



LOCAL PLANNING ENFORCEMENT POLICY

The Council's policy towards dealing with unauthorised development.

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TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	WHAT YOU CAN EXPECT FROM THE PLANNING ENFORCEMENT SERVICE.....	3
3	DEFINITION OF UNAUTHORISED DEVELOPMENT.....	4
4	THE COUNCIL’S APPROACH TO UNAUTHORISED DEVELOPMENT	4
5	PRIORITIES	5
6	INVESTIGATION OF SUSPECTED BREACHES OF PLANNING CONTROL	6
7	RETROSPECTIVE PLANNING APPLICATIONS	10
8	MATERIAL AND NON-MATERIAL AMENDMENTS TO PLANNING PERMISSIONS	11
9	MONITORING OF PLANNING PERMISSIONS	11
10	CONSIDERATIONS PRIOR TO TAKING ENFORCEMENT ACTION	12
11	TAKING FORMAL ENFORCEMENT ACTION	14
12	TIME LIMITS FOR TAKING FORMAL ACTION	18 ¹⁷
13	FAILURE TO COMPLY WITH FORMAL NOTICES	20 ¹⁸
14	OTHER TYPES OF ENFORCEMENT	22 ¹⁹
15	COMPLAINTS ABOUT THE PLANNING ENFORCEMENT SERVICE	23 ²⁰

1 Introduction

This document sets out the main Planning Enforcement service areas and explains how the Council carries out its enforcement activities. In order to provide the best possible service, the Council must give clear guidance on what it can and can't do, and how the demands on our services are balanced against available resources.

The Council has also published a separate list of frequently asked questions which cover other matters related to Planning Enforcement. This can be viewed on our web site at <https://www.spelthorne.gov.uk/article/17706/Planning-enforcement-FAQs> It should also be noted that the Council has enforcement powers and responsibilities relating to Building Control and Environmental Health matters, Those are not detailed in this Local Planning Enforcement Policy.

2 What you can expect from the Planning Enforcement Service

- A proactive and efficient service for customers seeking advice and information.
- A full range of available powers when conducting investigations (including negotiations and retrospective planning applications) and, where appropriate, immediate action.
- Minimising compliance costs by ensuring that action taken is proportionate to the risks.
- Care taken to work with small businesses and voluntary and community organisations to assist them in meeting their legal obligations without unnecessary expense, where practicable.
- Where appropriate, prosecute individuals or organisations who fail to comply with any formal notice served on them.
- Take direct action having regard to the degree of harm and public safety.
- Carry out our duties in a fair, equitable and consistent manner.
- Consider each matter on its merits and ensure a consistent approach to enforcement resolution.
- Ensure we follow principles of consistency and high standards in each and every case.
- Provide information and advice on the rules applied and publish this as widely as possible.

3 Definition of unauthorised development

Planning permission is required for the erection of many types of buildings and for a material change in use of land or buildings, and to erect some forms of advertisement. There are controls to protect Listed Buildings and trees covered by a Tree Preservation Order. Unauthorised development generally constitutes the following: -

- The erection of buildings or a material change of use without the necessary planning permission.
- The carrying out of development at variance to that given planning permission (and shown on the approved plans)
- The carrying out of development not in accordance with the conditions on the planning permission.
- The display of advertisements without the necessary advertisement consent.
- Felling of, and works to, trees included in a Tree Preservation Order, or in a Conservation Area.
- Demolition of, and alterations to, Listed Buildings and certain buildings in Conservation Areas without the necessary consent.

4 The Council's approach to unauthorised development

The purpose of planning enforcement is to investigate and resolve breaches of planning control and unauthorised development which cause harm to public amenity and the environment.

Enforcing against unauthorised development is a discretionary power and the Council is not legally bound to act. However, the Council consider it essential, where unauthorised development occurs which has harmful consequences either to the environment or to people living nearby or is contrary to planning policy that swift action is taken to prevent it continuing. The nature of the harm arising from unauthorised development will be the primary factor which influences the course of action taken to deal with an issue. Those cases which cause most harm will be prioritised.

