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Date	14 th March 2017

Ward (s) affected	All	Key Decision	Yes
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Subject	Report of the Planning Enforcement Scrutiny Panel.
RECOMMENDATION	
<p>The Planning Enforcement Scrutiny Panel invites the Scrutiny Committee to recommend to the Executive that:-</p> <ul style="list-style-type: none"> • A copy of the National Planning Practice Guidance on Ensuring Effective Enforcement is distributed to all Members and substitutes of the Development Control Committee. • Each month an updated Schedule of Enforcement Cases is provided for all Members through MOSS to include any additions to the Public Register of Enforcement Notices. • Alleged breaches of planning control should be submitted through the "Report It" function on the MVDC website in the interests of ensuring the efficient management of the planning enforcement caseload. • The Public Register of Enforcement Notices is published on the MVDC web site. • Reporting facilities for developers to notify the Council of development commencements should be made as accessible as possible with the aim of improving the current level of use 	
EXECUTIVE SUMMARY	
<p>In November 2014 it was agreed by the Scrutiny Committee to establish a Panel of Members to examine and review the delivery of MVDC's planning enforcement service. The Panel met twice in 2015 and following revision to its Terms of Reference met on two occasions in September and October 2016.</p> <p>At their 2016 meetings the Panel reviewed the level of enforcement case work and the arrangements for monitoring the work and keeping Members informed. It looked at how those who express concern about potential breaches of planning control are kept informed of MVDC's response. It reviewed the level of staff resources working on planning enforcement matters in relation to the case load and also looked at how best the outcomes of enforcement action could be reported to Members of MVDC.</p> <p>This report explains the findings of the Planning Enforcement Scrutiny Panel and its</p>	

recommendations to the Scrutiny Committee.

CORPORATE PRIORITY OUTCOMES

Environment

- **Protect and enhance the natural and built environment and ensure our areas of natural beauty are well looked after.**

The role of the Planning Enforcement Service is to ensure that potential breaches of planning control are investigated and appropriate action taken to ensure the District's built and natural environment is not harmed through unauthorised development.

1. Introduction / Background

- 1.1 As part of its work programme, the Scrutiny Committee agreed in 2014 to set up a Planning Enforcement Scrutiny Panel. The Panel met in March 2015 and November 2015. At the meeting of the Scrutiny Committee in July 2016 it was agreed to revise the Panel's Terms of Reference to take account of partnership arrangements and to strengthen the Panel's monitoring and reporting responsibilities. These are set out in Appendix 1 of this report.
- 1.2 The Panel met on two occasions in September and October 2016 and has agreed the content of this report.
- 1.3 At the September meeting of the Panel, the Enforcement Team explained that planning enforcement is not a mandatory service and local authorities take action at their discretion. The key concept in relation to effective planning enforcement is "proportionality". In deciding whether enforcement action is taken, MVDC has to have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action and those affected by the breach of planning control. In practice, this means that MVDC attempts in the first instance to speak to all relevant parties in an attempt to resolve any issues without recourse to formal action. Nevertheless there are occasions when formal enforcement action has to be taken.
- 1.4 The Panel reviewed the National Planning Practice Guidance – Ensuring Effective Enforcement. See Appendix 2. It considered this is a most useful document which provides in question and answer format a comprehensive overview of the planning enforcement process, the powers available to local authorities and the circumstances under which it is appropriate to use them. The Panel felt this is a document that would be particularly useful for members of the Development Control Committee as it provides a most helpful digest of all aspects of planning enforcement including its scope and procedures.
- 1.5 The Panel also noted MVDC's Local Enforcement Plan. See Appendix 3. This identifies the local priorities for enforcement action so that MVDC's limited enforcement resources are put to best use. The Panel was advised that new enforcement cases are initially assessed by the Planning Enforcement Team in terms of urgency, and assigned an appropriate category. Whilst these categories

define the deadlines by which an initial site visit will be carried out, in practice MVDC's response times are quicker than prescribed by the Local Plan, with most notifications followed up within 24 to 48 hours. It was noted that MVDC's Enforcement Team has developed a good awareness of the names and locations which arise most commonly in association with complaints, and this has helped to target monitoring resources where most urgently required.

- 1.6 The Panel then addressed the issues raised in the Terms of Reference that had been established by the Scrutiny Committee. The Panel's response to each issue raised by the Scrutiny Committee is set out in the following sections of this report.

2.0 Review of current enforcement activity.

- 2.1 The Panel received details of the Enforcement Team's case work. It was advised that between 1st January 2016 and 31st December 2016, 320 cases of an alleged breach of planning control were registered. On 24th February there were 119 open cases of alleged breaches of planning control¹.

- 2.2 The Panel reviewed with the Enforcement Team the current open enforcement cases and the actions being taken.

- 2.3 The Panel also recognised that the Enforcement Team carries out a significant amount of work to monitor the conditions and any legal agreements that are attached to planning permissions to ensure they are discharged appropriately before and during implementation of the planning permission. Monitoring compliance with conditions and legal agreements is undertaken by:

- Checking the Building Control daily commencement sheet to identify where development is starting.
- Reviewing the electronic mailbox to check for developers' confirmation that development has started on site. The Panel was advised that a planning decision notice includes a paragraph requiring the applicant to tell MVDC when the planning permission is being implemented.
- Observation by the Enforcement Team throughout the course of the working day when out and about in the District checking sites.
- Responding to information from individuals, local groups and organisations about the commencement of development.

- 2.4 The Panel was advised that during 2016, around 150 developments had been visited by the Compliance Officer in the Enforcement Team. Some of the sites have received more than one visit and for some many more. With so many developments under construction across Mole Valley and with limited resources, it was recognised that it is necessary to prioritise and target developments for compliance visits. In deciding which to select for visits, the Panel noted that the Enforcement Team gives consideration to the likelihood of complaints; the track record of the developer and agent; the weight of objection to the application during

¹ Figures updated since the November meeting of the Working Group

its determination; information from the public and whether the Development Management Team has requested the site be monitored.

- 2.5 The Panel's attention was drawn to the provisions of the Proceeds of Crime Act (POCA). This enables local authorities to retain 37% of the recovered costs where the unauthorised use of buildings and land has been successfully prosecuted in the Courts.
- 2.6 The Panel felt that the percentage of developers using the electronic mailbox to notify MVDC of the commencement of development was low. It concluded that any review of the content of the MVDC website should ensure that reporting facilities for developers to notify the Council when development is commenced is made as accessible as possible with the aim of improving the current level of use.

3.0 A Review of Monitoring Systems and updating Members

- 3.1 The Panel concluded that it would be beneficial for MVDC Members to receive a schedule of planning enforcement cases each month. The schedule would be updated each month and list all open cases of alleged breaches of planning control. Each will have a unique reference; a description of the alleged breach and the date of notification. The cases would be listed by ward for ease of reference for Members. It is also planned to include a column showing the current status of the Enforcement Team's response to the alleged breach of planning control, for example, awaiting further information, Enforcement Notice served.
- 3.2 The Panel was advised that MOSS is being redesigned to make it more user friendly for Members and that this would be a suitable channel for receiving monthly enforcement updates. Since the Panel met the redesigned MOSS facility has been introduced.

