



**Local Enforcement Plan  
Mid Devon District Council  
Consultation draft March 2017**

## MID DEVON DISTRICT COUNCIL

### LOCAL ENFORCEMENT PLAN

#### BACKGROUND

Mid Devon District Council has responsibility for the investigation of reported breaches of planning control. Unauthorised development can be detrimental to the local environment and be a source of social tension. Failure to enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system.

Policy DM31 of the Mid Devon Local Plan (MDLP) which was adopted in October 2013, states;

*The Council will investigate unauthorised development, acting proportionately to the scale of the suspected breach of planning control. Enforcement action will be taken where it is appropriate to do so and in the public interest.*

The MDLP, in paragraph 6.3 clarifies the need for a Local Enforcement Plan to set out the Council's approach to enforcement and states it will include timescales for action and detail on how the Council will respond to suspected breaches of planning control.

This Local Enforcement Plan has been developed in accordance with Government advice contained in the National Planning Policy Framework (March 2012) which was issued by the Department for Communities and Local Government. 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. 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."*

Furthermore, the Local Government Ombudsman, who investigate complaints from the public when Councils have failed to take enforcement action, state in their report 'Not in my back yard:

Local People and The Planning Process' (December 2014);

*"(Local Enforcement) Plans should set out how councils will investigate alleged cases of unauthorised development, the circumstances where they might take action, and the enforcement actions that they will consider. This will help officers make*

*consistent decisions and understand the legal tools available to them. It will also help local people understand what to expect when they make a complaint. The enforcement plan should be reviewed and updated on a regular basis.”*

Bearing this guidance in mind, this Plan will pursue the following objectives:

- Provide an accessible service that maintains public confidence in the planning system;
- Provide a service that is both reactive and proactive in its commitment to remedy undesirable effects of unauthorised development;
- Provide a service response that is prioritised according to the harm or the potential harm caused by the breach;
- Provide information on how breaches of planning control will be investigated and action taken where it is appropriate to do so;
- Monitor development in line with resources and prioritise according to the scale and complexity of the development permitted;
- Achieve a balance between protecting amenity and other interests and allowing acceptable development to remain, or to continue, in the absence of permission;
- Seek resolution of planning breaches through informal and formal action including prosecution of offenders to uphold the integrity of the planning system;
- Monitor performance of the service.

These objectives should be read within the context of the policies contained within the adopted MDLP and Mid Devon District Council's wider corporate aims as set out in the Corporate Plan 2016 -2020

- Economy
- Houses
- Community
- Environment

## LEGISLATIVE FRAMEWORK

The statutory legislation that the Council enforces is based upon the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. This legislation forms the fundamental basis of the planning system today in England and Wales.

Subsequent national planning legislation that is of particular relevance to Planning Enforcement includes the following :

**The Town and Country Planning (General Permitted Development) (England)**

**Order 2015** which sets out what can be done under 'permitted development rights', i.e. without requiring specific planning permission from the Council.

**The Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended)** which sets out which advertisements benefit from deemed consent i.e. those advertisements which can be displayed without requiring express consent from the Council.

**The Town and Country Planning (Use Classes) Order 1987 (as amended)** which sets out the various categories that different uses of land fall into, and what comprises a material change of use requiring planning permission.

**Planning (Listed Buildings and Conservation Areas) Act 1990** which sets out the regards a Local Planning Authority must have to preserving or enhancing the character and appearance of listed buildings and conservation areas

## WHAT IS A BREACH OF PLANNING CONTROL?

The Town and County Planning Act 1990 (as amended) sets out that planning permission is required for development. Section 55 of this Act defines development as the *“carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land.”*

Section 171A of the Act defines a breach of control as a) carrying out development without the required planning permission, or b) failing to comply with any condition or limitation subject to which planning permission has been granted.

