



## **Local Enforcement Plan Mid Devon District Council 2024**

### **Contact details**

Mid Devon District Council Website – ([Residents - MIDDEVON.GOV.UK](https://www.middevon.gov.uk) )

## Contents

<b>1. INTRODUCTION .....</b>	<b>2</b>
<b>2. SERVICE AIMS .....</b>	<b>3</b>
<b>3. PLANNING ENFORCEMENT AND WHAT IS A BREACH OF CONTROL ..</b>	<b>4</b>
<b>4. MAKING A COMPLAINT.....</b>	<b>5</b>
<b>5. THE ASSESSMENT AND DECISION MAKING PROCESS .....</b>	<b>7</b>
<b>6. TAKING ENFORCEMENT ACTION.....</b>	<b>10</b>
<b>7. AUTHORISATION OF ACTION .....</b>	<b>11</b>
<b>8. ENFORCEMENT PROCESS FLOW CHART.....</b>	<b>12</b>
<b>9. PLANNING ENFORCEMENT POWERS AVAILABLE .....</b>	<b>13</b>
<b>10. TREES.....</b>	<b>21</b>
<b>11. LISTED BUILDINGS .....</b>	<b>24</b>
<b>12. BREACHES OF SECTION 106 LEGAL AGREEMENTS.....</b>	<b>27</b>

## 1. INTRODUCTION

- 1.1 The National Planning Policy Framework (NPPF) states the following recommending that local planning authorities publish a local enforcement plan:

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

- 1.2 This Local Enforcement Plan sets out Mid Devon District Council’s priorities for investigation, explains what will be investigated and it outlines the Council’s general discretionary powers with regard to planning enforcement. This document sets out the policy and procedures that the Council will adopt when investigating and, where applicable, remedying breaches of planning control.
- 1.3 This document sits below, and should be read in conjunction with, the Council’s Regulatory Enforcement and Protection Policy which sets out the general principles the Council will follow in relation to investigations, enforcements and prosecutions as part of its regulatory functions. Further advice and guidance is also available within the National Planning Practice Guidance published by the Government.
- 1.4 Mid Devon District Council recognise that unauthorised development can have adverse consequences and, if unchecked, can undermine confidence in the planning system. The Council is, therefore, committed to the effective enforcement of planning control.
- 1.5 Planning enforcement can be a complex and involved process with varying timescales. The aim of this strategy is to ensure the Planning Enforcement Service:
- Has a decision making process that is open, transparent and is seen to be fair and balanced;
  - Provides an excellent service to those who live and work in and visit Mid Devon;
  - Is accessible to all users, keeping all interested parties updated;
  - Takes action, where appropriate, that is timely, proportionate and reasonable;
  - Achieves and maintains effective and efficient enforcement of planning control.

## **2. SERVICE AIMS**

2.1 The Council's Service Aims with regard to Planning Enforcement are:

1. To operate in accordance with the procedures outlined in this Plan and the overarching Regulatory Enforcement Policy published by the Council;
2. To remedy harm caused by breaches of planning control in the interests of protecting and enhancing the built and natural environment of Mid Devon and the amenity of its residents and visitors;
3. To strike a balance between protecting public safety, amenity and other important interests and enabling acceptable development to take place, even though it may initially have been unauthorised;
4. To ensure that the policies and the credibility of the Council and the planning system is not undermined;
5. To carry out all enforcement duties openly, fairly, helpfully, proportionately and consistently and to consider each case on its own facts and merits;
6. To maintain the confidentiality of complainants.
7. To investigate all reasonable complaints where complainant details are provided;
8. Complaints will be prioritised according to their urgency and potential harm;
9. Enforcement action will be taken where it is expedient to remedy harmful consequences and when it is in the wider public interest;
10. Ensure that any formal action is proportionate to the breach.

### **3. PLANNING ENFORCEMENT AND WHAT IS A BREACH OF CONTROL**

- 3.1 The enforcement of planning law is complicated. This is because central government attempts to balance the rights of individuals to use or alter their property against the need to safeguard the character and quality of towns/villages/the countryside, amenity of people and an area, and to uphold the planning policies of the district.
- 3.2 The planning enforcement system generally gives the benefit of the doubt to anyone undertaking the unauthorised development, and Council's are expected to give those responsible for undertaking unauthorised development an opportunity to correct matters before taking formal action.
- 3.3 If the Council's actions are considered too onerous or legally incorrect, it can be awarded costs against it and/or have its decisions overturned at appeal or by the courts. Maladministration can also be found against the Council by the Local Government Ombudsman if the Council fails to take effective enforcement action when it was plainly necessary, or takes action when it shouldn't. Such a decision can also lead to the payment of compensation by the Council to a complainant.
- 3.4 The Council's power to take enforcement action comes from Parliament under the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning and Compensation Act 1992, Town and Country Planning (Control of Advertisements) Regulations 2007, Anti-Social Behaviour Act 2007 and the Localism Act 2011. There are also powers in relation to the Community Infrastructure Levy under the Community Infrastructure Levy Regulations 2010 (as amended).
- 3.5 For a breach of planning control to have occurred, it must first be established that development requiring planning permission has taken place. Development is a legal term and generally means building works and/or some changes of use. Building works can include the construction of a building, excavations, extension, although small-scale extensions to houses may not need planning permission. Changes of use can include a change from a shop or office to a dwelling, although some changes of use do not require planning permission.
- 3.6 Not all development requires planning permission and the main sources of guidance on this are:
- The Town and Country Planning (General Permitted Development) Order (as amended);
  - The Town and Country Planning (Use Classes) Order (as amended); and
  - The Town and Country Planning (Control of Advertisements) Regulations (as amended).
- 3.7 These documents, which can be viewed on the Government's website, detail instances where permission is not required. For example, certain structures do not need permission because of their size, height or location etc. This is called 'permitted development' and specific guidelines are given in the General Permitted Development Order (the GPDO). The Use Classes Order places most types of use into classes (e.g. retail, business, etc.) and, in general, permission is required to change from one class to another. The Control of Advertisements Regulations set out what forms of advertising do not require consent,

known as “Deemed Consent” and what does, known as “Express Consent”. Further information on this is also available at [www.planningportal.co.uk](http://www.planningportal.co.uk)

#### **4. MAKING A COMPLAINT**

4.1 Most investigations into breaches of planning control result from complaints from the public, Councilors or Parish Councils, but the Council will act pro-actively where a significant breach of planning control is apparent even if no complaint has been received. All investigations will follow the same general procedure as set out below. Complaints can be made on-line, via the website, ‘report a breach’.