The Council will respond sympathetically to those situations where a breach of planning control has genuinely occurred unintentionally (particularly in relation to household development) but will take the necessary steps to resolve any harm arising from the work.

In all, but the most serious of cases, the Council will first seek to resolve the matter through discussion with the owner/person carrying out the work and to avoid any unnecessary formal legal action.

The Council will generally seek to prosecute those people who have felled or damaged a preserved tree or demolished or damaged a listed building.

The Council wishes to support activities which contribute to economic growth and will have regard to the impact of any enforcement action on businesses. It will ensure that the time periods for compliance in any Notice are sufficient to minimise disruption to the business and if possible, avoid any permanent loss of employment.

5 Priorities

To manage resources effectively, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. The priority rating determines the initial response. Dependent on the outcome of that initial response the priority rating may be changed. This is not an exhaustive list, and there may be exceptions.

5.1 Category 1: Serious harm (High Priority)

- Unauthorised demolition of Listed Buildings, ancient monuments and locally Listed Buildings.
- Felling or lopping of a preserved tree or tree in a Conservation Area.
- Where development has started and is subject to planning conditions which are required to be agreed before commencement (e.g. contamination, archaeology, nature conservation or trees).
- Development or breach of conditions likely to cause serious harm/danger to people or amenity.
- Harmful unauthorised development which is about to become immune from any action being taken against it because of the passage of time periods set in legislation.
- Failure to discharge BNG – Biodiversity Net Gain pre-commencement conditions.

5.2 Category 2: Significant and widespread harm to local amenity (Medium Priority)

- Unauthorised development causing significant or widespread harm.
- Breaches of planning conditions causing serious nuisance to adjoining residents.

- Breaches that are contrary to well established planning policies such as Green Belt.
- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours.

5.3 **Category 3: Other**

- Breaches of a technical nature and not in significant conflict with planning policy
- Breaches which are temporary and unlikely to result in any long-term harm.
- Advertisements not included above.
- Breaches of other planning conditions.
- Other changes of use including HMOs (which are not permitted development)
- High hedges.
- Unauthorised pitching of caravans.
- Businesses being operated from home.
- Development not in accordance with the plans during the build process.

Individual cases may be re-prioritised as the investigation progresses.

To ensure that an adequate overall service is provided resource allocation will be periodically reviewed. The quality of evidence and support provided by complainants can also impact on the outcome of an investigation, and where such support is likely to increase the chances of a successful outcome, the matter will be prioritised.

6 Investigation of suspected breaches of planning control

6.1 **Making a complaint or an enquiry**

To start a planning enforcement investigation, you can contact us by any of the following methods: -

- Completing the standard form on our web site:
<http://www.spelthorne.gov.uk/planningenforcementcomplaintform>
- Email at planningdm@spelthorne.gov.uk

- By letter to Planning Enforcement, Spelthorne Borough Council, Council Offices, Knowle Green, Staines Upon Thames, Surrey, KT18 1XB.

When complaints are received, they are recorded on our database with a unique reference number so they can be monitored, and the complainant updated on progress.

So that your enquiry can be processed efficiently the following information should be provided: -

- Name and contact details of complainant.
- Full address of the alleged breach of planning control.
- Nature of the breach and the harm it may be causing.

To avoid unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be pursued unless other evidence suggests that the breach is causing serious harm to the environment or the amenities of residents. Confidentiality of a complainant's identity will be safeguarded unless it is necessary for the complainant to give evidence at an appeal.

We will aim to acknowledge receipt of any complaint within 5 working days and to provide an initial response on the actions we are taking within 10 working days

After receipt of a complaint initial research will be carried out, and a site visit may be required to establish whether or not a breach of planning control has occurred.

The initial site visit (where necessary) will be conducted within the following timescales:

- High priority cases – within two working days
- Medium priority cases – within five working days
- Low priority cases – within ten working days

There will be exceptions to this, particularly in very urgent matters.

