

ADDITIONAL AGENDA PAPERS

**SPECIAL DEVELOPMENT CONTROL
COMMITTEE**

ITEM NO 7

CORPORATE ENFORCEMENT PLAN

30 MARCH 2017

7.00 PM

**COUNCIL CHAMBER, CIVIC OFFICES
CENTRAL MILTON KEYNES**

For more information about the meeting please contact Dino Imbimbo on Tel: (01908) 252458
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Wards Affected:

All Wards

DEVELOPMENT CONTROL COMMITTEE**30 MARCH 2017****CORPORATE ENFORCEMENT PLAN**

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01908 252580**Executive Summary:**

This report provides an overview of the proposed changes to the Council's Local Enforcement Policy (2008) and seeks approval for the adoption of the revised Local Enforcement Plan 2017, which is attached as an Annex. The proposed changes to the document includes streamlining and refinement of the Enforcement Team's priorities; a scoring chart for assessing harm, expediency for registering and a priority table for taking action which is recommended for inclusion within the Enforcement Plan. There will be a selective proactive approach with the introduction of monitoring of planning consents and the associated planning conditions.

This report asks the Development Control Committee to approve the proposed revisions to the Local Enforcement Plan and to adopt the document, as set out in the Annex.

1.0 Recommendation(s)

1.1 That the Planning Enforcement Plan be adopted with effect 1 April 2017

1.2 That a review of the Enforcement Plan be considered annually by the Development Control Committee with an interim review after the first 6 months regarding the success of the scoring chart.

2.0 Introduction

2.1 The National Planning Policy Framework (NPPF) (2012) refers to planning enforcement in paragraph 207 and references the desirability of an Enforcement Plan. Although such a plan is not a Development Plan Document, it would provide a statement of the Council's objectives and priorities regarding planning enforcement and the Council's local needs.

2.2 National Guidance emphasises that a local enforcement plan is important because it:

- Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;

- Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
 - Provides greater certainty for all parties engaged in the development process.
- 2.3 The National Planning Policy Guidance (NPPG), issued in March 2014, provides considerably more detail under the title of “Ensuring Effective Enforcement.” It provides guidance on when enforcement action should be taken and an outline of the various forms of Enforcement Action. It refers back to the NPPF encouragement for the preparation of a local enforcement plan. The Enforcement Plan refers to the content of the NPPG.
- 2.4 The Enforcement Plan does not differ greatly from the existing Enforcement Policy adopted in 2008. Its drafting updates the existing policy document in the light of various changes to legislation and Government policy. It has also provided an opportunity to review service priorities and timescales in the light of nature of current complaints and the lower levels of enforcement and planning officers and other resources currently available, and to direct resources to local needs. However it introduces an element of proactive development control with a proposal to monitor identified planning consents and their planning conditions. Members and the public have stated that many planning conditions are breached and would like greater control. The introduction of a carefully managed pro-active enforcement process will achieve some positive steps to apprehend unauthorised activities at an early stage.
- 2.5 In order to provide greater transparency regarding the issue of expediency, a scoring chart for assessing harm and a threshold of expediency for taking action is now proposed. If corporate priorities change the resource available may be adjusted as a higher or lower score. It is recommended that a review after 6 months takes place and thereafter yearly. The scoring chart at Appendix 1 is recommended for incorporation into the Plan.
- 2.6 Where Planning Enforcement breaches are found to involve Council owned land, any enforcement investigation will be terminated and the matter referred to the relevant asset manager to remedy. Land ownership remedies are generally speedier and more efficient than planning enforcement measures. Covenants imposed on land sold by the Council, where there is an overlap with breaches of planning control, should also be dealt with by the relevant asset manager.
- 2.7 Enforcement is discretionary where it is expedient in planning terms to take action. The word “expedient” is not defined in the Act, but implies a balance of policy and other factors against perceived or potential harm. Human rights of occupiers must be taken into account where relevant.
- 2.8 This report has taken account of the nature of the complaints that the Planning Enforcement Service receives. As indicated, there is no requirement for consultation on the plan and none is recommended.

3.0 Conclusion

- 3.1 The Plan sets out how the Council will prioritise breaches of planning control; the way in which investigations will be undertaken; including an assessment of harm. Additionally, it has highlighted the need of proactive enforcement and sets out to provide a selective process for carrying out monitoring of planning conditions on sites with valid planning consents. This will be reviewed and improved on a continuous basis.

