

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
3 September 2013

Subject: DRAFT LOCAL PLANNING ENFORCEMENT PLAN

All Wards
Portfolio Holder for Housing, Planning & Waste Management: Councillor B Phillips

1.0 PURPOSE AND BACKGROUND:

- 1.1 To seek Cabinet's approval of a revised policy on planning enforcement for public consultation and to form the basis of public guidance.
- 1.2 The Council adopted its Enforcement and Compliance Policy in 2008 and it is due for review, particularly in light of the National Planning Policy Framework, which has reduced the available guidance on enforcement issues and encourages Councils to adopt local enforcement plans. The proposed plan sets out a framework for investigating, assessing and acting on alleged and identified breaches of planning control based on three key principles of objectivity, proportionality and justice (paragraphs 2.1 – 2.7) to help promote greater understanding and appreciation of the service.
- 1.3 These three key principles translate into eight commitments to customers (paragraph 2.8).
- 1.4 The plan also reflects the increased emphasis that the Council places on enforcement, evident in additional staff resources and greater management oversight put in place in 2012. As a component of an improving planning service, the plan places a high value on early identification of the appropriate course of action, which can then be clearly communicated and acted on decisively (paragraph 5.1).
- 1.5 The plan was shaped by Member input at a workshop held on 15 July. Specific improvements arising from this include a clearer indication of timescales for negotiation and submission of retrospective planning applications (paragraphs 2.2, 2.7 & 2.8), a revised definition of the highest priority cases (paragraph 4.2) and swifter initial response to category 2 cases (paragraph 5.10).
- 1.6 The plan also stresses the value of joint working with other agencies and with Town and Parish Councils, learning from high-profile cases such as Bagby Airfield, Church Farmhouse Thornton-le-Street and Ings Lane, Great Broughton (paragraph 6.7).

2.0 LINK TO COUNCIL PRIORITIES:

- 2.1 It is important that the enforcement service is delivered in a way that is responsive to the needs of business, in line with the Council's aim to be "business friendly". The plan notes that "enforcement allegations often concern business activity and whilst all allegations must be investigated and steps taken where it is expedient to do so, the Council must seek to understand the likely impact of proposed action on business and only take such action where it is necessary and in the public interest" (paragraph 1.3).

3.0 **RISK ASSESSMENT:**

No risks are foreseen in undertaking consultation or the subsequent adoption of a plan.

3.1 **The key risk is in not approving the recommendations as shown below:-**

Risk	Implication	Prob*	Imp*	Total	Preventative action
Individual decisions are inconsistent, influenced by factors that are not relevant to planning, and without due regard to the consequences on the local community and the environment	Negative views and loss of reputation through perceived unfairness and the adverse impact or failure of ill-judged decisions	3	4	12	Promote greater understanding and consistency through publicity, consultation and guided decision-making using the principles set out in the plan

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

The benefits of agreeing with the recommendation clearly outweigh the risks of not agreeing it.

4.0 **FINANCIAL AND LEGAL IMPLICATIONS:**

4.1 No direct financial implications are foreseen, although costs may be awarded in individual cases where poorly judged enforcement action is overturned on appeal.

5.0 **EQUALITY/DIVERSITY ISSUES:**

5.1 The framework of the plan can ensure that decisions are made logically and consistently, with reduced likelihood of adverse impact on groups with protected characteristics. Such groups include travellers, who are frequently the subject of enforcement investigations.

6.0 **RECOMMENDATIONS:**

6.1 It is recommended that:

- (1) the Draft Plan be published for consultation with service users, partner organisations including Town and Parish Councils, and the general public; and
- (2) the results of consultation are reported to a future meeting of the Cabinet.