4.0 Ensuring those raising concerns about breaches of planning control are kept informed.

- 4.1 The Panel noted that where customers draw attention to potential breaches of planning control, the Enforcement Team keep them informed by telephone, email or letter of any actions that have been taken in response to their enquiry. For example, a customer will be advised if enforcement action is being taken or that a case is closed because the matter has been resolved or no breach had taken place. The Panel was generally satisfied with this arrangement but did conclude that a continued effort needs to be made to encourage members of the public to proactively contact MVDC if they had concerns about potential breaches of planning control. It felt strongly that adequate reporting facilities should be in place to enable this and were pleased to note that an on-line facility for reporting alleged breaches of planning control was to be introduced. Since the Panel met in November, a Planning Breach "Report it" portal has been added to the MVDC website to improve the management of complaints about alleged breaches of planning control. Members' attention has been drawn to this facility in an article on

MOSS² and have been asked to encourage residents to use the on-line “Report it” portal where there is concern about an alleged breach of planning control.

- 4.2 Work is also in hand to develop the enforcement case management system such that in due course there will be an on-line facility that will show the current status of open enforcement cases. It is planned to develop this function over the coming months.

5.0 Level of staff resources

- 5.1 At the time the Panel met, the Enforcement Team comprised a Senior Enforcement Officer and a Compliance Officer. The Panel was advised that the Planning Support Team also help with the administration of the Enforcement Team’s case load and noted that members of the Development Management Team have also worked on alleged breaches of planning control.
- 5.2 The Panel was advised that other local authorities in Surrey have larger Enforcement Teams.³
- 5.3 The Panel was keen to ensure that MVDC’s commitment to taking enforcement action is clearly understood by all communities to reduce the likelihood of breaches of planning control. It also emphasised the need to respond to breaches of planning control as quickly as possible and that those alleging the breach are directed to the appropriate authority if it is not MVDC, for example the Surrey County Council for highways matters or the Environmental Health Team if the matter relates to noise or bonfires for example.
- 5.4 Having considered the amount of casework the Senior Enforcement Officer and Compliance Officer are handling, the complexity of the cases and in the light of the need to manage the expectations of MV’s communities, the Panel believed there is a case to increase the capacity of the Enforcement Team by an additional Senior Enforcement Officer. The Panel agreed the case should be pursued through the 2017/18 budget setting process.
- 5.4 The Panel’s recommendation about increasing the staff resource in the Enforcement Team have been agreed by the Executive as part of the 2017/18 budget setting process and endorsed by Council on 21st February.

6.0 Reporting outcomes of formal action to Members.

- 6.1 The Panel recognised there is a requirement to maintain a public register of Enforcement Notices and recommend this should be published on the MVDC website. It was further suggested that the monthly MOSS update of alleged breaches of planning control includes additions to the register of enforcement actions.

7.0 Financial Implications – The cost of an additional Senior Enforcement Officer has

² MOSS item dated 17th February 2017.

³ E.g. Tandridge has 5 members of staff in its Enforcement Team; Reigate & Banstead 4; Elmbridge 3; Epsom & Ewell 1.2; Sevenoaks 5.

been incorporated in to MVDC's 2017/18 budget.

8.0 Legal Implications – None

CORPORATE IMPLICATIONS

Monitoring Officer Commentary - The Monitoring Officer is satisfied that all relevant legal implications have been taken into account.

S151 Officer Commentary – The s151 officer confirms that all relevant financial implications and risks have been taken into account in this report.

Risk Implications – None directly as a result of this report.

Equalities Implications – The delivery of the planning enforcement service must be accessible to all.

Employment Issues – None directly as a result of this report.

Consultation – None

Communications – None.

BACKGROUND PAPERS

None

Appendix 1

REVISED TERMS OF REFERENCE FOR PLANNING ENFORCEMENT SCRUTINY PANEL

Name of Panel	Planning Enforcement Panel
Members	<ul style="list-style-type: none">• Rosemary Dickson (VC)• David Harper• Mary Huggins (C),• Malcolm Ladell• Tim Loretto
Corporate Head(s) of Service	Jack Straw
Scrutiny Support Officer	Steve Tucker
Panel scope	<p>The Planning Enforcement Scrutiny Panel is asked to:</p> <ol style="list-style-type: none">1. Receive a summary update of current enforcement activity,2. Ensure that, satisfactory monitoring systems are in place to enable Members to receive regular updates on enforcement,3. Ensure appropriate feedback arrangements are in place so that those raising breaches of planning control are kept informed of progress on enforcement cases,4. Consider whether the levels of staff resource in the enforcement team are sufficient to deal with the current and future caseloads,5. In respect of 2) & 3), ensure that all confidentiality issues are considered,6. To consider how the outcomes of formal enforcement actions are reported to Members, and7. To report back to the Scrutiny Committee on the Panel's work as set out above.
Timescales	Panel to meet as soon as possible and to conclude with a report to the Scrutiny Committee in the autumn of 2016.

Planning Practice Guidance

Planning enforcement – overview

What is a breach of planning control?

A breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

[Permalink](#) ID 17b-001-20140306 Last updated 06 03 2014 [See revisions](#)

Who can take enforcement action?

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. It should be noted that local authorities have a range of enforcement powers that extend beyond planning, as do the police in certain instances. See, for example, the [note on dealing with illegal encampments](#).

[Permalink](#) ID 17b-002-20140306 Last updated 06 03 2014 [See revisions](#)

When should enforcement action be taken?

There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207:

- *National Planning Policy Framework 207. 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.

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 is taken, local planning authorities should, where relevant, 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.

[Permalink](#) ID 17b-003-20140306 Last updated 06 03 2014 [See revisions](#)

Related policy

National Planning Policy Framework

- [Paragraph 207](#)

What are the time limits for taking enforcement action?

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse;
- Within ten years for any other breach of planning control (essentially other changes of use).

These time limits are set out in [section 171B](#) of the Town and Country Planning Act 1990.

The time-limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. Section [171B\(4\)\(b\)](#) of the Town and Country Planning Act 1990 provides for the taking of “further” enforcement action in respect of any breach of planning control within four years of previous enforcement action (or purported action) in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time-limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time-limit for such action has since expired. This is known as the “second bite” provision.

[Permalink](#) ID 17b-004-20140306 Last updated 06 03 2014 [See revisions](#)

Why is effective enforcement important?

Effective enforcement is important to:

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

[Permalink](#) ID 17b-005-20140306 Last updated 06 03 2014 [See revisions](#)

Why are local enforcement plans important?

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;
- provides greater certainty for all parties engaged in the development process.

[Permalink](#) ID 17b-006-20140306 Last updated 06 03 2014 [See revisions](#)

What options are available to local planning authorities to tackle possible breaches of planning control in a proportionate way?

- [No formal action](#)
- [Retrospective planning application](#)
- [Planning contravention notice](#)
- [Enforcement Notice](#)
- [Planning Enforcement Order](#)
- [Stop Notice](#)
- [Temporary Stop Notice](#)
- [Breach of Condition Notice](#)
- [Injunction](#)
- [Rights of entry](#)
- [Enforcement on crown land](#)
- [Listed Building enforcement](#)
- [Enforcement of hazardous substances control](#)
- [Unauthorised advertisements](#)

- [Enforcement and protected trees](#)

[Permalink](#) ID 17b-007-20140306 Last updated 06 03 2014 [See revisions](#)

Why is early engagement important?