Annex: Milton Keynes Local Planning Enforcement Plan

Milton Keynes Local Planning Enforcement Plan

This plan sets out how Milton Keynes will manage and prioritise
Enforcement in a way appropriate to the area



www.milton-keynes.gov.uk/planning

Executive Summary

Milton Keynes Council is the responsible Local Planning Authority (LPA) for the enforcement of planning control within the district. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and planning policy. Therefore, ensuring development is planned and managed to achieve social, economic and environmental objectives within the public interest.

The Enforcement Team are responsible for the enforcement of planning control and have a range of powers to be exercised in the public interest where a breach of planning control is under consideration.

This responsibility is very important and therefore it is essential to have an effective Enforcement Team. National Planning Policy Guidance (NPPG) as published on-line since March 2014 sets out how to ensure an effective enforcement service. Under paragraph 006 of the NPPG entitled 'Ensuring Effective Enforcement' it notes the clear need for the adoption of an Enforcement Plan. By doing so will achieve the following:

- Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- Sets out the priorities for enforcement action, and which will inform decisions about when to take enforcement action;
- Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process.

The Enforcement Plan sets out standards expected so officers of Milton Keynes Council are accountable and expectations are clear for all parties. It will confirm the priorities which are adjusted to local circumstances to enable the service to priorities when navigating competing demands. It sets out a transparent scoring system that will be used for all investigations to show how decisions are reached on when it is expedient to take enforcement action. This statutory discretion is to be exercised in the public interest. This will ensure decisions and actions are consistent and robust if challenged by third parties.

Through this Enforcement Plan, Milton Keynes Council seeks to promote a clear understanding of the role and function of Enforcement Team, the exercise of discretion having regard to planning considerations, appropriate to the local context. In serious or intractable cases resort to the full range of legal powers may be required. It is hoped, however, that by clearly setting

standards of consistent good practice, is helpful to residents and businesses alike in explaining priorities and practice details, and will contribute to avoiding uncertainty in an area which can be very technical and complex.

In addition to this an efficient system needs the Council's website to be a helpful source of reference and advice with a robust reporting system which is transparent about the decisions taken. References to the NPPG section "Ensuring Effective Enforcement" are referred to within this document. This describes the options and procedures available to tackle possible and actual breaches of planning control in a proportionate way. The plan is to be published on the Council's web site with new on-line form for reporting planning issues and enforcement complaints. The forms will enable effective information gathering to ensure action appropriate and proportionate.

To conclude therefore the Enforcement Plan creates the environment for effective enforcement by ensuring that Milton Keynes Council:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

1 Introduction

Functions of the Planning Enforcement Service

1.1 Effective enforcement of planning is necessary to protect the amenity and environment of the Milton Keynes Council. Investigation powers are entrusted to LPA by Parliament to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.

1.2 The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with conditions of a valid planning permission) and bring about reasonable and proportionate remedial action where appropriate.

1.3 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop Notice, unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued which requires steps to be taken (and appeal procedures are exhausted or time barred) it is a criminal offence not to take those required steps.

1.4 Planning permissions usually have conditions which are necessary to make the development acceptable in planning terms, for example incorporating approved plans or requiring specific works. If conditions are not complied with and not enforced, they become immune from enforcement after a period of years. Section 29 Infrastructure Act 2015 inserts into the Act a new Section 74A, whereby conditions requiring consent from the Council may be deemed discharged if an application has been made and the conditions in a Development Order made by the Secretary of State has been complied with. Sub-section (9) provides that the provisions will not be retrospective.

Purpose of the Plan

1.6 The Enforcement Plan sets out the areas of priority, the framework for assessment, the ranking of breaches and whether formal action is required. This enables effective decision making. Effective decision making protects the integrity of the Enforcement Team, Milton Keynes Council and any enforcement investigation because it is consistent, resilient and based on a set of agreed objectives. It is a 'principle' of planning enforcement that action should be proportionate. The Enforcement Plan lays down clearly and transparently what is proportionate where possible.

1.7 It outlines the administrative system for recording and progressing investigations and reporting arrangements. This includes a points scoring system (Appendix 1) to assess harm and sets a threshold for not taking

further formal action. Records are to be maintained and monitored and scores adjusted to suit Local needs and resources, where it is shown not to evaluate in the interests of the area. Subject to committee authorisation.