MICK JEWITT

Background papers: Enforcement & Compliance Policy 2008
Draft Local Planning Enforcement Plan 2013

Author ref: MDH

Contact: Mark Harbottle
Planning Manager
01609 767115

HAMBLETON DISTRICT COUNCIL LOCAL PLANNING ENFORCEMENT PLAN

Contents

- 1.0 Introduction
- 2.0 The Hambleton approach to planning enforcement
- 3.0 Monitoring compliance with planning decisions
- 4.0 Priorities
- 5.0 Timescales and targets
- 6.0 Procedures

Annex A: Relevant Legislation and National Guidance

Annex B: Principal Enforcement Tools

DRAFT

1.0 INTRODUCTION

- 1.1 Planning enforcement powers are discretionary and must be exercised fairly and in the public interest. The Government's policy on planning enforcement is set out at paragraph 207 of the National Planning Policy Framework (NPPF) 2012:

“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.”

- 1.2 The NPPF encourages each Council to publish a Local Enforcement Plan to show how it will manage enforcement proactively, in a way that is appropriate to its area. This Plan sets out how Hambleton District Council will:

- (a) Monitor compliance with planning decisions;
- (b) Investigate alleged cases of unauthorised development; and
- (c) Take action where it is appropriate to do so.

- 1.3 It is also important that the service is delivered in a way that is responsive to the needs of business, in line with the Council's aim to be “business friendly”. Enforcement allegations often concern business activity and whilst all allegations must be investigated and steps taken where it is expedient to do so, the Council must seek to understand the likely impact of proposed action on business and only take such action where it is necessary and in the public interest. That is consistent with this more specific aim of the emerging Council Business Plan: “To ensure that the Planning Service supports the sustainable economic growth and development of the District.”

- 1.4 The Core Strategy for Hambleton District's Local Development Framework - sets out a “Vision for Hambleton “, which includes the following:

“The development of vibrant and prosperous market towns and sustainable rural communities will have been supported.This will have been achieved in ways that reduce the impact of society on the environment, improve the quality of design of the built environment and protect and enhance Hambleton's environmental assets...”

The planning system is a key factor in the delivery of this vision.

- 1.5 The planning system exists to manage the development and use of land in the public interest. The planning system can only achieve its objectives if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system, to monitor the proper implementation of planning decisions and to respond to development that arises without permission. The system relies on informed decision-making within a statutorily approved framework and policy context. As planning decisions affect the daily lives of individuals and the commercial interests of business and land owners it is not surprising that alleged breaches of planning control generate highly contentious situations. It is incumbent upon the Council to respond to these matters appropriately. Hambleton aims to do this by providing an efficient and effective planning enforcement service.
- 1.6 The framework within which the Service operates is set out in this Local Enforcement Plan. The Plan has been formulated with regard to: the Planning Acts; the Governments' Enforcement Concordat; relevant government guidance and circulars; the Council's Local Development Framework; the Human Rights Act and the Regulation of Investigatory Powers Act. The main elements of the legislative framework and guidance relating to enforcement are set out in **Annex A**. The enforcement tools available to the Council in the exercise of its enforcement function are explained at **Annex B**.

- 1.7 The purpose of the Local Enforcement Plan is to make clear what those undertaking unauthorised development and those objecting to it should expect from the Council. The Plan also explains how the Council will prioritise and undertake its investigations. These procedures will be reviewed on a regular basis.

2.0 THE HAMBLETON APPROACH TO PLANNING ENFORCEMENT

The Key Principles of the Local Enforcement Plan

A: Objectivity

- 2.1 The Council will judge the development, not who is responsible for it or how it came about, and will therefore choose from the following options in deciding how to act:
- Where it is felt that unconditional planning permission would have been granted, the submission of a retrospective planning application within a reasonable time scale will be required. However, if an application is not received, enforcement action is likely to be viewed as unreasonable and the Council would be at risk of an award of costs against it in any enforcement appeal.
 - Where it is felt that planning conditions could make the development acceptable, the correct approach is to require a retrospective planning application within a reasonable time scale. If an application is not received within a reasonable time scale, enforcement action would be justified if the Council can demonstrate that appropriate planning conditions would be necessary to overcome harm caused by the development.
 - Where the development cannot be made acceptable in planning terms, the Council will not seek a planning application but will instead set a realistic time limit for cessation, or relocation or closure of a business, and will be prepared to serve an enforcement notice if suitable progress is not made within that time scale.
- 2.2 What would be a reasonable time scale for submission of an application will vary depending on the nature and complexity of the development in question. 21 days should be adequate in most cases and more time will only be agreed where it is demonstrated to be necessary.
- 2.3 A planning application is the most appropriate way to consider the merits of development and to allow affected neighbours and other interested parties to have their say. It is therefore correct to apply the same approach to development already carried out, and for the Council to encourage retrospective planning applications where appropriate.

