

Local Enforcement Plan (Planning)

July 2018



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CONTROL SHEET FOR [policy title here]

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1.0 INTRODUCTION

What is a local enforcement plan?

- 1.1 A local enforcement plan should provide information on how the Council will respond to suspected breaches of planning control, tackle unauthorised developments, and monitor the implementation of planning permissions.

What is a breach of planning control?

- 1.2 There are many different types of breaches of planning control, including:
- where planning permission is required, the development of a building without the correct planning permission;
 - where planning permission is required, changes to the external appearance of a building without the correct planning permission;
 - where planning permission is required, changes of the use of the land or buildings without the correct planning permission;
 - where planning permission is required, engineering operations that change the existing levels of land or create new land forms that are carried out without the correct planning permission; and,
 - the demolition of a non-listed building within a Conservation Area.
- 1.3 We normally refer to these types of breaches of planning control as 'unauthorised development' because they are dealt with under powers in the Town and Country Planning Act 1990, as amended ('the 1990 Act').
- 1.4 The 1990 Act also covers other breaches of planning control, including:
- non-compliance with conditions attached to a planning permission, which is normally referred to as a 'breach of condition';
 - non-compliance with a planning obligation contained in a s.106 legal agreement attached to a planning permission; and
 - untidy land or buildings that has an unacceptable impact on the character and appearance of the local area.
- 1.5 In addition to unauthorised developments, there are other types of breaches of planning control that are normally dealt with under powers in different legislation, including:
- unauthorised alterations to a listed building or demolition of a listed building;

- unauthorised works to trees in a designated Conservation Area
- unauthorised works to or removal of a tree protected by a Tree Preservation Order, or trees located in a conservation area; and
- unauthorised removal of important hedgerows.

Why is a local enforcement plan important?

- 1.6 It is not a criminal offence to carry out unauthorised development (unless an enforcement notice is in place), and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control. The National Planning Policy Framework also states that the Council should act in a proportionate way when tackling breaches of planning control.
- 1.7 This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control. Formal enforcement action should be used as a last resort. In some cases, the Council may take formal enforcement action to resolve a breach of planning control. The Council may seek a retrospective planning application to resolve a breach of planning control, whilst in others the Council might not take any further action.
- 1.8 The Council has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently. Whilst demonstrating a consistent approach to planning enforcement, cases will be dealt with differently depending on the individual circumstances of the case.
- 1.9 Therefore, the preparation and adoption of 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; and,
 - provides greater certainty for all parties engaged in the development process.

What is the scope of this Local Enforcement Plan?

1.10 The following sections of this document will set out:

- how we will prioritise suspected breaches of planning control;
- how to report a suspected breach of planning control;
- how we will investigate suspected breaches of planning control;
- how we will take formal enforcement action against suspected breaches of planning control; and,
- who is responsible for implementing and monitoring these policies.

2. PRIORITIES

How will the Council prioritise planning enforcement?

- 2.1 For planning enforcement to work effectively and efficiently it is important to prioritise cases so we have sufficient resources available to tackle the most serious cases quickly. It is also important that we have sufficient resources to properly investigate suspected breaches of planning control to make sure we take the most appropriate action in the most reasonable amount of time.
- 2.2 Therefore, the first thing we will normally do when we identify a breach of planning control is decide whether the case is classed as high, medium or low priority to make sure planning enforcement is carried out effectively within the District.

Why is effective planning enforcement important?

- 2.3 Effective planning enforcement is important to:
- tackle breaches of planning control that have an unacceptable adverse impact on the character and appearance of the local area, or have an unacceptable adverse impact on the living conditions of local residents;
 - maintain the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval; and
 - maintain public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations needed to make development acceptable in planning terms are complied with.

What is a high priority case?

- 2.4 High priority cases are cases of severe importance. We will aim to investigate these cases on the same day that they are reported to the Council. We will then decide what further action to take, if any, within 24 hours. Examples of high priority cases are as follows:
- Demolition in a Conservation Area;
 - Destruction of an important hedgerow;
 - Hazardous substances;
 - Unauthorised works to protected trees; and,
 - Unauthorised works to listed buildings.