When investigating an alleged or apparent breach of planning control, a crucial first step is for the local planning authority to attempt to contact the owner or occupier of the site in question. [Section 330](#) of the Town and Country Planning Act 1990 provides local planning authorities with the power to require information as to interests in land. Where it is possible, early engagement is vitally important to establish whether:

- there is a breach of planning control and the degree of harm which may be resulting;
- those responsible for any breach are receptive to taking action to remedy the breach.

[Permalink](#) ID 17b-008-20140306 Last updated 06 03 2014 [See revisions](#)

Is there a public register of enforcement action?

Local planning authorities must maintain a register of enforcement and stop notices ([Section 188](#) of the Town and Country Planning Act 1990 & [Article 43](#) of the Town and Country Planning (Development Management Procedure (England) Order 2015). It is important that, as soon as possible, details of the following actions should be recorded on the register:

- enforcement notices;
- stop notices;
- breach of condition notices;
- planning enforcement orders.

[Permalink](#) ID 17b-009-20140306 Last updated 06 03 2014 [See revisions](#)

2. [No formal action](#)

No formal action

Can breaches of planning control be addressed without formal enforcement action, such as an enforcement notice?

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 control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to

remedy it. Furthermore in some instances formal enforcement action [may not be appropriate](#).

It is advisable for the local planning authority to keep a record of any informal action taken, including a decision not to take further action

[Permalink](#) ID 17b-010-20140306 Last updated 06 03 2014 [See revisions](#)

When might formal enforcement action not be appropriate?

Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

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

[Permalink](#) ID 17b-011-20140306 Last updated 06 03 2014 [See revisions](#)

3. [Retrospective planning applications](#)

Retrospective planning applications

Can a local planning authority invite a retrospective planning application?

A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application ([Section 73A](#) of the Town and Country Planning Act 1990) without delay. It is important to note that:

- although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any

- application for planning permission – such an application must be considered in the normal way;
- an enforcement notice may also be issued in relation to other elements of the development.

[Permalink](#) ID 17b-012-20140306 Last updated 06 03 2014 [See revisions](#)

Are there any restrictions on retrospective applications?

A person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event. This can either be by means of a retrospective planning application (under [section 73A](#) of the Town and Country Planning Act 1990) or by means of an appeal against an enforcement notice on ground that planning permission ought to be granted or the condition or limitation concerned ought to be discharged – this is referred to as a ground (a) appeal.

The local planning authority can decline to determine a retrospective planning application if an enforcement notice has previously been issued ([Section 70C](#) of the Town and Country Planning Act 1990). No appeal under ground (a) may be made if an enforcement notice is issued within the time allowed for determination of a retrospective planning application.

[Permalink](#) ID 17b-013-20140306 Last updated 06 03 2014 [See revisions](#)

4. [Obtaining information about alleged breaches of planning control](#)

Obtaining information about alleged breaches of planning control

Why is information about an alleged breach of planning control important?

Effective enforcement action relies on accurate information about an alleged breach of planning control.

In many instances, comprehensive information about the planning history of the site and the alleged breach of control is readily available; from the local planning authority's own records, site visits and other publicly available information. It is important to keep documentary evidence of any investigation.

Where necessary, local planning authorities also have a range of investigative powers for planning enforcement purposes. One option available is for the local planning authority to serve a [planning contravention notice](#).

[Permalink](#) ID 17b-014-20140306 Last updated 06 03 2014 [See revisions](#)

5. [Planning contravention notice](#)

Planning contravention notice

What does a planning contravention notice do?

A planning contravention notice may be issued under [Section 171C of the Town and Country Planning Act 1990](#) and can be used to do the following:

- allow the local planning authority to require any information they want for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and;
- can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied.

[A model planning contravention notice is here](#) (PDF).

[Permalink](#) ID 17b-015-20140306 Last updated 06 03 2014 [See revisions](#)

When can a planning contravention notice be used?

A planning contravention notice may only be served when it appears to the local planning authority that a breach of planning control may have occurred and they want to find out more information before deciding what if any enforcement action to take. It should not be used to undertake an investigative trawl just to satisfy the local planning authority about what activities are taking place on a parcel of land.

This is a discretionary procedure – the local planning authority need not serve a planning contravention notice before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

A planning contravention notice is not available for use where there are suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

There is no requirement to enter a planning contravention notice in the local planning authority's register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

[Permalink](#) ID 17b-015-20140306 Last updated 06 03 2014 [See revisions](#)

What are the consequences of failing to respond to a notice?

A failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice ([Section 171D of the Town and Country Planning Act 1990](#)).

[Permalink](#) ID 17b-016-20140306 Last updated 06 03 2014 [See revisions](#)

6. [Enforcement notice](#)

Enforcement notice

Deciding whether to issue an enforcement notice

The power to issue an enforcement notice is discretionary ([Section 172 of the Town and Country Planning Act 1990](#)).

An enforcement notice should only be issued where the local planning authority is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.

[Further guidance on when enforcement action should be taken.](#)

[Permalink](#) ID 17b-018-20140306 Last updated 06 03 2014 [See revisions](#)

What does an enforcement notice do?

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

The local planning authority must enclose with the enforcement notice information about how to make an appeal. This information is contained in the [information sheet](#) provided by the Planning Inspectorate which local planning authorities should use.

Enforcement notices are not improved by over-elaborate wording or legalistic terms: plain English is always preferable. An eventual prosecution under [Section 179](#) of the Act may fail if the Court finds the terms of the notice incomprehensible to the lay person.

[An example enforcement notice – operational development is here](#) (PDF).

[Permalink](#) ID 17b-019-20140306 Last updated 06 03 2014 [See revisions](#)

Is it possible to take enforcement action against only some parts of a breach of planning consent?

A local planning authority may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”.

Where an enforcement notice identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements, and all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use ([Section 173\(11\) of the Town and Country Planning Act 1990](#)).

Whether a particular notice “could have” required something is contingent upon the terms of the alleged breach of planning control set out in the notice.

[Permalink](#) ID 17b-020-20140306 Last updated 06 03 2014 [See revisions](#)

Is there a right of appeal against an enforcement notice?

There is a right of [appeal](#) against an enforcement notice.

[Permalink](#) ID 17b-021-20140306 Last updated 06 03 2014 [See revisions](#)

What happens if an enforcement notice is not complied with?

It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal.

A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment to an unlimited fine. In determining the amount of any fine, the Court is to have regard to any financial benefit which has been accrued or appears likely to accrue in consequence of the offence ([Section 179 of the Town and Country Planning Act 1990](#)). Therefore, prosecuting authorities should always be ready to give any available details about the proceeds resulting, or likely to result, from the offence, so that the Court may take them into account.

Where a local planning authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the [Proceeds of Crime Act 2002](#), to recover the financial benefit obtained through unauthorised development.

[Permalink](#) ID 17b-022-20140306 Last updated 06 03 2014 [See revisions](#)

Local authority default powers

The local planning authority has powers to enter enforcement notice land and carry out the requirements of the notice themselves ([Section 178 of the Town and Country Planning Act 1990](#)). It is an offence to wilfully obstruct anyone who is exercising those powers on the local planning authority's behalf.

