condition. There can only be a breach of condition where;

- (i) a planning condition is in force,
- (ii) it is a valid condition, and,
- (iii) it is enforceable.

A condition takes effect only when the planning permission is implemented, or that part of the development has been reached. It is important that all conditions attached to a grant of planning permission meet six tests to ensure that it is a valid condition, which are:

- (i) necessary;
- (ii) relevant to planning law;
- (iii) relevant to the development to be permitted;
- (iv) enforceable;
- (v) precise;
- (vi) reasonable in all other respects.

Any breach of condition notice served shall:

- (i) state the condition(s) which has not been complied with,

- (ii) require compliance with the condition(s),
- (iii) specify the measures to be taken to ensure compliance,
- (iv) allow a minimum period of 28 days for compliance,
- (v) be served on the person 'responsible' for the breach.

There is no right of appeal against a Breach of Condition Notice although there can be defence pleas should the matter result in a court prosecution. It is important, therefore, that the condition against which action is being taken meets the six tests outlined above.

10.6 **Stop Notice**

The effect of an Enforcement Notice is suspended if an appeal is lodged. When the effects of unauthorised activity are seriously detrimental, a Stop Notice can be used to ensure that the unauthorised activity does not continue should an appeal be lodged against the Enforcement Notice. Where the Authority considers it expedient that any unauthorised use or activity should cease before the end of compliance period of an Enforcement Notice, they may serve a Stop Notice. There is no right of appeal against a Stop Notice. The advantage of the use of a Stop Notice in relation to building operations is that it has the effect of 'freezing' the development at the time of service.

The Stop Notice must be served at the same time as an Enforcement Notice or thereafter, but it may not be served where the Enforcement Notice has taken effect.

The Notice shall:

- (1) refer to the Enforcement Notice to which it relates;
- (2) specify a date when it takes effect, which should be at least three clear days after the date of first service and not more than 28 days thereafter;
- (3) be served on any person appearing to the Local Planning Authority to have an interest in the land, or to be engaged in any activity prohibited by the Notice.

The recipient of a Stop Notice may be entitled to be compensated by the local planning authority for any loss or damage directly attributable to service of the Stop Notice, if the Stop Notice or Enforcement Notice is withdrawn or if any appeal against the Enforcement Notice succeeds on certain grounds.

10.7 **Temporary Stop Notice**

Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the TCP Act 1990 enables the local planning authority to issue a Temporary Stop Notice.

This differs from the Stop Notice powers because service of a Temporary Stop Notice does not have to wait for an accompanying Enforcement Notice to be issued. In addition, the effect of a Temporary Stop Notice will be immediate, it will not be necessary to wait three days

before the requirements of the Notice take effect or give reasons why the Temporary Stop Notice will take effect immediately.

The decision to use a Temporary Stop Notice is at the discretion of a local planning authority, if they think that there has been a breach of planning control and they consider that it is expedient that the activity is stopped immediately.

The Temporary Stop Notice must be:

- (i) In writing and must set out the activity that the local planning authority thinks is a breach of planning control. It must prohibit the carrying on of the activity and set out the local planning authority's reasons for issuing the Temporary Stop Notice;
- (ii) Served upon any person who appears to be carrying out the activity prohibited by the Temporary Stop Notice, anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. It is for the local planning authority to decide which is the appropriate person or persons. In cases where such persons cannot immediately be located, or refuse service of the Temporary Stop Notice, a copy of the Notice on the site will suffice.

The local planning authority must also display a copy of the Temporary Stop Notice on the site with a statement that the Notice has been served and failure to comply with the Notice is an offence. The site notice extends the effect of the Temporary Stop Notice to any person contravening it.

The site notice publicising the Temporary Stop Notice must state the date that the Notice has been served, the activity that has to cease and that any person contravening the Notice may be prosecuted for an offence under section 171G. A Temporary Stop Notice takes effect on the day that the site notice is displayed.

The Temporary Stop Notice expires 28 days after the display of the Notice on the site, or any shorter period set out in the Notice, or if it is withdrawn by the local planning authority. The maximum length of time that the Temporary Stop Notice will have effect is for a period of 28 days. During this period the local planning authority must decide whether it is appropriate to take enforcement action. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

The activities that a Temporary Stop Notice may prohibit include: a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally.

Therefore, the activity need not be taking place on the entire site. It might be confined to a specific area of the site, for example, a particular building from which noise, fumes and dust are being emitted; or a part of the site where open storage of scrap materials is unacceptable because of the height at which the scrap is piled.

