

Cabinet – 14 December 2016

Walsall's Local Planning Enforcement Plan

Portfolio: Councillor Lee Jeavons, Deputy Leader and Regeneration

Related portfolios: All

Service: Planning, Environment and Transportation

Wards: All

Key decision: No

Forward plan: No

1. Summary

- 1.1 This report provides a summary of the proposed Local Planning Enforcement Plan (LPEP) and a recommendation to take the document to consultation with the aim of adopting the Plan in early 2017.
- 1.2 The Plan provides details on the legal framework which supports the Council in its duties to ensure development within the Borough is undertaken in an appropriate manner that complies with existing legislation notably The Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990.
- 1.3 The document sets out what works are deemed to be 'development' i.e. those matters which can be considered by planning for example building operations, material changes of use or subdivision of a premises. Internal alterations or changes of use in the same planning category are not deemed to be development.
- 1.4 Information is also provided within the Plan on what constitutes a breach of planning control and identifying harm.
- 1.5 To ensure resources are targeted effectively at the most significant cases, a scoring matrix is provided in the Plan to identify the level of harm associated with the matter in hand. This addresses impact to environmental assets, highways, breaches of planning conditions and extent of harm arising.

2. Recommendations

- 2.1 That Cabinet agrees to commence a period of public consultation commencing in January 2017 for a period of no less than 6 weeks on the attached Planning Enforcement Plan with the intention of adopting the

measures within the plan subject to the comments received during consultation.

- 2.2 That Cabinet agrees to receive a report to a future meeting on comments received during the consultation period with consideration to adoption of the plan subject to the comments received.
- 2.3 That Cabinet advises Planning Committee of the proposed consultation on the Plan.

3. Report detail

Background

- 3.1 The Councils Planning service regulates development within Walsall. Development can constitute physical building works ranging from the construction of small factory extensions and other small works through to major schemes such as the construction of new factories and housing estates. In addition development can comprise the change of use of existing premises to a new use for example the conversion of an office building to a block of flats.
- 3.2 A large proportion of development work in the Borough requires approval through the granting of planning permission though some smaller works can be undertaken without need to apply for consent from the Local Planning Authority (LPA) if they fall within the parameters for permitted development. The legislation on permitted development is complex in part because it addresses nearly all forms of development from household extensions through to infrastructure projects including highway and railway works.
- 3.3 Through these two principle routes, planning applications to the LPA and permitted development, the vast majority of development in the Borough is regulated. The Planning Service also manages the other, less frequently used, routes through which development may be allowed including the planning appeal process and separate legislation such as the Caravans Act 1968.
- 3.4 Despite these opportunities existing for development to secure approval through the appropriate legislation, there has historically been a low level of development in Borough that does not benefit from consent either through an application to the Council or through permitted development. This work is considered to be unauthorised and therefore the LPA can consider where enforcement action is necessary to remedy any breach that has occurred.
- 3.5 Whilst the Council has a range of powers to enforce against unauthorised development, the Government though paragraph 207 of the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and LPA's should act proportionately in responding to suspected breaches of planning control.

- 3.6 At the heart of the consideration of an enforcement case is the amount of harm the breach of planning control may cause. This harm may manifest itself in detriment to the amenity or privacy to neighbours, environmental harm particularly protected habitats or species, damage to the character and appearance of the surrounding area or conflict with established national and local planning policies including those in the Council's own UDP or new emerging policies.
- 3.9 Sometimes though this harm may be marginal for example a boundary built slightly in excess of the prescribed height limit remote from any neighbouring roads or properties. Even in this simple example though differing views may emerge of what constitutes a slight exceedence of the height or how remote the boundary is to neighbours. Accordingly, nearly all breaches brought to the attention of the planning service need to be inspected before any conclusions about harm can be made.
- 3.10 In instances where it is considered the breach is minimal, the option exists for the LPA not to take action. Part of this assessment is consideration of whether planning permission would be likely to be granted should a retrospective planning application be submitted to regularise the unauthorised works.
- 3.11 In instances where it is considered the breach is more significant, the Local Enforcement Plan sets out the steps the LPA will take to investigate a matter raised for consideration.
- 3.12 The key sections of the Local Planning Enforcement Plan deal with the following matters:
- Defining what constitutes breach of planning control and the different forms a breach may take including retrospective and intermittent breaches
 - Identifying harm and its impacts
 - A scoring matrix to assist in quantifying harm
 - Prioritisation of enforcement cases
 - Methods of communication with the Council including timescales
 - Different routes to taking enforcement action including prosecution.
- 3.13 In paragraph 207 of the NPPF, the Government states that LPAs 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.
- 3.14 The proposal to adopt the Local Planning Enforcement Plan would therefore comply with this guidance and in doing so assist in ensuring any future action taken by the LPA would be carried out in accordance with established best practice.

