

SOUTH GLOUCESTERSHIRE COUNCIL
Planning Enforcement Policy

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PURPOSE & LEGAL STATUS OF THE POLICY

This Planning Enforcement Policy provides guidance, for Officers and all other users of the service, on the way decisions are made and the options for action that are available to the service to achieve compliance with planning control.

The Council's planning enforcement function is the responsibility of the Safe and strong Communities Division. The Council receives approximately 1100 planning enforcement complaints each year, and has a statutory duty to ensure that these complaints are investigated and the appropriate action taken.

This Policy was approved by the Communities Committee on 13th February 2013.

This policy is intended to provide guidance for Officers and all other users of the service. It does not affect the discretion of the Council to take formal action, including legal proceedings where this is considered to be in the public interest.

KEY PRINCIPLES OF PLANNING ENFORCEMENT & SCOPE OF DUTIES

Purpose of the Planning Enforcement Service

South Gloucestershire Council has a commitment to protect and enhance the environment for the benefit of all residents and businesses in the area. The Council can give effect to this commitment through the exercising of its powers as a Local Planning Authority to investigate and where appropriate to take action in the public interest to remedy breaches of planning control.

The Planning Enforcement Service seeks to bring the unauthorised use and development of land under control to protect the natural and built environment of South Gloucestershire, to ensure that development takes place in a sustainable manner and to ensure that the credibility of the planning system is not undermined.

Wider Planning Service of South Gloucestershire Council

The Planning Enforcement Service links directly with the **Council's Development Management Service** which is responsible for the consideration of applications for planning permission and advertisement consent, against the national and local planning policy framework.

The Planning Enforcement Service seeks to ensure that compliance with planning controls are achieved in the South Gloucestershire area; including the planning decisions made by the Development Management Service.

Decisions made by the Planning Enforcement Service are in accordance with planning legislation and guidance and consistent with interpretation by the Development Management Service.

Public Interest

The enforcement of planning control is operated in the public interest. It is not the role of the Council to protect the private interests of one party against those of another, unless these also coincide with the public interest. The Council therefore cannot intervene in private civil disputes such as breaches of restrictive covenants, boundary disputes or disputes that relate to damage to or reduction in value of land or property. Nor is it the role of planning enforcement to act punitively against breaches of planning control, to punish minor or trivial breaches which do not demonstrably harm the public interest. The council will need to ensure that any responses to breaches of planning control are proportionate and have regard to the extent to which the public interest is protected by a decision to take or not to take action.

Scope of the Planning Enforcement Service: What can we investigate?

The Council's Planning Enforcement Service is responsible for the investigation of:

- 'alleged breaches of planning control'; and
- 'the failure to properly maintain land'; and
- 'the illegal display of advertisements'; and
- 'Unauthorised works to listed buildings'.

Alleged Breaches of Planning Control

Section 171A of the Town and Country Planning Act 1990 (as amended) provides that the following circumstances constitute a breach of planning control.

- 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;

The definition of development is set in Section 55 of the Town and Country Planning Act 1990 (as amended). 'Development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

'Development' does not include works which only affect the interior of the building or work which do not materially affect the external appearance of the building or works of repair using similar materials.

'Development' does not include works to trees or hedgerows unless the tree or hedge is subject of a condition attached to a planning permission. Concerns regarding works to trees in a conservation area or trees covered by a Tree Preservation Order will be referred to the Council's Tree Officer.

Failure to Properly Maintain Land

Section 215 of the Town and Country Planning Act 1990 (as amended) provides power to require the proper maintenance of land. Land causing an adverse effect on the amenity of any part of South Gloucestershire due to its condition can be considered under this section.

Any condition of land which results from the ordinary course of events which benefit from planning permission or are lawful in planning terms cannot be considered under Section 215.

Illegal Display of Advertisements

Section 220 of the Town and Country Planning Act 1990 (as amended) provides power to restrict and regulate the display of advertisements in the interests of amenity or public safety.

Advertisements displayed in accordance with The Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) do not require advertisement consent for their display.

Unauthorised Works to Listed Buildings

Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that it is an offence to execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

LEGISLATION AND GOVERNMENT GUIDANCE

When investigating breaches of planning control, the Council will act in accordance with the provisions of both primary legislation (Acts of Parliament) and secondary legislation (Statutory Instruments).