B: Proportionality

- 2.4 This plan defines the appropriate form of response to various breaches of planning control, determined by the guiding principle that the response to a breach of control should be proportionate to the harm it causes. Harm will be assessed according to the degree of conformity or conflict with national and local planning policy, in much the same way that planning applications are evaluated. It would not be expedient, or a wise use of public resources, to pursue enforcement action against something that would have been granted planning permission, except where it is necessary to impose controls that would have been secured by conditions attached to planning permission. Enforcement is not punishment, but an appropriate response to something that is unacceptable in planning terms.

C: Justice

- 2.5 Enforcement action will not normally be pursued while a planning application for the same development is under consideration, or when the matter has been taken to appeal. The Council will deal with applications as quickly as possible in these circumstances to limit any

uncertainty or loss of amenity. The Council must deal with the application fairly before proceeding with enforcement action as necessary.

2.6 Justice must be seen to be done and therefore we will clearly explain the reasons for our decisions and publish data about our performance against the standards set out in this plan.

2.7 Hambleton District Council will:

- Place a high priority on compliance with planning law. It is recognised however, that many breaches of planning law, although unlawful, do not constitute a criminal offence – until there is non-compliance with an enforcement notice;
- Always endeavour, as required in Government advice, to resolve matters via negotiation over a defined period, normally 21 days. Formal enforcement action will only be used where it is felt that reasonable negotiation will not succeed;
- Exercise proportionality in applying the law and securing compliance; and in relating the type of action taken to risks and costs; and
- Via the delegated powers of the Planning Manager, decide whether or not to commence enforcement action. The Council recognises that enforcement is a discretionary procedure, which relies upon the test of expediency. Although there is a duty on the Council to investigate alleged breaches of planning control, there is no mandatory requirement to undertake enforcement action.

Our Commitments

2.8 Hambleton District Council will seek to ensure that enforcement procedures and decisions are always consistent, fair and appropriate. The Council therefore makes the following commitments.

Commitment 1 – The Council will, in the first instance, always seek to negotiate a resolution within a reasonable time scale (normally 21 days) by being flexible and considering genuine alternative solutions to resolving breaches.

Commitment 2 - The Council will comply with the timescales for commencing formal enforcement action set out in section 3 below; unless there are exceptional circumstances which require different timescales to be used. This will be determined by the Planning Manager.

Commitment 3 – In considering whether to take enforcement action the Council will not give weight to the fact that development may have commenced.

Commitment 4 – In considering whether to take enforcement action the Council will not give weight to non-planning considerations.

Commitment 5 - Decisions not to take enforcement action, or to close a case involving a breach of planning control, will be made by the Planning Manager in consultation with the Portfolio Holder and subject to communication with a Town or Parish Council that has expressed an interest in the matter. Reasons for these decisions will be recorded in writing.

Commitment 6 – The Council will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.

Commitment 7 - The Council will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.

Commitment 8 – The Council will deal with all users of the Enforcement and Compliance Service in an honest, responsive and courteous manner and will keep Ward Members and Town and Parish Councils informed.

3.0 MONITORING COMPLIANCE WITH PLANNING DECISIONS

3.1 When the Council notifies neighbours of planning applications, it allows people to understand the changes that are proposed in their local area. In order to maintain public confidence in the planning system it is important to ensure that any subsequent changes are only made with good reason. However, it is important to bear in mind that alternative forms of development might have been approved, and therefore any variation must be considered objectively. But first it is necessary to ensure that the process is managed as well as possible.