These timescales allow officers to carry out research before visiting a site. If carrying out the initial site visit within these time frames is problematic on a specific case the officer will notify the complainant.

On completion of the initial site visit, the findings will be assessed by the Officer, and a view taken as to how the investigation will proceed, which may include taking legal advice.

6.2 **Cross Service Enforcement**

In the event of an issue being reported to multiple services, for e.g. Environmental Health and Planning Enforcement, the other service is then consulted to determine the most efficient and expedient action to take to resolve the issue. Usually this will mean after initial investigation, one service takes the lead and carries out enforcement action as and when it is expedient to do so. For example, it may mean that one service has more effective powers in legislation than the other and so takes the enforcement lead.

In certain instances, it is recommended to carry out a joint investigation. However, resourcing will be taken into consideration to ensure it is essential and effective.

6.3 **Right of Entry**

The Planning Enforcement Officers are authorised to act on the Council's behalf and have a right to enter land and buildings without warrant for the purposes of making inspections, surveys and examinations as required, pursuant to any statutory planning related powers of the Council.

Section 196A and section 324 of The Town and Country Planning Act 1990 and section 88 of The Planning (Listed Buildings and Conservations Areas) Act 1990 identify those powers giving rights of access.

6.4 **If no breach of planning control is established**

A significant number of investigations are closed as there is no breach of planning control established. For example:

- There is no evidence to substantiate the allegation.
- Development has taken place but planning permission is not required (usually because it is permitted development)
- Planning permission has been granted or an application is in progress.

Where this is the case, the complainant will be notified that no further action will be taken, either verbally or in writing, within 10 working days of the initial site visit

6.5 **Where further investigation is required**

There are cases where the initial site visit does not provide sufficient evidence to prove whether a breach of planning control has taken place such as business operating from home and breaches of hours conditions, and further investigation is required. In these cases, the complainant will be notified within 10 working days of the initial site visit that further investigation is required. If they are unwilling to help, it may not be possible to take further action due to insufficient evidence.

A Planning Contravention Notice can be served to obtain information relating to the suspected breach, which can take time.

A person on whom notice is served has 21 days to respond. Therefore, it may be several weeks until the appropriate evidence can be collected.

6.6 Where there is a breach of planning control

When a complaint is received the case officer will check to see if there is a breach of planning control and that legislation allows us to take action. Each case is judged on its individual merits. In some cases, although a breach of planning control has been identified it is not possible for the Council to take action because it has been occurring, or in existence, for a long period of time and is immune from Enforcement action.

In most cases it is not possible to take action against buildings and structures which have been erected without consent if they have been in existence for more than **10 years (or 4 years prior to 25 April 2024)**. Similarly, a change of use of a building or land without permission, or the breach of a planning condition imposed on a permission, will be immune from enforcement action if it has occurred for more than 10 years.

6.7 Negotiation

Where it is considered that the breach of planning control is unacceptable Officers will initially attempt to negotiate a solution without going straight to formal action unless the breach is causing significant harm. Negotiations may involve scaling down or stopping an unauthorised use or activity or changing or removing the unauthorised development.

Where negotiation is not an acceptable solution, or it is clear at the outset that the breach is not capable of being resolved, formal enforcement action will proceed where it is expedient to do so. Service of a temporary stop notice may be appropriate to prevent the breach becoming worse.

6.8 Not expedient to pursue formal action

There are cases where it would not be 'expedient' or worthwhile for the Council to take enforcement action. Expediency is a test of whether the unauthorised activities are causing serious harm, and the officer investigating the case will consider this. The outcome of this consideration will generally inform the course of the investigation. Taking formal enforcement action is only one option with other courses open to the Council. Examples of where it may not be expedient to take action are as follows:

- A technical breach of planning control is so minor that it has no, or very little, impact on amenity.
- The work carried out is only marginally in excess of that allowed under permitted development and the increase causes no harm ie. a fence

has been erected and is only a few centimetres above the normal allowance of 2m (where it does not front a road).