In deciding whether to limit the Temporary Stop Notice to only part of the site, the local planning authority will need to consider whether the activity to be prohibited is capable of readily being moved around to any other part of the site, e.g., open storage of pallets. If so, it will usually be prudent to make the Temporary Stop Notice apply to the entire site to prevent the prohibited activity from being carried out on another part of the site.

An “activity” which the Temporary Stop Notice may prohibit is defined in section 171E(1) of the 1990 Act as, “the activity (or any part of the activity) which amounts to the breach.”

Because a Temporary Stop Notice is prohibitory, it is not appropriate for use in any circumstances that require some positive action to be taken in response to it. A Temporary Stop Notice can only require an activity to cease, or reduce or minimise the level of an activity. The “immediate” cessation of activities should allow for the shutting down or making safe any activity. Where building operations are stopped allowance should be made for any work necessary to make the site safe. A Temporary Stop Notice may prohibit an unauthorised activity, which is ancillary or incidental to the change of use of land.

A Temporary Stop Notice may be served in cases where planning permission has been granted subject to conditions, which if not complied with can result in serious harm, and those conditions have not been complied with. Examples of these types of conditions include: archaeological surveys required before works commence on the site; tree protection required before works commence on the site; tree surveys indicating trees to be retained before works commence on the site; and wheel washing equipment for vehicles on the site.

Temporary Stop Notice restrictions

The primary legislation makes clear that a Temporary Stop Notice may not prohibit the use of a building as a dwelling house.

The Town and Country Planning (Temporary Stop Notice) Regulations 2005 make clear that a Temporary Stop Notice may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan, subject to the qualifications referred to below.

The Town and Country (General Permitted Development) Order 2015 Schedule 2 part 5, Class A sets out permitted development rights for the use of land as a caravansite. , Schedule 1 to the Caravan Sites and Control of Development Act 1960, sets out where there is no need to obtain a caravan site licence.

11. Other Powers

11.1 Prosecutions

Failure to comply with any requirement of a statutory Notice is a criminal offence. There are a number of options available to the Council depending on the harm caused and the circumstances of the case, which include prosecution, an injunction, direct action or indeed, taking no further action. Prosecution is generally the most common form of initial further

action, but there may be circumstances where direct action, or an injunction, may be considered to be the most expedient and appropriate action and it does not necessary follow that the Council will always chose to prosecute first, before considering the other options available.

The Council will always consider what would be the most appropriate form of further action that should be taken in these circumstances. Key questions in considering whether or not to take further action and what form that action should take are: would the action be proportionate to the breach of planning control; would the intended action be in the public interest; would the action be likely to resolve the issue and whether or not there is sufficient evidence to progress the case.

Officers have been given the delegated authority to instigate formal legal proceedings in such cases. Nevertheless, any possible prosecution in regard to a breach of a statutory notice or other offence i.e. a breach of Listed Building control would involve discussion with the Council's Solicitor and agreement of the Planning Development Manager or Principal Officer. However, should the use of direct action be considered, such action would require authorisation from the Council's Planning Committee.

Should it be deemed to be in the public interest, further legal action would be normally considered against persons or companies who appear to blatantly disregard the requirements of a notice or where their actions severely affect public amenity or put the environment at risk.

11.1 Simple Cautions

The "Simple Caution", may be used, in certain circumstances, as an alternative to prosecution (Ministry of Justice guidance, Simple Cautions for Adult Offenders (April 2015))

Simple Cautions are used to:

- Offer a proportionate response to low-level offending, where the offender had admitted the offence.
- To deliver swift, simple and effective justice that carries a deterrent
- To record an individuals' criminal conduct for possible reference in future criminal proceedings or in a criminal record or other similar checks,
- Divert less serious offences away from the Courts.
- To reduce the likelihood of re-offending.

11.2 Direct Action/Action in Default

Provision is made in the Town and Country Planning Act 1990 (as amended), under Section 178 in relation to unauthorised development, and Section 219 in relation to Notices served to require the maintenance of land, for the District Council to take 'Direct Action' to enter the land and remedy the problem.

Direct Action will only be taken after consultation with and authorisation from the Council's Planning Committee. Reports to Planning Committee on such matters will be held in private session to ensure that staff safety is not compromised. However, all avenues will be explored with the contravener to avoid having to take such action. No prior notice of the date and time of such action needs to be given to the offender.

If Direct Action is taken the cost to the Council can be considerable. A charge in favour of the Council for the cost of the action will be registered on the land to ensure that money raised by any future sale will be used to recoup the Councils' costs. The monetary charge on the land would also be subject to favorable annual interest increases.