Primary Legislation

The Town and Country Planning Act 1990 (as amended)

This legislation sets out the definition of 'development', and provides the Council with the majority of its planning enforcement powers.

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

This legislation sets out works which require consent on listed buildings and provides the Council with enforcement powers specific to dealing with listed buildings; the works may not always constitute 'development' in planning terms.

Key Secondary Legislation

Localism Act 2011

This Act, amongst other functions, makes new provisions about town and country planning. Part 6 Chapter 5 refers to powers related to planning enforcement including: power to decline retrospective applications, cases involving concealment; assurance for those not intended to be prosecuted; improvements to penalties for planning enforcement offences; and additional powers in relation to illegal advertisements.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

This Order identifies a range of 'classes' which most primary uses of land can be categorised into. The Order identifies a number of land use changes which do not require prior planning permission.

The Town and Country Planning (General Permitted Development) Order 1995 (as amended)

This Order sets out what forms of development have the benefit of 'deemed' planning permission and therefore do not require a prior planning application. All works or activities that are defined as being 'development' that are not covered by this Order will require express planning permission.

Planning and Compensation Act 1991

This Act added planning contravention notices, breach of condition notices and injunctions to the powers available to Planning Enforcement Officers as amendments to the TCPAct 1990.

Planning and Compulsory Purchase Act 2004

This Act added temporary stop notices to the powers available to Planning Enforcement Officers as an amendment to the TCPAct 1990.

Planning Act 2008 (and Good Practice Guidance)

This Act provided the power to make non-material changes to planning permission as an amendment to the TCPAct 1990.

Local Government (Miscellaneous Provisions) Act 1976

This Act provides, under Section 16, the ability to require landownership information by issue of a Notice.

Key Guidance

When investigating breaches of planning control, the Council will have regard to the principles set out in National Guidance.

The **National Planning Policy Framework** published in March 2012 (paragraph 207) states:

‘Effective enforcement is important as a means of maintaining 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.’

Town And Country Planning (Control Of Advertisements) (England) Regulations 2007

In a similar way to the GPDO, these regulations set out what forms of advertisement benefit from ‘deemed’ advertisement consent and therefore do not require a prior application. All advertisements that are not covered by this Order will require express advertisement consent.

Government Circulars

When enforcing breaches of planning control, the Council will have regard to relevant Government circulars. Circulars are used to explain policy and regulation more fully; they provide non-statutory advice and guidance. The most relevant circulars are:

Circular 10/1997 (Enforcing Planning Control)

Provides guidance on how to use the planning enforcement provisions of the Town and Country Planning Act 1990 (as amended)

Circular 02/2002 (Enforcement Appeals Procedure)

Explains the procedure for handling enforcement appeals.

Circular 02/2005 (Temporary Stop Notices)

Provides guidance on the temporary stop notice provisions that we inserted into the TCPAct 1990 by the P&CPAct 2004.

Circular 11/95 (The Use of Conditions in Planning Permissions)

Provides guidance that conditions should only be imposed if they are necessary and effecting and explains that conditions should meet the six tests: necessary, relevant to planning, relevant to the development permitted, enforceable precise and reasonable in all other respects.

Other Legislation, Guidance and Codes of Practice

When investigating breaches of planning control the Council will also have regard to the following:

- Code of practice for regulators
- Code for Crown Prosecutors
- Human Rights Act 1998
- Equality Act 2010
- Police and Criminal Evidence Act 1984 and Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

Case Law and Legal Precedent

The UK planning system has generated in a significant amount of case law. Case law derived from the High Court and above, sets legal precedent which dictates how the law should be interpreted by decision makers and investigators. Legal precedent is subject to continual change as new cases are put before the Courts, and it is in the best interests of the Council to be well informed on this subject as such changes can significantly enhance or impair the actions of the Council when dealing with breaches of planning control.

INVESTIGATING BREACHES OF PLANNING CONTROL AND PRIORITISING WORK

Investigating Breaches of Planning Control

The Council has a statutory duty to investigate alleged breaches of planning control, to determine whether a breach has taken place. Separately following investigation of an alleged breach the council is required to assess and determine whether enforcement action is necessary and proportionate. The Council does not have a statutory duty to take formal planning enforcement action, if as a result of its assessment it determines that it is not in the public interest to do so.