The Good Practice Guide has advice at paragraph 12.6 and NPPG at paragraph 009 refers to the statutory register of enforcement and stop notices maintained under Section 188 of the Act. Regulations made under Section 43 of the Local Audit and Accountability Act 2014, (the Openness of Local Government Bodies Regulations, 2014), require decisions made by officers which affect the rights of individuals to be recorded and published as soon as practicable after the decision. The record must contain:

- (a) The title of the decision making officer
- (b) The date the decision was taken
- (c) A record of the decision taken along with reasons for the decision,
- (d) Details of alternative options considered and rejected
- (e) The name of any member of a relevant local government body who has declared a conflict of interest in relation to the decision

Such decisions are to be published on the website and the papers retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information.

1.8 This does not prevent a case by case assessment. Planning considerations must be the basis for the decision, and the investigating officer must judge and report on the impact of the unauthorised development the options available and time for compliance. The effect on business, and any relevant Public Sector Equalities duty are also relevant in recommending whether to enforce or take no action.

1.9 The Enforcement Plan includes appendices on trees, untidy land issues (Section 215 of the Act) and High Hedge complaints. These refer to more detailed guidance notes for which links are published on the Council's website.

2 Context

Milton Keynes Local Plan (2001-2011)

2.1 The Milton Keynes Local Plan (adopted December 2005) is the current development plan. The plan provides a comprehensive statement of land use policies and proposals and supported by the Core Strategy adopted in 2013. The Council is required to produce a new Local Plan for the area and the emerging plan MK once adopted will supersede the current Local Plan and this process is underway.

The National Planning Policy Framework

2.1 Enforcement is referred to in paragraph 207 of the National Planning Policy Framework (NPPF) 2012. The discretionary and proportionate nature of enforcement is stressed and it is suggested 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 Planning Practice Guidance

2.2 The PPG at paragraph 007 sets out 14 options available to local authorities to tackle possible breaches of planning control in a proportionate way. These are described in the Planning Enforcement Toolkit (See Appendix 4).

Legal Context

2.3 The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. The Council has powers to investigate and take action to remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

2.4 Enforcement provisions of the Localism Act 2011 extensively addresses tactics previously adopted by some developers that were seen as abuses, such as twin tracking an appeal against an enforcement notice and an application for retrospective approval. It also covers time limits on concealed

breaches as well as penalties and increased powers in relation to fly-posting and graffiti.

2.5 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice.

2.6 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear and flagrant breach of a planning decision or a serious case of harm.

3 Service Standards

3.1 Milton Keynes Council's existing practices have sought to achieve the Principles of good enforcement practice.

Openness

3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

Proportionality

3.3 We will deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any under takings given, the history and whether time limits are approaching which would confer immunity on unlawful development.

Consistency

3.4 We seek to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible a fair and equitable outcome

and locally utilise the local score sheet to try and ensure consistency in line with these standards.

Helpfulness

3.5 We aim to be polite but firm with the person/people that are alleged to be in breach of planning. We will meet when requested, where reasonable to try and achieve a satisfactory outcome and will keep complainants and Members informed.

Procedures

1) Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.

2) The rights of appeal of the developer against any formal notice will be clearly explained.

3) Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent where it is considered to be achievable

4) Any threat of formal action will be followed up swiftly if there is inadequate evidence of steps being taken to resolve the problems.

Minimising Occasions that Breaches of Planning Control Occur

3.6 Breaches of planning control comprise the carrying out of development without the granting of planning permission, or deemed permission by government order, or without compliance with approved plans or any conditions attached to a planning permission. While carrying out development without planning consent is not a criminal offence, failure to comply with an enforcement notice is a criminal offence.

3.6 In addition to the service's reactionary role in dealing with planning enforcement matters, the council will seek to provide a new proactive risk based approach to ensure compliance with planning conditions on approved planning permissions and other consents. It is the responsibility of individual developers to comply with the terms and conditions related to the development - identified in any planning agreement and planning permission or consent. However, failure to comply can affect the quality of the environment in the borough and prejudice the justification and reasons why

permission was originally granted. Effective, proactive action will encourage and where needed, enforce, compliance to ensure that development remains acceptable in planning policy terms, maintaining an attractive, high quality environment. It is hoped that proactive compliance will reduce the number of reactive enforcement matters. (See Appendix 3)

3.7 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders (TPO), trees within a Conservation Area, There is more detailed information on tree enforcement (See Appendix 4).

3.8 Advertisements and flyposting also come within the scope of planning control, but unlike those identified above, constitute a criminal offence.

