

Devon County Council Local Enforcement and Monitoring Plan

Adopted 4th June 2014



**Devon County Council
Local Enforcement and Monitoring Plan**

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1. PURPOSE & LEGAL STATUS OF THE PLAN

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

The Council's planning enforcement function is the responsibility of the planning group of the Planning, Transportation and Environment Service. The Council receives approximately 30 planning enforcement complaints each year, and has a statutory duty to ensure that these complaints are investigated and the appropriate action taken.

This Plan does not affect the discretion of the Council to take formal action, including legal proceedings where this is considered to be in the public interest.

2. KEY PRINCIPLES OF PLANNING ENFORCEMENT & SCOPE OF DUTIES

Devon County Council has a commitment to protect and enhance the environment for the benefit of all residents and businesses in the area as well as the intrinsic value of Devon. The Council can give effect to this commitment through the exercising of its powers as a County Planning Authority for Minerals and Waste development to investigate and where appropriate to take action in the public interest to remedy breaches of planning control.

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

Public Interest

The enforcement of planning control is operated in the public interest. It is not the role of the Council to protect the private interests of one party against those of another, unless these also coincide with the public interest. The Council therefore cannot intervene in private civil disputes such as breaches of restrictive covenants, boundary disputes or disputes that relate to damage to or reduction in value of land or property. Nor is it the role of planning enforcement to act punitively against breaches of planning control, to punish minor or trivial breaches which do not demonstrably harm the public interest.

The Council will need to ensure that any responses to breaches of planning control are proportionate and have regard to the extent to which the public interest is protected by a decision to take, or not to take, action.

What can we investigate?

The County Planning Authority is responsible for the investigation of alleged breaches of planning control in relation to mineral and waste development only.

Whilst Devon County Council is able to determine planning applications for its own development any formal enforcement action relating to any development it carries out will need to be taken by the relevant District / City / Borough Council.

Alleged Breaches of Planning Control

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

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

The definition of development is set in Section 55 of the Town and Country Planning Act 1990 (as amended).

'Development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

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

'Development' does not include works to trees or hedgerows unless the tree or hedge is subject of a condition attached to a planning permission.

Concerns regarding works to trees in a conservation area or trees covered by a Tree Preservation Order will be referred to the relevant District Council's Tree Officer.

3. INVESTIGATING BREACHES OF PLANNING CONTROL AND PRIORITISING WORK

Investigating Breaches of Planning Control

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

All allegations will be investigated in an equitable, timely, consistent and open manner in accordance with this Plan.

Initial History Check

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

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

Site Visit

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

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Powers of Entry

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

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

Officers do not have powers to force entry into any dwelling house. Where appropriate, officers will leave a note requesting the occupier of the land to contact the Council. In the event admission to a dwelling house is reasonably required, 24 hours' notice of intended entry will be given to the occupier of the dwelling.

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

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

Gathering Evidence

Officers will make a reasonable attempt to gather evidence and determine whether a breach of planning control has occurred for all allegations received. In most cases a 'reasonable attempt' will consist of an appropriate number of site visits at days and/or times deemed most suitable to the nature of the complaint. This approach ensures that the Council's limited resources are used efficiently.

Whilst on site, officers may ask questions of any present occupiers, and may take photographs or measurements. Photographs will be taken on the site at the discretion of the officer investigating the complaint, but particularly in instances of an apparent breach of planning control. Photographs may later be produced as evidence in appeal or legal proceedings. Whilst these may be scanned or reprinted these will be exact copies of the original and in all such instances, these will be signed and dated. In all cases photographic and other evidence must be gathered in accord with the legal requirements in place.

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

Sources of Information

The County Monitoring Officer and planning officers will use both internal Council sources and external sources to gather information and/or evidence, where necessary, when assessing an alleged breach of planning control.

Due regard will always be paid to the Data Protection and Freedom of Information Acts when using information from other records. Information from other sources will not be provided to third parties or

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the public, but may need to be disclosed in the event of an appeal or legal challenge to appropriate parties. Any enquiries for this information will be directed to the relevant record keeper.

Initial Assessment

Following the first site visit and the review of all available relevant documents; in the majority of cases, an initial assessment of the allegation will be carried out.

The Initial Assessment will conclude:

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

The investigating officer will produce a report detailing the recommended action to be taken and this will be agreed with the Planning Development Manager or Chief Planner or County Solicitor as appropriate. The investigating officer will then prioritise the subsequent investigation.