All allegations will be investigated in an equitable, timely, consistent and open manner in accordance with the Planning Enforcement Charter and the deadlines set therein.

Initial History Check

Upon receipt of an allegation, Officers will undertake an initial search of the Council's planning records to establish the planning history and planning constraints of the site subject of the allegation. This initial research may reveal that no breach of planning control has occurred; however in most cases further investigation will be necessary.

If the allegation relates to non-compliance with an existing planning condition, the requirements of the condition and its reason for inclusion in the planning decision will be reviewed and taken into account.

Site Visit

For the majority of cases, the Investigation Officer will undertake a visit to the site which is subject of the allegation, to try to establish whether a breach of planning control has taken place. In the interests of timely investigation and effective work-planning, the majority of site visits are made without prior arrangement.

Powers of Entry

Planning Enforcement Officers are authorised by the Council, under Section 196A of the TCPAct 1990 to enter, at any reasonable hour and when it is reasonably necessary, any land to ascertain whether there is or has been any breach of planning control. (also Sections 88A & 88B of the Planning (Listed Buildings & Conservation Areas) Act 1990 for Listed Buildings) (also Section 324 of the TCPAct 1990 for advertisements)

Where site visits are made and no occupier can be found at the time of visit, Officers have powers to inspect the land in their absence.

Officers do not have powers to force entry into any dwellinghouse. Where appropriate, Investigation Officers will leave a calling card requesting the occupier of the land to contact the Council.

In the event admission to a dwellinghouse is reasonably required, 24 hours notice of intended entry will be given to the occupier of the dwelling.

If entry to land or buildings is refused and it is reasonably necessary to gain entry to the site, Officers may apply to the Magistrates Court for a Warrant under Section 196B of the TCPAct 1990. This course of action will only be taken in cases where it is considered both necessary and proportionate to the alleged breach under investigation.

Whilst on site, officers may ask questions of any present occupiers, and may take photographs or measurements. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter.

Gathering Evidence

Officers will make a reasonable attempt to gather evidence and determine whether a breach of planning control has occurred for all allegations received by the Planning Enforcement Team.

In most cases a 'reasonable attempt' will consist of an appropriate number of site visits at days and/or times deemed most suitable to the nature of the complaint. This approach ensures that the Council's limited resources are used efficiently.

Whilst on site, officers may ask questions of any present occupiers, and may take photographs or measurements. Photographs will be taken on the site at the discretion of the Investigating Officer, but particularly in instances of an apparent breach of planning control. Photographs may later be produced as evidence in appeal or legal proceedings. Whilst these may be scanned or re-printed these will be exact copies of the original and in all such instances, these will be signed and dated.

In all cases photographic and other evidence must be gathered in accord with the legal requirements in place.

Where officers can find no evidence of a breach of planning control the investigation will be closed, the relevant parties informed, and no further action taken. In some circumstances the complainant may be asked to provide additional evidence to identify or substantiate the allegation. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

Sources of Information

The Planning Enforcement Officers will use both internal Council sources and external sources to gather information and/or evidence, where necessary, when assessing an alleged breach of planning control.

Due regard will always be paid to the Data Protection and Freedom of Information Acts when using information from other records. Information from other sources will not be provided to third parties or the public, but may need to be disclosed in the event of an appeal or legal challenge to appropriate parties. Any enquiries for this information will be directed to the relevant record keeper.

Initial Assessment

Following the first site visit and the review of all available relevant documents; in the majority of cases, an initial assessment of the allegation will be completed. The Planning Enforcement Service can then prioritise the subsequent investigation.

An initial assessment will conclude:

1. If the allegation falls within the scope of Planning Enforcement legislation (for example, does the allegation constitute 'development' or is the subject of the allegation immune from action due to the passage of time, or is it covered by other legislative powers?);
2. Whether the subject of the allegation requires the permission of the Council (for example, does not benefit from permitted development rights or deemed consent);
3. What harm in planning terms is being caused by the development or activities;
4. Who is responsible for the 'development' (via discussion on site or via a Land Registry Search);
5. Whether it is expedient for further investigation or action to be taken.
6. The likely impact of the alleged activities on the environment and community i.e. is it likely to cause irreversible or substantial harm in planning terms (e.g. unauthorised work to a listed building).