What is a medium priority case?

- 2.5 Medium priority cases will not normally require immediate action to prevent serious harm. They will include suspected breaches of planning control that would not normally get planning permission because they are contrary to local planning policies, and have a harmful impact on the amenity of the area.

2.6 We will aim to start investigating cases that are likely to be a medium priority by visiting the site within two weeks of receiving a complaint. We will then decide what further action to take, if any, within four weeks of the site visit. Examples of medium priority cases are as follows:

- Unauthorised development that contravenes local planning policy;
- Unauthorised development that significantly impacts on local amenity and public safety;
- Unauthorised development that results in harm to the character of a Conservation Area; and
- Unauthorised development that results in harm to the setting of a listed building.

What is a low priority case?

2.7 Low priority cases will be minor breaches of planning control. We will aim to start investigating cases that are likely to be a medium priority by visiting the site within four weeks of receiving a complaint. We will then decide what further action to take, if any, within eight weeks of the site visit.. Examples of low priority cases are as follows:

Unless falling within priorities 1 and 2 above:

- Running a business from a residential property;
- Unauthorised advertisements;
- Unauthorised fences and walls;
- Unauthorised householder developments; and,
- Untidy land and buildings.

How will we monitor implementation of planning permissions?

2.8 The Council does not have sufficient resources to monitor every planning permission that is implemented across the District. We will normally need to rely on reports of suspected breaches of planning conditions to investigate these types of planning control or ad-hoc monitoring of development by case officers.

2.9 When we receive a report of a suspected breach of planning conditions or we identify a breach of planning conditions on a development site, we will approach the case in the same way as other breaches of planning control depending on whether the breach of condition is considered to be a high, medium or low priority case.

3. REPORTING A SUSPECTED BREACH OF PLANNING CONTROL

How should a suspected breach of planning control be reported?

- 3.1 We publish a form on the Council's website that asks for all the information we need to allow us to investigate a suspected breach of planning control. We have also included a copy of this form in this document (see appendix A), which can also be used to report a suspected breach of planning control. If the form is incomplete or missing some information this may delay our investigation.
- 3.2 To report a suspected breach of planning control the form should be completed and e-mailed to dev.control@bolsover.gov.uk or posted to the Planning Department at Bolsover District Council, The Arc, High Street, Clowne S43 3JY.
- 3.3 Once we have received a completed form we will send an acknowledgement. At the conclusion of our investigations we will let the person who has reported a suspected breach know what action we have taken. We will not normally provide any other updates on our investigations but we will aim to work to the timescales we have set out in Section 2 of this document for high, medium and low priority cases.
- 3.4 We do not normally need photographs to be submitted with a completed form because we cannot use these photographs as evidence. However, we do need the address of the person reporting a suspected breach of planning control and that person's contact details. We do not accept anonymous complaints and we may need to discuss the case with the person who has reported it as part of our investigations.

How will we use personal data included on a completed form?

- 3.5 We will only share the address and private contact details of a person reporting a suspected breach of planning control with officers dealing with the case, unless the case involves a matter that cannot be dealt with by planning enforcement.
- 3.6 If a case should be dealt with by another department in the Council, we will share the details of the case with relevant officers in that department so they can take appropriate action. However, the Council will not share personal contact details with any external third parties without that person's consent.
- 3.7 We do not publish your personal contact details and we treat these details in confidence because we recognise many people will not have the confidence to report a suspected breach of planning control if their identity were to be made public.
- 3.8 For these reasons, the Council would not normally provide information about the details of a person who has reported a suspected breach of planning control if we receive a request for this information made under

the freedom of information act or the environmental information regulations.

- 3.9 However, we may have to share your personal details with the police or the courts if, in very exceptional circumstances, the suspected breach of planning control actually amounted to a criminal offence subject to prosecution.

What types of complaints cannot be dealt with by planning enforcement?