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

Immunity from Planning Enforcement Action

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

Breaches of planning control will become lawful by the passage of time. When this occurs the breach is immune from enforcement action and the Council is unable to remove or mitigate the development. Immunity from enforcement action for all building and engineering operations occurs four years from the date the development was substantially completed. The four year rule also applies to any breach of planning control that involves the change of use of any building to a dwelling house. All other breaches of planning control are subject to immunity after 10 years have passed.

Legislation covering listed buildings does not include an immunity period; therefore action can be taken at any time, subject to expediency considerations, where it is found that unauthorised works harm its character as a building of special architectural or historic interest. The responsibility for enforcement relating to breaches concerning listed buildings rests with the District / City / Borough Councils.

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

Request for Further Information

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

The Council has powers to issue Planning Contravention Notices; Section 16 Notices; and Section 330 Notices (see below). These oblige the recipient to provide the requested additional information.

Planning Contravention Notice

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

Section 330 Notice

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

Section 16 Notice

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

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

Prioritising Allegations

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

Highest Priority

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

4. DECISION MAKING PROCESS

Expediency

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

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

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

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

An 'expediency' test will usually involve the planning officer assessing:

- If the breach is in accordance with the policies of the development plan.
- If had a planning application been submitted before the development occurred, permission would have been likely to have been granted.
- If the breach unacceptably affects public amenity.
- If the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
- If action would be proportionate with the breach to which it relates.
- If action would be in the public interest.
- If the breach is against any other material planning considerations.

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

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

Material Planning Considerations

Material planning considerations include the following:

- Visual impact on the surrounding area;
- Loss of privacy to neighbouring occupiers;
- Development overbearing to neighbouring occupiers or the area;
- Loss of daylight/sunlight;
- Creation of nuisance such as noise or smells;
- Increase in traffic or unsafe access;
- Health and safety concerns;
- Harm to nature conservation interests;
- Harm to Historic Environment interests
- Crime (or fear of crime);
- Economic impact of the development;
- Related previous or pending planning decisions;
- Cumulative impact of development;
- Personal factors (only in exceptional circumstances);

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

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

5. MONITORING

The National Planning Policy Framework published in March 2012 (paragraph 207) states that; 'Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area'. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so'.

The Purpose of Monitoring

The County Council has the responsibility for monitoring minerals and waste sites and the County's own developments. Monitoring is undertaken for two reasons firstly, to ensure compliance with the terms of planning permissions including conditions and legal agreements and secondly, to ensure that unauthorised developments are regularised or removed. The monitoring of sites is undertaken by both the County Monitoring Officer and the planning officers.

The County Monitoring Officer fulfils specific specialist monitoring duties allowed for by the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 and routinely monitors the conditions on landfill and quarry sites. Minerals and Waste Planning Authorities are able to recover costs incurred in the routine monitoring of minerals and landfill sites. At present the national fee set by Government is £331 per inspection for active sites and £110 for dormant sites. The decision on the frequency of the visits rests with the Council. The Regulations restrict visits to a maximum of eight in any charging year, and Government guidelines suggest four visits. The County Monitoring Officer aims to visit each active site at least once a year, but this is subject to other time constraints caused by investigating complaints and enforcement. Additional inspections made in response to a specific complaint are not chargeable, but in the event the complaint is substantiated there may be an increase in the frequency of visits.

The number of sites falling within this regime in Devon is currently (2013):

- 43 minerals sites
- 17 landfill sites
- 84 inactive sites

The Council will continue to monitor all relevant sites, irrespective of whether they are able to recover the cost of monitoring, to ensure compliance with the terms of planning permissions and encourage good practice.

Since the appointment of the County Monitoring Officer in 2007 an average of 70 routine visits have been carried out each year. Following each chargeable visit a Monitoring Report is produced describing current activity, highlighting non-compliance issues and actions required to be undertaken by the Operator.

The Council will also monitor other sites not subject of the routine monitoring regime and this includes other forms of waste management, such as recycling plants or composting sites, and monitoring of the County Council's own development such as schools and highway developments.

The monitoring regime demonstrates a pro-active approach to the Council's commitment to protect and enhance the environment and a reassurance to the public that development does take place within the established Government legislation guidelines.