4.2 The Planning Enforcement service will not normally take the lead in investigating possible breaches of planning control that occur on Council-owned land or on highway land. The appropriate Council service or the Highway Authority (Devon County Council) will have stronger powers to remedy such breaches.

4.3 When the complaint is received:

It will be acknowledged within 7 working days.

- Complainant’s identities will be kept confidential, unless they are asked to collect and submit evidence to help secure a prosecution in which case their identity and evidence will subsequently be made public.
- Anonymous complaints will not normally be investigated unless they allege serious breaches of planning control.
- Action on complaints will be prioritised (see 4.4 below).

#### **Complaint Priorities**

4.4 Complaints will be prioritised in accordance with the following categories:

##### **1. High Priority Complaints – Requiring Immediate Investigation**

- Development resulting in concerns for public health and safety which are controllable through planning legislation.
- Works of demolition, significant alteration or extension causing substantial harm to, or total loss of, a heritage asset.
- Works to protected trees (either those covered by a Tree Preservation Order or those within a conservation area), important hedgerows and non-compliance with tree protection conditions where there is a likelihood of substantial harm to significant trees and hedgerows.
- Demolition of important unlisted buildings/heritage assets in conservation areas.
- Development that may adversely affect or destroy a site of nature conservation value.
- Development that has a significant impact on the natural environment.
- Significant unauthorised building works/structures.

- Uses of land or buildings or activities that cause significant disruption by reason of noise, smell, fumes or other forms of nuisance.

**2. Medium Priority Complaints – Investigation to commence and complainant to be informed of progress.**

- Operational and building works not covered under high priority . above.
- Changes of use resulting in harm to residential amenity or the immediate environment.
- Non-compliance with conditions/planning obligations resulting in harm to residential amenity or where there is less likelihood of substantial harm to significant trees and hedgerows.
- New build and other works within conservation areas not covered under high priority above.
- Where immunity from enforcement action due to the passage of time will come into effect shortly.
- Untidy land – depending on severity
- Other works causing less than substantial, or no, harm to the significance of a heritage asset.

**3. Low Priority Complaints that will not be investigated while other urgent complaints are under investigation.**

- Other changes of use.
- Other minor building works and structures e.g. garden sheds, walls, fences etc.
- Non-Compliance with other conditions.
- Advertisements.
- Satellite dishes.

## **5. THE ASSESSMENT AND DECISION MAKING PROCESS**

### **Initial action**

- 5.1 The investigation will be carried out by a Planning Enforcement Officer or a Planning Officer, as considered appropriate with regards to the type of breach alleged. A Planning Officer will have greater knowledge of the site and breach if it relates to a planning permission not built in accordance with plans or where a planning condition has not been complied with.
- 5.2 Following receipt of a complaint, or following monitoring of a development by the Council, the matter will be screened to see if a breach of planning control may have occurred. This will be a desktop investigation to check, for example, planning history, other records and relevant legislation. If it is established at this stage that there is no breach the Complainant will be advised and no further action will be taken. Where appropriate, information will be passed to other departments or organisations for investigation e.g. Building Control, Devon County Council, and Environment Agency etc.

### **Site Visit**

- 5.3 If the initial screening indicates that there may be a breach, a site visit will be made (if one has not already been carried out as part of monitoring the development). If the land and/or building(s) are occupied the enforcement officer may make an appointment with the owner/occupier. This is not always possible or advisable as it may alert them and enable them to temporarily remove or disguise the subject matter of the complaint. In some cases 24 hours' notice may be required to enter certain properties.
- 5.4 At the site visit the officer will identify themselves and explain the reason for the visit. Proof of authorisation to enter land under the 1990 Planning Act will be provided if requested. The enforcement officer's role is simply to gather the facts of the case and they will not always be able to advise on the acceptability of the works and the potential to gain consent for any unauthorised works.
- 5.5 The officer will record a description of the site and the alleged breach of planning control, take any necessary measurements/photographs, obtain the identity of the owner/occupier/person responsible for the activity/operations taking place if possible and identify any neighbouring properties likely to be affected.
- 5.6 If a breach of planning control has clearly taken place the owner/occupier/person responsible will be informed straight away (if they are present). If the case is not clear cut then the enforcement officer may need to confer with colleagues or check the legislation before reaching a decision. In either case where a breach has occurred the owner/occupier/person responsible will be advised that if they carry on with the activity/development this will be entirely at their own risk and may be subject to enforcement action. The investigating officer will have regard to the provisions of Sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 (PACE) in relation to cautioning suspected offenders.



### Following the site visit

- 5.7 If the owner/occupier/person responsible was not present or further investigations were required then they will be contacted and advised of the Council's intended action and options available to resolve the matter as soon as possible after the site visit.
- 5.8 If it was established at the site visit that there is no breach the Complainant will be advised and no further action will be taken.