- 3.10 Before reporting a suspected breach of planning control, to avoid any unnecessary work or delay in taking the most appropriate action it is important to check that the matter is for the Council's Planning Department to deal with. The most common issues that are incorrectly reported to the Council's Planning Department are listed below:

Approved development or works

- 3.11 In some cases, we receive reports of suspected breaches of planning control about development or works that have been granted planning permission. We publish details of most planning applications on the Council's website including details of approved plans, planning conditions and planning obligations.
- 3.12 If it is found that works or a development has already got consent and is being carried out in accordance with the permission, then we will not take planning enforcement action. However, a complaint can still be made to the Council's Complaints Department about the way we dealt with an application for permission for the works or development. Please note that this complaint cannot change the decision made.

Boundary disputes

- 3.13 The planning department cannot deal with boundary disputes. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter.

Damage to private property

- 3.14 Similar to the above, the planning department cannot deal with reports about damage to private property. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or reporting the matter to the police.

Dangerous Structures

- 3.15 The Planning Department cannot deal with reports of dangerous structures, which should be reported to Derbyshire Building Control Partnership who can be contacted on 0333 880 2000 or by email at

info@dbcp.co.uk

Empty Properties

- 3.16 The Planning Department cannot deal with empty properties, which should normally be reported to the Council's Empty Property Officer by telephoning 01246 242424.

Fly-tipping

- 3.17 The planning department cannot deal with reports of fly-tipping, which should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Fracking

- 3.18 All issues related to Fracking should be discussed with Derbyshire County Council who can be contacted on 01629 580000.

Highways Land

- 3.19 The planning department cannot deal with complaints about any structures, advertisements, A-boards or any other operations, such as cars sales for example, that have taken place on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself.
- 3.20 Complaints about activities taking place on highways land that is connected to the local road network should be reported to the Highways Department at Derbyshire County Council by telephoning 01629 580000. Complaints about activities taking place on highways land connected to the strategic road network should be reported to Highways England by telephoning 0300 123 5000.

Invasive non-native plants and harmful weeds

- 3.21 Unless a breach of a planning condition has been identified, complaints about non-native invasive species or harmful weeds cannot be dealt with by the Planning Department and should be reported to The Environment Agency, more information can found at www.gov.uk/government/organisations/environment-agency

Light Pollution

- 3.22 Unless a breach of a planning condition has been identified, complaints about light pollution cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Noise Nuisance

- 3.23 Unless a breach of a planning condition has been identified, complaints about noise nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Odour Nuisance

- 3.24 Unless a breach of a planning condition has been identified, complaints about odour nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Quarry Sites and active Mineral Extraction

- 3.25 All issues related to quarrying or mineral extraction should be discussed with Derbyshire County Council who can be contacted on 01629 580000.

Trespass

- 3.26 Reports about private individuals trespassing cannot be dealt with by the Planning Department and these types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or reporting the matter to the police.

Vermin

- 3.27 The planning department cannot deal with reports of vermin or other types of infestation, which should be reported to the Council's Environmental Health Department by telephoning 01246 242424 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk

Waste sites.

- 3.28 Any complaints about the operation of a waste transfer site including public amenity waste disposal sites and scrapyards should be directed to Derbyshire County Council who can be contacted on 01629 580000.

4. Investigating suspected breaches of Planning Control

How will we investigate suspected breaches of planning control?

- 4.1 Effective enforcement action relies on the Council having accurate information about a suspected breach of planning control. This means that the first part of our investigation is arranging a site visit. This can often involve contacting the owner of the land where the suspected breach of planning control has taken place and/or the person that appears to be responsible for the breach to arrange a site visit.
- 4.2 We prefer to organise a site visit in this way because this gives us the opportunity to discuss the case with the people involved and it will help us with our investigations if we have a better understanding of what has happened and why. In addition, a breach of planning control may be the result of a genuine mistake where, once the breach is identified, the person responsible may take immediate action to remedy it.
- 4.3 However, we will not delay starting our investigations if we are not able to arrange a site visit or are refused entry to a site. If we are unable to arrange a site visit or are refused entry to the site then we will consider using our rights of entry. If we use our rights of entry, we will inform anybody on site who we are and the purpose of our visit. Our officers will also be carrying their staff cards as proof of identity.