These default powers should be used when other methods have failed to persuade the owner or occupier of land to carry out, to the local planning authority's satisfaction, any steps required by an enforcement notice.

Further, the local planning authority can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work ([Regulation 14 Town and Country Planning General Regulations 1992](#)).

A local planning authority can prosecute for a failure to comply with a notice as well as using default powers.

[Permalink](#) ID 17b-023-20140306 Last updated 06 03 2014 [See revisions](#)

7. [Planning enforcement order](#)

Planning enforcement order

What does a Planning Enforcement Order do?

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action ([Section 171B of the Town and Country Planning Act 1990](#)) have [expired](#). A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

[Permalink](#) ID 17b-024-20140306 Last updated 06 03 2014 [See revisions](#)

What are the requirements for obtaining a planning enforcement order?

A local planning authority must have sufficient evidence of the apparent breach of planning control to justify applying for a planning enforcement order ([Sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990](#)).

The application may be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the local planning authority's knowledge. The appropriate officer must sign a certificate on behalf of the authority which states the date on which that evidence came to the local planning authority's knowledge, and the certificate will be conclusive of that fact.

The application must be made to a magistrates' court and a copy must be served on the owner and occupier of the land, and on anyone else with an interest in the land which, in the local planning authority's opinion, would be materially affected by the taking of enforcement action in respect of the breach. The applicant, any person who has been served with the application, and any other person the court thinks has an interest in the land that would be materially affected by the enforcement action. have a right to appear before, and be heard by, the court hearing the application.

[Permalink](#) ID 17b-025-20140306 Last updated 06 03 2014 [See revisions](#)

What evidence is needed to obtain a planning enforcement order?

A magistrates' court may only make a planning enforcement order if it is satisfied on the balance of probabilities that the apparent breach of planning control (or any of the matters constituting that breach) has (to any extent) been deliberately concealed and that it is just to make the order having regard to all the circumstances.

Planning enforcement orders can only be made where the developer has deliberately concealed the unauthorised development. In these circumstances, evidence that the developer has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the local planning authority about it, will be required.

It is expected that planning enforcement orders will be focused on the worst cases of concealment.

[Permalink](#) ID 17b-026-20140306 Last updated 06 03 2014 [See revisions](#)

What is the effect of a planning enforcement order?

The effect of a planning enforcement order is that the local planning authority will be able to take enforcement action against the apparent breach of planning control or any of the matters constituting the apparent breach during the "enforcement year". This means that once the "enforcement year" has begun, the local planning authority can at any time during that year, take enforcement action in respect of the apparent breach of planning control or any of the matters constituting that breach.

The "enforcement year" does not begin until the end of 22 days starting with the day on which the court's decision to make the order is given, or when any appeal against the order has been finally dismissed.

A local planning authority may make an application even if the normal time limit for enforcement action has not expired. This is to allow for the possibility that evidence may come to light very close to the end of the normal time limits for taking enforcement action, when there may be insufficient time to draft and issue an

enforcement notice, or where there may be doubt as to when the time limits actually expire. For example, where the date of substantial completion is not certain.

The local planning authority is not prevented from taking enforcement action once the enforcement year has ended provided that the normal time limits for enforcement action have not expired ([Section 171BA of the Town and Country Planning Act 1990](#)).

[Permalink](#) ID 17b-027-20140306 Last updated 06 03 2014 [See revisions](#)

8. [Stop notice](#)

Stop notice

What does a stop notice do?

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice ([Section 183 of the Town and Country Planning Act 1990](#)).

A stop notice cannot be served independently of an enforcement notice.

[A model stop notice is here](#) (PDF).

[Permalink](#) ID 17b-028-20140306 Last updated 06 03 2014 [See revisions](#)

How quickly can a stop notice take effect?

The local planning authority must specify in the stop notice when it is to take effect. The effective date must normally be no less than 3 days (or later than 28 days) after the date when the notice is served. ([Section 184\(3\) of the Town and Country Planning Act 1990](#)).

When there are special reasons for specifying an earlier date a stop notice may take effect before 3 days, in which case, a statement of reasons must be served with it. For example, it may be considered essential to protect an Area of Outstanding Natural Beauty, Green Belt or conservation area, from operational development (such as buildings, roadways or other hard surfaces) which if it continued, would be especially harmful.

[Permalink](#) ID 17b-029-20140306 Last updated 06 03 2014 [See revisions](#)

Are there any restrictions on what a Stop Notice can prohibit?

There are restrictions on what a Stop Notice can prohibit. These are set out in [Section 183 of the Town and Country Planning Act 1990](#). One important restriction is that a stop notice may **not** prohibit the use of any building as a dwelling house, although it may be used to prohibit the use of land as a site for a caravan occupied by a person as his or her own main residence.

[Permalink](#) ID 17b-030-20140306 Last updated 06 03 2014 [See revisions](#)

Could the local planning authority be liable for compensation as a result of serving a stop notice?

Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations ([Section 186 of the Town and Country Planning Act 1990](#)).

[Permalink](#) ID 17b-031-20140306 Last updated 06 03 2014 [See revisions](#)

How does a local planning authority decide whether to serve a stop notice?

The power to serve a stop notice is discretionary. Before serving such a notice a local planning authority must be satisfied that it is expedient that any relevant activity should cease before the expiry of the period for compliance specified in an enforcement notice.

The relevant local planning authority should ensure that an assessment of the likely consequences of serving the notice is available to the Committee or officer who will authorise service of it. The assessment should examine among other things the foreseeable cost and benefits likely to result from the stop notice.

The local planning authority should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a stop notice, the local planning authority's representative should discuss, whenever practicable, with the person carrying on the activity, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

[Permalink](#) ID 17b-032-20140306 Last updated 06 03 2014 [See revisions](#)

What about human rights?

The provisions of the [European Convention on Human Rights](#), such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

[Permalink](#) ID 17b-033-20140306 Last updated 06 03 2014 [See revisions](#)

What are the penalties for contravention of a stop notice?

A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence ([Section 187\(1\) of the Town and Country Planning Act 1990](#)).

A person guilty of this offence is liable on summary conviction to a fine not exceeding £20,000 – and on conviction on indictment, to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

[Permalink](#) ID 17b-034-20140306 Last updated 06 03 2014 [See revisions](#)

How can a stop notice be challenged?

There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the propriety of the local planning authority's decision to issue a notice, may be challenged by application to the High Court for judicial review.

[Permalink](#) ID 17b-035-20140306 Last updated 06 03 2014 [See revisions](#)

9. [Temporary stop notice](#)

Temporary stop notice

Why are temporary stop notices important?

Temporary stop notices are a powerful enforcement tool that allows local planning authorities to act very quickly to address some breaches of planning control, such as unauthorised activities, where it is expedient to do so. Temporary stop notice may

prohibit a range of activities, including those that take place on the land intermittently or seasonally.

[Permalink](#) ID 17b-036-20140306 Last updated 06 03 2014 [See revisions](#)

What does a temporary stop notice do?

A temporary stop notice ([Section 171E of the Town and Country Planning Act 1990](#)) 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.

[A model temporary stop notice is here](#) (PDF).

[Permalink](#) ID 17b-037-20140306 Last updated 06 03 2014 [See revisions](#)

How is this different to a stop notice?

A temporary stop notice does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate.