4. Council priorities

- 4.1 The Corporate Plan 2016-2020 sets out the purpose and priorities over the next four years.
- 4.2 The Local Planning Enforcement Plan will contribute to the following Corporate Plan priorities:
 - Sustainable change and improvement for all
 - Safe, resilient and prospering communities
- 4.3 Besides meeting statutory and procedural requirements, consultation on the plans should accord with the council's commitments to openness, listening and involvement. Positive plans for the future of the borough also represent tangible commitments to leadership.

5. Risk management

- 5.1 Failure to have an adopted Local Planning Enforcement Plan could result in the Borough failing to deliver an effective, prioritised enforcement service. This in turn would limit the Council's ability to regulate effectively development being undertaken and therefore adequately protect amenity levels, businesses and habitats.
- 5.2 Delivery of the plan will be monitored and assured through the quarterly reports presented to the Planning Committee.

6. Financial implications

- 6.1 Whilst there are staffing costs associated with the resourcing of the enforcement service and the processing of any action taken including prosecution and if necessary direct action, the procedures set out in the Local Planning Enforcement Plan do not expose the Council to any additional costs.
- 6.2 Through setting out clear steps for undertaking enforcement action, the risks of abortive action should be minimised hence reducing the potential for unnecessary costs to be incurred by the Council.

7. Legal implications

- 7.1 The adoption of the Plan should assist in ensuring action taken by the LPA is in accordance with legislation and therefore minimise opportunities for action to be taken against the Council.
- 7.2 The proposals within the Plan do not raise any new legal risks for the Council.

8. Property implications

- 8.1 As the enforcement process deals with the use of land, there will inevitably be implications for people's use of land either owned by them or a third party. The purpose of the Plan though is to ensure action taken by the LPA is undertaken in an appropriate manner. Accordingly, it is considered that the Plan will minimise the opportunities for unnecessary detriment to land owners to occur.

9. Health and wellbeing implications

- 9.1 None identified.

10. Staffing implications

- 10.1 The delivery of the enforcement service is important to the Council. To ensure the service is delivered in the most efficient manner, a senior enforcement officer is currently being recruited to the Planning Service to oversee this function. They will initially be working with the Planning case officers who currently deliver the planning service.
- 10.2 In the new financial year two planning enforcement officers will also be brought in to enable an intensification in the enforcement work the Council undertakes to minimise opportunities for breaches of planning control to occur.

11. Equality implications

- 11.1 None identified.

12. Consultation

- 12.1 Consultation has been undertaken with the following:
- Legal Services
 - Communities & Public Protection
 - Regulatory Services.

Background papers

National Planning Policy Framework/ National Planning Policy Guidance

Information on planning enforcement can be found on the Governments website at www.planningportal.gov.uk.

[Walsall Planning Policy Framework](#)

The strategic planning aims of the Council are set out in the Development Plan, which is a group of documents comprising the following:-

The Black Country Core Strategy:

http://cms.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

The Unitary Development Plan (UDP):

http://www.walsall.gov.uk/index/environment/planning/unitary_development_plan/udp_documents.htm

The Emerging Walsall Site Allocations Document and Town Centre Area Action Plan:

http://cms.walsall.gov.uk/index/environment/planning/planning_policy/planning_2026.htm

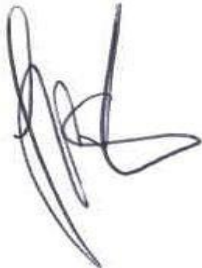
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expediency