3.9 Untidy land often can come within planning control and further information is available at appendix.

4 Identifying Unauthorised Development

4.1 To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found at: http://www.milton-keynes.gov.uk/forms/showForm.asp?nc=7U8O&fm_fid=809

4.2 It is strongly encouraged that the online form is used in the first instance as this is the most efficient use of resources available. Complaints made by letter, phone or email are logged onto the web form. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.

4.3 Anonymous complaints about a third party will not be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the Council. If a member of the public wishes to be anonymous then they must go through either their local Ward Member or Parish Council to submit the online form on their behalf.

4.4 The planning history of a site is always investigated to establish any planning permissions or permitted development.

4.5 An assessment is then made into the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.

4.6 The Council does not investigate highway matters, boundary wall or other land disputes and activities incidental to residential use of a dwelling, including third party wall act disputes and issues that do not constitute

planning development matters. Any potential breaches of other legislation will be passed on to the appropriate investigative authority.

4.7 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.

4.8 The Council will only take formal enforcement action when expedient to do so, formal enforcement action will not be instigated solely to regularise trivial breaches of planning control (score of 4 or lower) using an assessment score sheet and *where* there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by negotiation. Such breaches include temporary structures, flyposting, untidy sites, changes in surfaces, unobtrusive and minor changes of use or extensions. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the LPA are set out in the Enforcement Toolkit.(See Appendix 4)

5 Enforcement Priorities

5.1 Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

5.2 All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.

5.3 Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. When these occur, Enforcement Officers will endeavour to keep original complainants informed on a regular basis and indicate arrangements for this in the initial

response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation.

Site Visits

5.3 Planning and Listed Building legislation gives authorised officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. The toolkit at Appendix 4 has the statutory references. Because of the nature of enforcement work it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours notice will be given if access is required to a dwelling house.

5.4 On site visits Investigating Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where she/he considers an offence has occurred, interview an alleged contravener 'under caution' (PACE) where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.

5.5 After the first site visit (and also during the investigation process) the Investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.

How we decide if an investigation is 'complete'

6.2 We consider our investigations to be "complete" when one of the following a point has been reached:

- The investigation identifies that no breach in planning control has occurred.
- An alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted and approved following the investigation.
- A breach in planning control has been identified and an application requested but not submitted. A report has been prepared and is on an agenda for Councillors to confirm that it is not expedient to take formal enforcement action in this case at this time.

∞ A breach in planning control has been identified. Authority to take formal enforcement action and/or issue a notice has been given. The matter is then passed to legal advisors to process.

7 Improving Planning Enforcement

7.1 The Council will monitor the length of time taken from the receipt of information regarding a suspected breach of planning control to the conclusion of the case with specific reference to the timescales shown previously in this document. This is carried out in order to ensure the timely progression of all complaints received.

7.2 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers.

7.4 The outcome of the compliance check will be reported to the applicant, agent or landowner. Any non-compliance will be addressed through usual enforcement practice.

7.5 The Council will be introducing proactive monitoring of Planning Conditions attached to Planning Permissions and other consents using the process identified in the flow chart (See Appendix 3).

Appendix 1

Scoring chart for the assessment of Harm,

Points Allocation	Scoring	Score
Status of Breach	Worsening (1) Ongoing but Stable (0)	
Highway Safety Issue?	Yes (1) No (0)	
Other Safety Issue?	Yes (1) No (0)	
Complainant	Immediate neighbour. Staff (1) Borough or Parish Councillor (1) Anonymous/Malicious (0) Other (1)	
Age of Breach	Within 3 months of immunity (2) Less than 1 month old (1) More than 1 month old (0)	
Is the Harm	Widespread / Public (2) Local (Private) (1) None (0)	
Irreversible Harm?	Yes (1) No (0)	
Causes statutory or serious environmental nuisance	Yes (1) No (0)	
Breach of a condition or Article 4 Direction? (Score 1 per condition breached (max 5))	Yes (1-5) No (0)	
Operational development in Green Belt or Major Breach of Plan Policy	Yes (1) No (0)	
Development affecting contaminated land	Yes (1) No (0)	
Flood Zone	Zone 3 (2); Zone 2 (1); Zone 1 (0)	
Affecting setting of Conservation Area	Yes (1) No (0)	
Harming a Listed Building or its setting	Yes (1) No (0)	
Sensitive site e.g. SSSI; SAM; Listed Garden; Archaeological Importance	Yes (1) No (0)	
Part of a special initiative (specify)	Yes (1) No (0)	
Undesirable Precedent (specify)	Yes (1) No (0)	
Total Points (Harm Score)		