[Permalink](#) ID 17b-038-20140306 Last updated 06 03 2014 [See revisions](#)

Are there any restrictions on what a Temporary Stop Notice can prohibit?

There are restrictions on what a Temporary Stop Notice can prohibit ([Section 171F of the Town and Country Planning Act 1990](#)):

- a temporary stop notice can require an activity to cease, or reduce or minimise the level of activity. Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances which require positive action to be taken in response to it. The “immediate” cessation of activities should allow for the shutting down and making safe of an activity;
- a temporary stop notice may not prohibit the use of a building as a dwelling house.

[Permalink](#) ID 17b-039-20140306 Last updated 06 03 2014 [See revisions](#)

How long can a temporary notice last?

A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

It is not possible to issue a further temporary stop notice unless the local planning authority has first taken some other enforcement action against the breach of planning control. ([Section 171F\(5\)](#) of the Town and Country Planning Act 1990).

[Permalink](#) ID 17b-040-20140306 Last updated 06 03 2014 [See revisions](#)

How does a local planning authority decide whether to serve a temporary notice?

Before issuing a temporary stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately” ([Section 171E\(1\)\(b\) of the Town and Country Planning Act 1990](#)). The local planning authority must give reasons for issuing the temporary stop notice on the face of the notice ([Section 171E\(3\) of the Town and Country Planning Act 1990](#)).

The effect of issuing a temporary stop notice will be to halt the breach of planning control, or the specified activity immediately. This can have immediate serious consequences on a business. Local planning authorities should therefore ensure that a quick but adequate assessment of the likely consequences of issuing a temporary stop notice is available to the officer who will authorise issue of the notice.

It should not be necessary to carry out a detailed cost/benefit assessment, but the assessment should examine the foreseeable costs to the company, operator, or landowner, against whose activities the stop notice is directed and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice.

The local planning authority should ensure that a temporary stop notice’s requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a temporary stop notice, the local planning authority’s representative may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

[Permalink](#) ID 17b-041-20140306 Last updated 06 03 2014 [See revisions](#)

What about human rights?

The provisions of the [European Convention on Human Rights](#), such as [Article 1 of the First Protocol](#), [Article 8](#) and [Article 14](#), are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a temporary stop notice, the local planning authority must be satisfied that there has been a breach of planning control and “it is expedient that the activity which amounts to the breach is stopped immediately” ([Section 171E\(1\)\(b\) of the Town and Country Planning Act 1990](#)).

[Permalink](#) ID 17b-042-20140306 Last updated 06 03 2014 [See revisions](#)

What are the penalties for contravention of a Temporary Stop Notice?

It is an offence to contravene a temporary stop notice, and a local planning authority should always consider prosecution as soon they have evidence of an offence ([Section 171G of the Town and Country Planning Act 1990](#)).

A person guilty of an offence is liable on summary conviction, to a fine not exceeding £20,000; and on conviction on indictment, to an unlimited fine.

[Permalink](#) ID 17b-043-20140306 Last updated 06 03 2014 [See revisions](#)

How can a temporary stop notice be challenged?

Any person affected by a temporary stop notice will be able to make representations to the local planning authority to challenge the temporary stop notice. The local planning authority should include the name, address and telephone number of their nominated officer in the temporary stop notice.

There is no right of appeal to the Secretary of State against the prohibitions in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the local planning authority’s decision to issue a temporary stop notice, may be challenged by application to the High Court for judicial review.

[Permalink](#) ID 17b-044-20140306 Last updated 06 03 2014 [See revisions](#)

Is compensation payable?

Only in certain circumstances is compensation payable. A person who at the time the temporary stop notice is served has an interest in the land to which the notice relates may be entitled to compensation by the local planning authority for any loss or damage directly attributable to the prohibition effected by the temporary stop notice. The scope for compensation is set out in [Section 171H](#) of the Town and Country Planning Act 1990. It should be noted compensation is only payable if one or more of the following applies:

- c. the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with;
- d. it is [permitted development](#) (including under a local or neighbourhood development order);
- e. the local planning authority issue a lawful development certificate confirming that the development was lawful;
- f. the local planning authority withdraws the temporary stop notice for some reason, other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.

[Permalink](#) ID 17b-045-20140306 Last updated 06 03 2014 [See revisions](#)

Can a temporary stop notice be used on land not owned by those living on it?

Yes. It may be appropriate in some circumstances for the local planning authority to issue a temporary stop notice where the breach of planning control has occurred on land owned by a third party, including the local authority or another public authority.

[Permalink](#) ID 17b-065-20150323 Last updated 23 03 2015 [See revisions](#)

10. [Breach of condition notice](#)

Breach of condition notice

What does a breach of condition notice do?

A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the local planning authority in the notice ([Section 187A of the Town and Country Planning Act 1990](#)).

Any recipient of a breach of condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

[A model breach of conditions notice is here](#) (PDF).

[Permalink](#) ID 17b-046-20140306 Last updated 06 03 2014 [See revisions](#)

When can a breach of condition notice be used?

A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition – but it may also be served in addition to an enforcement notice, perhaps as an alternative to a stop notice, where the local

planning authority consider it expedient to stop the breach quickly and before any appeal against the enforcement notice is determined.

[Permalink](#) ID 17b-047-20140306 Last updated 06 03 2014 [See revisions](#)

What happens if a breach of condition notice is not fully complied with?

Following the end of the period for compliance, a “person responsible” who has not ensured full compliance with the conditions and any specified steps, will be in breach of the notice and guilty of an offence [Section 187A\(8\) and \(9\) of the Town and Country Planning Act 1990](#). Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice.

[Permalink](#) ID 17b-048-20140306 Last updated 06 03 2014 [See revisions](#)

How can a breach of condition notice be challenged?

There is no right of appeal to the Secretary of State against a breach of condition notice. The validity of a breach of condition notice, and the propriety of the local planning authority’s decision to serve a breach of condition notice, may be challenged by application to the High Court for judicial review.

[Permalink](#) ID 17b-049-20140306 Last updated 06 03 2014 [See revisions](#)

11. [Injunction](#)

Injunction

How does a Local Authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?

A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control ([Section 187B of the Town and Country Planning Act 1990](#)).

In deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:

- they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;
- there is clear evidence that a breach of planning control has already occurred, or is likely to occur;

- injunctive relief is a proportionate remedy in the circumstances of the particular case;
- in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply;
- a local planning authority 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 a local planning authority can take because if a person fails to comply with an injunction they can 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. In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the local planning authority to explain its reasons on this issue.

[Permalink](#) ID 17b-050-20140306 Last updated 06 03 2014 [See revisions](#)

Seeking an injunction against an unknown person

The Court may grant an injunction against a person whose identity is unknown ([Section 187B\(3\) of the Town and Country Planning Act 1990](#)). Nevertheless local planning authorities will need to identify, to the best of their ability, the person against who the injunction is sought. The following may be used in support of the authority's submission to the Court:

- photographic evidence of the persons concerned;
- affidavit evidence sworn by the local planning authority's officers;
- reference to chattels on the land, known to belong to, or be used by, that person (eg a registered motor vehicle); or
- other relevant evidence (such as a name by which the person is commonly known even though it is not his or her proper name).

When applying to the Court, the local planning authority will have to provide affidavit evidence of their inability to ascertain the identity of the person, within the time reasonably available, and the steps taken in attempting to do so.