Walsall Council

PLANNING, ENVIRONMENT AND TRANSPORTATION

LOCAL PLANNING ENFORCEMENT PLAN

DRAFT

28 November 2016

DATE ADOPTED BY COUNCIL: Not currently adopted

CURRENT STATUS: DRAFT
DATE: 2 November 2016

PREPARED BY:
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APPROVED BY:

DATE OF NEXT REVIEW:

Contents

EXECUTIVE SUMMARY	5
INTRODUCTION AND OVERALL OBJECTIVES	6
SERVICE STANDARDS	7
PLANNING ENFORCEMENT LEGISLATION	9
WHAT IS DEVELOPMENT?	10
THE PRINCIPLES OF PLANNING ENFORCEMENT	11
WHAT IS A BREACH OF PLANNING CONTROL?	12
PLANNING HARM	13
Harm Scoring and Threshold for Taking Further Action	14
ENFORCEMENT PRIORITIES	15
Table 1: Enforcement Priorities	15
Table 2: Target Times For Initial Response To Complaint	16
PROCEDURES	17
ANONYMOUS COMPLAINTS	17
HOW TO SUBMIT AN ENFORCEMENT ENQUIRY	18
METHODS OF COMMUNICATION	18
RESPONSE PROCEDURE	19
SUMMARY OF ACTIONS WE WILL TAKE ACCORDING TO THE STATUS OF AN INVESTIGATION	20
THE EXPEDIENCY TEST	21
IMMUNITY FROM ENFORCEMENT ACTION	21
HOW THE COUNCIL RESPONDS TO DIFFERENT TYPES OF BREACH	22
On-going breaches of planning control	22
Intermittent breaches of planning control	22
Retrospective applications for planning permission	22
PLANNING ENFORCEMENT OPTIONS	24
Formal Enforcement Action	24
Prosecutions	25
Direct Action	25
APPENDICES	Error! Bookmark not defined.
APPENDIX 1 – ENFORCEMENT TOOLKIT	27
OBTAINING INFORMATION	27
Section 330 of the Town and Country Planning Act 1990 (as amended)	27
Section 16 of Local Government (Miscellaneous Provisions) Act 1976	27
Section 171C of the Town and Country Planning Act 1990 (Planning Contravention Notice)	27

POWERS OF ENTRY FOR ENFORCEMENT PURPOSES.....	27
ENFORCEMENT NOTICE.....	28
LISTED BUILDING ENFORCEMENT NOTICE	28
BREACH OF CONDITION NOTICE	28
STOP NOTICE	28
TEMPORARY STOP NOTICE	28
DISCONTINUANCE NOTICE.....	29
SECTION 215 NOTICES /UNTIDY LAND NOTICE	29
COMPLETION NOTICE	29
INJUNCTION.....	29
TREE REPLACEMENT NOTICE.....	30
HEDGEROW REPLACEMENT NOTICE	30
HIGH HEDGE REMEDIAL NOTICE	30
DIRECT ACTION /DEFAULT POWERS	30
LEGAL AGREEMENTS	30
SECTION 225A: REMOVAL NOTICES	31
COMMUNITY PROTECTION NOTICE (CPN)	31
SECTION 70C: DECLINE TO DETERMINE A RETROSPECTIVE APPLICATION	31
SECTION 171BA –:PLANNING ENFORCEMENT ORDER	31
 APPENDIX 3: REVIEW OF THE LOCAL ENFORCEMENT PLAN.....	 32
APPENDIX 4: REFERENCE SOURCES	33
PLANNING INVESTIGATION LOG SHEET	34

EXECUTIVE SUMMARY

This is our framework for dealing with any alleged breaches of planning control received by the Council. Planning enforcement has a vital role in making the Borough a better place for those living, working or investing in the Borough and for supporting the Council's Vision for Walsall. The Vision can be seen online at the following location:

http://www.walsall.gov.uk/index/council_and_democracy/corporate_plan_vision_and_values.htm

The Government's Planning Practice Guidance (PPG) published on-line since March 2014 provides advice on the role of planning enforcement in the section Ensuring Effective Enforcement. This guidance states that 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, and which will inform decisions about when to take enforcement action;
- Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process

This Local Enforcement Plan has been the subject of public consultation and report to the Council's Planning Committee and Cabinet before adoption and is intended to meet these criteria. The plan sets out the objectives of the Planning Enforcement Service and the system and principles for the exercise of the relevant statutory powers. The local context in the plan includes the natural and historic environment. References to "the Act" mean the Town and Country Planning Act 1990, as amended. Other legislation specifically referred to relates to the Equalities Act 2010, Listed Buildings and Hedgerows and High Hedges.