- Where building work or a change of use has taken place, but it is clear that retrospective planning permission is likely to be granted.

Although development should not be carried out without first getting planning permission, an enforcement notice should not be issued solely to regularise development which is acceptable in planning terms, but for which permission has not been sought. In these cases, the Council will ask for an application.

It is generally regarded as unreasonable for a Council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the building works/use.

Where officers conclude that it is not expedient to take action the case will be closed (with a reasoned justification).

Action taken should be proportionate to the breach. Many technical breaches of planning control are investigated (e.g. a fence or a rear extension slightly higher than permitted development). In such cases it would be unreasonable to require the removal of an entire building or fence where a slightly lower structure could be put up without planning permission.

We will work with owners to resolve situations, but ultimately it is unlikely that formal action could be warranted in the case of a technical breach.

7 Retrospective planning applications

In some cases, unauthorised development may be rendered acceptable by the imposition of appropriate conditions on a planning permission. For example, a change of use to a restaurant may be acceptable in principle but give rise to concerns about late opening hours. Rather than take formal action against the use, it would be appropriate to request a retrospective application which if, having assessed the detail and taken into account the views of consultees, was found to be acceptable, could be granted permission subject to a condition restricting hours of use.

A retrospective application is processed in the same way as a standard planning application. This allows third parties to be formally consulted and make their views known. In addition to those adjoining the site, the Council notify anyone who originally complained about the unauthorised work. The fact that the development has already been carried out in part or full can have no bearing on the Council's decision on the application.

The Council will specify a time period in which a retrospective application must be submitted. The period given will vary from case to case but will reflect the complexity in preparing such a submission. Periods of 28 or 56 days are often given. If no application is submitted the Council will consider the expediency of taking further action, taking into account any harm arising from the breach (and

lack of conditions imposed on a planning permission to control it). It may become necessary to serve an Enforcement Notice.

If the development is unlikely to receive permission the Council will not encourage the submission of a retrospective application, although there remains a right to make such an application. Unless the Council has served an enforcement notice prior to the submission of the retrospective application (which relates to those matters sought permission in the application) the Council is duty bound to consider it.

The Council will, generally, refuse to process retrospective applications which are submitted after serving of an enforcement notice unless entertaining the application is likely to result in an amended proposal which overcomes the reason for serving the notice.

8 Material and non-material amendments to planning permissions

Development should be completed strictly in accordance with the approved plans, which form part of the planning permission. Following the grant of permission applicants often wish to make variations. Sometimes, because of problems during the construction process or a change in the client's wishes. The Council's approval is required for any changes from the approved plans, and this should be sought before work is carried out. Sometimes, however, changes occur without the Council's prior approval.

Where these alterations are materially different from the permission a new application for the whole development will be required

Where the scale and nature of the alterations results in a development that is not substantially different from the one that has been approved, a "minor material amendment application" will be invited which, in effect, seeks permission for the changes proposed rather than the whole scheme again. The Council will consult adjoining properties in the consideration of these types of application and take into account any representations submitted.

Where the changes proposed are extremely minor (such as the omission of a window or reduction in the size of an extension) the Council will request the submission of a "non-material amendment". This is also subject to a fee but will usually be considered by exchange of letter and without notification to neighbouring properties.

9 Monitoring of planning permissions

It is not practical or proportionate to monitor all planning permissions granted by the Council, and all development carried out as permitted development. Most development occurring in the Borough is in built up areas close to adjoining properties and the majority of alleged breaches of planning control

are reported by people living close to development. Most of the Council's planning enforcement officers time is spent resolving reported breaches.

Compliance with pre commencement conditions is also checked. In addition, planning officers will, as resources allow, check sensitive development at key stages of construction and on completion of the development.