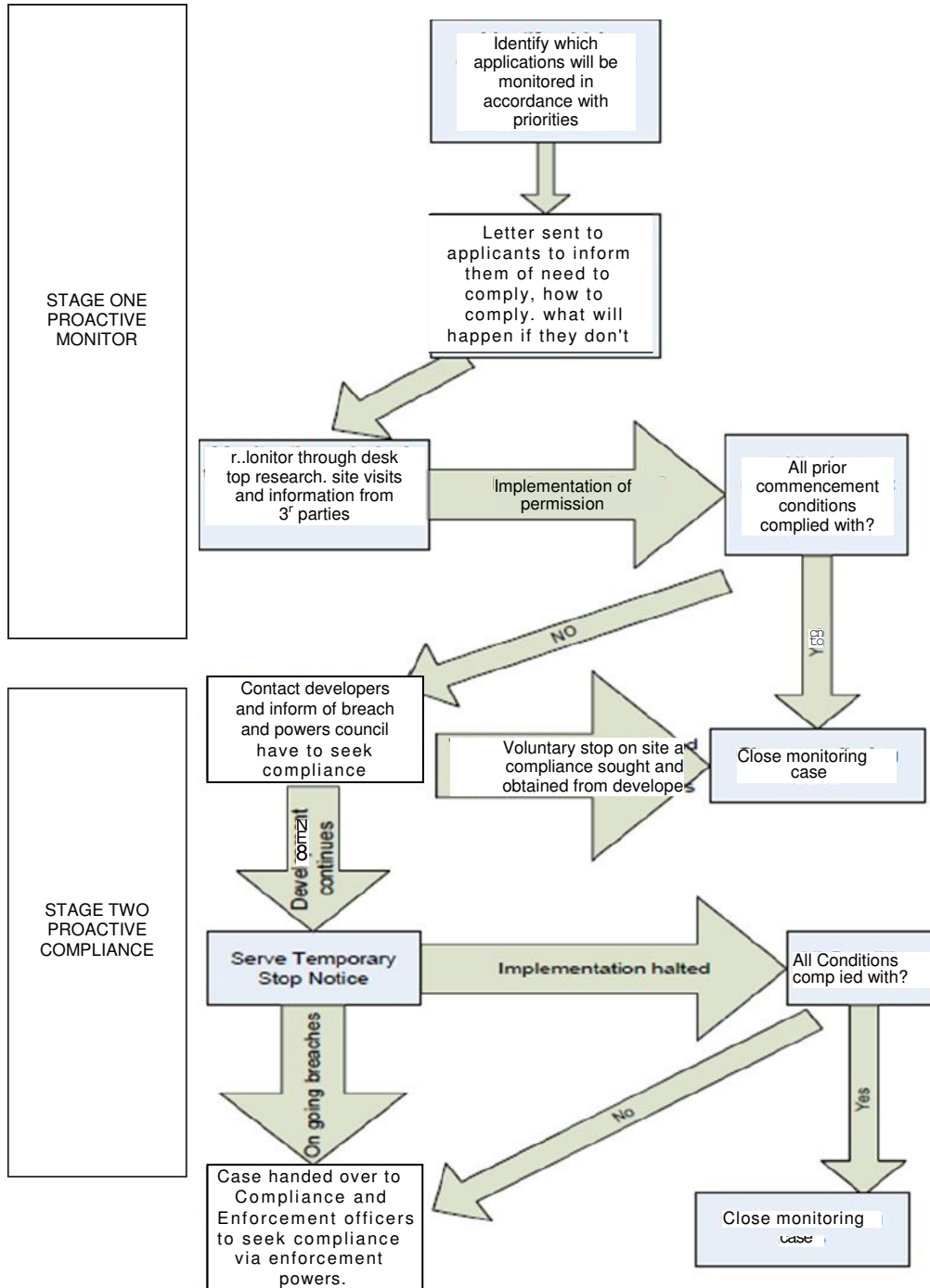
Appendix 2

Table 1: Enforcement Priorities

Priority	Description	Response time
High	<p>Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a conservation area or to the open countryside</p> <p>Unauthorised works to a listed Building</p> <p>Irreversible harm to amenity of a Conservation Area</p> <p>Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area</p> <p>Non Compliance with planning conditions attached to a valid planning consent</p>	All within 48 Hours
Medium	<p>Breach which results in serious demonstrable harm to amenity of Neighbourhood</p> <p>Unauthorised development in a designated area</p> <p>Source of significant public Complaint</p>	All within 5/10 Days
Low Priority	<p>Unauthorised development which is not the source of significant public complaint</p> <p>Erection of Advertisements</p> <p>Untidy Land</p>	All with 28 days
No Action	If a breach scores less than 4 on the score sheet (Assessment of Harm)	N/A