11.3 Injunctions

Legal powers are available for the local authority to apply to the Courts for an injunction to restrain an actual or alleged breach of planning control. Injunctions are a discretionary power and an assessment should be made of the likely outcome prior to commencing proceedings. Legal advice should be sought at an early stage so as to assess the viability of such a course of action.

An injunction can be: -

- (1) prohibitory - requiring the defendant to refrain from doing a specific act;
- (2) mandatory - requiring the defendant to carry out a specific act;
- (3) interlocutory – a provisional measure taken as a measure of urgency;
- (4) substantive or final - granted by the Court following a full trial.

12. Other Investigations

12.1 Some breaches of planning control are the subject of separate legislation. These include:

- Listed buildings
- Advertisements
- Trees & Hedgerows
- Land adversely affecting public amenity

12.2 Listed Buildings

The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.

It is an offence under Section 9 of this Act to carry out unauthorised works to a listed building that would affect its character. The owner of a listed building, those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory.

There is no time limit upon the District Council to pursue Listed Building Enforcement Action.

A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal the service of a Listed Building Enforcement Notice, but failure to comply with the Notice is an offence.

12.2 Advertisements

The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended)

There are 3 categories of advertisement consent:

- Those permitted to be displayed without either deemed consent or express consent from the local planning authority;
- Those which have deemed consent (granted by the Regulations);
- Those which require the express consent of the local planning authority (upon submission of an application for consent).

The Advertisement Regulations are complicated and seek to control, amongst other things, the height, size and illumination of advertisements.

Anyone who displays an advertisement, without the consent required for it, is acting illegally. It is open to the local planning authority to take a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent he needs, and, if refused, there will be a right of appeal the decision. Displays of an advert after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution.

Fly-posting is display of posters, bills or stickers advertising, usually advertising events, that are displayed without the property owner's permission, often on highway structures. Any form of fly-posting an offence, which is open to prosecution or to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser the Council must give 2 days' notice before obliteration or removal takes place. Joint working with other related services, particularly Environmental Health and Highways, to tackle the problem of fly-posting.

12.3 Trees

Under Section 198 of the Town and Country Planning Act 1990 the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a protected

tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. Trees in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act.

Consent is generally not required for the following works to trees the subject of a tree preservation order:

- Works to trees that are dying or dead or have become dangerous.
- Works to trees authorised by the grant of planning permission.
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade.

12.4 Hedgerows

Section 7 of the Hedgerow Regulations 1997 makes the removal of certain hedgerows without Local Authority consent, an offence (subject to a number of exceptions).

12.5 Land Adversely Affecting the Amenity of the Neighbourhood – Untidy Sites

Section 215 of the Town and Country Planning Act 1990, provides a local planning authority with powers, in certain circumstances, to take steps to require land or buildings to be tidied up when its condition adversely affects the amenity of the area. The local planning authority may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period. The notice becomes effective after 28 days.

There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice has no effect pending the outcome of the appeal, but once the notice takes effect it is an offence not to carry out the steps required. If the notice is not complied with the local planning authority may prosecute the owner for the offence of non-compliance with the notice, or enter the land, carry out the required works and recover all costs from the owner. The Council also have powers under Environmental Health legislation that can also be used to resolve untidy site problems. The Planning Enforcement section will normally liaise with other sections within the Council to ensure that the most appropriate and effective remedy is sought.

13. Review of the Enforcement Plan

13.1 In common with most formal documents, regular reviews of this Enforcement Plan will be necessary to ensure its status remains current, within the framework of the most up-to-date legislation and guidance issued by Government.

13.2 Reviews will take place when:

- Current legislation and/or guidance changes or;
- When comments received from residents, customers, businesses and visitors to the District can improve how the policy is being developed and used.

APPENDIX A

Our Commitment to the Regulators Compliance Code & the Enforcement Concordat

Lichfield District Council is committed to good enforcement practice.

Our work is primarily to protect the public interests and the environment. Carrying out this work in a fair, practical and helpful manner helps to achieve this while promoting a thriving local economy. We will encourage economic progress and only intervene in the operation of a business when there is a clear case for protection.

1. Information & Advice

- We provide information setting out our approach to enforcement both in general and in particular areas.
- Clear, concise and accessible information, advice and guidance, will be provided to help individuals and businesses meet their legal obligations.
- Clear distinctions will be made between legal requirements and guidance

If you need advice or assistance on a planning enforcement issue, either ring or ask for general help or take the question up with the case officer. Full contact details will be given on any correspondence.