With the advent of the new Biodiversity Net Gain (BNG) legislation, applicants will be required to deliver 10% "Biodiversity Net Gain" when building new housing, industrial or commercial developments. This commenced on 12 February 2024 for major development and from 3 April 2024 for minor developments. Documents will need to be submitted as part of a planning application, including a metric detailing how a 10% net gain will be achieved. Developers are required to achieve all of their BNG on site. If this cannot be achieved on-site, they can deliver through a mixture of on-site and off-site. Developers can either make gains on their own land outside the development site or buy off-site biodiversity units on the market. If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. This should be a last resort. There will be a pre commencement condition on any granted planning permission. This means that before any development begins, applicants need to provide a biodiversity net gain plan to show the existing and proposed biodiversity values of their sites. A strategy of monitoring compliance of BNG is currently being formulated within the Council, however, checking that a pre commencement condition has been discharged before development is implemented will fall to the Planning Enforcement Team.

10 Considerations prior to taking enforcement action

Several factors must be taken into consideration prior to any enforcement action.

10.1 Human Rights Act 1998

When deciding whether or not to take enforcement action, the Council will pay due regard to the Human Rights Act 1998 and, in particular, to the requirement not to act in a way which is incompatible with any relevant Convention rights which are the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property. These rights are qualified rights which means that, when considering enforcement action, the Council will balance the rights of those who may be in breach of the planning legislation against those affected by the breach, including the community at large.

10.2 Public Sector Equality Duty (Equality Act 2010)

10.2.1 A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2.2 For the purposes of the provisions of this Section, pregnancy and maternity, age, gender reassignment, disability, race, religion or belief, sex and sexual orientation are all protected characteristics. That question in every case is whether the decision maker has in substance had due regard to the relevant statutory need, to see whether the duty has been performed.

10.2.3 The Council's obligation is to have due regard to the need to achieve these goals in making its decisions. Due regard means to have such regard as is appropriate in all the circumstances.

10.2.4 The Council must consider if formal enforcement action to remedy harm is wholly appropriate and proportionate. If a breach of planning control has occurred and requires further investigation, then the subsequent investigation must be proportionate.

In any event, if human rights or public sector equality rights are potentially affected, the Council must consider that the public interest factors outweigh any potential interference.

10.3 Corporate Priorities and Values

The Council takes the following corporate priorities and values into consideration when determining the expediency of enforcement action against unauthorised development and changes of use.

The priorities for the 2024 - 2028 focus on:

- C** - Community
- A** - Addressing housing need
- R** - Resilience
- E** - Environment
- S** - Services

Our values, ethos and ways of working will inform and underpin everything that we do:

- P** - Pride in our Council, communities, and Borough
- R** - Responsive and respectful
- O** - Open and accountable
- V** - Value for money
- I** - Integrity
- D** - Dependable
- E** - Empowering and inclusive

The Environment priority now includes the implementation of Biodiversity Net Gain (BNG) obligations, which in turn means the Planning Enforcement team will now investigate and enforce against non-compliance with BNG planning conditions.

Our priorities and values are outlined in more detail in the Corporate Plan 2024 – 2028 which can be found here:

<https://www.spelthorne.gov.uk/corporateplan>

10.4 **Financial Implications**

In taking enforcement action the Council must consider the financial implications in doing so. The Council must first determine that there is a specific breach of planning control and that the harm caused far outweighs the cost of rectifying the breach.

The Council must also consider the likelihood of recuperating costs from the recipient of the enforcement action. Could POCA (Proceeds of Crime Act) be applied?

The Council must exhaust all means of negotiation for a resolution to the breach prior to commencing any costly enforcement action.

Planning enforcement is not statutory. However, we have a duty to investigate planning breaches, and it is only the taking of further action that is discretionary.