The majority of complaints made to the Council allege that one of the following breaches has occurred:

- Operational development has taken place without planning permission
- A material change of use of land without planning permission
- Works have not been carried out in accordance with an approved planning permission
- Failure to comply with conditions attached to an approved planning permission

There are also other matters which fall under the scope of planning control, and therefore any reported breach would be investigated by the Council. These include:

- Advertisements which are being displayed without either deemed or express consent
- Works to a listed building which affect its character and setting without the necessary listed building consent
- Demolition in a conservation area, when planning permission is required
- Works to or removal of protected trees and hedgerows

## **WHAT IS NOT A BREACH OF PLANNING CONTROL?**

We receive a number of complaints about matters which are not within the scope of planning control. They may fall within the remit of other Council departments, and where this is the case we will advise the complainant of where to seek further advice. Some examples of things that we cannot investigate include:

- Boundary wall and other land ownership disputes. These are civil matters between neighbours, and we do not keep records of land ownership
- Parking, traffic and obstructions on the Highway or verges. These are matters in which we cannot take action. Devon County Council are the highway authority and can be contacted on 0845 155 100 for further advice
- Fly tipping. This is investigated by the Council's Environmental Health Team. Reports can be made via the Council's website or by phone on 01884 255255. For very large quantities of fly tipped waste or incidents which might threaten to pollute a water course, the Environment Agency can investigate. Their hotline number is 0800 807060.
- Dangerous structures. These may fall within the remit of the Building Control team who can be contacted on 01884 234345
- Complaints regarding noise and smell. These may be an issue which can be investigated by Environmental Health who can be contacted on 01884 255255.
- Stationing of a caravan within the grounds of a dwelling

### **Time Limits**

Section 171B of the Act sets out the time limits for taking enforcement action. In the case of building, engineering, mining or other operations in, on, over or under land, normally no action can be taken after four years from where the works were substantially completed. Where there has been a change of use of any building to a single dwelling house, the limit is also four years, beginning with the date of the breach. In the case of any other breach of planning control no enforcement action can be taken once ten years has elapsed.

Works to listed buildings, protected trees and the display of advertisements fall within the remit of different legislation, and therefore these time limits do not apply.

## **INVESTIGATION OF REPORTED BREACHES OF PLANNING CONTROL**

### **Receipt of complaints**

There are several ways that members of the public can register a planning enforcement complaint:

- by email to [devcon@middevon.gov.uk](mailto:devcon@middevon.gov.uk)
- by telephone to the contact centre 01884 225 225
- by completing the online form at <https://new.middevon.gov.uk/planning/alleged-breaches/>
- by writing to us at Planning Enforcement, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP
- in person to the duty Planning Officer at Phoenix House from 9:00 to 12:00, Monday to Friday

Breaches of planning control are also reported to the Council by its Elected Councillors, Parish and Town Councils. The Council's staff also identify breaches for investigation.

### **Confidentiality**

The details of the complainant are treated as confidential. However, in some circumstances this may not be possible particularly when matters progress to court in the event the complainant becomes a witness and gives evidence and/or details of the complaint must be disclosed. Representations received on a planning application are not confidential. Breaches reported by Parish and Town Councils where they are discussed in public at a meeting of the Council are a matter of public record and not treated as confidential.

### **Registration of complaints**

When a complaint is received, it is recorded on our secure database and allocated a unique reference number. In order that we are able to investigate effectively it is important that we have the following information as a minimum:

- Full address of the site where the breach of control is suspected
- Details of the nature and extent of the suspected breach of control
- Name and contact details of the complainant so that we are able to update on progress made and advise of the outcome of our investigation. For convenience and in the interests of best use of resources, it is helpful for this to include an email address if the complainant is happy to be contacted in this manner. Generally we will not investigate anonymous complaints.

We will acknowledge all complaints made to us, and confirm the reference number and the investigating officer. This may be by telephone if the complaint is made in this manner.

All complainant details will remain confidential. Although a contravener may be able to guess the source of the complaint, this will not be revealed by the Council. All information is held securely in our database and is not accessible to the public.

### **Background checks**

Once a complaint has been registered, we will carry out a check of the planning history of the site. This may include checking whether planning permission has been granted for the development, whether there are any relevant conditions or if the matter has been previously investigated. If appropriate, we may look at aerial photographs from different timescales and historic maps.

We may also liaise with other Council departments relevant to the case. This may include Building Control, Environmental Health, Licensing and Council Tax. This helps us establish a background to the case, and may help us to confirm whether works have already commenced or a change of use has occurred.