2. Resources

Resources will be targeted towards development which gives rise to serious harm to public interests.

3. Visits

- No inspection will take place without reason.
- Some visits will be advisory and we will give you help to meet your obligations by suggesting and advising.
- Where appropriate, this will include giving you a chance to discuss and remedy problems before action is taken.
- When action is required, then you will be given proper details of the action and fully advised of any right of appeal or review of the matter. Sometimes such action is required immediately for public protection and if it is, we will need to take it straight away.
- If a prosecution is required the Council will normally consider whether it is in the public interest to proceed. Where it is appropriate you will be given the opportunity to contribute information to help us reach an informed decision.

4. Our Complaints Procedure

Details of the District Councils' Corporate Complaints procedure is available on the Council's website.

5. Proportionality

We will only require or take action that is proportionate to the risks involved and where we have taken account of all the circumstances of the case to minimise the costs of compliance. However, we must comply with the law where necessary.

6. Consistency

All of our planning enforcement work will aim to be consistent and transparent, although we will have due regard to the circumstances of each individual case. This will be achieved through the use of our enforcement plan and procedures.

Regulators' Code, April 2014, Department for Business Innovation and Skills.

Website: <http://bre.berr.gov.uk/regulation>

APPENDIX B

Other Relevant Legislation and Codes of Practice

Police and Criminal Evidence Act 1984

Regulation of Investigatory Powers Act 2016

Criminal Procedure and Investigations Act 1996

Human Rights Act 1998

General Data Protection Regulation 2018

Data Protection Act 2018

Freedom of Information Act 2000

Code of Practice of Crown Prosecutors

Anti-Social Behaviour Act 2003

APPENDIX C – Statutory Notices

Statutory Notices are legal documents, normally requiring the recipient to carry out works to ensure compliance with an Act of Parliament.

Main Definitions

The main definitions and Notices referred to below, relate to the principal legislation used by Development Services.

Planning Contravention Notice (PCN)

Served under Section 171C of the Town and Country Planning Act 1990. Used where the District Council considers there may be a breach of planning control and further information is required about the development or the ownership of land. It requires responses to specific questions about the development. A PCN can be used to establish the facts of a case and let the owner/occupier/operator know that the Council is seriously concerned about an alleged breach. It is intended to act as both an information-gathering tool and a statement of intent.

Requisition for Information Notice (RFI)

Used to obtain information about the ownership of land. Served under Section 330 of the Town and Country Planning Act 1990, in relation to Listed Buildings and the Display of Advertisements (for which a Planning Contravention Notice cannot be used).

Breach of Condition Notice

Served under Section 171A of the Town and Country Planning Act 1990. Used where conditions imposed on the grant of planning permission have not been complied with or a limitation set out in Regulations has been exceeded. It sets out requirements to be complied with and a timetable for the required works to be carried out. There is no right of appeal to a Breach of Condition Notice, other than to the High Court on a point of law. The Notice must be served on the person responsible for the breach. Where there is any doubt about who is responsible or where human rights issues may arise due to the inability to appeal it may be more appropriate to serve an Enforcement Notice.

Enforcement Notice (EN)

Served under Section 187A of the Town and Country Planning Act 1990 where development is carried out without planning permission and gives a list of requirements and a schedule of reasons for issuing the notice. There is a right of appeal to the Secretary of State on 7 grounds:

- a) that planning permission should be granted for what is alleged in the Notice
- b) that the breach has not occurred as a matter of fact
- c) that there is not a breach of planning control
- d) that the development is immune from enforcement action
- e) that the copies of the Notices have not been correctly served
- f) that the requirements of the notice are excessive to remedy the breach
- g) that the compliance period is too short.

If an appeal is submitted action against the notice is suspended until the appeal has been heard

Stop Notice (SN)

Served under Section 183 of the Town and Country Planning Act 1990 where there is a breach of planning control that is causing serious harm, or has the potential to cause serious or irrevocable harm to amenity. It may be served with an Enforcement Notice as set out above or before an Enforcement Notice has taken effect, but requires the relevant activity to cease immediately and it cannot continue whilst an appeal against an enforcement notice is in progress. In certain circumstances the District Council may be liable to pay compensation to the recipient of a Stop Notice. It is a criminal offence not to comply with the requirements of the Notice.

Temporary Stop Notice (TSN)

Served under Section 171E of the Town and Country Planning Act 1990. This may be served where it appears that there is a breach of planning control occurring and it prevents that development or activity taking place, for a period of up to 28 days. It gives the Council and the contravener the opportunity to consider further how to deal with the matter. It is a criminal offence not to comply with the requirements of the Notice.