In cases where it is established that no breach of planning control has been evidenced or no harm in planning terms is being caused, the case will be closed at this initial stage, and relevant parties informed.

Immunity from Planning Enforcement Action

When investigating breaches of planning control, officers must identify whether or not a breach is immune from enforcement action.

Breaches of planning control (not listed buildings) will become lawful by the passage of time. When this occurs the breach is immune from enforcement action and the Council is unable to remove or mitigate the development.

Immunity from enforcement action for all building and engineering operations (not listed buildings) occurs four years from the date the development was substantially completed. The four year rule also applies to any breach of planning control that involves the change of use of any building to a dwelling house.

All other breaches of planning control (not listed buildings) are subject to immunity after 10 years have passed.

Legislation covering listed buildings does not include an immunity period; therefore action can be taken at any time, subject to expediency considerations, where it is found that unauthorised works harm its character as a building of special architectural or historic interest.

In circumstances where it is believed that an immunity period may have been gained due to an act of 'concealment'; the Planning Enforcement Officer will consider the use of a Planning Enforcement Order to seek a further year to take any necessary formal enforcement action.

Request for Further Information

Where it is not possible to make a clear assessment at the initial stage due to lack of necessary information, the Planning Enforcement Officer will require the information from the landowner or person considered responsible for the breach.

The Council has powers to issue Planning Contravention Notices, Section 16 Notices and Section 330 Notices to oblige the recipient to provide the requested additional information.

Planning Contravention Notice

This Notice allows the Officer to gather information about development taking place on the land where it appears that there may have been a breach of planning control. This Notice can also be used to offer a meeting for further discussion with the recipient. A Notice served under this power requires a 21 day response; failure to respond is an offence and if taken to court proceedings could result in a fine of up to £1000; if the information is found to be false that would also constitute an offence which if taken to court could result in a fine of up to £5000.

Section 330 Notice

Section 330 of the TCPAct 1990 (as amended) can be used to gather information about a person's legal interest in the land. A Notice served under this power requires a 21 day response; failure to respond is an offence and if taken to court proceedings could result in a fine of up to £1000.

Section 16 Notice

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended) can be used to gather information about a person's legal interest in the land. A Notice served under this power requires a 14 day response; failure to respond is an offence and if taken to court proceedings could result in a fine of up to £5000.

Issuing any of these Notices does not constitute formal enforcement action. These Notices are not registerable as a land charge, and are not included on the Council's Planning Enforcement Register.

Prioritising Allegations

The Planning Enforcement Service aims to acknowledge all valid complaints in writing within three working days. To ensure the most efficient use of Council resources, all planning enforcement allegations are priority assessed by professional officers. Each case is assessed on its own merits (i.e. the damage caused by the breach, not how easy it would be to resolve). This approach ensures that those breaches of planning control that are causing the greatest public harm are acted upon as quickly as possible.

Highest Priority

Allegations of activities that will likely cause irreversible or substantial harm in planning terms and where it is considered necessary (by the Planning Enforcement Service) that the works immediately cease will receive the highest priority.

DECISION MAKING PROCESS: EXPEDIENCY

Whilst the Planning Enforcement Service does not condone wilful breaches of planning control; government guidance is clear that planning enforcement action is discretionary and subject to consideration of what action is proportionate in relation to the breach under consideration. In the absence of any other identified harm, Planning Enforcement action cannot to be used purely as a 'punishment' for those who have not complied with planning regulations.

In cases where it has been established that a breach of planning control has occurred, the Planning Enforcement Service will take enforcement action when this is regarded as expedient, proportionate and necessary in the public interest.

The Planning Enforcement Service will not take action against a trivial or technical breach of planning control which causes no harm to amenity in the locality of the site. Nor will action be taken where upon assessment it is considered that planning permission would have been granted for the development had an application been made prior to the commencement of development.

In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of 'expediency' to determine which next course of action should be taken.

An 'expediency' test will usually involve the Planning Enforcement Officer assessing:

1. whether the breach is in accordance with the policies of the development plan;
2. the breach against any other material planning considerations;
3. Whether had a planning application been submitted before the development occurred, permission would have been likely to have been granted
4. whether the breach unacceptably affects public amenity;
5. whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest;
6. whether action would be proportionate with the breach to which it relates;
7. whether action would be in the public interest;
8. Whether action is plainly necessary.