In order that we are able to use the resources available most effectively, we prioritise all cases received as follows:

**High Priority:**

A breach of planning control which is causing, or is likely to cause serious harm to the environment, serious disturbance or nuisance to residents or to public safety unless an immediate response is made

The unauthorised works or use of land or buildings, that present an immediate and serious danger to the public

Unauthorised works that could be seriously detrimental to the character of a Listed Building, Scheduled Ancient Monument, Conservation Area or Site of Specific Scientific Interest.

Unauthorised development that causes serious harm, yet has gone undetected and the statutory time limit for taking enforcement action is imminent

Works to protected trees or hedgerows.

**Response time – first site visit within 3 working days of registration**

**Medium Priority:**

The priority level covers all cases that are not a high or low priority

Unauthorised developments causing disturbance/ nuisance to residents or damage to the environment.

Work to Listed Buildings which is not considered seriously detrimental to its character.

Unauthorised advertisements in a conservation area or prominent locations which have the potential to cause serious harm to public safety or amenity.

Unauthorised development where the statutory time limit for taking enforcement action may expire within the next six months.

Untidy land which is causing serious harm to the amenity of the area



Non-compliance with planning conditions which are having a significant adverse impact on the development, amenity or neighbouring properties

Deviation from approved plans, which is having a significant adverse impact on amenity or neighbouring properties

**Response time – first site visit within 10 working days of registration**

**Low priority:**

This priority level covers breaches of planning control that are causing limited or no harm to the environment or residential amenity

Technical breaches of control – for example works that are marginally above permitted development

Installation of satellite dishes

Unauthorised advertisements in less sensitive locations

Minor variations from approved plans which are not having an adverse impact on amenity

**Response time – first site visit within 15 working days of registration**

**Initial site visit**

Once the check of the history of the site has been undertaken, the investigating officer will normally visit the site. Sometimes for safety or operational reasons this may be by more than one officer, or with colleagues from other departments. It is standard procedure for the officer to visit the site where the alleged breach of control has been reported, and speak to the owner or occupier where they are present.

The timescale for the initial site visit when required of the site relates to the priority of the alleged breach (see above). Where the matter falls within the remit of more than one Council department, the initial visit may be carried out by an officer from another department.

As part of our investigation we may take photographs at the site. These will be stored in a secure manner and will not be accessible to the public but may be used in documents which the public will have access to in the event of them being required as evidence. Photographs enable us to have an accurate record of the situation on a given day and also facilitate discussions with other officers about what has been seen during the site visit.

Once the visit has been completed, the findings will be assessed and a view taken as to how the investigation will proceed. This may include obtaining legal advice about the case.

**If no breach is established**

A significant proportion of cases are closed as it appears to the Council that no breach of control has occurred. Examples of where this might take place include where:

- planning permission has been granted for the development

- there is no evidence that the alleged breach has taken place.
- specific planning permission is not required as the works fall under the scope of the Town and Country Planning (General Permitted Development) (England) Order 2015. This legislation grants deemed planning permission for certain works.
- evidence confirms that the development is now immune from enforcement action due to the passage of time

Where no breach is established and therefore no further action is to be taken, we will notify the complainant within ten days of the date of the initial site visit to explain the position and the case will be closed.

### **Where further investigation is required**

In some circumstances it may not be possible to establish from our initial visit whether there is a breach of planning control. Examples of this may include:

- Alleged breaches of hours of operation conditions
- Domestic premises being used for business purposes where a material change of use is alleged
- Building works which the owner claims took place more than four years ago.

Further investigation will be required, and examples of this may include a more detailed study of Council records, liaison with other Council departments and external agencies and seeking further clarification from the alleged contravener.

In some cases, we may ask the complainant to provide us with more information. If they are unable to do so, this may result in the Council not being able to take further action due to insufficient evidence.

### **Obtaining additional information**

To help us obtain more information and to ensure we correctly identify the breach of planning control and persons responsible, there are specific legal tools available to us. These are discretionary, and are not used in every case:

#### **i) Planning Contravention Notice (PCN)**

A PCN can be served on anyone with an interest in the property. It can only be served where it appears to the Council that a breach of planning control may have occurred and they want to find out more information before deciding what if any enforcement action to take. It allows the local planning authority to require any information they need for enforcement purposes about any operations being carried out or any use of the land.

It 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.

There is no right of appeal against a PCN and failure to respond within the required timescale is an offence.