Rights of Entry

- 4.4 The Council can authorise named officers to enter land specifically for enforcement purposes (sections 196A, 196B and section 196C of the Town and Country Planning 1990 Act). This right of entry is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control. The Act specifies the purposes for which entry to land may be authorised (section 196A(1) of the 1990 Act), namely:
 - to ascertain whether there is or has been any breach of planning control on the land or any other land;
 - to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised; and
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.
- 4.5 The phrase "or any other land" means that, if necessary, neighboring land can be entered, whether or not it is in the same ownership or is being occupied by the person whose land is being investigated.

- 4.6 Section 196A of the 1990 Act state there must be reasonable grounds for entering the land for the purpose in question. This is interpreted to mean that entering the land is the logical means of obtaining the information required by the local planning authority when investigating a suspected breach of planning control. It is also an offence to willfully obstruct an authorised person acting in exercise of a right of entry under section 196C(2) of the 1990 Act.
- 4.7 Where there are reasonable grounds for entering land for enforcement purposes, and a right of entry is refused or is reasonably likely to be refused, or there is a need for urgency, then it is possible for a Justice of the Peace to issue a warrant to allow entry (section 196B(1) of the 1990 Act). However, entry to a building used as a dwelling house cannot be demanded as of right unless 24 hours advanced notice of intended entry has been given to the occupier.

Assessing the Evidence

- 4.8 In many cases, we can collect enough relevant information from our historic records of the site, as well as information collected on a site visit and other publicly available information to be able to properly assess whether an actual breach of planning control has taken place and what further action we need to take.
- 4.9 On some occasions we might need to obtain further information to make an assessment of whether there are any legal grounds that mean we cannot take formal enforcement action. In these circumstances, a planning contravention notice may be issued under section 171C of the 1990 Act and can be used to do the following:
- allow officers to request any information they need for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land; and
 - invite its recipient to provide officers with constructive suggestions about how any suspected breach of planning control may be remedied satisfactorily.
- 4.10 A proportionate way to tackle suspected breaches of planning control is to negotiate an acceptable solution with interested parties. Issuing a planning contravention notice can be one way to achieve this, allowing officers to collect the information they need to help progress a case. However, it is an offence not to return a planning contravention notice within the time specified for its return and it is an offence for a recipient to provide false information when completing a planning contravention notice.

When might the Council not be able to take formal enforcement action?

- 4.11 One reason the Council may not be able to take formal enforcement action is when an investigation of a suspected breach of planning control reveals that a breach of planning control has not actually taken place.
- 4.12 For example, we will not take any further action if we find that development or works taking place or completed on a site already has the appropriate planning permission and is being carried out or has been completed in accordance with the permission
- 4.13 We will also not take any further action if we find that development or works taking place or completed on a site benefits from 'deemed consent' because it is permitted development under the Town and Country (General Permitted Development)(England) Order 2015, as amended, or when we find that a sign or advertisement has 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 4.14 In addition, the 1990 Act and Town and Country Planning (Use Classes) Order 1987 (as amended) set out various activities and operations that cannot be considered to be development that requires planning permission as a matter of law. We will not take any further action if we find that a suspected breach of planning control is not development that requires planning permission within these statutory provisions.

Time limits for enforcement

- 4.15 In most cases, development becomes immune from enforcement if no action is taken:
- within 4 years of substantial completion for a breach of planning control consisting of operational development;
 - within 4 years for an unauthorised change of use to a single dwellinghouse;
 - within 10 years for any other breach of planning control (essentially other changes of use or breaches).
- 4.16 These time limits are set out in section 171B of the 1990 Act and we will not normally take any further action if we find out that an unauthorised development is immune from enforcement because we are too late to take action.
- 4.17 However, these statutory time limits do not prevent enforcement action after the relevant dates where there has been deliberate concealment of a breach of planning control.
- 4.18 Deliberate concealment may be considered to have occurred when deliberate attempts have been made to hide or disguise a breach of planning control to prevent its discovery, or deliberately misleading

statements or information have been provided to the Council to prevent a breach of planning control being discovered.

- 4.19 In cases of deliberate concealment, officers may decide to proceed with formal enforcement action that would normally be considered 'out of time' or apply for a planning enforcement order to gain more time to consider whether formal enforcement action should be taken.