The Council has a duty to ensure proper consideration is given to all relevant material planning considerations. Officers when assessing expediency must determine how these factors are weighted for each case, and provide justification for any weightings given.

In cases where there has been previous involvement or there will likely be future involvement of the Council's Development Management Service; consultation with the relevant Development Management Officer will take place prior to concluding the expediency assessment to ensure consistency of decision making. This will include discussions around enforceability and reasons for conditions attached to planning decisions.

In cases where specialist knowledge may be required to determine the expediency of taking action, the Planning Enforcement Officer will consult the relevant department or authority prior to concluding the expediency decision.

Material Planning Considerations

Material planning considerations will usually include the following:

- visual impact on the surrounding area;
- loss of privacy to neighbouring occupiers;
- development overbearing to neighbouring occupiers or the area;
- loss of daylight/sunlight;
- creation of nuisance such as noise or smells;
- increase or unsafe access/traffic implications.
- health and safety concerns
- harm to ecology in the area
- crime (or fear of)
- economic impact of the development
- related previous or pending planning decisions
- cumulative impact of development
- Personal factors (only in exceptional circumstances)

The following factors will not be taken into account when assessing expediency:

- Breaches of restrictive covenants
- Private disputes
- Competition between businesses
- Damage to property
- Boundary or other land disputes
- Reduction in value of land or property

PRO-ACTIVE COMPLIANCE MONITORING OF DEVELOPMENTS

The National Planning Policy Framework published in March 2012 (paragraph 207) states that '...Local Planning Authorities 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 to do so'.

The Monitoring Compliance Service has been operating since June 2008. The Service is now consistently achieving around 70 visits (inc. 20-24 new cases) per month. From a position of 100% failure to submit discharge of conditions applications we are now achieving more than 95% responses and are chasing 100% of known commenced permissions with pre-commencement conditions outstanding.

The service is very positively received with builders and planning agents and has given the Development Management Service greater credibility. The service demonstrates a pro-active approach to the Council's commitment to protect and enhance the environment and a reassurance to the public that development does take place within the established government legislation and guidelines.

Purpose of the Monitoring Compliance Service

The Monitoring Compliance Service seeks to monitor development of selected planning permissions from the commencement phase through to completion; and to monitor compliance with any relevant conditions attached to those permissions.

Selection of Cases

Planning permissions are selected according to criteria. The criteria were drawn-up following a 'bench-marking exercise' with other Authorities, an internal research project and assessment of a three-month trial period.

The service will monitor minor applications. The research project indicated a 100% failure of compliance with pre-commencement conditions on minor applications prior to introduction of the service and a pre-dominance of 'minor' over 'major' permission breach allegations entering the enforcement remit as complaints.

The selection criteria are priority based. As there is currently no requirement for developers to advise the planning authority when they start works, the Service generates a list of developments commenced from the Building Control records. This list includes applicants using the Council's own Building Control Service and those whose development has commenced under Initial Notice.

The criteria used to prioritise sites are as follows;

- Objections – If an objection has been raised at the application stage then the potential for further complaints is inevitably greater. Targeting cases where objections have been raised previously should increase the credibility of the service and reduce the potential for reactive complaints.
- Pre-commencement conditions – The research prior to the commencement of the service indicated that the majority of these conditions are ignored and subsequently not discharged. Securing compliance with these conditions maintains the validity of the permission enhances the credibility of the service and reduces the potential for reactive complaints.
- Other Conditions – Permissions are typically conditioned to address matters such as materials, landscaping, parking, cycle and bin storage etc. These need to be assessed on site to verify compliance.
- Reactive Culling – Where a complaint has been received alleging non-compliance with a plan or condition and development has only recently commenced. It may be deemed advantageous for the further development to be closely monitored by the Compliance Team. These may therefore be added to the Compliance Service in addition to new cases.
- Officer Recommendation – Planning Officers may have particular reasons (complaints, unique conditions, historic enforcement issues etc.) that make a particular application one that might benefit from the regular visits from the Compliance Service. Provided we can establish a commencement date or the development has already commenced, these too can be included in the Service.

Where priority sites are visited and there are further developments with outstanding pre-commencement conditions, a letter will be sent to those applicants/agents drawing attention to these conditions.