11 **Taking formal enforcement action**

11.1 **Enforcement Notice**

Enforcement Notices can be served where development or a change of use has taken place without permission, and it is considered expedient to do so. They are served on the owner, occupier and any other person with an interest in the land and must set out what is expected to happen (for example demolishing a building or stopping a car repair workshop) in order to:

- Ensure development complies with the terms of any planning permission granted
- Stop the use of the land or restore it to the condition it was in before the breach took place
- Ensure that development does not have an adverse impact on amenity

A notice will specify a timescale for works to be carried out, and it comes into effect a minimum of 28 days after it is served. There is a statutory right of

appeal to the Planning Inspectorate against the notice during this period. Once the Planning Inspectorate has received a valid appeal, the enforcement notice has no effect until the appeal has been determined.

Any appeal may include one or all of these grounds:

- a) Planning permission ought to be granted
- b) The development or change of use has not taken place
- c) The development or change of use does not need permission
- d) The development or change of use is immune from action (e.g. been in place or operating too long)
- e) The enforcement notice(s) were not served correctly
- f) The works/action to be carried out are excessive
- g) Not enough time has been allowed for the works/action to be carried out

Given these rights of appeal it is important that all relevant matters are taken into account before serving an enforcement notice. This includes being clear about:

- What the specific breach is (e.g. building is too high, in the wrong place, agricultural building being used for industrial purposes)
- What must be done to set it right (e.g. reduced height, demolish and re-build, stop the use)
- How long is given for the works/actions to be carried out (e.g. three months, 12 months).

If the breach of planning control relates to a listed building or unauthorised demolition within a conservation area, the expediency of serving a listed building enforcement notice or a conservation area enforcement notice will be considered. Where appropriate prosecution in the Courts will be commenced.

All enforcement notices are placed on the Council's enforcement register which is available to view on the Council's website.

11.2 **Planning contravention notice (PCN)**

This is often served prior to serving an enforcement notice. It can be served on the owner or occupier of the land in question, or a person who is carrying out operations or using the land. The PCN gives those people 21 days to provide the information which the Council has asked for. If they do not give the information they can be prosecuted (~~maximum fine of £1,000~~). ~~To knowingly provide false information on a PCN can result in a fine of up to £5,000.~~

11.3 Other requisition for information notices

The Council can require anyone who receives a requisition for information notice to supply, in writing, details of their interest in a property and details of anyone else having an interest in the property. A reply must be supplied within 14 days. Failure to comply with the requirements of a notice or makes a false statement in a reply is an offence punishable by a fine ~~of up to £5,000.~~

The Council can also require those individuals to state in writing the nature of their interest in a property and the name and address of any other person known to them as having an interest in the property, such as a freeholder, mortgagee, lessee or otherwise. Failure to return the form or to provide an untrue statement is an offence punishable by a fine ~~of up to £1,000.~~

11.4 Breach of condition notice (BCN)

This can be served where a planning condition has not been complied with. The type of condition which has been breached has to be taken into account (e.g. windows are not obscure glazed or contaminated land conditions have not been complied with), and what should be done to correct the situation. Once issued the notice does not take effect for 28 days.

A BCN has to set out what is required to ensure compliance with the condition and by when. There is no appeal against a BCN and therefore it can be more expedient than issuing an enforcement notice. Failure to comply with the notice is dealt with by a prosecution in the Magistrates Court (~~maximum fine is currently £2,500~~). The BCN is ideal for matters where the steps to be taken are relatively simple and can be readily achieved.

11.5 Stop notice

A stop notice may be served where urgent action is necessary to stop a relevant activity before the end date of the related enforcement notice.

A stop notice must be served at the same time or after the service of an enforcement notice.

The stop notice must refer to the enforcement notice, specify the activity or activities that have to stop and set the date when it comes into effect. Failure to comply with the notice is an ~~offence (maximum fine on summary conviction is £20,000)~~. The Council must consider the use of stop notices carefully as they carry with them significant statutory compensation provisions.

11.6 Temporary Stop Notice (TSN)

A TSN can be issued without an enforcement notice and is designed to halt breaches of planning control for a period of up to **56 days for both listed and non-listed buildings and uses**. This comes into immediate effect and is used to

stop work and to see if issues can be resolved within a limited timescale. These are most often served where a development has started but conditions on the planning information requiring further action before commencement have not been complied with (e.g. a contaminated land investigation and mitigation measures have not been agreed).