Walsall Council is the responsible Local Planning Authority for the enforcement of planning control within the Borough.

There are a range of powers to be exercised in the public interest where a breach of planning control is under consideration. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and is planned and managed to achieve social, economic and environmental objectives. This Plan seeks to promote procedures which will manage enforcement issues in an appropriate way for Walsall.

Effective enforcement relies to a large degree on efficient and timely communication. Possible breaches of planning control; unauthorised works/activities/advertisements on land, buildings, trees or hedgerows are brought to notice by members of the public, Council Officers in different departments and well as by Planning and Enforcement Officers. An efficient system needs the Council's website to be a helpful source of reference and advice with a robust reporting system which is transparent about the decisions taken. References to the PPG section "Ensuring Effective Enforcement" are given particularly in Appendix 1 which describes the options and procedures available to tackle possible and actual breaches of planning control in a proportionate way. The plan is published on the Council's web site with an on-line form for reporting planning issues and enforcement complaints.

The Plan sets out standards and proposed priorities restating and updating principles of good practice enforcement advocated by the Government but adapted to local circumstances.

INTRODUCTION AND OVERALL OBJECTIVES

This is our framework for dealing with any alleged breaches of planning control received by the Council. Planning enforcement has a vital role in making the Borough a better place for those living, working or investing in the Borough and for supporting the Council's Vision for Walsall, which can be found at:

http://www.walsall.gov.uk/index/council_and_democracy/corporate_plan_vision_and_values.htm

The National Planning Policy Framework (NPPF) March 2012 advises that Local Planning Authorities (Local Planning Authorities) should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. The Council's previous Planning Enforcement Policy was first published in November 2012 and has now been reviewed following changes to national policy/guidance for enforcement and operational changes. The Local Enforcement Plan (LEP) also confirms the current planning enforcement powers available to the Council.

The Government also published guidance on planning enforcement contained within the Planning Practice Guidance in March 2014 which was subsequently updated in September 2015. Further information which can be found via the following web site:

<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

In assessing any enforcement case, the Council will give consideration to the national planning policy framework (NPPF) and supported by the Planning Practice Guidance, plus policies set out in the Council's Unitary Development Plan (UDP) and the Black Country Core Strategy which form the heart of the Council's Development Plan. Both of these documents are subject to review and this plan will be reviewed in light of any new adopted policies as they emerge.

Effective control over unauthorised development protects the environment, the local amenity of residents and other people, promotes confidence in the planning system and helps to revitalise our Borough. Enforcement is an essential part of the Development Management process and its integrity depends on our readiness to take proportionate enforcement action. Planning enforcement action is also discretionary; the Council must judge each case and decide if it is expedient to act (expediency is a crucial test in the legislation and its meaning is explored on page 22).

In deciding whether to take enforcement action we must have regard to local and national planning policies, in particular, the advice set out in the Council's Development Plan (see above), and Government guidance.

Much of what the Council deals with comes to us through a range of planning enforcement enquiries. All planning enforcement enquiries will be assessed and prioritised according to the criteria set out on pages 16 and 17.

The Council is fully committed to the Regulators Code published by the Department for Business Innovation and Skill in April 2014 which has replaced the Government's Enforcement Concordat which the previous Enforcement Plan supported. This document sets out a range of good practice enforcement policies and procedures to deliver best practice in regulatory and enforcement work by public bodies.

SERVICE STANDARDS

Walsall Council's existing practices have sought to achieve the principles of good enforcement practice. The following standards reflect the overarching principles the Council has adopted with regard to inspecting and if appropriate, pursuing enforcement action.