### Further investigations

- 5.9 Further investigation may be necessary following the site visit to determine whether a breach has occurred and may involve:
- Monitoring the site to collect further evidence. Where appropriate, the complainant will be requested to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal enforcement action.
  - Serving a Planning Contravention Notice (PCN) requiring the owner/occupier/person responsible to provide information relating to the potential breach of planning control within 21 days (see Section 6).
  - Checking against the legislation to see if the works are within permitted development limits.
  - Consultation with other departments or organisations.
  - A Land Registry Search to establish ownership of the land (if registered) and a 'Requisition for Information' to identify any other people with an interest in the land together with information about the length of time the activity/development has been in existence.

### Results of Investigations

- 5.10 The following outlines likely steps to be taken in certain scenarios and are summarised in a flow-chart at the end of Section 5 (see further sections 7, 8 and 9 in relation to unauthorised works to trees, listed buildings and non-compliance with a legal agreement):

**The complaint may relate to a non-planning matter such as disputes over land ownership, boundary disputes, private covenants and legal agreements/obligations, moral or ethical concerns, commercial competition and private interests.**

- 5.11 As these are outside the jurisdiction of planning, no planning enforcement action can be taken. However if the complaint can be dealt with by another Council service the Complainant will be advised and the relevant information passed on. If it appears that another authority or organisation may be able to assist the Complainant they will be advised of this and provided with contact details if possible.

**The complaint may relate to an activity, building or works that are lawful for planning purposes, for example the works may be “permitted development”.**

5.12 In these circumstances no planning enforcement action can be taken and the Complainant will be advised of this.

**The complaint may relate to a minor breach of regulations and regarded as so trivial that formal action would not be justified as no harm is being caused (for example there is no harm to the amenity of an area and/or residents, no harm to the visual amenity of the area, no highway safety issues and the proposal complies with planning policy).**

5.13 If action were taken in these circumstances the Council could be justifiably criticised and costs may be awarded in any resultant appeal. No planning enforcement action will be taken in these circumstances and the Complainant will be advised of this. Enforcement action will not therefore be taken against a minor or technical breach which causes no harm to the local area (examples could include a shed constructed a bit higher than permitted and located within a large garden away from neighbours and not highly visible, or a window inserted in a dwelling that does not overlook neighbours). Nor will enforcement action be taken purely to regularise breaches of planning control that have been found to be acceptable. In these cases an application may be invited for consideration through the usual process to regularise the situation but further formal action will not be taken regardless of whether or not an application is submitted.

**A breach of planning control has occurred and there is considered to be planning harm**

5.14 In these circumstances the Council will consider what enforcement action should be taken.

5.15 Although a complaint may be received regarding a single matter (for example a building being constructed in the wrong location), the Council will look at all other aspects of the development (such as window positions and height) to establish if any other breaches have occurred. If other breaches have occurred, these will be investigated.

5.16 There are time limits for taking enforcement action. In most cases the development will be immune from enforcement action if no action is taken:

- Within 4 years of substantial completion of the construction of a building;
- Within 4 years for an unauthorised change of use to a single dwelling;
- Within 10 years for any other breach.

5.17 These time limits do not prevent enforcement action where a further breach has taken place within 4 years of previous enforcement action, where it relates to a listed building, or where there has been deliberate concealment of a breach. Any changes to these timescales brought in by Government will require update accordingly.

## **6. TAKING ENFORCEMENT ACTION**

- 6.1 Once investigations are complete and a breach of planning control causing harm has been identified, officers will decide whether or not it is expedient to take enforcement action. They take into account the development plan and any other material considerations. Many breaches of planning control can be resolved informally and by negotiation with the owner/occupier. Formal action will be taken only where other means to resolve the problem have been unsuccessful.
- 6.2 The Council will take enforcement action when it is essential to maintain public safety, the character and appearance of the area, the area's social and economic well-being and to preserve the natural and built environment. The impact of developments varies greatly and enforcement action should be proportionate to the specific breach.
- 6.3 Enforcement action will not be taken merely to rectify an absence of planning permission if it is likely that planning permission would have been granted for the development or where there is no loss of public amenity.
- 6.4 Where enforcement action is considered expedient officers will draw this to the attention of the person responsible (and the landowner if different). They will be advised of the most appropriate course of action, which will be proportionate to the breach of planning control, and generally as follows:

**6.5 The development can be amended such that planning permission is no longer required:**

The Council will advise if changes can be made to a proposal so that it no longer requires planning permission. If the development is amended such that it no longer requires planning permission, no further action will be taken once the works have been carried out and officers have confirmed that it no longer requires planning permission. The Complainant will be advised of the outcome.

**6.6 The development could satisfy relevant policies and other material considerations with modification and/or the imposition of appropriate conditions:**

The Council will request a "retrospective" application for the relevant permission/consent. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that permission will be granted. Any application would follow the normal planning process, including consultation and notification of neighbours. Formal enforcement action will not take place until after the application has been determined and will not be taken at all if the breach of planning control is remedied by the grant of permission.

**6.7 The breach could be immune from enforcement action due to the passage of time:**

The person responsible will be advised of the option to submit an application for a Certificate of Lawful Use or Development. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that a certificate will be granted. Any application would follow the normal planning process. Formal enforcement action will not take place until after the

application has been determined and will not be taken at all if the breach of planning control is remedied by the grant of a certificate.

**6.8 The breach is causing serious harm and permission is unlikely to be given:**

The Council will ask for the activities or the works to cease voluntarily. A reasonable time will be allowed, depending on what needs to be done. For example business tenants will be allowed a suitable time to find somewhere else to operate if livelihoods are affected. A retrospective planning application will not be invited, but if one is submitted enforcement action may be suspended to allow determination of the application. However, if the proposal is fundamentally unacceptable and serious harm is being caused, the Council may not await the outcome of an application before taking further action.