3.2 The Council makes approximately 1,000 planning decisions each year and the planning acts allow three years for the implementation of these decisions. The Council cannot predict when a project will start and so it is not possible to systematically monitor the uptake of every decision. However, the following arrangements are in place to maximise the effectiveness of monitoring:

- Planning decisions, with conditions and the reasons for them, are recorded and available for inspection;
- The submission of details required by conditions allows general monitoring of the uptake of permission;
- Information is shared with other regulatory regimes such as building regulations or premises licensing;
- Planning officers are expected to check progress on key sites when inspecting new ones in the vicinity; and
- Completion of new housing and commercial floor space is monitored on an annual basis.

3.3 In addition, the Council relies on information from interested local people and organisations. How we co-operate with other bodies and how we use this information are described in section 6 below. The wide notification of planning applications and decisions allows greater public involvement in planning matters and this provides a valuable monitoring resource.

4.0 PRIORITIES

4.1 In order to manage resources sensibly it is necessary for the Council to adopt a priority system for responding to and dealing with alleged breaches of planning control. Complaints regarding breaches of planning control will be investigated in accordance with the order of priority set out below, relating to the degree of harm or danger.

4.2 In all cases whether a breach of planning control has taken place, and if so the priority to be afforded to dealing with it, will be reviewed following an initial investigation and inspection of the site. All priorities may therefore be subject to change as the facts are established.

Category 1 – any immediate and irreparable harm to our best assets within the natural or built environment, or public safety. The best assets are often identified by planning constraints, such as Tree Preservation Orders, protected hedgerows, trees and buildings within Conservation Areas (including Article 4 Directions) and Sites of Special Scientific Interest.

For example:

- Unauthorised works to protected trees; or
- Damage to listed buildings; or

- Any use or structure falling within planning control that presents an immediate and serious danger to the public. This will be determined in liaison with the emergency services and other regulatory agencies, who may have more appropriate powers.

Initial response: site inspection the same working day (this may be the next working day if the complaint is received after 3pm)

Category 2 – any unauthorised development or activity which causes, or has the potential to cause, clear and continuous harm or danger to the public; or the built or natural environment, including the living conditions of residents.

For example: noise disturbance resulting from non-compliance with operating conditions; or dangerous unauthorised vehicular access arrangements.

Initial response: site inspection within 2 working days

Category 3 - any unauthorised development or activity where there is a risk of material harm to the environment and / or some harm to residential amenity.

For example:

- Works or uses with potential to cause material long term damage to the environment; or
- Developments and uses which are clearly contrary to established policies.

Initial response: site inspection within 5 working days

Category 4 – breaches of planning control causing limited, or no material harm to the environment, or the amenity of residents.

For example: unauthorised uses or development, which would be likely to receive planning permission.

Initial response: site inspection within 10 working days

4.3 Breaches of planning conditions will be dealt with in accordance with the above priorities.

4.4 The Planning Manager will determine within which category an alleged breach falls.

5.0 TIMESCALES AND TARGETS

5.1 In order to ensure that all those involved in the process are aware of what should happen and when, the following actions with timescales have been set. The pivotal action in every case will be determining the appropriate course of action, as this will provide clarity for all parties and allow timely response. These timescales and targets for action are intended to give consistency, certainty and transparency to the process of enforcement. The Council has sought to devise an approach, which is equitable to all parties, particularly in terms of the frequency and manner in which information is provided.

5.2 A small proportion of unauthorised development activity may occur outside of normal working hours. The Council does not have sufficient resources to respond to anything but the very highest priority cases, i.e. Category 1, outside of normal office hours. The nature of any “out of hours” response will be determined by managers on a case-by-case basis.

5.3 The Council considers it essential to keep Ward Members and Town and Parish Councils informed, given their role as a valuable source and disseminator of information in the local community. As a consequence contact with Ward Members and Town and Parish Councils are included within the Local Enforcement Plan’s timescales and targets for action.