Initial Visit

A letter will be sent to the applicant or agent notifying them of the selection for monitoring and advising that a site visit will be made shortly. The Investigator should have copies of the relevant approved plans and details of any outstanding conditions. Initial site visit objectives are to:

- Meet and establish a rapport with the applicant/developer
- Measure foundations/footings against the approved plans
- If necessary measure against neighbouring boundaries
- Discuss any issues arising and advise of nature of further visits

Works in Breach

Contravening works or breaches of condition should be drawn to the attention of the builder/owner as soon as is practicable. Pending discussions with the Senior Officer or a Planning Officer, some of these might be written off as de minimis alterations.

Where there is little or no harm arising, solutions may be achieved through negotiation but more material alterations, irrespective of harm, might require invitation of a fresh application. Where unacceptable development is not rectified, the Senior Officer must consider the expediency of formal enforcement action in accordance with the Planning Enforcement Policy and the options outlined in that Policy.

Closure

Following completion of the final site inspection, the Officer should be in a position to confirm that the development has either:

- Been completed wholly in accordance with the plans and conditions
- Been completed subject to de minimis or negotiated amendments considered acceptable by the Senior Officer and relevant Planning Officer
- Been completed in accordance with a revised application
- Been completed and now complied with any formal enforcement action

The case file is then forwarded to the Scanning Team and placed on Idox as part of the planning application file but headed 'Compliance File'. Where third parties have been subject to enforcement related correspondence the File should be marked 'SENSITIVE'. Following scanning the file is culled.

USE OF PLANNING ENFORCEMENT POWERS: OPTIONS FOR ACTION

The Council has a variety of enforcement options that may be utilised when resolving a breach of planning control.

The Planning Enforcement Officer will initially attempt to resolve the breach of planning control via negotiation; with the exception of some highest priority cases which are causing immediate and irreversible harm.

If reasonable negotiated attempts to resolve the breach fail, where expedient, formal enforcement action will be issued without undue delay.

Enforcement options

Negotiation	Government guidance supports negotiation as the most appropriate initial resolution tool. Time may be given to remedy the breach or justify its retention. Such cases may include situations where there is no demonstrable harm and is not so serious as to warrant immediate action or where it maybe 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	.Such a notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. Failure to properly respond to such a Notice is an offence with the risk of a fine of up to £1000.
Enforcement Notice	These will be the normal means of remedying unacceptable development where the council's enquiries meet with no satisfactory response. The planning authority has the discretion to "under enforce" on an enforcement notice once it comes into affect. The notice can be appealed within 28 days to the planning inspectorate who will dismiss or uphold the appeal. Costs may be awarded to either party. Once in effect; failure to adhere to such a Notice is an offence with the risk of a fine of up to £20000.

Breach of condition notice	<p>These can be used in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can be used to secure complete compliance with planning condition “under-enforcement” is not an option. Also as there are no powers to enter the land and carry out the works, prosecution is the only means of enforcement. Therefore the use of a BCN may not be appropriate. Failure to adhere to such a Notice is an offence with the risk of a fine of up to £2500.</p>
Listed building and Conservation area notices	<p>A Listed building notice can be served against unauthorised works that damage the character of a listed building. There is no 4 or 10 year rule limiting time in which such an enforcement notice can be served. A conservation area notice can be served against unauthorised demolition in a conservation area. Once in effect; failure to adhere to such a Notice is an offence with the risk of a fine of up to £20000.</p> <p>It is illegal to undertake works that damage the character of a listed building without the appropriate permission. It is available therefore to directly initiate prosecution proceedings against the person responsible for the works regardless of the decision to issue a Notice.</p>
Listed building and Conservation area prosecution	<p>A person who is found carrying out unauthorised works that affect the character of a 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.</p>
Temporary Stop Notices	<p>A temporary stop notice can be issued to seek immediate cessation of the breach of control. Unlike a stop notice it does not require an enforcement notice to be served first. It is only valid for a period of 28 days, by which time the local planning authority can decide 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 £20,000.00. Compensation maybe payable if later the local authority issues a lawful development certificate.</p>

Stop Notice	<p>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 of £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.</p>
Court Injunction	<p>This maybe done in the most serious cases where the 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 case. Defendants risk imprisonment if they do not comply with a court order.</p>
Direct Action	<p>The Council may enter land to take the necessary steps to secure compliance when an enforcement notice 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.</p>
Section 215 Notice	<p>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. . Failure to adhere to such a Notice is an offence with the risk of a fine of up to £1000.</p>
Section 225A Notice	<p>Such a notice requires an unauthorised advertisement to be removed</p>