Listed Building Enforcement Notice (LBEN)

Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Notice may require the building to be brought back to its former state, or other works specified in the Notice to alleviate the effects of the unauthorised works, or the building to be brought back to a state it would have been in if the terms of any Listed building Consent had been observed, within a timescale specified in the Notice. There is a right of appeal against a LBEN. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to £20,000 can be imposed on summary conviction

Unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990.

Listed Building Urgent Works and Repairs Notices

Served under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives Local Authorities the power to carry out works to unoccupied or partly occupied Listed Buildings. At least 7 days notice must be given to the owner. Section 55 of the Act allows for reasonable costs to be recovered. Section 48 of the Act gives the power to serve a Repairs Notice specifying works which are considered necessary for the proper conservation of the Listed Building. Section 47 of the Act allows for a Local Authority to compulsorily purchase any Listed Building where a Repairs Notice is not complied with. These powers do not relate to ecclesiastical buildings or ancient monuments.

Conservation Area Enforcement Notice

As above, but relates specifically to demolition in a Conservation Area. Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Notice under Section 215

Served Under Section 215 of the Town and Country Planning Act 1990. Used to require the maintenance of untidy land. There is a right of appeal to the Magistrates Court.

Injunctions

The District Council can apply to the High Court or County Court for an Injunction requiring works to cease where they consider it expedient to do so. Failure to comply with an Injunction can lead to proceedings in the County Court.

Discontinuance Notice

Requires the discontinuance of the display of any advertisement, or the use of a site for the display of an advertisement, which has the benefit of deemed consent under the Control of Advertisements Regulations where the Council is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Served under Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulation 1995. It is a criminal offence not to comply with the requirements of the Notice.

Unauthorised Display of Advertisements

It is a criminal offence to display an advertisement, which requires Advertisement Consent, without consent being obtained.

Contravention of a Tree Preservation Order

Under section 210(1) or (4) it is a criminal offence cut down, lop, top or wilfully destroy any tree which is the subject of a Preservation Order.

Completion Notice

Served under Section 94 of the Town and Country Planning Act where development has commenced and where the Local Planning Authority is of the opinion that that a development will not be completed in a reasonable period. It must be served on any owner and occupier, stating that a planning permission will cease to have effect at the end of a further period, of at least 12 months. It only takes effect after confirmation by the Secretary of State and there is an opportunity for those served with the Notice to be heard at a Public Local Inquiry. It does not require any development already carried out under the planning permission to be removed, nor does it guarantee that a development will be completed, but merely takes away planning permission for any further development once the period stated on the Notice has expired.

High Hedge Remedial Notices

Served under Section 69 of the Anti-Social Behaviour Act 2003 to require the reduction of an evergreen hedge. There is a right of appeal against a Notice and also by the complaint if no Notice is served. It is a criminal offence not to comply with any requirement of High Hedge Remedial Notice.

Powers of Entry

Enabled by Sections 196A 196B and 196C of the Town and Country Planning Act 1990, to enter land specifically to investigate alleged breaches of planning control.

Section 74 of the Anti-Social Behaviour Act 2003 to enter land specifically to in relation formal High Hedges complaints

Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to enter land specifically to in relation to alleged breaches of Listed Building Consent.

Officer have rights of entry under the Council's Scheme of Delegation, as set out in the Constitution.

Power to decline to determine retrospective planning applications

Insertion of Section 70C to the Town and Country Planning Act 1990, the power to decline to determine a retrospective planning application in relation to land where an enforcement notice has been served prior to the receipt of the application and would involve granting planning permission for the matters specified as the alleged breach of planning control.

Time limits for enforcing concealed breaches of planning control

Insertion of Section 171BA to the Town and Country Planning Act 1990, the power to apply to the magistrates court for a planning enforcement order, to extend the period for immunity in relation to an apparent breach where the court is satisfied, on the balance of probabilities, that the apparent breach has deliberately been concealed.

Power to remove structures for the unauthorised display of advertisements

Insertion of Section 225A of Town and Country Planning Act 1990, the power to serve a removal notice and dispose of any display structure used for the unauthorised display of advertisements. There is a right of appeal to the Magistrate's Court against the issue of a removal notice.

Insertion of section 225C of the Town and Country Planning Act 1990, the power to serve an action notice in relation to the persistent display of unauthorised advertisements on any surface. There is a right of appeal to the Magistrate's Court against the issue of an action notice.