These five standards are set out in the Regulators Code

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow

The purpose of the planning enforcement process is not to punish those who find themselves working outside of the planning framework and the policies of the development plan but to ensure inappropriate development does not cause harm. The Council will continue to work with individuals and businesses in a manner that assists people in understanding the planning systems and how they can best meet their aspirations.

2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

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

3. Regulators should base their regulatory activities on risk

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

In prioritising our cases, consideration will be given to the risk of harm that may arise in the processing phase. Where there is a potential for irreversible damage to occur to the environment for example, enforcement action will be given the highest priority.

4. Regulators should share information about compliance and risk

The Local Planning Authority will work closely with other enforcement organisations to secure effective regulation of the planning system, protect the environment and amenity. Consideration will always be given to the nature of the information to be shared in these cases to ensure confidentiality and data security is maintained.

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

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

We aim to be polite but firm with the person/people that are alleged to be in breach of planning or environment controls. We will meet when requested, both before and during enforcement actions, to try and achieve a satisfactory outcome and will keep complainants and Councillors informed of key stages in the process.

We already provide significant amounts of information on our website about the planning process and enforcement and we will continue to expand on this resource over time.

Dealing with Complaints

In addition to working in accordance with the five criteria set out in the Regulators Guide, the Council also takes complaints about the operation of the enforcement service seriously. Opportunity exists for complaints to be made about the operation of the enforcement through the Council's complaints procedure. Feedback from this will be used to inform future actions and improve the way in which the Council delivers this service.

PLANNING ENFORCEMENT LEGISLATION

The enforcement activities in this document mainly rely on the following statutes:

- The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)
- The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by the Planning and Compensation Act 1991)
- The Planning and Compulsory Purchase Act 2004
- The Town and Country Planning (Control of Advertisements)(England) Regulations 2007
- The Town and Country Planning (General Permitted Development)(England) Order 2015

Guidance provided by the Government relating to planning enforcement will also be taken into account as and when it is updated or introduced. Information on the different types of Statutory Notice, or Enforcement Tools, which are available to formally remedy breaches is given below in Appendix 1: Enforcement Toolkit.

Planning legislation exists to control 'development' in the public interest and to prevent harm arising from 'development', which may be the construction or physical alteration of something, or changing the use of land and/or buildings.

The first consideration in any enforcement query is whether there has been a breach of planning control. If there is no breach identified, and the developer has only done what they are entitled to as set out in the legislation, then the Council cannot take any action at all.

Not all work to land or building involves 'development'; for example, works simply amounting to maintenance or repair are not classed as development. Furthermore, a large amount of 'development' has the benefit of automatic planning permissions which are granted by the national planning regulations (commonly called 'permitted development rights'). A main part of enforcement work is assessing whether development complies with the criteria laid down for these automatic national planning permissions, criteria such as the type of development, its size, and its position.

Where there has been a breach of planning control, the developer can be advised to alter the development to bring it within the criteria for an automatic planning permission. Breaches of planning control can also be reminded with the opportunity to make a planning application, if an application can be looked upon favourably, without prejudicing the Council in making any planning decision. If the matter cannot be resolved in these ways, the Local Planning Authority (LPA) has to decide whether it would be expedient, beneficial and proportional in the public interest to pursue formal enforcement action.

This decision cannot be based simply on the notion that planning legislation has been infringed. Carrying out work without the necessary planning permission is generally not a criminal offence in itself. However, there are exceptions for illegal works to Scheduled Ancient Monuments, Listed Buildings, some Advertisements, works to protected trees and demolition of buildings in a Conservation Area. If the LPA takes enforcement action simply because there is a lack of a valid planning permission in place, it may be liable to pay the appellants costs at appeal. The LPA must be able to demonstrate that harm has been caused by the development and that there is significant benefit from taking formal enforcement action. This reflects the power to act only when 'expedient' to do so and if such action is clearly in the public interest.

It is unlikely that enforcement action will be pursued where a technical breach of planning control has occurred that causes no significant harm. One example would be when development has been carried out which is only a slight variation in excess of specified criteria and no harm has been caused to amenity, safety or other interests of acknowledged importance notably planning policy.