<p>Advertisement Removal Enforcement Notice/Prosecution Proceedings</p>	<p>Such a notice can require the removal of an advertisement and/or the structure which is used to display it. Section 225 of the Act also provides for persistent advertisements; defacement of premises and street furniture. Failure to adhere to such a Notice is an offence with the risk of a fine of up to £2500.</p> <p>It is illegal to display an advertisement without the appropriate consent. It is available therefore to directly initiate prosecution proceedings against the person displaying the advertisement regardless of the decision to issue a Notice requiring removal.</p>
<p>Discontinuance notice</p>	<p>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</p>
<p>Planning Enforcement Order</p>	<p>In circumstances where it appears to the council that a breach has been ‘concealed’ in order to gain immunity from planning enforcement action; the council can apply to the magistrates court for a Planning Enforcement Order; if granted, the order would allow a further year for the council to investigate and issue further formal enforcement action.</p>

No Further Action

No further action will be taken by the Council if it is determined that no breach of planning control has taken place. Relevant parties will be advised of this decision.

No further action will be taken where following an assessment of expediency it is determined that the breach is technical or trivial and no harm is being caused in planning terms. Relevant parties will be advised of this decision.

No further action will be taken where following an assessment of expediency it is determined that the breach would be acceptable based on its planning merits and likely to achieve planning permission if it were to be applied for. The relevant parties will be advised of this decision. In these circumstances landowners and/or occupiers will be advised that retrospective planning permission should be sought to regularise the breach.

Negotiate Remedial Action – Not Expedient to take further Formal Enforcement Action – Invite a Planning Application

In cases where limited harm is being caused and it is likely that the development would be acceptable in planning terms and therefore likely to achieve planning permission if applied for; the Planning Enforcement Officer will provide options to the landowner for resolution with the intention of provoking voluntary compliance, including the submission of an retrospective application for consideration; or by requesting cessation or removal of the breach of planning control. When it is established that no further formal enforcement action can be taken in respect of the breach, the complainant will be advised that the case will not be pursued further.

Negotiate Remedial Action - Expedient to take further Formal Enforcement Action

In cases where harm is being caused and it is unlikely that the development would be unconditionally acceptable in planning terms, and therefore unlikely to achieve planning permission without the imposition of conditions if applied for; the Planning Enforcement Officer will provide options to the landowner for resolution with a clear timescale for compliance. This could include the submission of an retrospective application for consideration or steps to resolve the breach.

The time allowed will be reasonable and will take into account the amount of work required, the seriousness of the contravention and the implications of non-compliance. The person responsible for the breach will be advised that formal enforcement action will be taken if no action to resolve the issue takes place in the timescale provided.

Formal Enforcement Action

Decisions to issue formal enforcement action, such as the issue of a Notice or the initiation of legal proceedings will be reviewed and authorised by the Principal Planning Enforcement Officer or the Planning Enforcement Manager (or the Senior Planning Enforcement Officer in the absence of the former). The type of Notice issued will be dependant on the nature of the breach of planning control and consideration of which Notice would best achieve the required results. (See Table above)

In the event a landowner or planning agent seeks to submit a planning application at the time of issuing an enforcement notice, the Planning Enforcement Officer and the Planning Officer will discuss and consider the powers of Section 70C of the Town and Country Planning Act 1990; the power to decline to determine a retrospective application.

Direct Action

Where the Council has issued an Enforcement Notice, a Listed Building Enforcement Notice or a Section 215 Proper Maintenance of Land Notice; and those responsible for the breach have failed to comply; the Council has powers to carry out the works specified in the notice. This is referred to as 'direct action'.

In considering whether to take direct action, the Planning Enforcement Service will make a balanced judgement following consideration of all relevant matters, including alternative enforcement powers available to achieve compliance, the harm caused by the breach, the public interest test, the availability of resource to complete the direct action and the likelihood of the breach reoccurring.

The Council may recover the cost from the landowner at the time. If the Council cannot recover the costs directly, a charge will be put on the land in accordance with Regulation 14 (2) of the Town and Country Planning (General) Regulations 1992.