**6.9 The breach cannot be resolved by negotiation and/or a retrospective application is refused:**

Enforcement action will be taken if it is expedient. This is a discretionary decision made on a case by case basis and must be taken only after proper consideration of the relevant facts and planning merits. Formal action must be justified and the specific requirements and the time period to comply with these must be reasonable. The responsible person will be advised of the right of appeal against refusal of retrospective permission but the Council will not await the submission and outcome of an appeal before taking formal enforcement action, because this can be used as a mechanism for prolonging a breach. There is a right of appeal against an enforcement notice and this can be dealt with concurrently with an appeal against a refusal of permission.

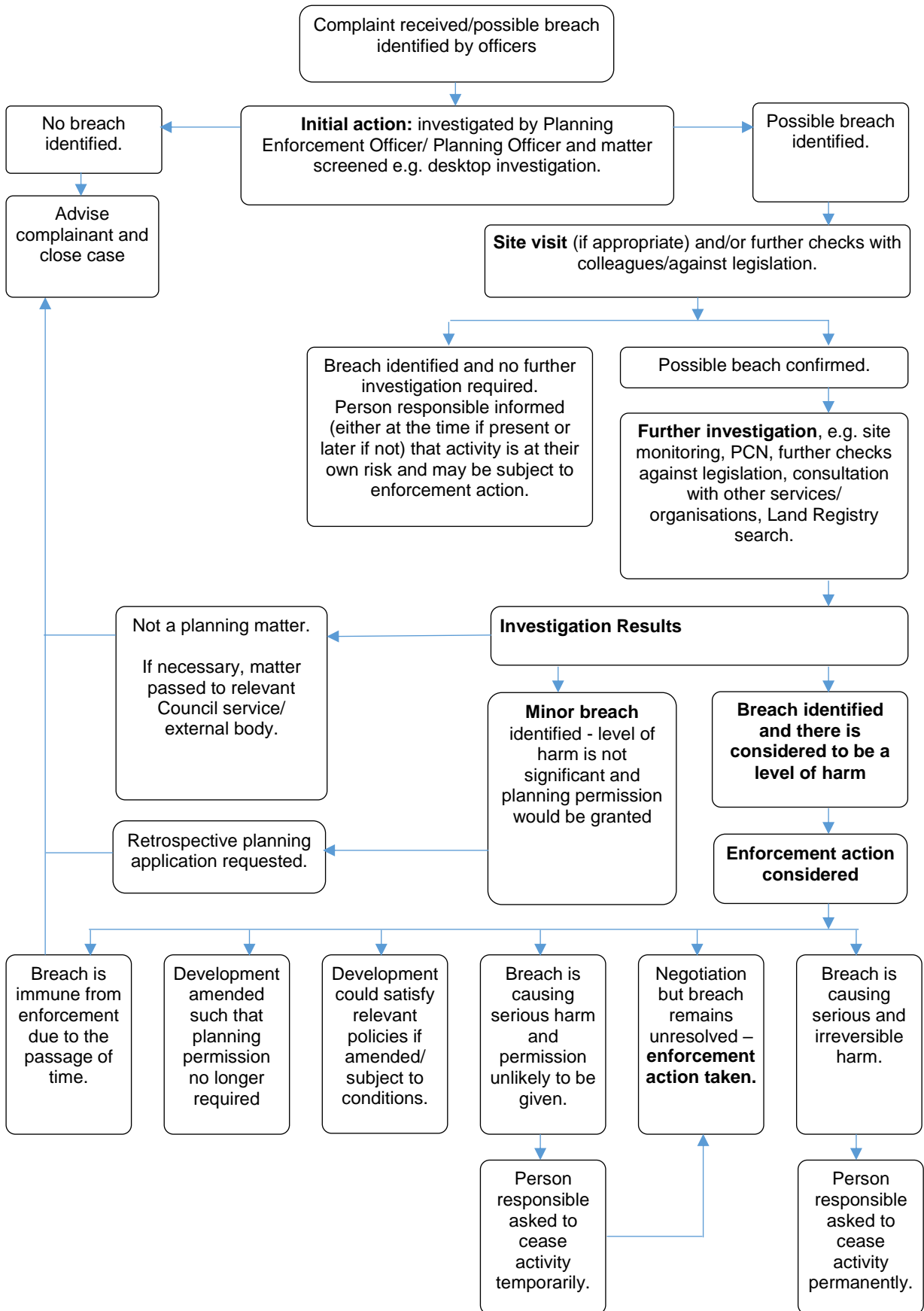
**6.10 The breach is resulting in serious and irreversible harm requiring immediate prohibition:**

The responsible person will be advised to stop work immediately. If the request is not complied with the Council will serve a 'Stop Notice' or 'Temporary Stop Notice' (TSN). These will only be directed at preventing the specific harm that is occurring. As a Stop Notice can only be served in conjunction with an enforcement notice it is not possible to serve one immediately a breach of planning control is identified. A TSN can be served on its own and so can be served promptly. This will compel those to stop the breach of planning control straight away (but only for a limited period of 28 days). During this time the Council will decide whether further enforcement action is expedient. A TSN cannot be used to effectively deprive someone of their home but it can be used to prevent the home being established. Stop Notices and Temporary Stop Notices are only available to deal with development requiring planning permission.

## **7. AUTHORISATION OF ACTION**

7.1 Enforcement action is normally authorised by the Service Lead of Legal, in conjunction with the Development Management Manager under delegated powers. However, where matters are considered to be of strategic or wider importance, the Service Lead may refer the matter to the Planning Committee.

## 8. ENFORCEMENT PROCESS FLOW CHART



## **9. PLANNING ENFORCEMENT POWERS AVAILABLE**

9.1 The following details the planning enforcement and related powers available to the Council.

### **Planning Contravention Notice**

9.2 A Planning Contravention Notice can be issued under Section 171C of the Town and Country Planning Act 1990 and can be used to:

- allow the Council to require information needed for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and;
- can be used to invite its recipient to respond constructively to the Council about how any suspected breach of planning control may be satisfactorily remedied.