When might formal enforcement action not be appropriate?

- 4.20 Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of planning control may be the result of a genuine mistake where, once the breach is identified, the person responsible will take immediate action to remedy it.

- 4.21 We will generally not take further formal enforcement action when action is taken to remedy a breach of planning control within 3-6 months of that action being agreed. The amount of time needed to put things right will depend on what actions are required to remedy the identified breach of planning control, but officers will not normally agree to a period longer than 6 months unless there are exceptional circumstances.

- 4.22 In deciding, in each case, what is the most appropriate way forward, the Council should also usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of planning 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.

- 4.23 In most cases, only a minor breach of planning control will fall within the above criteria and these types of breaches will normally be low priority cases. However, if the Council decides not to take further action when it has completed its investigation of a low priority case this should not be taken as condoning a willful breach of planning law.

- 4.24 A decision to take no further action will be a proportionate response when the retention of an unauthorised development or works will not result in any demonstrable harm. Nonetheless, it is in the landowner's own best interests to regularise unauthorised development even when the Council decides not to take any further action.

- 4.25 We will always invite the submission of a retrospective application for low priority cases and other minor breaches of planning control because it is likely these types of applications will be granted permission. The right planning permission will normally be needed by the landowner when it comes to selling the property to reduce any conveyancing and legal issues.
- 4.26 We will also normally invite a retrospective planning application for some medium priority cases where planning conditions could be used to make the unauthorised development or works acceptable in planning terms and the person responsible for the breach of planning control has expressed a willingness to submit a retrospective application within 3 months of the breach being identified.
- 4.27 However, it is highly unlikely that we will invite an application if the breach of planning control we are investigating is significantly contrary to planning policies and/or has resulted in or continues to significantly detract from the living conditions of local residents or the character and appearance of the local area in a way that cannot be dealt with satisfactorily by planning conditions or amendments to the development.
- 4.28 In these circumstances, we will consider taking further action and this will normally involve commencing formal enforcement action to tackle some medium priority cases and all high priority cases.

5. Formal Enforcement Action

When will we start formal enforcement action?

- 5.1 Formal enforcement action should only be taken where the Council is satisfied that there has been a breach of planning control and it is expedient to take enforcement action, taking into account the provisions of the development plan and any other material considerations. Formal enforcement action should only be taken as a last resort.
- 5.2 Therefore, we will normally only start formal enforcement proceedings when we have thoroughly investigated the suspected breach of planning control and explored and exhausted every opportunity to agree a timely resolution to a breach of planning control with the person responsible for that breach and/or the landowner if they are not the person who has carried out the breach of planning control.
- 5.3 However, we cannot defer enforcement action indefinitely and some breaches of planning control require immediate action. So, we will consider taking formal enforcement action without giving further notice when we are tackling the most serious breaches of planning control, when the time limits for enforcement are close to running out, or when we cannot negotiate an acceptable solution or actions to remedy a breach of planning control have not been carried out in an agreed timescale.
- 5.4 It is therefore important that any person contacted by the Council about a suspected breach of planning control that they are responsible for, or that has been carried out on their land gets in contact with officers to discuss the case as a matter of urgency. It is also important that if a way to put things right has been agreed with officers to prevent further enforcement action being taken by the Council then it is important the actions needed to put things right are completed within the agreed timescale.

What types of formal enforcement action can the Council take?

- 5.5 There is a range of ways of tackling breaches of planning control available to the Council through formal enforcement action. In each case officers not only have to determine which of the options would be the most effective way of dealing with the breach but also which would be the most proportionate way of securing a resolution.
- 5.6 In these terms, in most medium priority cases and in some high priority cases, issuing an enforcement notice will normally be the right approach for officers to take when it appears to them that there has been a breach of planning control and it is expedient to take formal enforcement action when taking into account the provisions of the development plan and any other material considerations (including the guidance in this document).