Whilst TSNs also carry some compensation provisions these are significantly lower than with a stop notice and therefore the risk to the Council is reduced.

11.7 Section 215 notice

In cases where the amenity of an area is adversely affected by the condition of land or buildings a Section 215 Notice (untidy land) may be served. This will set out what is expected to happen (e.g. remove building materials/shrubs/board up windows), when it needs to be done by, and the date the notice takes effect.

A Section 215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.

11.8 Enforcement Warning Notice

From 25 April 2024 Local planning authorities have been able to issue Enforcement Warning Notices (EWN). This is a procedure for an authority to request a planning application, where it appears there has been a breach of planning control and there is a reasonable prospect that planning permission relating to the breach would be granted. Such requests are routinely made at present, but can now be given a more formal footing.

Issuing an EWN 'stops the clock' on immunity and can reduce the number of appeals for 'acceptable' developments when an enforcement notice has been issued.

11.9 Development Commencement Notice

From 25 April 2024 s93G of the Town and Country Planning Act 1990 introduced Commencement Notices. Before the development has begun, the person proposing to carry it out must give notice (a 'commencement notice') to the LPA, specifying when they propose to commence the work.

Where it appears to the LPA that a person has failed to comply with the requirements set out above, they may serve a notice on any relevant person, requiring the relevant information to be submitted to the LPA.

If a notice is served by the LPA, requiring the information to be provided to it, and the relevant person fails to give that information within 21 days, they shall be guilty of an offence.

This allows the LPA to formally record the commencement of developments.

11.10 Completion Notice

From 25 April 2024 s93H of the Town and Country Planning Act 1990 introduced the Completion Notice.

This applies where a planning permission has been granted for development and is subject to the 'commence within 3 years' condition, and this condition was complied with, but the development has not been completed.

If the LPA are of the opinion that the development will not be completed within a reasonable time period, then they may serve a notice ('completion notice') stating that the planning permission will cease to have effect at a specified time ('the completion notice deadline').

S93I deals with the criteria for appeals against a Completion Notice.

The effect of a completion notice is that the planning permission to which the notice related becomes invalid at the completion notice deadline (whether as originally specified or substituted on appeal under section 93J).

12 Time limits for taking formal action

Where a breach of planning control involves building operations and has been ongoing for more than 10 years the Council cannot serve a notice. For example:

- Extensions to dwellings
- New buildings
- Laying hardstanding
- Change of use of any building to a single dwelling
- Unauthorised changes of use and breaches of conditions

The Council are not able to take action on anything beyond the 10 years period, and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) and, if the evidence is clear, they can 'regularise' the situation. However, it should be noted that even if a use is lawful, it does not mean that the Council would have granted planning permission if this has been applied for before the development/change of use had taken place.

Serving an enforcement notice in respect of a particular development 'stops the clock' in relation to the time limit. Therefore, where the Council consider a breach may be close to the 10 year time limit, it may seek to take urgent enforcement action to prevent such a development or use becoming lawful

The Localism Act 2011 introduced enforcement powers in relation to time limits which allows Councils the possibility to act against concealed breaches of planning control even after the usual time limit for enforcement has expired.

13 Failure to comply with formal notices

Where a notice has been served and has not been complied with there are three main options available to the Council.

13.1 Prosecution

Prosecution proceedings can be instigated against any person who has not carried out the works expected of them and where the end date for compliance/action has passed. This may be in relation to any of the following Notices:

- enforcement notice
- listed building enforcement notice
- conservation area enforcement notice
- breach of condition notice
- section 215 notice
- stop notice

Cases involving unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area also constitute an offence in their own right. Consideration of whether it would be expedient to prosecute for these works rather than issuing a notice will be given on a case-by-case basis.

Before commencing any legal proceedings, the Council needs to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the action taken is in the public interest.