9.3 A planning contravention notice can be served when the Council believes that a breach of planning control may have occurred to find out more information before deciding what, if any, enforcement action to take. It cannot be used to undertake an investigative trawl just to satisfy the Council about what activities are taking place on a parcel of land.

9.4 The power is discretionary and as such the Council does not need to issue a planning contravention notice before taking any enforcement action.

9.5 Failure to complete or return a notice within 21 days is an offence. It is also an offence to provide false or misleading information on the notice. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Enforcement Notice**

9.6 An enforcement notice should only be issued where the Council is satisfied that a breach of planning control has occurred and it is expedient and in the public interest to issue a notice.

9.7 An enforcement notice requires works to be undertaken to rectify a breach of planning control within a specified time period.

9.8 The legislation (Section 172 of the Town and Country Planning Act) 1990 requires that an enforcement notice shall: -

- State the nature of the alleged breach;
- Identify the land to which the notice relates;
- Clearly state the matters that appear to constitute the breach of planning control;
- State the Council's reason for issuing the notice, including any relevant development plan policies that are allegedly contravened;

- Specify the date on which the notice takes effect (not less than 28 days after service to allow for an appeal);
- Specify the steps which the Council require to be taken or the activities which the Council require to cease in order to remedy the breach or any injury to amenity it has caused;
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the effect that the breach is having;
- Be registered as a local land charge in Part 3b of the Land Charges Register.

9.9 The enforcement notice will state the breach of planning control, the reasons for serving the notice and the steps to be taken in plain language that will be understood by anyone required to comply with its requirements. This is particularly important given that criminal liability attaches to any breach of the requirements of an enforcement notice. This should also make checking for compliance easier and assist in mounting a successful prosecution if the notice is not complied with. The enforcement notice may require the restoration of the land to its condition before the unlawful development took place; the demolition or alteration of any building or other works; the discontinuance of the use of land; or the carrying out of any building works or other operations.

9.10 The enforcement notice must be directed only at the specific breach. It cannot take away existing lawful rights to use land or retain buildings and other works. The Council can direct an enforcement notice to only part of the breach of planning control and/or it can require only a partial remedy. This is termed “under enforcement” and will be used to take action where only part of the unauthorised works causes harm and therefore only action against those elements is appropriate. The notice will be served on the owner of the land and therefore tenants carrying out works to a rented property should keep their landlord advised of any enforcement investigation on their property; together with anyone who we identify as having an interest in the land.

9.11 It is an offence not to comply with an enforcement notice once the period for compliance has elapsed, and there is no outstanding appeal. The LPA does have discretionary power under the legislation to extend the time period only if they consider it to be necessary. A person guilty of an offence is liable on conviction to an unlimited fine. The Courts will have regard to any financial benefit accrued from the offence when determining the fine. The Council on receipt of a successful conviction can apply for a Confiscation Order under the Proceeds of Crime Act 2002 to recover any financial benefit obtained through the unauthorised development.

### **Appeals against an Enforcement Notice**

9.12 There is a right of appeal to the Secretary of State against an enforcement notice. The appeal must be lodged before the notice takes effect. Details of how to appeal will be included with the enforcement notice. An appeal can be lodged on one or more of the following grounds:

- a) That planning permission should be granted for what is alleged in the notice.

- b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
- c) That there has not been a breach of planning control.
- d) That at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice
- e) That the notice was not properly served on everyone with an interest in the land.
- f) That the steps required to be taken, or the activities required to be ceased, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by the breach
- g) That the time given to comply with the notice is too short.

9.13 When an appeal is made against an enforcement notice on ground a) above, an application for permission to retain the development is deemed to have been made. This will only be considered by the Planning Inspectorate if the appropriate fee (two times the planning application fee where applicable) has been paid.

#### **The Breach of Condition Notice (BCN)**

9.14 This is an alternative to an enforcement notice that is available to remedy the failure to comply with any condition of a planning permission. There is no right of appeal and failure to comply is an offence.

9.15 The BCN must specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). The BCN may, therefore, be positive (requiring something to be done) or prohibitive (requiring something to stop). Unlike an enforcement notice, a BCN can only require full compliance. A BCN also has to specify a period for compliance, which shall be not less than 28 days.

9.16 Non-compliance with the notice is an offence that can be prosecuted through the Magistrate's court. There is no right of appeal against the notice. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Complying with an Enforcement Notice or Breach of Condition Notice**

9.17 As soon as the compliance period set out in an enforcement notice or BCN has passed, enforcement officers will investigate whether or not the breach of planning control is continuing.

9.18 When officers conclude that notices have been complied with, this will be confirmed verbally to the owner/occupier and to anyone who has complained about the building works or activity. Compliance with an enforcement notice does not, however discharge it. The notice will remain in place to prevent any further breaches and it will continue as a registered charge on the land or property.

9.19 Failure to comply with the requirements of an enforcement notice or BCN is an offence. If there are grounds to suspect that an offence has been committed, interviews of



suspects or witnesses will be carried out in accordance with Police and Criminal Evidence Act 1984 (PACE) requirements. The Council will take firm action where the requirements of an enforcement notice or BCN have not been complied with.

### **Further action following non-compliance with an Enforcement Notice or BCN**

- 9.20 The Council may attempt to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts (usually Magistrates Courts). Any decision to prosecute will have due regard to the availability, nature and strength of evidence and will consider whether the public interest is served (see sections below under Prosecution).
- 9.21 Alternatively, an injunction may be sought (see below). This is an order from the Court to comply with the Enforcement Notice. Failure to then follow the court order is contempt of court and carries the threat of a prison sentence.
- 9.22 The Council can take Direct Action (see below) when the requirements of a Notice have not been complied with. This will only be considered in exceptional circumstances. The Council can place a legal land charge against the property to enable all reasonable costs incurred in the direct action to be recovered and in certain circumstances enforce the sale of the land.