Enforcement Notices

- 5.7 An enforcement notice should enable every person who receives a copy to know:
- exactly what, in the local planning authority's view, constitutes the breach of planning control; and
 - what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach of planning control.
- 5.8 There is a right of appeal against an enforcement notice, however it is an offence not to comply with an enforcement notice once the period for compliance has lapsed.
- 5.9 Therefore, it is important that the recipient of an enforcement notice takes immediate action to lodge an appeal against the notice if they think there are good grounds to do so or take immediate steps to comply with the notice.

Stop Notices

- 5.10 A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in a related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Therefore, a stop notice might be issued shortly after an enforcement notice because it is important to prevent a development from continuing before the enforcement notice comes into effect.
- 5.11 Because there are very strict limitations on the use of a stop notice, it is unlikely officers will consider issuing a stop notice unless an unauthorised development involves the demolition of an unlisted building in a designated Conservation Area and an agreement to stop demolition with immediate effect has not been reached.

Temporary Stop Notices

- 5.12 A temporary stop notice requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.
- 5.13 The Council does not need to have served an enforcement notice before it issues a temporary stop notice and officers may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.
- 5.14 A temporary stop notice expires after 28 days, so officers will consider what further action is required within this period if an alternative way of dealing with

the breach which would overcome the objections to it in an environmentally and legally acceptable way cannot be agreed with the recipient of the temporary stop notice.

Breach of Condition Notice

- 5.15 A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition. Officers will consider issuing a breach of condition in addition to an enforcement notice, as an alternative to a stop notice, where officers consider it is expedient to stop the breach of conditions quickly and before any appeal against the enforcement notice is determined.
- 5.16 A breach of condition notice is therefore most likely to be used in some high or medium priority cases when immediate action is required to stop a continuing breach of conditions in the interests of safeguarding amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

Injunction

- 5.17 The Council can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that the Council take because if a person fails to comply with an injunction they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made.
- 5.18 In these circumstances, officers will only consider applying for an injunction as a last resort and only if there have been persistent breaches of planning control such as failure to comply with the requirements of an enforcement notice over a long period and/or other enforcement options have been, or would be, ineffective in the event of a serious breach of planning control that would cause substantial and/or immediate harm to the local area.

Prosecution

- 5.19 When officers are dealing with high priority cases, many of the breaches of planning control may constitute a criminal offence subject to prosecution including unauthorised works to protected trees, removal of important hedgerows, unauthorised works to listed buildings and where hazardous substances are involved.
- 5.20 Officers will take further legal advice in these cases with a view to pursuing a prosecution in the event of a serious breach of planning control that has resulted in substantial harm to the local area. It is therefore important that a person that is contacted by officers about a high priority case makes every effort to stop any unauthorised works or activities on site immediately.

5.21 Officers will also take further legal advice with a view to pursuing a prosecution in the event of non-compliance with the requirements of an enforcement notice, breach of conditions notice, stop notice, temporary stop notice, listed building notice, community protection order or a section 215 notice.

Listed Building Enforcement Notice

5.22 Although broadly similar, there are a number of important differences between planning enforcement notices and listed building enforcement notices including the fact that there are no time-limits for issuing listed building enforcement notices.

5.23 Officers will consider issuing a listed building enforcement notice in medium and high priority cases where works have been carried out without the necessary listed building consent, or a condition attached to that consent has not been complied with when such works materially detract from the historic or architectural significance of the building and there is no agreement to put those works right in any other way.

Community Protection Notices

5.24 Officers have the power to issue a Community Protection Notice under the Anti-Social Behaviour, Crime and Policing Act 2014 and these Notices can be used to tackle a wide range of issues including:

- untidy land / buildings;
- unauthorised use of land; and
- unauthorised buildings / structures.

5.25 Where any of the above problems are causing ongoing detrimental effects to the living conditions of the local community, a Community Protection Notice can contain reasonable requirements:

- to stop doing specified things;
- to do specified things; or,
- to take reasonable steps to achieve specified results.

5.26 Officers will consider issuing a Community Protection Notice if an earlier written warning that a Notice may be issued has been ignored and may be used as an alternative to a section 215 Notice.

Section 215 Notices (Requiring proper maintenance of land)

5.27 Section 215 of the 1990 Act provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its

condition adversely affects the amenity of the area. If it appears to officers that the public amenity of part of the District is being adversely affected by the condition of neighbouring land and buildings, they may consider serving a section 215 notice on the owner requiring that the situation be remedied.