#### **ii) Section 330 Notice (Requisition for Information)**

To enable the Council to exercise other powers, they may serve a notice under Section 330 of the Town and Country Planning Act 1990 requiring information as to interests in land,

including ownership and occupier details. There is no right of appeal against a Section 330 Notice and failure to respond within the required timescale is an offence.

### **Where a breach of control is established**

Where a breach is established, the first step is for a decision to be made whether it would be expedient to take formal action. Expediency is a test of whether the unauthorised activities are causing serious harm having regard to the Mid Devon District Council Local Plan policies and other material considerations. This decision will be made in conjunction with the relevant Planning Officer.

It may be the case that a technical breach of control has occurred, but that it is so minor in nature, and having little or no impact on the amenity of the local area, that it would not be expedient to take further action. An example of this might be a fence which is slightly higher than the height it could be erected without the need for planning permission, so is a technical breach of control. If it was not having any adverse impact on the amenity of the area, the Council may decide that it is so minor that it would not warrant any further action.

### **Proportionality**

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. Government guidance advises that there is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, the Council will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, as well as those who are affected by a breach of planning control.

Planning enforcement powers are discretionary, and it is not considered to be a good use of limited public resources to pursue enforcement action against any development where planning permission would normally be granted, except where the imposition of conditions would allow appropriate controls to be secured. It is important to be aware that enforcement is not intended to be a punishment for those who have breached planning control, but a necessary function to protect the environment.

Where a development is considered likely to be granted planning permission, or where the imposition of conditions would enable appropriate control, the Council will encourage the submission of a retrospective planning application. This enables affected neighbours and interested parties to have their say. Where the Council considers that there is no prospect of planning permission being granted, and there is an adverse impact on the built environment, the Council will proceed to formal enforcement action where negotiations to resolve the matter informally are unsuccessful.

### **Negotiation**

Where it is considered that the breach of planning control is unacceptable, the Council will initially attempt to negotiate a solution unless the breach is causing an irreparable harm to the environment or local amenity. This may include the reduction or cessation of an unauthorised use or activity or the modification or removal of unauthorised operational development.

In carrying out negotiations, officers will have regard to the specific circumstances of the case, and advise an appropriate timescale for any remedial works or relocation to be carried out. Where it is clear from the outset that negotiation will not be successful, or where a

solution cannot be reached within a reasonable timescale, we will proceed with formal action.

**Retrospective planning application**

In circumstances where a breach of planning control has occurred and it is considered that the development could be made acceptable by the imposition of conditions, or where the submission of a planning application is likely to benefit the proper assessment of the impact of the unauthorised development, a retrospective planning application would be invited within a specified timescale. In such circumstances it will be made clear that the invitation is made without prejudice to any final decision the Council may make in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take enforcement action.

## **COMMENCING FORMAL ENFORCEMENT ACTION**

Where negotiations with the contravener are unsuccessful, or if the breach of control is considered to have such a detrimental impact that more immediate action is needed, there are a range of powers available to the Council, which are set out in the paragraphs below.

The Planning Services Scheme of Delegation sets out which powers are delegated to the Head of Planning and Regeneration and which will require Planning Committee authority.

Once a report has been prepared for committee approval, the contravener and complainant will be advised of the date in writing. The Planning Committee meeting will be held in Council's Tiverton office at Phoenix House and meetings usually commence at 2.15pm. The meeting is open to the public. There is an opportunity for both parties to address the Committee. Details of the procedure on how to register to speak will be contained within the letter.

A copy of the officer's report is available either from Phoenix House five working days prior to the date of the Committee or via the Committee Meetings and Minutes link accessed from [www.middevon.gov.uk](http://www.middevon.gov.uk).

### **Enforcement Notice**

This can be issued where development is being carried out without planning permission or where a condition is not being complied with. It requires action to be taken to rectify the breach within a specified timescale. A copy should be served on the land and anyone with an interest in the land. Once the notice has been served, there is a further minimum period of 28 days before the notice becomes effective. Any person in receipt of a copy of the notice has right of appeal to the Planning Inspectorate. Failure to comply with an enforcement notice is a criminal offence tried in the Magistrates' or the Crown Court. The maximum penalty in the Magistrates' Court is a fine not exceeding £20,000 but there is no limit on the fine that the Crown Court may impose.