[Permalink](#) ID 17b-051-20140306 Last updated 06 03 2014 [See revisions](#)

12. [Rights of entry](#)

Rights of entry

What rights of entry are permitted?

Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes ([Sections 196A, 196B and Section 196C of the Town and Country Planning Act 1990](#)). This right 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 Town and Country Planning Act 1990](#)), 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.

The phrase “or any other land” means that if necessary neighbouring 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.

The provisions of the Act ([Section 196A of the Town and Country Planning Act 1990](#)) 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.

[Permalink](#) ID 17b-052-20140306 Last updated 06 03 2014 [See revisions](#)

What happens if right of entry is obstructed?

It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry ([Section 196C\(2\) of the Town and Country Planning Act 1990](#)).

[Permalink](#) ID 17b-053-20140306 Last updated 06 03 2014 [See revisions](#)

Are there any restrictions or controls in relation to rights of entry?

There are a number of restrictions on the right of entry, including:

4. **Damage to land or chattels:** Local planning authorities are expected to take every reasonable precaution to ensure no damage is caused as a result of exercising a right of entry. Where damage is caused, compensation may be recovered from the authorising authority.
5. **Agricultural land:** In the interests of animal and plant health special precautions are essential when the right of entry is exercised. Additional precautions must be taken when there is an outbreak of serious disease in

animals or a serious plant pest or pathogen. As not all diseases require warning notices local planning officers should contact the appropriate [Animal Health Veterinary Laboratories Agency's Field Office](#) and the [Plant Health and Seeds Inspectorate Regional Office](#) to check there are no restrictions in force on land to be visited.

6. **Disclosure of information:** It is an offence to disclose any information obtained while on the land about any manufacturing process or trade secret.
7. **Dwellinghouses:** Entry to a building used as a dwelling house cannot be demanded as of right unless 24 hours advanced notice of intended entry to the occupier has been given.

[Permalink](#) ID 17b-054-20140306 Last updated 06 03 2014 [See revisions](#)

Entry authorised by warrant issued by a Justice of the Peace

Where there are reasonable grounds for entering land for enforcement purposes, and 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 Town and Country Planning Act 1990](#)).

There are three restrictions on the use of a warrant:

- it only authorises entry on one occasion;
- entry must be within one month from the date of the issue of the warrant;
- the entry must be at a reasonable hour, unless the case is one of urgency.

[Permalink](#) ID 17b-055-20140306 Last updated 06 03 2014 [See revisions](#)

13. [Enforcement on Crown land](#)

Enforcement on Crown land

Is enforcement action possible in relation to Crown Land?

Enforcement action is possible in relation to Crown Land, but there some restrictions which do not apply elsewhere. [Sections 296A and 296B of the Town and Country Planning Act 1990](#) restrict such actions as serving enforcement notices, stop notices, revocation orders and discontinuance orders on the Crown.

The restrictions apply to all land in which a Crown body has any interest. Where a Crown body does have an interest, anything which must or may be done by or to the owner of the interest in land must be done by or to the appropriate authority ([section 293 of the Town and Country Planning Act 1990](#)). An interest in land includes an interest only as an occupier of the land.

Subject to these restrictions, a local planning authority can serve a notice or make an order (other than a court order) intended to enforce compliance on Crown land without having to follow any procedures other than those which are already set out in the planning Acts as being generally applicable. There is no requirement to obtain the consent of the appropriate authority before serving the notice or making the order.

A local planning authority cannot, however, enter land for any purposes connected with the making or enforcing of any such notice or order without first securing the consent of the relevant Crown body. And, in granting such consent, the appropriate authority may impose such conditions as it considers appropriate. This might mean, for example, that any site visit by the local planning authority has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

The local planning authority is also required to secure the consent of the appropriate authority, before taking any action to enforce the notice or order, even against a non-Crown interest, such as a private leaseholder on a Crown freehold. This includes bringing proceedings or making an application to the courts.

The Crown is also immune from prosecution under these provisions.

[Permalink](#) ID 17b-056-20140306 Last updated 06 03 2014 [See revisions](#)

14. [Listed building enforcement](#)

Listed building enforcement

What enforcement action can be taken against breaches of listed building consent?

The listed building enforcement provisions are in [sections 38 to 46 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#), and the enforcement provisions relating to the demolition of an unlisted building in a conservation area (“relevant demolition”) are in the Town and Country Planning Act 1990. Although broadly similar, there are a number of important differences between planning enforcement and listed building and conservation area enforcement, namely:

- there are no application fees for listed building consent or applications for relevant demolition;
- there are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time that has elapsed since the apparent breach may be a relevant consideration when considering whether it is expedient to issue a listed building enforcement notice;
- carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works etc materially affect the historic or architectural significance of the building, is an

offence under section 9 of that Act – whether or not an enforcement notice has first been issued;

- carrying out work without the required planning permission for relevant demolition, or failing to comply with a condition attached to that planning permission is an offence under section 196D of the Town and Country Planning Act 1990, and;
- listed building consent and planning permission for relevant demolition are not granted retrospectively.

[Permalink](#) ID 17b-057-20140306 Last updated 06 03 2014 [See revisions](#)

15. [Enforcement of hazardous substances control](#)

Enforcement of hazardous substances control

What enforcement action can be taken against breaches of hazardous substances consent?

The Planning (Hazardous Substances) Act 1990 requires hazardous substances consent to be obtained when a [controlled quantity of hazardous substance is present on land](#). Provisions for enforcing against breaches of control generally follow the planning enforcement provisions, so far as they are appropriate, and a contravention of hazardous substances control is itself an offence.

[Permalink](#) ID 17b-058-20140306 Last updated 06 03 2014 [See revisions](#)

16. [Unauthorised advertisements](#)

Unauthorised advertisements

Tackling Unauthorised Advertisements and defacement of premises

For more information about tackling unauthorised advertisements and defacement of premises, [see here](#).

[Permalink](#) ID 17b-059-20140306 Last updated 06 03 2014 [See revisions](#)

17. [Enforcement and protected trees](#)

Enforcement and protected trees

For more information about tackling damage to protected trees, see [here](#).

[Permalink](#) ID 17b-060-20140306 Last updated 06 03 2014 [See revisions](#)

18. [Model Notices](#)

Model Notices

- [Model planning contravention notice](#) (PDF)
- [Example enforcement notice – operational development](#) (PDF)
- [Model stop notice](#) (PDF)
- [Model temporary stop notice](#) (PDF)
- [Model breach of conditions notice](#) (PDF)

19. [Unauthorised Encampments](#)

Unauthorised Encampments

Does the absence of authorised sites prevent local authorities from taking enforcement action against unauthorised encampments?

No – an absence of authorised sites does not mean that a local authority or the police cannot take enforcement action against unauthorised encampments.

[Permalink](#) ID 17b-066-20150901 Last updated 01 09 2015 [See revisions](#)

What powers do local authorities and the police have to take against unauthorised encampments?

In March 2015 [the Government wrote](#) to council leaders, police and crime commissioners, and police chief constables summarising the extensive powers they have to help them deal with illegal and unauthorised sites.