- 5.4 Within 3 working days of a complaint being received the Council will issue an acknowledgement to the complainant giving:
- The name and contact details of the case officer;
 - Information about the procedures that will be followed; and
 - An indication of the likely time scale.
- 5.5 Officers will inspect the site and/or take action in accordance with the timescales set out in the Priority Categories 1 – 4, as detailed above.
- 5.6 Within 10 working days of the site inspection, officers will contact the complainant to advise of progress, detailing whether and how the matter will be progressed.
- 5.7 Officers will contact the operator or landowner to advise of the Council's views and recommended action, with timescales within 10 working days of the site inspection. A meeting will be offered if it was not possible at the site inspection.
- 5.8 The next steps will depend on the seriousness of the breach of planning control:

Category 1

- 5.9 The Council will determine the appropriate course of action from the following options within 5 working days of a breach being identified:
- (a) Serve a Planning Contravention Notice where necessary;
 - (b) Commence formal enforcement action (such as issuing a Temporary Stop Notice or an Enforcement Notice and Stop Notice);
 - (c) Close the case (because a breach has not occurred);
 - (d) Invite a regularising application; or
 - (e) Identify any further evidence that is needed in order to make an informed choice between options (b), (c) and (d) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced immediately.

Where option (e) is selected, progress of the investigation will be subject to weekly review.

Category 2

- 5.10 The Council will determine the appropriate course of action from the following options within 10 working days of a breach being identified:
- (a) Serve a Planning Contravention Notice where necessary;
 - (b) Commence formal enforcement action (such as issuing an Enforcement Notice);
 - (c) Close the case (because a breach has not occurred);
 - (d) Invite a regularising application; or
 - (e) Identify any further evidence that is needed in order to make an informed choice between options (b), (c) and (d) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced within 5 working days of the refusal.

Where option (e) is selected, progress of the investigation will be subject to fortnightly review.

Category 3

5.11 The Council will determine the appropriate course of action from the following options within 15 working days of a breach being identified:

- (a) Serve a Planning Contravention Notice where necessary;
- (b) Commence formal enforcement action (such as issuing an Enforcement Notice);
- (c) Close the case (because a breach has not occurred);
- (d) Invite a regularising application; or
- (e) Identify any further evidence that is needed in order to make an informed choice between options (a), (b) and (c) and continue the investigation.

Where option (a) is selected, the notice will be issued within 5 working days of the decision.

Where option (b) is selected, the notice will be issued within 10 working days of the decision.

Should an application submitted under option (d) be refused, formal enforcement action will be commenced within 10 working days of the refusal.

Where option (e) is selected, progress of the investigation will be subject to fortnightly review.

Category 4

5.12 The Council will only commence formal enforcement action if it considers it expedient to do so having regard to the available resources. Any cases unresolved after a period of 9 months will be reviewed by the Planning Manager to determine the appropriate action.

All categories

5.13 The Council will inform complainants of any pertinent information, or significant progress in the case and will invite comment.

5.14 The Council will normally inform the operator/landowner at least 7 days prior to enforcement action commencing to advise them of this fact and the implications for them (unless planning permission has previously been refused).

5.15 The Council will inform complainants and the relevant Ward Member(s), Town or Parish Council, to advise them that enforcement action has commenced, within 7 days of that action commencing.

5.16 If an application is submitted to regularise a breach the complainant, the Ward Member(s) and the Town or Parish Council will be informed of the application in writing.

5.17 An exception to the above will be if the Planning Manager in agreement with the Legal Manager and the Chairman of the Planning Committee consider the immediate serving of a Temporary Stop Notice necessary which will be implemented, and then the Ward Member(s) notified.

5.18 The Planning Manager will decide if and when a case is closed. The reasons given for closing a case will be recorded.

- 5.19 The Council will, within 7 working days of a case being closed, write to the complainant, Ward Member(s) and the Town or Parish Council and the landowner /operator complained against to explain the Council's actions.
- 5.20 The Council will seek to adhere strictly to the above timescales and targets- unless the Planning Manager considers that exceptional circumstances apply, such that these timescales are varied. (For example; bereavement, or confirmed and secured resolution of the matter within a different timescale).
- 5.21 The Council expects to achieve these targets in 90% of cases.