### **Breach of Condition Notice**

This can be issued where a condition on a planning permission is not being complied with. A copy of the Breach of Condition Notice, is not served on the land, but instead on anyone with an interest in the land and requires compliance with condition within a specified timescale. There is no right of appeal, but the validity of a breach of condition notice, and the appropriateness of the local planning authority's decision to serve it may be challenged by application to the High Court for judicial review. Summary prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice. The maximum penalty on conviction is a fine, currently not exceeding £1,000.

### **Listed building Enforcement Notice**

This is similar to an Enforcement Notice but used where works have been carried out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such a consent. The notice can require the removal of the unauthorised works and reinstatement.

### **Stop Notice**

This can be served with an Enforcement Notice or after we have served an Enforcement Notice if it is considered that continuing unauthorised development is causing irreparable

and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. It requires that activities cease to safeguard local amenity or public safety and to prevent serious or irreversible harm to the environment. There is a minimum three day period before it comes into effect. There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the appropriateness of the local planning authority's decision to issue a notice, may be challenged by application to the High Court for judicial review. Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn, compensation may be payable in certain circumstances and subject to various limitations

### **Temporary Stop Notice**

These can be served where we consider that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice, but it is only valid for a period of 28 days. There is no right of appeal when a Temporary Stop Notice is served, but a judicial review can challenge the validity and propriety of our decision.

### **Section 215 Notices**

When the condition of land or buildings negatively affects the amenity of an area, a Section 215 Notice can be served. This requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. Recipients of a Section 215 Notice have the right of appeal to a Magistrates' court. Failure to comply with the notice is an offence.

Where an appeal is lodged with the Planning Inspectorate against any notice issued by the Council, the complainants, the applicable Ward Councillors and the Town/Parish Council will be notified in writing and advised on how they may contribute to the appeal process, should they wish to do so.

### **Prosecution**

We can commence Court proceedings where a formal notice has not been complied with. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal notices, e.g. unauthorised works to a listed building or a protected tree or an unauthorised advertisement.

We will apply two tests in cases where a prosecution appears likely, in consultation with our legal services department:

- i) The evidential test - Is there admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction?
- ii) The public interest test - Is it in the public interest to take action?

### **Direct Action**

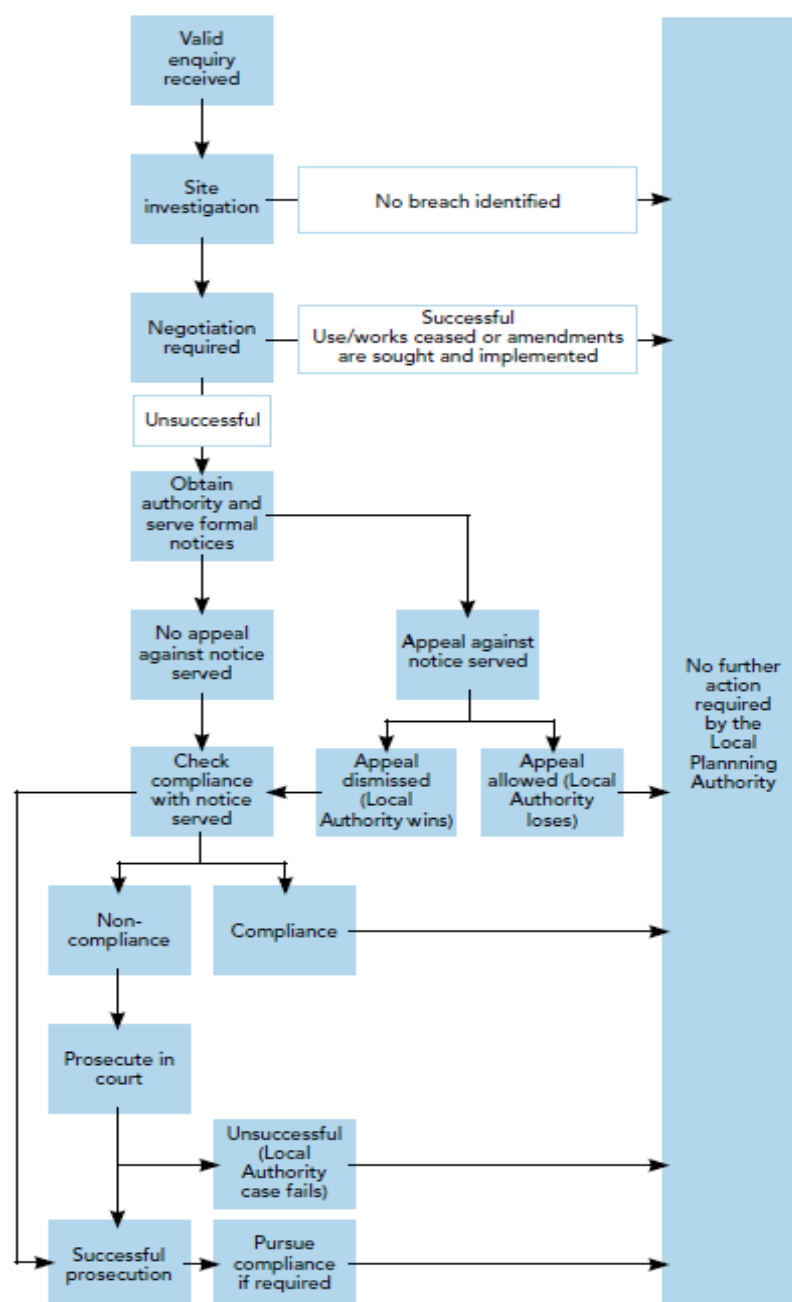
The Council has powers to enter land to carry out works and to make sure an Enforcement Notice or a Section 215 Notice is complied with by carrying out the required steps ourselves. The Local Planning Authority may also recover from the person who is then the owner of the