### **Stop Notice**

- 9.23 The Council can, when appropriate to do so, under Section 183 of the Town and Country Planning Act serve a Stop Notice requiring alleged breaches of planning control (including activities) to cease immediately. Such a notice can only follow be served in conjunction with an Enforcement Notice. There are limitations on the service of this notice and additionally compensation may be payable by the Council in some circumstances if the recipient makes a successful challenge. It is used very selectively and it is not necessarily an instant solution.
- 9.24 The Stop Notice is not usually effective until 3 days after it is served and cannot prohibit the use of any building as a dwelling house.
- 9.25 In certain circumstances the Council can be liable for compensation if the associated enforcement notice is quashed, varied or withdrawn.
- 9.26 The serving of a notice is discretionary and should only be used where it is expedient that any relevant activity should cease before the expiry of the compliance period in the associated enforcement notice.
- 9.27 If a Stop Notice is contravened a person is guilty of an offence and if found guilty shall be liable upon summary conviction to a fine not exceeding £20,000 or on conviction on indictment to unlimited fine. The Court will have regard to any financial gain that has accrued or likely to accrue..
- 9.28 There is no right of appeal against a Stop Notice.

### **Temporary Stop Notices**

- 9.29 Where the Council 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 Town and Country Planning Act 1990 enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition, the effect of the temporary stop notice will be immediate.
- 9.30 A Temporary Stop Notice can require an activity to cease, or reduce to minimise any impact but cannot be used to prevent the use of a building as a dwelling house.
- 9.31 A Temporary Stop Notice expires after 28 days. Should further action be required after the 28 days an enforcement notice and stop notice will be required.
- 9.32 If a Temporary Stop Notice is contravened a person is guilty of an offence and if found guilty shall be liable upon summary conviction to a fine not exceeding £20,000 or on conviction on indictment to unlimited fine. The Court will have regard to any financial gain that has accrued or likely to accrue.
- 9.33 There is no right of appeal against a temporary stop notice.

### **Injunction**

- 9.34 Where the Council considers a breach of planning control to be a serious and immediate risk to health and safety, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction under section 187B of the Town and Country Planning Act 1990. This can be extremely expensive, but can be effective in appropriate circumstances. An injunction is a special court order that requires a party to refrain from certain acts or to carry out certain measures.
- 9.35 Proceedings for an injunction are the most serious enforcement action a Council can take as failure to comply with an injunction can lead to prison for contempt of court. As a result an injunction is usually a last resort following persistent breaches of planning control.

### **Planning Enforcement Order**

- 9.36 Where somebody deliberately conceals unauthorised development, it may not come to light until the period for taking action (4 of 10 years) has expired. A planning enforcement order enables the Council to take action notwithstanding the time limits.
- 9.37 Where there is sufficient evidence of a breach, the Council can apply for a planning enforcement order under sections 171B, 171BB and 171BC of the Town and Country Planning Act 1990.
- 9.38 The application must be made to the magistrate's court within 6 months of the Council having sufficient evidence to identify the apparent breach. There is a right to be heard by the court. The Council has to prove that positive steps were taken to conceal the unauthorised development.

9.39 The effect of the order is that the Council will be able to take enforcement action, generally within a year of the order being granted.

#### **Advert Removal Notice**

9.40 Sections 225 of the Town and Country Planning Act 1990 provide the Council with powers to deal with illegal adverts.

9.41 Section 225A of the 1990 Act (as amended) allows the Council to remove an illegal advert through the serving of an Advert Removal Notice. If the notice is not complied with within 22 days, the authority may remove the structure/advert and recover any reasonable expenses incurred in doing so.

9.42 There is a right of appeal to the magistrate's court.

9.43 The Council also has powers under section 225 to remove or obliterate any placard of poster displayed illegally following advance notice to the person responsible for the display.

#### **High Hedges Remedial Notice**

9.44 The Council can take action where a hedge or a row of trees forming a hedge cause a significant loss of amenity to a neighbouring property. The legislation does however require complainants to have approached the owner of the hedge and pursued all reasonable means of mediation before making a complaint to the Council. If a complaint has been properly made and the Council decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti-Social Behaviour Act 2003 and is known as a remedial notice. The remedial notice can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although the Council cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners. It is an offence not to comply and if found guilty on summary conviction a fine not exceeding level 3 on the standard scale can be imposed and there is also a provision for daily fines if the works remain outstanding following a court order. The Council's decision can be appealed to the Planning Inspectorate by the applicant or person affected by the Notice.

#### **Untidy Land Notice**

9.45 Owners and occupiers sometimes neglect their land and buildings and allow them to become seriously unkempt or derelict. This can create eyesores that can be particularly damaging for the neighbourhood. Section 215 of the 1990 Act empowers planning authorities to require owners to take steps to alleviate these problems. These powers can be used in a variety of situations – e.g. heavily overgrown and neglected gardens; derelict buildings and sites that disfigure town centres and village centres. The power can also be exercised in conjunction with other environmental powers such as those directed to the upkeep of listed buildings and powers exercised by the Council's Environmental Health and Building Regulations Services. Officers will liaise with these services to ensure that the most appropriate remedy is used.

- 9.46 Officers will investigate such sites and if remedial action is necessary they will contact the owner and advise them that the state of their land and/or buildings is causing problems. They will be advised of the steps they need to take to alleviate the problems and given (initially) 28 days to voluntarily carry these out. If no serious effort has been made, the Council will serve a formal notice compelling the owner/occupier to take the necessary steps. The notice becomes effective after 28 days. There is a right of appeal to the Magistrates or Crown Court. If this happens the notice has no effect pending the outcome of the appeal.
- 9.47 Once the notice becomes effective, it is an offence not to carry out the required steps within the specified time period. The Council may prosecute the offender for non-compliance. It may also enter the land, carry out the works and recover the costs from the owner either by sending them a bill or applying to the Land Registry to place a charge on the property.