6.0 PROCEDURES

Anonymity

- 6.1 The most effective way to report a suspected breach of planning control is by using the "Report" function on the Council web site's [home page](#) and selecting the "Alleged Breaches of Planning Control" option, which opens an online form. This ensures that all the information the Council needs to be able to investigate the matter is collected.
- 6.2 Complaints about alleged breaches of control will also be accepted by letter, e-mail, telephone, or in person, provided the complainant gives their name, address and telephone number. However, if it is necessary to ask for additional information that would have been provided by use of the online form, the investigation of the matter may be delayed. To avoid the risk of malicious or vexatious complaints, anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public safety, or the natural or built environment.
- 6.3 The identity of complainants will be treated as confidential and the general public will not have access to the Council's enforcement files. Information that has been submitted in confidence can be exempted from disclosure under the Freedom of Information Act 2000 and the Data Protection Act 1998 would require any personal information including names, addresses, telephone numbers and email addresses to be removed from any information the Council has to release. These measures protect the anonymity of complainants and allow the Council to carry out its enforcement duties effectively.
- 6.4 However, if the investigation proceeds to formal action, resulting in prosecution in the High Court or at public inquiry, it may not be possible for the Council to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation before the Council goes to court or public inquiry. If a complainant is unwilling to appear in court or at a public inquiry it may not be possible to continue with the action.

Joint working

- 6.5 Officers will co-operate with and seek appropriate assistance from other Council services and from other bodies, including licensing and environmental health officers, North Yorkshire County Council, North Yorkshire Police and North Yorkshire Building Control Partnership.
- 6.6 Where another body has more effective powers and is prepared to use them to achieve similar results it may not be necessary to also take action under the planning acts.
- 6.7 Many investigations, and the assessment of the planning applications that follow, rely on information provided by local people and by Parish and Town Councils. Whilst legal responsibility for the enforcement of planning control rests solely with the District Council, we will, on request, meet the Parish or Town Council to discuss the evidence and available options and seek to agree the appropriate course of action in conjunction with the Ward Member.

Rights of entry

- 6.8 Officers are granted rights of entry by the Town and Country Planning Act 1990.
- 6.9 Section 196A states that: “any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land (except a dwellinghouse where 24 hours notice of intended entry must be given to the occupier)...to determine whether there is or has been a breach of planning control”. In planning law, “dwellinghouse” excludes flats and residential caravans but the Council will afford occupiers the same 24 hour notice period. It is not necessary to give 24 hours notice to enter a garden or other land belonging to a dwellinghouse, just the building itself, although the Council will always pay due regard to rights to privacy.
- 6.10 Any person authorised to enter land in pursuance of such a right of entry or under warrant is required to produce evidence of such authority and also state the purpose of entry, if requested, under Section 196C (1) (a) of the Act before entering. It is an offence to wilfully obstruct entry where the correct procedures have been followed.
- 6.11 Sections 324 and 325 give more general rights of entry for planning purposes. Other legislation enables similar rights of entry in connection with listed buildings, trees and hedgerows, advertisements and hazardous substances matters, together with various powers within the Local Government (Miscellaneous Provisions) Acts of 1976 and 1982.
- 6.12 Hambleton’s Planning Officers carry identity cards bearing their name, post title and photograph authorising them to enter land to investigate planning enforcement complaints. Officers will always introduce themselves and explain the purpose of their visit.

Councillors

- 6.13 Councillors do not have rights of entry under Town and Country Planning legislation.
- 6.14 Discussions on site between Council Members and parties to a planning enforcement issue are not encouraged under the Councils’ Code of Practice. It is appropriate for Members to enter land and/or buildings by prior invitation at a formal site visit duly authorised by the Planning Committee.

Recording alleged breaches of planning control

- 6.15 All complaints and allegations received, subject to the anonymity clarification, will be recorded onto the Council’s Enforcement database. This will be updated as necessary. When a breach has occurred this will be recorded on the database and the information retained by the Council.