land any expenses reasonably incurred by them in doing so, either by direct billing or by registering. a charge on the property with the Land Registry. Direct Action is costly, and will only be considered when the level of harm being caused is sufficient to justify the use of limited resources.

### **Injunction**

This is an order of the High Court or the County Court, which can be used to restrain an actual or anticipated breach of planning or listed building control. This power is used where nothing short of an injunction would be effective to restrain breaches. There are compensation implications for the LPA to consider. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

## How the process works





## TARGETS FOR ACTION

The planning service aims to achieve the following targets. The Service will set performance targets depending upon the priorities and resources available to deliver the planning enforcement service:

ACTION	TARGET TIME
Register and acknowledge all written complaints	3 working days
Carry out initial site visit – High priority cases	3 working days
Carry out initial site visit – Medium priority cases	10 working days
Carry out initial site visit – Low priority cases	15 working days
Initial response to complainant setting out progress or informing about a decision in cases where there is no breach	Within 5 working days of the date of the initial site visit
Notify complainant that Enforcement Notice has been served or decision that 'no action' will be taken	Within 5 working days of the issue of the notice or decision to take no further action.

When cases take a long time to investigate, for example where on-going monitoring is required, the Enforcement Officer will update the complainant at each significant stage of the process. This might include consulting if a retrospective planning application is submitted or advising of the compliance date within an issued enforcement notice.

The Enforcement Service will endeavour to resolve enquiries within three months of their receipt. However, where formal enforcement action is required, such as the issue of an enforcement notice, the timescales involved will not make this possible.

## **MONITORING THE IMPLEMENTATION OF PLANNING PERMISSIONS**

It remains the responsibility of individual developers to comply with the terms and conditions set out in their planning permissions. However, failure to comply can affect not only the quality of the environment of the district or the amenity of the neighbourhood and also undermine the reasons and justification for granting planning permission in the first place.

There is no requirement for a developer to notify the Council of commencement of most developments once planning permission has been granted, however we ask that they do so. We are not always aware of when work commences on site and it is of assistance if this is brought to our attention. Due to limited resources, it is not possible for the Council to monitor every planning permission granted. We rely in part on nearby residents and the Town and Parish Councils to let us know if they notice things are not being built in accordance with the approved plans, or if a condition is not being complied with.

Where planning applications have attracted a high level of public interest we will endeavour to monitor the implementation of any permission granted.

## **REVIEWING THE PLAN**

This Local Enforcement Plan will be reviewed every three years or sooner if there is a substantial change in the relevant legislation.