Monitoring Programme

The frequency of routine monitoring visits for minerals and landfill sites is determined on a case by case basis and monitoring visits for other sites is selected according to the following criteria:

- Objections – If an objection has been raised at the application stage then the potential for further complaints is often greater. Targeting cases where objections have been raised previously should increase the credibility of the service and reduce the potential for reactive complaints.
- Pre-commencement conditions – These conditions are sometimes ignored and subsequently not discharged. Securing compliance with these conditions maintains the validity of the permission enhances the credibility of the service and reduces the potential for reactive complaints.
- Other Conditions – Relating to requirements to submit details within timescales (eg landscaping) NS ongoing requirements for the life of the site (eg hours of operation).
- Reactive Monitoring – Where a complaint has been received alleging non-compliance with a plan or condition and development has only recently commenced it may be deemed advantageous for the development to be closely monitored
- Officer Recommendation – planning officers may identify particular reasons (complaints, unique conditions, historic enforcement issues etc.) that make a particular site one that might benefit from the regular visits..

Initial Visit

For non-routine monitoring visits the officer will normally contact the applicant or agent prior to the visit taking place, although it is considered good practice for planning officers to make brief site visits if they happen to be in the vicinity of the area. For planned visits the officer should have copies of the relevant approved plans and details of any outstanding conditions. Initial site visit objectives are to:

- Meet and establish communications with the applicant/developer.
- Establish that the development is taking place in the right position as shown on the approved plans.
- Discuss any issues arising and advise of nature of further visits.

Following a monitoring visit the officer will make a note on the electronic planning application file.

Works in Breach of Planning Conditions

Contravening works or breaches of condition should be drawn to the attention of the operator/builder/owner as soon as is practicable. Where there is little or no harm arising, solutions may be achieved through negotiation and submission of a non-material amendment application. Material changes from the approved plans, irrespective of harm, might require the invitation of a S73 (variation of planning condition) application. Significant changes may require the submission of a fresh planning application

Where unacceptable development is not rectified, the officer will consider the expediency of formal enforcement action in accordance with this Plan.

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Closure

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

- Been completed wholly in accordance with the plans and conditions
- Been completed subject to changes to the plans and/or conditions approved as non-material amendments
- Been completed subject to changes in the approved plans and/or conditions approved as minor material amendments
- Been completed in accordance with a revised application
- Been completed and now complied with any formal enforcement action
- Been completed not in accordance with the plans and conditions where the officer has determined it is not expedient to take enforcement action.

6. USE OF PLANNING ENFORCEMENT POWERS

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

The planning officer will initially attempt to resolve the breach of planning control via negotiation; with the exception of some highest priority cases which are causing immediate and irreversible harm. If reasonable negotiated attempts to resolve the breach fail, where expedient, formal enforcement action will be issued without undue delay.

Enforcement options

Negotiation	<p>Government guidance supports negotiation as the most appropriate initial resolution tool. Time may be given to remedy the breach or justify its retention. Such cases may include situations where there is no demonstrable harm and is not so serious as to warrant immediate action or where it may be justifiable by some other benefit.</p> <p>Following the serving of formal notices the Council will continue to negotiate to try and resolve the breach of planning condition.</p>
Planning Contravention Notice	<p>This Notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. Failure to properly respond to this Notice is an offence with the risk of a fine of up to £1000.</p>
Enforcement Notice	<p>These will be the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response.</p> <p>An Enforcement Notice will require actions to be taken and a timetable for the completion of the required actions.</p> <p>The Notice can be appealed within 28 days to the Planning Inspectorate who will dismiss or uphold the appeal. Costs may be awarded to either party.</p> <p>Once in effect; failure to adhere to the Notice is an offence with the risk of a fine of up to £20000.</p> <p>The planning authority has the discretion to "under enforce" on an Enforcement Notice once it comes into effect.</p>

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Breach of Condition Notice (BCN)	<p>These can be used in addition or as an alternative to an Enforcement Notice where the unauthorised activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can be used to secure complete compliance with planning condition “under-enforcement” is not an option. Also as there are no powers to enter the land and carry out the works, prosecution is the only means of ensuring compliance with the Notice</p> <p>Failure to comply with such a Notice is an offence with the risk of a fine of up to £2500.</p>
Temporary Stop Notices	<p>A Temporary Stop Notice can be issued to seek immediate cessation of the breach of control.</p> <p>Unlike a Stop Notice it does not require an Enforcement Notice to be served first. It is only valid for a period of 28 days, by which time the Planning Authority can decide to serve an Enforcement Notice. There is no right of Appeal against a Temporary Stop Notice and it is an offence to contravene such a notice, with the maximum fine on summary conviction, being up to £20,000. Compensation may be payable if later the local authority issues a lawful development certificate</p>
Stop Notice	<p>The LPA can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. It can only be served if an Enforcement Notice has first been served.</p> <p>There is no right of appeal against a Stop Notice and it is an offence to contravene such a notice, with the maximum fine of £20,000. However, a Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the LPA may be liable to pay compensation for any financial loss resulting from the issuing of the stop notice.</p>
Court Injunction	<p>This may occur in the most serious cases where the irreparable harm is being done and where other actions have failed. There are significant costs involved in bring such an action and it can only be justified in extreme case. Defendants risk imprisonment if they do not comply with a court order.</p>
Direct Action	<p>The Planning Authority may enter land to take the necessary steps to secure compliance when an Enforcement Notice is in effect. This is at the Council’s cost. However, although the cost can be recovered from the landowner, experience has shown that this is not often forthcoming, and is rarely cost effective.</p>
Planning Enforcement Order	<p>In circumstances where it appears to the Planning Authority that a breach has been ‘concealed’ in order to gain immunity from planning enforcement action the Council can apply to the magistrates court for a Planning Enforcement Order and if granted ,the Order would allow a further year for the Council to investigate and issue further formal enforcement action.</p>