Comments and Complaints

- 6.16 Hambleton District Council is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the Service should first discuss any concerns with the Planning Manager. If you remain dissatisfied the Council has a formal Complaints Procedure, a separate leaflet is available explaining how to go about this. The Council will record and monitor the number of comments and complaints it receives about the service and these will be published in an Annual Report on the service.
- 6.17 If anyone considers that the Council has not sufficiently investigated an issue, or that the decision not to initiate enforcement action is not well-founded, they may also, in certain circumstances refer the matter to the Local Government Ombudsman, or apply to the High Court for judicial review. A leaflet explaining how to complain to the Local Government Ombudsman about possible maladministration is available from Council offices, but it may be necessary to consult a solicitor about the possibilities of a legal challenge.

Monitoring & Review

- 6.18 The Planning Service will publish an Annual Enforcement Report. This will measure the Service's performance in relation to the current Service benchmarks. In addition the Service will monitor its performance in relation to targets, casework levels, type and number of notices served and cases resolved on a quarterly basis. Furthermore, this Local Enforcement Plan, and its standards, will be reviewed every 3 years.

DRAFT

Annex A

Relevant Legislation and National Guidance

Legislation

A.1 The Town & Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, and the Planning & Compulsory Purchase Act 2004 are the principal sources of law on planning enforcement. Specific advice is issued from time to time on various other matters.

Guidance

A.2 National policy advice is found in three main documents:

- The 2012 National Planning Policy Framework (NPPF);
- “Enforcing Planning Control: Good Practice Guide for Local Authorities” (1997); and
- The Government’s 1998 “Enforcement Concordat”.

A.3 The NPPF states that:

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

A.4 The Good Practice Guide for Local Planning Authorities “Enforcing Planning Control” accompanied Circular 10/97 “Enforcing Planning Control: Legislative Provisions and Procedural Requirements”. This requires Councils to work within the legislative framework, having full regard to relevant judicial authority, appeal decisions and national policy guidance. Careful consideration has also to be given to other legislation that impacts on enforcement investigations, such as the Human Rights Act 1998, the Police and Criminal Evidence Act 1984 (PACE), and the Regulation of Investigatory Powers Act 2000 (RIPA).

A.5 The Good Practice Guide deals with the concept of the retrospective application. Where development has been undertaken without planning permission, the developer or land owner is entitled to seek to regularise the situation by way of a retrospective planning application, (even if enforcement action has been commenced). The Guide states:

“The authority’s approach to enforcing planning control over unauthorized development should not therefore be stricter, for planning purposes, than it would be when considering the merits of a prior application for planning permission before development starts.”

A.6 The Government’s “Enforcement Concordat” 1998, sets out the principles of good enforcement practice. These include:

- Setting out clear standards of the level of service and performance which users of the service can expect;
- Providing widely available information and advice on enforcement matters;
- Actively working to provide a courteous and efficient service advising on compliance;
- Having well-publicised, accessible, effective and timely procedures for dealing with complaints;
- Minimising the costs of compliance by ensuring that any action is proportionate to the harm caused, and avoids unnecessary expense;

- Carrying out duties in a fair, equitable and consistent manner, and having arrangements in place to promote consistency;
- Providing clear and simple advice confirmable in writing to explain legal requirements and set timescales for action;
- Providing an opportunity to discuss the case and resolve matters through negotiation unless immediate action is required; and
- Providing in writing an explanation of why immediate action is required, and advice on rights of appeal.

DRAFT

Annex B

Principal Enforcement Tools

Planning Contravention Notice (PCN)

B.1 The power to issue a PCN lies in Section 171C of the Town and Country Planning Act 1990 (as amended). This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool and does not necessarily mean that a breach of planning control has occurred or that further action will follow. The notice requires details and information on an alleged breach of planning control to be submitted to the Council to clarify whether a breach has occurred. Failure to respond within 21 days, or submission of false or misleading information may result in prosecution in the Magistrates Court and a potential fine.