Appendix 3

Flow chart for pro-active monitoring Planning Conditions



Appendix 4

Planning Enforcement Toolkit

The main options to tackle possible breaches of planning control are:

No formal action

Early engagement is important, and the landowner may take immediate action when advised of the issue. Where a breach of planning control is on council owned land, or on land where a covenant controls the issue, such breaches are most effectively addressed through estate management or landlord control.

PPG (paragraph 011) states that local planning authorities should usually avoid taking formal enforcement action where:

- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

An outstanding breach of control may affect the sale and marketing of a property and nothing in this plan should be taken as condoning a clear and wilful breach. However, the balance of public interest varies from case to case. A scoring chart for assessing harm is attached to this Appendix.

Retrospective Planning Application

PPG paragraphs 012 and 013 advice that where the LPA consider that an application is the appropriate way forward to regularise the situation, the owner and occupier should be invited to submit an application under Section 73A of the Act without delay. It cannot be assumed that permission will be granted – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

Planning Contravention Notice

This can often be the first formal step in formally resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may give notice of a date and time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the authority. An opportunity to make such representations must be made. It is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information. Paragraphs 015 and 016 of PPG refer.

Section 330 of the Town and Country Planning Act 1990

This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but require further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. For both of these cases it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Conviction currently carries a maximum fine not exceeding £1,000.

Rights of Entry

The Act specifies the purposes for which entry to land including buildings may be authorised, namely:

- to ascertain whether there is or has been any breach of planning control;
- to determine whether any of the LPA's powers should be exercised;
- to determine how such power should be exercised, and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action.

A record should be made of the inspection with appropriate photographs. Entry to a dwelling house cannot be demanded as of right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates for a warrant to allow entry. Paragraphs 052-055 PPG refer. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

Breach of Condition Notice:

This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition, but may be served in addition to an enforcement notice, perhaps as an alternative to a stop notice. It can only be challenged by judicial review. Following the end of the period for compliance, a “person responsible” who has not ensured full compliance with any conditions and any specified steps will be in breach of the notice and guilty of an offence. Paragraphs 046-049 of PPG refer.

Enforcement Notice:

Effective enforcement is important. Development becomes immune from enforcement if no action is taken within four years of substantial completion of building operations or ten years of a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know:

∞ Exactly what, in the LPA’s view, constitutes the breach of planning control; and

∞ What steps the LPA require to be taken to remedy the breach.

An enforcement notice may “under enforce”, by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect: however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. Paragraphs 018-023 of PPG refer.

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- to determine how such power should be exercised, and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action.

A record should be made of the inspection with appropriate photographs. Entry to a dwelling house cannot be demanded as of right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates for a warrant to allow entry. Paragraphs 052-055 PPG refer. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

Planning Enforcement Order:

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. Paragraphs 024-027 PPG refer.

Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area. Best Practice Guidance is on the Council's web site

Stop Notice:

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant

harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. Paragraphs 028 – 035 PPG refer.

Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the environment in the surrounding area. Paragraphs 036-045 PPG refer.

Listed Building Enforcement:

PPG paragraph 057 notes that the Listed Building Enforcement provisions are in sections 38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the enforcement provisions relating to the demolition of an unlisted building in a conservation area (“relevant demolition”) are in the Act. Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is time limit in which such an enforcement notice can be served. There are five important differences between planning enforcement and listed building and conservation area enforcement, namely:

- There are no application fees for listed building consent or relevant demolition;
- There are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;
- Carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;
- Carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990; and
- Listed Building Consent and planning permission for

relevant demolition are not granted retrospectively. A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

Injunction:

This may be done in the most serious cases generally where irreparable harm is being done or is apprehended, or where and where other actions have been or would be ineffective. Section 187B of the Act applies where the LPA consider it expedient to restrain actual or apprehended breaches of planning control. Section 44A Planning (Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. The Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify to the best of their ability the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- Photographic evidence of the persons concerned;
- Affidavit evidence by the LPA officers;
- Reference to chattels (e.g. registered vehicles) known to belong to, or be used by, that person;
- Other relevant evidence (such as a name by which the person is commonly known).