[Permalink](#) ID 17b-067-20150901 Last updated 01 09 2015 [See revisions](#)



Mole Valley District Council
Pippbrook, Dorking,
Surrey

Local Enforcement Plan

(November 2012)

Contents

1. Introduction
2. A proportionate response to alleged breaches
3. Implementation of planning permission
4. Investigating an alleged breach of planning control
5. Enforcement tools available
6. Monitoring performance

1. Introduction

- 1.1. The Mole Valley District Council Local Enforcement Plan (the Plan) identifies local priorities for enforcement action, so that the Council's scarce enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of all the residents.
- 1.2. This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF)(March 2012) issued by the Department for Communities and Local Government which states:

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

This Plan therefore will provide clarity on the Local Planning Authority's (LPA's) procedure(s) on the following;

- What is 'a proportionate response' when investigating an alleged breach of planning control?
- How we will manage enforcement proactively and in a way appropriate to the district?
- How we will monitor implementation of planning permissions?
- How we investigate alleged breaches of planning control?
- Set out what action we can take where it is considered appropriate to do so

2. A proportionate response

- 2.1. There is increasing public concern about activities that harm the local environment and damage the quality of people's lives. People who cause harm to the environment or the quality of other people's lives by not following laws and regulations designed to protect the public should not be allowed to benefit from such activities. People who knowingly carry out unauthorised development can undermine the planning system, and bring it into disrepute. Others however, often carry out works genuinely without knowledge that planning permission is required. It is therefore important to operate in a proportionate and consistent manner.
- 2.2. Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011.
- 2.3. This Plan defines the appropriate form of response to various breaches of planning control. This is determined by the guiding principle that the response to a breach of control should be proportionate to the harm it causes. It is never expedient, or a wise use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of planning conditions. In all cases, enforcement action should not be viewed as punishment, but what needs to be done to protect public amenity and the environment.
- 2.4. A planning application is the most appropriate way to consider the merits of a proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore logical to apply the same approach to development already carried out, and for the Council to encourage retrospective planning applications where appropriate.
- 2.5. The exception is where the Council considers there is no real prospect of planning permission being granted. In these cases we will proceed to enforcement action as a matter of course.
- 2.6. The Mole Valley Core Strategy shows how the District is expected to evolve until 2026 and the Local Plan seeks to maintain and enhance the quality of the Districts environment. Enforcement action underpins

this by helping to protect the environment. The primary function of enforcement action is to protect the environment in the public interest, and to do this we must be firm but fair.

- 2.7. However, the developer still has the right to apply for planning permission. and if they do, the Council must deal with the application fairly before proceeding with enforcement action if that is considered necessary. In all cases, the Council will judge the development itself, not how it came about.
- 2.8. The public's frustration over retrospective planning applications is understood, and one of their concerns is that this approach is sometimes the approach that developers take to present the Council with a fait accompli. At the moment, the Council has no powers to charge differently for retrospective applications, but if the Council is able to introduce charges to allow this, the Council may pursue this approach.
- 2.9. There are three categories of enforcement cases, Category 1, 2 and 3.

Category 1 cases require an initial site visit within 2 working days of notification.

Category 2 cases require an initial site visit within 5 working days of notification.

Category 3 cases require an initial site visit within 10 working days of notification.

Category 1 case examples:-

Unauthorised works in the Green Belt, breach of an Enforcement Notice, unauthorised works in a Conservation Area, unauthorised works on a Listed Building.

Category 2 case examples:-

Breach of a planning condition (unless causing environmental harm), development not in accordance with the approved plans, unauthorised change of use, works contrary to the local plan policies.

Category 3 case examples:-

Businesses being run from home, untidy land affecting the local amenity, unauthorised advertisements

The category examples above are not a complete list of all breaches of planning control and are shown only as a guide.

2.10. In all cases the offending developer / land owner / occupier will be notified of what the Council requires them to do to remedy any identified breach of planning control. They will also be informed of the possible consequences of non-compliance in terms of taking formal enforcement action.

3. Implementation of planning permission

- 3.1. Many potential problems with a planning permission can be overcome by the imposition of planning conditions. Many are precedent conditions (i.e. conditions that need to be complied with before development commences) and need to be proactively monitored.
- 3.2. Although all developers are obliged to notify the Council when work commences on a site, this does not always happen, and in many cases it is not done in a timely manner. We cannot be aware of all developments taking place. Neighbours and interested parties are often a good source of information and we do encourage people to get involved and contact us. This can result in a reactive enforcement approach if we become aware that conditions have not been complied with. To help minimising the risk of this occurring, a letter is sent accompanying the formal planning Decision Notice confirming the necessity to comply with ALL planning conditions with a particular emphasis to conditions precedent.
- 3.3. The Council will maintain a proactive approach to monitoring major development sites. Planning permissions are being checked when major developments (i.e. 10 or more dwellings or commercial development over 1,000 square metres) commence, to ensure that all the necessary planning conditions are complied with. Planning Officers, Tree Officers and building surveyors are also involved in the monitoring and checking of major development sites. Breaches of Condition are taken seriously, and, if they result in harm and are not remedied quickly, a Breach of Condition notice can be served. (See Section 5.3).
- 3.4. Inevitably a large proportion of complaints received will continue to be reported by members of the public and need to be investigated reactively. Each report will result in a case being set up according to the priority (2.9 above) and investigated within the agreed timescales. The complainant will be kept informed of progress of the investigation through to completion.

4. Investigating an alleged breach of planning control

(to be read taking account of para 2. above – a proportionate response)

- 4.1. Full details of the legislation covering planning enforcement action, enforcement notice appeals, prosecutions and other enforcement remedies are set out in Parts VII and VIII of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011
- 4.2. The power to take enforcement action is discretionary and comes from section 172 of the Town and Country Planning Act 1990.
- 4.3. We will follow the relevant legislation and consider the harm created when undertaking enforcement action and when deciding on whether it is expedient to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code of Practice for Crown Prosecutors. (The general principles of this relate to two critical tests, evidential and public interest)
- 4.4. The full details of the person(s) making the complaint will be taken, including a phone number or e-mail address; complaints may be taken in extreme circumstances where the complainant does not wish to disclose their details. In all cases these details are given in strict confidence and this will be respected as far as possible at all times.

Policy Background

- 4.5. Effective enforcement action is necessary to ensure that development plan policies are upheld and implemented. The planning policies applicable to all development are contained in the Local Development Plan, which comprises the National Planning Policy Framework 2012, The Mole Valley Core Strategy 2009 (adopted October 2009) and the Mole Valley Local Plan 2000 (adopted October 2000).
- 4.6. The Local Planning Authority experiences a wide variety of planning enforcement issues and many of these arise from the need to maintain the integrity of specially protected areas such as the Green Belt and the Surrey Hills Area of Outstanding Natural Beauty. The Council's location between London and Gatwick Airport means that there are very strong pressures for development in the Green Belt and continual problems with off-airport car parking sites, as this can be lucrative. Agricultural activities in the area have limited viability, so there are

strong pressures to find alternative economic uses for this land and buildings.