### **Prosecution**

- 9.48 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.

#### ***The decision to prosecute:***

- 9.49 In making a decision on a prosecution the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 9.50 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will then consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

#### ***The Evidential Test:***

- 9.51 The first matter the Council will look at when considering a caution, administrative penalty or a prosecution is whether there is enough evidence to prosecute the matter. This is the evidential test. If the case does not pass the evidential test it must not go ahead no matter how serious or important the case may be. In order for a case to pass the evidential test there must be enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge.
- 9.52 Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction. This is detailed further in the overarching Regulatory Enforcement and Prosecution Policy published by the Council.
- 9.53 As part of the process the Council must consider what the defence case is and how it is likely to affect the prosecution case. A realistic prospect of conviction is an objective test; it means that a jury or a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and also whether or not it is reliable.

9.54 If the evidential test is satisfied then the most appropriate way of dealing with the matter will be assessed. When considering which course of action is the most appropriate the Council will consider the factors outlined below. This is called “the Public Interest Test”.

***The Public Interest Test:***

9.55 The more serious the offence is the more likely it is that a prosecution should take place. However the Council will weigh public interest factors carefully. Public Interest Factors in favour of and against Prosecution are detailed in the overarching Regulatory Enforcement and Prosecution Policy published by the Council.

***Further Action:***

9.56 Failure to comply following a successful prosecution may lead to further prosecutions to secure compliance where an offence is on-going.

9.57 Where an offence leads to on-going financial or other gain for the offender then the Council will consider whether to take action under the Proceeds of Crime Act 2002 to ensure that the offender does not gain from their actions.

**Direct Action**

9.58 The Council is empowered to take direct or default action to remedy a breach of planning control if the requirements of a Notice have not been complied with. This will only be considered in exceptional circumstances. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise when successive fines by the Courts have not proved to be a sufficient deterrent for the perpetrators of the breach. It may also be considered where the effects of a breach of planning control are so harmful that compliance with notices should not be subjected to delay in Court processes. The Council can place a legal land charge against the property to enable all reasonable costs incurred to be recovered. In some circumstances we can also enforce the sale of the land to recover our costs.

## 10. TREES

- 10.1 Section 198 of the 1990 Act provides the Council with the power to protect trees through the making of Tree Preservation Orders. Consent is then required to carry out works to the protected trees. Section 210 of the Act makes it an offence to cut down, uproot or wilfully destroy a protected tree or to wilfully damage, top, or lop a protected tree in such a manner as to be likely to destroy it.



- 10.2 Provided the trunk diameter is more than 7.5 cm at 1.5m above ground level, trees in Conservation Areas are similarly protected. Notice of any intended works has to be given to the Council and work is unauthorised until the Council has responded to the notice or 6 weeks have elapsed, whichever is the sooner.
- 10.3 Consent is not required for the following works to protected trees.
- a) Works to trees that are dead
  - b) Works to trees that are urgently necessary to remove an immediate risk of serious harm. 5 working days prior written notice must be given to the authority before cutting down or carrying out other work on a dead tree.
  - c) Works to trees that are necessary in order to implement a planning permission
  - d) Works to trees cultivated for the production of fruit where such work is in the interests of that trade or business.
  - e) Removal of deadwood from a living tree.

In relation to a) and b) above in particular it is best to check with the Councils Tree Officers before undertaking such work to ensure that they are satisfied that the tree is dead or that the works are genuinely urgent and necessary.

- 10.4 Section 97 of the Environment Act 1997 makes it an offence to remove what are termed “important” hedgerows, without the consent of the Council. Where this takes place the Council has the power to serve a ‘hedgerow replacement notice’.
- 10.5 The Council will give high priority to complaints relating to works to protected trees and hedgerows as any harm will be irreversible and arises from not just the loss of the tree or hedgerow itself but the loss of wildlife habitat that it provided.
- 10.6 Tree enforcement issues fall into two principal categories:
- unauthorised works or, damage to, or removal of trees that are protected by Tree Preservation Orders or situated within Conservation Areas (see below), and;
  - breach of planning conditions relating to tree retention and protection. These will be dealt with in the same way as a breach to any other planning condition (see above).
- 10.7 There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.
- Firstly, anyone who cuts down, uproots or willfully destroys a tree, or who lops, tops or willfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable on conviction to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.
  - Secondly, anyone who carries out works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.
- 10.8 In addition to directly carrying out unauthorised works on protected trees, it is an offence to cause or permit such works.
- 10.9 In order to bring a successful prosecution, the Authority must be able to prove that:
- the defendant has carried out, or caused, or permitted works on the tree;
  - the tree was protected;
  - the works were carried out without the Authority’s consent; and
  - the works were not exempt works.
- 10.10 Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning

Authority). The planting of a replacement tree is the minimum the Council will require from a landowner who has removed a tree in contravention of the legislation.

10.11 The Council has a range of possible further courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- seek a prosecution;
- administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence;
- under section 206 of the Town and Country Planning Act 1990, require the planting of a replacement tree for each tree destroyed;
- under section 207 of the same Act, serve a replanting direction. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;
- On receipt of a successful conviction can apply for a Confiscation Order under the Proceeds of Crime Act 2002 to recover any financial benefit obtained through the works; and,
- take no formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

10.12 Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being dealt with on its own merits.

10.13 Where enforcement action against works to protected trees and important hedgerows is involved, the Council will take the following into account alongside the Evidential and Public Interest Tests outlined in Section 6 above:

- The size of the tree(s)/length of hedge(s) involved;
- The prominence of the tree(s) or hedge(s);
- The condition of the tree(s) or hedge(s);
- The life expectancy of the tree(s) or hedge(s);
- The seriousness of the offence;
- The loss of/effect on amenity;
- Whether there have been persistent offences by the people involved;
- Any other mitigating factors.