Cautions

In some instances the Council may have sufficient evidence to prosecute an individual or business for failing to comply with a notice, yet it may not be considered to be in the public interest to do so. Where this applies, the Council may offer a simple caution to the offender(s).

A simple caution is not a criminal conviction, rather an admission of guilt, and remains on the Council's Cautions Register for three years. If further similar offences are committed within this three year period, the Council is permitted to bring the caution to the attention of the Court on conviction. This may result in a harsher sentence for the latter offence(s). A caution can be administered in addition to direct action.

If any individual or business refuses to accept a caution, the Council will review the case and prosecution may ensue.

Prosecution

An offence has occurred when:

- the requirements of an enforcement notice have not been complied with within the compliance period;
- the requirements of a breach of condition notice have not been complied with within the compliance period;
- the requirements of a section 215 notice have not been complied with within the compliance period;
- the requirements of a listed building enforcement notice have not been complied with within the compliance period;
- the requirements of a stop notice or temporary stop notice have not been complied with within the compliance period;
- an advertisement has been displayed within the necessary advertisement consent;
- Listed Buildings

In considering whether to initiate prosecution proceedings against the offender; the Planning Enforcement Officer will consider the possible defences (reasons to appeal) against the prosecution proceedings as set by legislation, the Code for Prosecutors evidential test and the the Code for Prosecutors public interest test. All decisions will be reviewed and agreed with the Council's Legal Officer. The Council's Legal Officer is responsible for taking the matter before the Magistrates or Crown Court.

A notice may have to be served on more than one person to meet the terms of 'good service' for example a mortgage provider or an occupant where the landowner has also been served. At this time or at any time after a notice is issued, it is available to the council to write to a person served with a notice, providing an assurance that they are not at risk of being prosecuted.

Evidential Test

The evidence presented to Magistrates Court must be reliable and sufficient to satisfy the Legal Officer (prosecutor) that there is a realistic prospect of conviction. The evidence must clearly prove that the offence has occurred and identify who is legally responsible for that breach (the defendant).

Public Interest Test

The Legal Officer (prosecutor) must be satisfied that the public interest factors tending against the prosecution outweigh those tending in favour.

Factors considered would include:

- would the conviction likely result in a fine/costs above that which a prosecutor is able to secure through a conditional caution;
- would the conviction likely result in compliance with a Notice/remedy of the breach;
- would the conviction likely prevent repeated/continued/other offences;
- would the conviction result in a nominal penalty with no real impact to the defendant;
- was the offence committed as a result of genuine mistake or misunderstanding;
- is the harm minor and the result of a single incident
- has there been a long delay between the offence evidenced and the court hearing without reasonable justification;
- the health (ill-health) of the defendant.

In cases where it is considered disproportionate, likely to be ineffective in resolving the breach, there is no realistic prospect of conviction, or where it is not in the public interest, the Planning Enforcement Service will not initiate prosecution proceedings.

In cases where it is necessary to use witnesses not employed by the Council; the witness will be advised of the possible need to attend court and will be asked to provide a written witness statement. In such circumstances, if witnesses cannot or do not provide the necessary evidence, those prosecution proceedings may not be pursued.

REPORTING BREACHES OF PLANNING CONTROL

The Council encourages the reporting of suspected breaches of planning control. As development can gain immunity from enforcement action over time, it is important that any suspected breaches are reported as soon as possible in order that harmful development can be removed or minimised.

Those reporting a breach of planning control are asked to provide the following information:

- Their name, address and contact details - complainant details will be kept confidential, however in many cases due to the close proximity of some neighbours the subject of a complaint will already be aware of the identity of a complainant
- The precise location where the suspected breach of planning control is taking place
- How long the suspected breach has been taking place
- Details of the person(s) responsible for the breach, if known
- Any planning history the complainant may be aware of

If the information initially provided is deficient, the Council's Validation & Registration team will advise the complainant that additional information is required before the breach can be investigated.

In all but the most exceptional (high priority) cases, the Planning Enforcement Service is unable to investigate alleged breaches of planning control from anonymous sources. If, during the course of investigation, the contact details of the complainant are found to be false, in most circumstances, the investigation will cease.

The Council will not investigate if it has reason to consider that the complaint is malicious or spurious.

In accordance with the Data Protection Act 1998, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have brought the matter to the attention of the Council.