- 5.28 These notices will set out the steps that need to be taken, and the time within which they must be carried out. The Council also have powers under s219 of the 1990 Act to undertake the clean-up works itself and to recover the costs from the landowner.

Other default powers

- 5.29 The Council can prosecute for a failure to comply with an enforcement notice but it can also consider using its default powers under s.178 of the 1990 Act to enter enforcement notice land and carry out the requirements of the notice itself.
- 5.30 It is an offence to willfully obstruct anyone who is exercising those powers on the Council's behalf and Council can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work.
- 5.31 Officers will only consider using these default powers when all other methods to persuade the owner or occupier of land to carry out any steps required by an enforcement notice have failed.

Advertisements and fly-posting

- 5.32 The Council will not take action against any adverts or fly-postings on the local road network, which would normally be dealt with by the local highway authority (Derbyshire County Council). Highways England would be expected to deal with adverts and fly-posting on the strategic road network.
- 5.33 In other cases, where signs, adverts or fly-posting are unauthorised and is damaging the character and appearance of the local area, officers will normally serve advance written notice to anyone who can be identified as the person responsible, that:
- in the Council's opinion the advert or sign is displayed illegally; and
 - the Council intends to remove it after the expiry of a period specified in the notice.

Officers can then remove the sign or adverts 2 clear days after the notice was served.

- 5.34 However, the Council need not give any notice to remove fly-posters where a placard or poster does not give the address of the person displaying it and officers do not know that address and are unable to ascertain the relevant address after making reasonable enquiries.

How will human rights be taken into account in planning enforcement?

- 5.35 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action should be taken, officers, where relevant, will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.
- 5.36 When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

How will the public sector equality duty be taken into account in planning enforcement?

- 5.37 In deciding whether enforcement action should be taken, officers, when the relevant information is publically available or has been made available to officers, will have regard to the potential impact on any person with a protected characteristic or group of persons that share a protected characteristic that are either likely to be affected by the proposed action or likely to be affected by a breach of planning control.
- 5.38 Officers will also make any reasonable adjustments that have been requested and in particular, will make the process of planning enforcement as accessible as possible by ensuring all written communication is in plain English, can be produced in bigger text or different languages if appropriate, and where necessary, by visiting people at their home to discuss any breach of planning control that directly affects their living conditions or any action that will have a material effect on their quality of life.

Unauthorised Encampments

- 5.39 An absence of authorised sites does not mean that the Council cannot take enforcement action against unauthorised encampments. There are also extensive powers available to help the Council deal with illegal and unauthorised sites.
- 5.40 However, officers will only proceed with action against unauthorised encampments following liaison with the Council's Corporate Enforcement Officer Group, the equalities officer, other interested parties including the police, particularly because of the need to balance the potential of taking urgent action to remedy a serious breach of planning control whilst dealing with sensitive issues around human rights and compliance with public sector

equality policy.

6. Implementation and Monitoring

Who will be responsible for implementing the Local Enforcement Plan?

- 6.1 The Joint Head of Planning, the Planning Manager and the Principal Enforcement Officer will be responsible for implementing the plan and ensuring the guidelines in this document are followed by officers.
- 6.2 The Principal Enforcement Officer, Enforcement Officers and Planning Officers, where appropriate, will be responsible for a pro-active approach to reporting suspected breaches of planning control, investigating suspected breaches of planning control, and monitoring large housing sites.
- 6.3 The Joint Head of Planning, the Planning Manager and the Principal Enforcement Officer will assist, where appropriate, with deciding what action should be taken when an investigation into a suspected breach of planning control has been completed, and the Council's solicitors will be consulted before any formal enforcement action is commenced.
- 6.4 The Council's solicitors will also be consulted before any legal action is commenced and the Council's solicitors will assist with any legal proceedings including instructing a QC to represent the Council in any court proceedings.
- 6.5 The Planning Manager and/or the Principal Enforcement Officer will normally be expected to prepare a statement of cases and/or represent the Council at an informal hearing or public enquiry in the event of an appeal to the Planning Inspectorate where an enforcement notice has been served in particularly complex or high profile enforcement cases
- 6.6 The Planning Manager and the Principal Enforcement Officer will assist the Enforcement Officer or other Planning Officers to prepare a statement of case in other more straightforward cases.
- 6.7 The Council's Corporate Enforcement Officer Group will also have a role to play in planning enforcement if a case requires joint working across Council departments. Unauthorised encampments will therefore always be referred to this Group before any decisions are made on how to progress these cases.