There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

Unauthorised Advertisements:

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

Direct Action or “Default” Action:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme case. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

Other than advertisements and Untidy Land notices, direct action is seen as a draconian power and normally a course of last resort. The Council’s decision may be challenged by Judicial Review. There may be violence or threats of a breach of the peace and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the cases of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to the recovery.

High Hedge Enforcement

If a complaint has been properly made and we decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti Social Behaviour Act 2003 and is known as a remedial notice. This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although we cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners. Signs and Advertisements Where an advertisement is not lawfully displayed and causes harm to the enforcement after a Remedial Notice has taken effect if there is a first conviction and the owner of the land does not comply with an order of the court to take steps within a reasonable period fixed by a court order the land owner may be liable on summary conviction to a daily penalty. While there is a default power for the Council to carry out works to a High Hedge, enforcement by prosecution and Court order is considered better practice.

There are also powers in Section 219 of the Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier

The High Hedges Procedure, complaint form and useful links to legal and national guidance is available to view on the Council’s website

Tree Protection Enforcement

Good Planning

Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

Tree Protection

Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage. Trees may be protected by legislation enshrined in the Town and Country Planning Acts 1990 -2012, by being subject to a tree preservation order (TPO) or being situated within a conservation area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission. In certain circumstances trees may be protected by conditions attached to a planning permission.

Compliance

Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as B.S. 3998, and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the trees itself and of the protected tree stock of the borough. Compliance should be the starting point of any enforcement policy.

Specific Tree Protection

a) Where trees are protected by a TPO, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

b) Where trees are protected by inclusion in a conservation area six weeks' notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six week period, the

Authority is required to consider the need to make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks the works may go ahead as notified.

c) Trees retained under planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

d) Offences under 1 and 2 above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity. Secondly, anyone who carries out works on trees that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

e) Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that:

- 1) The defendant has carried out, or caused, or permitted works on the tree;
- 2) The tree was protected;
- 3) The tree works were carried out without the Authority’s consent;
- 4) The works were not exempt works.

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, which the exemption applies.

f) Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected

and whether any consent has been granted. In most cases the Council's Arboriculture Officer will also make a site visit.

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to. In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

g) Time scale: Initial investigation as outlined above will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

Table 1: Tree Protection Enforcement Timescales

Response Level	Response Criteria	Response time
1	Ongoing works likely to have a significant impact on public amenity	Within 24 hours
2	Completed works likely to have a significant impact on public amenity and ongoing works of lower amenity impact	Within 5 working days
3	Other works including longstanding issues	Within 28 working days

h) Possible actions by authority: The Council has a range of possible courses of action available to deal with the cases of unauthorised works on protected trees. These include the following:

1) Initiate a prosecution (which may be for destroying the tree or for lesser works to it);

2) Administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence;

3) Require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990;

4) Serve a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;

5) Informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs. Decisions as to what action to take will be taken in the public interest; ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually. Prosecutions will be considered against the tests of evidential value and public interest; these will be dealt with by the council's legal advisors. Cautions may be used in accordance with guidance from the legal section.

6) Replanting: In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a tree replacement notice [TRN] may be considered. A TRN may also be considered when the automatic legal duty to replant on the death or removal of a protected tree. Any replacement tree is subject to the same protection as the original tree that was lost.

Untidy Land Notices Section 215

7.5 From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health but they will be an eyesore, which means it is detrimental to the local amenity.

7.6 Under section 215 of the Town and County Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up. The power is exercisable if it appears that 'the amenity of a part of [the local planning authority's] area, or adjoining area, is adversely affected by the condition of land in their area' (section 215(1)). The notice 'shall require such steps for remedying the condition of the land as maybe specified in the notice to be taken within such period.

7.7 There is a right to appeal to the Magistrate's Court on any of the following grounds:

(i) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;

(ii) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III (the requirement to have planning permission];

(iii) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;

(iv) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonable be allowed.

7.8 If the notice is not complied with, the local planning authority is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying out works under an enforcement notice. The Council may also prosecute for non-compliance.

7.9 To find out more about the Best Practice Guidance, please visit the Council's website

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