10.14 Where a tree which is the subject of a Tree Preservation Order is removed without consent, or a tree in a Conservation Area is removed without consent, the Council will:

- If the tree is a single specimen tree of high amenity value in a prominent location and having a significant impact on amenity, prosecute those responsible for its removal and seek replacement planting in all but exceptional circumstances;
- In all other cases (e.g. lesser value trees or groups), prosecute, issue a Caution and/or require the provision of a semi-mature replacement tree in all but exceptional circumstances;
- With regard to trees in a Conservation Area, the seriousness of an offence will be judged by determining if the tree would have been made the subject of a Tree Preservation Order. If the tree was not worthy of a Preservation Order then the Council is unlikely to Prosecute but will seek the planting of a suitable replacement tree and will decide whether or not to issue a Caution.

10.15 Where unauthorised works are carried out to trees the subject of a Tree Preservation Order or are located within a Conservation Area:

- The seriousness of the offence is determined by the extent and quality of works and the effect on visual amenity and life expectancy;
- Where minor works have been carried out to an acceptable standard, the owner and any other relevant parties will be advised that any further works must be subject to a formal application;
- Where more extensive works have taken place that would not have been granted, the Council will decide whether to issue a Caution or Prosecute; Prosecution is more likely where there is a clear wider effect on visual amenity.
- Where works have been carried out but would have been granted, but to an unacceptable/poor standard, the Council will ensure remedial works are undertaken.

## **11. LISTED BUILDINGS**

11.1 Unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. A person who is guilty of such an offence will be:

- Liable on conviction to imprisonment not exceeding 3 months or a fine not exceeding the statutory maximum or both; or
- Liable on conviction to imprisonment for a term not exceeding 12 months or a fine or both.



11.2 In deciding the amount of fine to be imposed on any person convicted, the court will take into account any financial benefit which has been gained as a result of the offence.

11.3 The Council has a range of possible courses of action available to deal with cases of unauthorised works to listed buildings. These include the following:

- seek a prosecution;
- administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence;
- serve a breach of condition notice – note it is an offence to fail to comply with a condition on a listed building application;
- serve a temporary stop notice or stop notice;
- negotiate the reversal of works/works to address the unauthorised works;
- serve an enforcement notice to remedy the works – note that there are no time limits for issuing listed building enforcement notices;
- take no formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

- 11.4 With regard to Listed Buildings, the Council also has the following powers at its disposal: Urgent Works Notices and Repairs Notices and more information non this is available in Historic England's publication 'Stopping the Rot - A Guide to Enforcement Action to Save Historic Buildings'.

### ***Urgent Works Notices***

- 11.5 Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 enables local authorities to undertake works which are urgently necessary for the preservation of a listed building. Works can only be carried out to parts of a building that are not in use. The owner will be given a minimum of seven days' written notice of the intention to carry out works. The notice will describe the works to be carried out.
- 11.6 Section 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990 allows the Council to recover the costs of the works from the owner. The owner will be served a notice requiring them to pay the expenses of the works. The notice can be appealed to the Secretary of State within 28 days of the service of the notice.

### ***Repairs Notices***

- 11.7 Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 allows the Council to serve a Repairs Notice on the owner of a listed building specifying works that it considers are reasonably necessary for the preservation of the building.
- 11.8 After 2 months, if it appears that reasonable steps are not being taken to carry out the repairs, the Council can begin compulsory purchase proceedings under section 47 of the Planning (Listed Building and Conservation Areas) Act 1990. This process requires confirmation from the relevant Secretary of State.
- 11.9 Serving a Repairs Notice does not commit the Council to proceed to compulsory purchase action. The Council can withdraw the Repairs Notice at any time giving notice to the owner.
- 11.10 Decisions as to what action to take in cases of unauthorised works to listed buildings will be taken in the public interest, with each case being dealt with on
- 11.11 When considering enforcement action against unauthorised works to listed building or other heritage assets, in addition to the Evidential and Public Interest Tests the following will be taken into account:
- an injunction will be considered where it would (i) prevent anticipated unauthorised works (ii) remedy damage where there is urgency, for example where urgent remedial action is required to prevent further imminent degradation and (iii) compel compliance with an enforcement notice where there are little signs of it happening;
  - Prosecution will be likely to be used where unauthorised demolition has taken place or where unauthorised alterations are considered to be harmful to the special architectural or historic character of the building;
  - Prosecution is unlikely if the alteration is sympathetic to the special architectural or historic character of the building;

- The Council will judge the effect on the character of the building, its listing and consider any change to the form, scale, appearance integrity and special character that contributes to it being of special interest; the structural integrity of the building; and the relationship between the building and its setting.

## **12. BREACHES OF SECTION 106 LEGAL AGREEMENTS**

12.1 When granting planning permission for development, the Council can impose planning obligations on the applicant. These obligations are usually contained with a legal agreement (often called a S.106 Agreement) and require certain works to be carried out or contributions to be paid/complied with at certain times. These agreements sit alongside the planning permission such that the land owner and developer are required to comply with any obligations with the legal agreement as well as any conditions on their planning permission.

12.2 If the Council decides that there is a breach of a planning obligation (e.g. a financial contribution has not been paid or required works have not been carried out within the timescale specified within the legal agreement), there are three options available:

- The Council can apply to the Court for an injunction to force the obligation(s) to be complied with. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment;
- The Council can enter the land to complete works if an obligation required works to be carried out by a certain time and this has not been carried out. The Council must give 21 days' notice of the intention. The Council will seek to recover costs incurred in the completion of the works;
- The Council may place a local land charge on the land or property which is binding on successive owners.