Breach of Condition Notice (BCN)

B.2 The power to issue a BCN lies in Section 187A of the Town and Country Planning Act 1990 (as amended). This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A BCN cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice. There is no right of appeal against a notice; the right of appeal applied to the imposition of the condition when permission was granted. Failure to comply with a BCN is an offence liable to prosecution and a fine up to £1,000.

Enforcement Notice

B.3 The power to issue an enforcement notice lies in Section 172 of the Town and Country Planning Act 1990 (as amended). A Council may issue a notice where it considers there has been a breach of planning control and it is expedient to do so, i.e.; the development is unacceptable in policy terms, or planning conditions need to be imposed to make it acceptable. The enforcement notice must specify:

- The land to which the notice relates;
- The reasons why it is expedient to take such action;
- The breach of planning control complained of;
- The steps required to remedy the breach;
- The date on which the notice comes into effect; and
- The period for compliance.

B.4 There is a right of appeal to the Secretary of State. This must be made before the Notice is due to come into effect, usually not less than 28 days after the date of issue, and will suspend the notice until the appeal is determined. Failure to comply with an enforcement notice within the time specified is an offence liable to prosecution in the Magistrates Court and a fine of up to £20,000, or even imprisonment.

Direct Action

B.5 The power for a Council to take direct action to address non-compliance with an enforcement notice lies in Section 178 of the Town and Country Planning Act 1990 (as amended). If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not been taken within the compliance period, the Council may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

Stop Notice

- B.6 The power to issue a stop notice lies in Section 183 of the Town and Country Planning Act 1990 (as amended). A stop notice may be issued to support an enforcement notice. It has the effect of requiring a breach of planning control to cease. A stop notice is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the enforcement notice. It cannot be used to prohibit the use of any building as a dwellinghouse nor require the cessation of any activity which has been carried out for a period of more than four years prior to the service of the notice. The Council may have to pay compensation if the enforcement notice to which the stop notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution in the Magistrates Court and a fine of up to £20,000 or even imprisonment.

Temporary Stop Notice (TSN)

- B.7 The power to issue a TSN lies in Section 171E – 171H of the Town and Country Planning Act 1990 (as amended). Introduced in March 2005, this does not require the issue of an Enforcement Notice. A TSN can require the immediate cessation of a breach of planning control for a period of up to 28 days and since 4 May 2013 this includes residential caravans. During this 28 day period Enforcement and Stop Notices can be served or the person in receipt of the TSN could take appropriate corrective action. There is no right of appeal. Failure to comply is an offence subject to prosecution in the Magistrates Court and a fine of up to £20,000.

Injunction

- B.8 The Council can seek an Injunction under Section 187B of the Town and Country Planning Act 1990 (as amended) where it considers that a serious actual or intended breach of planning control is likely to take place it may seek an Injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction, although the Courts may expect this. The granting of an Injunction is at the Court's discretion. An Injunction is generally sought where an operator continues to ignore an Enforcement or Stop Notice, or where there are irreversible consequences; i.e. the threatened demolition of a Listed Building, but it can be used as a preventative measure if there is a strong prospect that something unacceptable might occur. Failure to comply with an Injunction is a contempt of court and can lead to imprisonment.

Section 215 Notice (“Untidy Land Notice”)

- B.9 Under Section 215 of the Town and Country Planning Act 1990 (as amended) a Council can serve a Notice requiring land to be cleared and tidied up when its condition adversely affects the amenity of the area. The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works must be completed. Appeals are made to the Magistrates Court. Failure to comply is an offence subject to prosecution in the Magistrates Court and a fine of up to £1,000 or daily penalties if the nuisance persists. The Council may resort to direct action and seek to recover the costs of remedial works from the land owner.

Unauthorised Advertisements

- B.10 Advertisements which are displayed in breach of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 constitute an offence and render those responsible and the owner of the land liable to immediate prosecution in the Magistrates Court and a fine of up to £2,500 and up to £250 for every day the offence continues after conviction.