How will District Councilors be involved?

- 6.8 Ward Councilors will normally be informed before officers take formal action in respects of any suspected breach of planning control in their local area where the case is sensitive or contentious.
- 6.9 On a quarterly basis, District Councilors will also receive a list of suspected breaches of planning control that have been reported to the Council or that have been identified by officers over the last three months so they have the opportunity to discuss these cases or check progress with officers if necessary.

A half yearly report will also be produced, giving reference to performance standards associated with the varying case priority levels (see section 6.13).

What service standards will be monitored?

- 6.10 The nature of planning enforcement means that it is not possible to target a timescale in which to close a case. For example, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal.
- 6.11 It is also not possible for officers to meaningfully control how many complaints the Planning Department receive about suspected breaches of planning control or how many breaches occur within the District at any particular time, although it is hoped this document will help reduce both.
- 6.12 However, as previously highlighted, this document sets out the following service standards that officers consider are specific, measurable, achievable and realistic:
- The site of a high priority case will be visited in the same day the suspected breach of planning control has been clearly identified. Wherever possible, a decision on what further action is required will be taken within 24 hours of that site visit. Investigations will not take place over the weekends or Bank Holidays
 - A site visit will be undertaken within two weeks of identifying a suspected breach of planning control that is likely to be a medium priority case. A decision on what further action to take will be made within four weeks of that site visit.
 - A site visit will be undertaken within four weeks of identifying a suspected breach of planning control that is likely to be a low priority case. A decision on what further action to take will be made within eight weeks of that site visit.
- 6.13 We will monitor our performance against these standards and publish the results on a half-yearly basis. These results will be assessed to see whether this Plan is working or needs to be reviewed. Achieving a culture of compliance would be one key measure of whether the Plan has been successful.
- 6.14 The Local Enforcement Plan will also be reviewed if there are any substantial changes to relevant legislation, national policy or national guidance or within three years after publication depending on whichever is the sooner.
- 6.15 Planning officers will attend regular training events to ensure that their continuing professional development is appropriate to endorse the principles of this Enforcement Plan.

Appendix A:

Planning Enforcement Enquiry Form

Please note that Bolsover District Council does not normally accept anonymous complaints. Therefore, all fields of the Enquiry Form should be completed. If insufficient details are provided the information will be placed on file and the matter will not be investigated.

Your details are kept confidential at all times and are protected by the Data Protection Act 1998. This information is required so that we can contact you if we need further information and to let you know what progress we are making with your enquiry. We will not use your personal information for any other purpose.

Once you have completed the form please send it to us via email; you can also print off the form and post it to us or put it in an envelope addressed to 'Planning Department' and hand it in at one of our contact centres.

Contact details:

Planning Enforcement
Bolsover District Council
The Arc
High Street
Clowne
Chesterfield
Derbyshire
S43 4JY

Telephone: 01246 242424
E-mail: dev.control@bolsover.gov.uk

Your details:

Name:

Address:

Postcode:

Telephone Number (Day):

Telephone Number (Mobile):

E-mail address:

Details of the alleged breach

Please give full details of the development you are reporting. The more information you provide at this stage the sooner we can investigate and take any necessary action.

Address/location of site:

Name of the owner or occupier (if known) or any other useful contact:

Please describe in as much detail as possible the nature of the development being carried out, including approximate dimensions, dates and times of activity and when development began.

Please explain what problem this is causing you.



All personal information provided to Bolsover District Council will be held and treated in confidence in accordance with the Data Protection Act 1998. It will only be used for the purpose for which it was given and may be shared with other council departments or third party organisations which also have a role in dealing with the complaint or which have powers to deal with aspects of the complaint