- 4.7. There is a need to achieve a reasonable balance between protecting amenity and other interests of acknowledged importance, and enabling acceptable development to take place, even though it may initially have been unauthorised.
- 4.8. The Council will also monitor major development sites, subject to resources, whether or not the authority is carrying out the building control function. This is to ensure that development is carried out in accordance with the approved plans and that planning conditions are fully complied with as required.
- 4.9. Our approach in deciding whether enforcement action is expedient is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
- 4.10. We must work within the legislative framework, having full regard to relevant judicial authority and taking account of appeal decisions. Careful consideration has to be given to other legislation that impacts on enforcement work, such as:
 - The Human Rights Act 1998;
 - The Police and Criminal Evidence Act 1984 (PACE); and
 - The Regulation of Investigatory Powers Act 2000 (RIPA).
- 4.11. These Acts advocate against resolving cases quickly, as a thorough investigation of the full facts and assessment of all the circumstances is required prior to formal action.
- 4.12. All complaints are investigated as quickly as possible (see paragraph 2.9) to establish their priority and what action needs to be taken. This is a vital part of the enforcement process. After that, the priority is to tackle the most serious breaches that harm public amenity and risk undermining the Council's objectives of caring for the environment. We will achieve this by prioritising cases according to the level of harm being caused or anticipated.
- 4.13. More than half of complaints are found not to be in breach of planning control, but these are a significant drain on resources, as a site inspection and investigation are required, as well as having to advise the interested parties. The majority of actual breaches reported relate

to minor matters and often arise from ignorance of planning controls or misunderstandings over what is taking place, and may be exacerbated by neighbour disputes.

- 4.14. Whilst the Council has a duty to investigate all alleged breaches, its resources must be used wisely to (a) allow us to concentrate on serious breaches; and (b) avoid the LPA coming into disrepute through abuse of its enforcement powers. Initiating enforcement action when the matter can be resolved through a retrospective application, and the imposition of necessary conditions, would be seen as unreasonable behaviour by appeal Inspectors and the Courts, and could lead to an award of costs against the Council. In order to maintain focus on agreed priorities and as enforcement is a discretionary function officers may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or are motivated by neighbour disputes or are considered “de minimus”.

5. Enforcement tools available

5.1. Planning Contravention notice (PCN). Authorised under S171(C) of the TCPA

This is used to obtain information about alleged unauthorised development, where a change of use of the land has occurred and it can be used to invite discussion on how any suspected breach of control may be remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. This will be issued and served by the Senior Enforcement Officer.

5.2. Enforcement Notice (EN). Authorised under delegated powers to the Development Control Manager, the Notice will be drafted by the Council’s Legal Services Manager and served by the Senior Enforcement Officer.

The LPA can issue an enforcement notice where it considers there has been a breach of planning control and it is expedient to issue the notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service), the steps to be taken and the compliance period. There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN requirements until the appeal is determined or withdrawn

5.3. Breach of Condition Notice (BCN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This is used to secure compliance with planning conditions and takes effect not less than 28 days after service. It must specify the steps that the LPA considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN, and failure to comply with it is a summary offence in the Magistrates' Court carrying a maximum penalty of £2,500 (April 2012).

5.4. Temporary Stop Notice (TSN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This is used where the LPA considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This notice differs from the normal stop notice powers because it does not have to wait for an enforcement notice (EN) to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach, and can be served on any person carrying out the activity and must be displayed on the site. The TSN is only in effect for 28 days, during which time the LPA must decide whether it is appropriate to serve an EN. TSNs have been used successfully to stop work on development sites when important precedent planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land or tree protection and unauthorised off site airport car-parking.

5.5. Stop Notice (SN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

A stop notice can only be served on land where an enforcement notice has been served and issued and is an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land, but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the enforcement notice is quashed on appeal or the

notices have to be withdrawn. (i.e. if it is found that the activity was legitimate and therefore the Stop Notice should not been served).

5.6. Prosecution. Authorised under delegated powers to the Corporate Head of Service

Some breaches of planning control are summary offences, but others are subject to trial (i.e in Magistrates' Court or Crown Court) such as the carrying out of unauthorised works to a listed building, or a protected tree, or the failure to comply with the requirements of an Enforcement Notice, or a Stop Notice or a Temporary Stop Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine, if found guilty, is £20,000 (May 2012) for these offences. For summary only offences such as illegal advertisements and failure to comply with a BCN or to complete and return a PCN, the maximum fine is lower.

5.7. Injunction. Authorised under delegated powers to the Corporate Head of Service

Section 187B (1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Application for an injunction from the courts may be made when it is necessary or expedient for any actual or apprehended breach of planning control to be restrained, whether or not the LPA has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a Court order is an extremely serious matter, and can result in imprisonment.

5.8. Section 215 Notice (Untidy land). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation. There is a right of appeal against the notice to the Magistrates' Court, and if the notice is not complied with, the Council can enter the land and carry out the steps in default and charge the owner accordingly.

5.9. Listed Building Enforcement Notice. Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This type of enforcement notice applies to listed buildings, and is similar to an ordinary enforcement notice in most respects. It can require the removal of any unauthorised works, or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a notice to the Planning Inspectorate.

5.10. Conservation Area Enforcement Notice. Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council’s Legal Services Manager and served by the Senior Enforcement Officer.

This type of enforcement notice is used in conservation areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990. An example of this would be the unauthorised demolition of a building or wall in a conservation area, and the requirement of the notice would be to rebuild it. There is a right of appeal against such a notice to the Planning Inspectorate.

5.11. Default Powers. Authorised under delegated powers to the Corporate Head of Service.

Section 178 enables the LPA to take direct action where, on expiry of the enforcement notice compliance period, the required steps have not been taken, by carrying out “default” action and recovering its reasonable expenses from the owner. This power relates to enforcement notices and untidy land notices served under Section 215.

5.12. Article 4 Directions. Under Article4(1) Of the TCPA (General Permitted Development) Order 1995 as amended. Authorised under delegated powers to the Corporate Head of Service.

These are used to remove “permitted development” rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, (temporary buildings, moveable structures, plant or machinery required in connection with operations being carried out on the land). This enforcement tool is used particularly when open land is being sold off as speculative building plots (sometimes referred to as ‘Land Banking’). The Direction is provisional for six months and has to be confirmed by the Council within that period in order to become permanent. It means that planning permission would have to be granted by the LPA in order to carry out the development.

5.13. Confiscation under the Proceeds of Crime Act 2002. Authorised under delegated powers to the Corporate Head of Service

If an offence has been committed or an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002 where it appears that the offender has benefited from criminal conduct.

By way of an example, these proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control and this breach (and consequences of it) is factored into the running costs of the operation.

In these circumstances the potential maximum confiscation order would be considered a reasonable 'cost' to the operator given the greater potential gains from continuation of the breach.

6. Monitoring Performance

- 6.1. Our performance standards are monitored quarterly, as are the other targets for actions taken in the investigation of cases, particularly for timely undertaking of site visits.
- 6.2. We also intend to monitor the effectiveness of our enforcement actions and to review the priorities for enforcement regularly. This will involve identifying the achievements and shortfalls within the reactive elements of the service. Greater emphasis is being put on proactive measures with rapid and early responses to problems arising through the development process, and by developing a team approach involving all the key players in the process and across other disciplines.
- 6.3. Taking formal enforcement action will continue to occur only in a very small minority of all the reported cases.
- 6.4. Our performance details will be published in the Council's quarterly / annual report
- 6.5. Although a difficult area, with inherent conflict in the work, we will monitor the way we carry out our duties, taking feedback from users and improve the service where we can.

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