7. Enforcement Procedures

No Further Action

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

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

Referral to other bodies

Evidence gathered by the officer investigating the complaint may indicate that other authorities, such as the District Council or the Environment Agency, are responsible for further action. In such cases the County Council will pass on all relevant information to the appropriate body.

Negotiate Remedial Action

In cases where limited harm is being caused a request will be made by the planning officer for the cessation or removal of the breach of planning control within an agreed timescale. In the event of such voluntary compliance no further action would be taken.

Regularisation Planning Application

If it is considered appropriate for a planning application to be sought to regularise the breach, the planning officer will notify the operator / owner and provide a date for the submission of the application. In the event that a valid application is submitted within the agreed timescale no further action will be taken until the application is determined.

Negotiate Remedial Action - Expedient to take further Formal Enforcement Action

In cases where harm is being caused the planning officer will provide options to the site operator / landowner for resolution with a clear timescale for compliance.

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

Formal Enforcement Action

Decisions to issue formal enforcement action, such as the issue of a Notice or the initiation of legal proceedings will be reviewed and authorised by the County Solicitor in discussion with the planning officer.

The type of Notice issued will be dependent on the nature of the breach of planning control and consideration of which Notice would best achieve the required results. (See Table above)

In the event a landowner or planning agent seeks to submit a planning application at the time of the authority issuing an Enforcement Notice, the planning officer and the County Solicitor will discuss and consider the powers of Section 70C of the Town and Country Planning Act 1990 which gives the Planning Authority the power to decline to determine a retrospective application.

Direct Action

Where the Council has issued an Enforcement Notice, and those responsible for the breach have failed to comply; the Council has powers to carry out the works specified in the notice. This is referred to as 'direct action'.

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

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

Cautions

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

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

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

Prosecution

An offence has occurred when:

- the requirements of an Enforcement Notice have not been complied with within the compliance period;
- the requirements of a Breach of Condition Notice have not been complied with within the compliance period;
- the requirements of a section 215 notice have not been complied with within the compliance period;
- the requirements of a listed building Enforcement Notice have not been complied with within the compliance period;
- the requirements of a Stop Notice or Temporary Stop Notice have not been complied with within the compliance period;

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

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

Evidential Test

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

Public Interest Test

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

Factors considered would include:

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

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

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

8. REPORTING BREACHES OF PLANNING CONTROL

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

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

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

If the information initially provided is deficient, the Council will advise the complainant that additional information is required before the breach can be investigated.

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

In accordance with the Data Protection Act 1998, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an

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investigation will make their own assumptions as to who may have brought the matter to the attention of the Council.

8. LEGISLATION AND GOVERNMENT GUIDANCE

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

Primary Legislation

The Town and Country Planning Act 1990 (as amended)

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

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

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

Key Secondary Legislation

Localism Act 2011

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

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

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

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

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

Planning and Compensation Act 1991

This Act added Planning Contravention Notices, Breach of Condition Notices and injunctions to the powers available to Planning Enforcement Officers as amendments to the TCP Act 1990.

Planning and Compulsory Purchase Act 2004

This Act added Temporary Stop Notices to the powers available to Planning Enforcement Officers as an amendment to the TCP Act 1990.

Planning Act 2008 (and Good Practice Guidance)

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

Local Government (Miscellaneous Provisions) Act 1976

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

Key Guidance

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

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

‘Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.’

The **National Planning Practice Guidance** updated 06/03/2014 – Ensuring effective enforcement

Other Legislation, Guidance and Codes of Practice

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

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

Case Law and Legal Precedent

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