13.2 Direct action

Where any works/actions required by an enforcement notice or section 215 notice have not been completed within the time period (other than stopping the use of a piece of land), consideration will be given whether it is expedient to enter the land and undertake the works (e.g. Demolish the building and recover from the owner of the land, any expenses reasonably incurred by them in doing so).

In most cases the Council will seek to prosecute the failure to comply with a notice before seeking to initiate direct action.

13.3 Injunction

Where an enforcement notice has not been complied with and, because of the special circumstances of the case, either direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an Injunction.

An injunction can also be applied for where there is clear evidence that a breach of planning control is anticipated but has not actually occurred. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing or likely to cause exceptional harm (e.g. materials for hard standing being put on a site and services being laid).

13.4 POCA – Proceeds of Crime Act

The Proceeds of Crime Act 2002 (“POCA”) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place.

The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime (planning and non-planning related) and disrupt and deter criminality.

With regard to planning enforcement the Council will consider requesting a confiscation order if it is considered expedient to do so.

The Crown Court must consider making a confiscation order against a defendant under Part 2 POCA if:

- a) the defendant is convicted of an offence or offences in the Crown Court, or has been committed to the Crown Court for sentence or to be considered for a confiscation order; and
- b) the prosecutor requests that the court consider making a confiscation order, or the court believes that it is appropriate to consider making a confiscation order.

14 Other Types of Enforcement

14.1 Advertisements

The display of advertisements without consent is an offence the Council can prosecute against without the need to issue a notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so may result in further action being taken without further correspondence.

The Council is also able to remove or obliterate posters and placards and will consider using these powers as appropriate

The Localism Act 2011 introduced provisions in respect of dealing with advertisements. These are Removal Notices, Action Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court.

14.2 Removal notices

The Council can seek removal of any structure used to display an advertisement and where the notice is not complied with can remove the structure and recover the cost of doing so.

14.3 Action notices

Where there is a persistent problem with unauthorised advertisements an Action Notice can be issued specifying measures to prevent or reduce the frequency of the display of advertisements. Where the notice is not complied with the Council may remove the structure and recover the cost of doing so.

14.4 Power to remedy defacement of premises

Where a sign is readily visible from an area where there is public access and is considered to be offensive or damaging the amenity of the area, a Notice may be issued requiring the removal or obliteration of the sign. As with the above provisions failure to comply with the notice will allow the Council to undertake the works in default and recover costs (except where it relates to a flat or house or is within the curtilage of a house).

14.5 Trees

Legislation protects trees, which are the subject of Tree Preservation Orders (TPOs) or are within a Conservation Area, from felling or other works without permission. Such works are an offence and prosecution without a notice can take place. However, such action would not remedy the harm caused.

Where a tree covered by a TPO has been removed a notice requiring an appropriate replacement tree to be planted can be issued.

14.6 High hedges

From 1 June 2005 Councils have had the power to deal with disputes over high hedges where all reasonable steps to resolve the issue have been taken by the relevant parties. In cases where we find in favour of the complainant we will ensure, through enforcement action, if necessary, that any specified schedule of remedial works is carried out.

15 Complaints about the Planning Enforcement Service

If you feel that there is unreasonable delay with an enforcement investigation, or you believe there is an error in the way an investigation is being carried out, please inform the Planning Enforcement Officer dealing with your case so that they may respond or take the necessary action.

If you remain dissatisfied with the service, it is open to you to make a formal complaint. Please remember that the complaints procedure does not apply to matters that are directly related to a Council or Panel decision. You can, of course, contact your local Councillor at any time.

If you remain dissatisfied, you may write to the Local Government Ombudsman and information on how to do this will be given to you by the Group Head of Corporate Governance. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and will deal only with matters relating to the conduct of the investigation.

16 Minor Amendments

Minor amendments to the Local Planning Enforcement Policy shall be approved by the Planning Development Manager in consultation with the Chairman of the Environment and Sustainability Committee.