People can also perceive harm when it is caused by, for example, a possible loss of value of their property, competition from another business, trespass onto their land, or a breach of a restrictive covenant. These matters are outside the scope of the planning system, although there may be redress through civil law. In such cases, the parties should consult a solicitor or seek advice from a Citizens Advice Bureau.

WHAT IS DEVELOPMENT?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in Section 55 of the Town and Country Planning Act 1990.

'Development' includes:

- building operations (e.g. structural alterations, construction, rebuilding, most demolition);
- material changes of use of land and buildings;
- engineering operations (e.g. groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwelling house for use as two or more separate dwelling houses

The categories of work that do not amount to 'development' are set out in Section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition, but is linked to the significance of the change which is made to a building's external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

Activity or work that is not classed as development under Section 55 of the Town and Country Planning Act 1990 cannot be addressed through the Planning Enforcement Service. The Council will use their best endeavours to ensure any queries for work falling outside the definition of development is passed on to the relevant Council department. If a third party organisation is required to investigate or pursue action, the Council will use its best endeavours to identify the organisation and it will be a matter for the complainant to pursue a complaint directly.

THE PRINCIPLES OF PLANNING ENFORCEMENT

The use of planning enforcement powers by the Council is discretionary and the carrying out of development without planning permission, although unauthorised, is not illegal. Some actions may become illegal only following non-compliance with a formal Enforcement Notice.

All alleged breaches of planning control will be investigated by the Council except for anonymous complaints, unless there is clear evidence the resulting harm is significant.

In the first instance, the Council will seek to resolve all breaches of planning control through informal negotiation unless the breach is causing or is likely to cause imminent irrevocable harm requiring immediate action. This generally occurs in only a very small number of cases. The focus is to achieve compliance without resorting to formal proceedings which can be protracted and costly.

Where appropriate, the Council will give reasonable timescales for voluntary compliance through removal of the breach or through regularisation before seeking to take formal action.

Legislation does allow planning permission to be sought retrospectively and government guidance recommends that local planning authorities seek to regularise potentially acceptable unauthorised development through granting planning permission. Where there is a breach of planning control an application will be requested by the Council where it believes consent could be granted with conditions imposed to satisfactorily control the development. This doesn't prejudice the future decisions of the Council.

It should be noted that the Council has to accept all valid applications and determine these even if they have not been invited. Instances where an application has been submitted either with or without guidance from the Council, formal action will not be taken when there is an undetermined valid planning application or appeal awaiting determination except in exceptional circumstances. When determining a planning application for non-authorised development, the non-authorised/retrospective nature of the development will not influence the planning assessment.

Any action should be proportionate to the level of harm (see box below for explanation of harm) involved and should take into account relevant circumstances where it is expedient and necessary to do so, i.e. in the public interest. The Council needs to consider whether it is expedient having regard to the Council's Development Plan, National legislation, policies, guidance, any other material considerations and whether it's in the public interest to undertake formal enforcement action to remedy breaches of planning control.

Expediency will depend on the level of harm caused and the likelihood of achieving voluntary compliance.

There is a range of enforcement powers available to the Council to address breaches of planning control and the Council will apply the most appropriate power dependant on the circumstances of each particular case.

The Local Enforcement Plan applies to activities carried out via the legislation enforced by the Development Management Enforcement Team. The Council also has other powers of enforcement in relation to other legislation such as highways, environmental health and public protection. This plan does not apply to these powers though contact details are provided in on the Councils website.

Planning enforcement action will not be pursued where the matter is addressed through other legislation.

WHAT IS A BREACH OF PLANNING CONTROL?

Breaches of planning control vary considerably and could involve such matters as the unauthorised erection of a building or extension to a building, a material change of use of land or building, or the display of unauthorised advertisements. Other breaches of planning control include the following;

Breach of planning control	Not a breach of planning control
<ul style="list-style-type: none">• Unauthorised works to Listed Buildings• Unauthorised advertisements• Unauthorised works to trees subject of a tree preservation order (TPO) or in a Conservation Area• Unauthorised demolition within Conservation Areas• Breaches of conditions attached to planning permissions• Not building in accordance with the approved plans of planning permissions• Untidy land where it adversely affects the amenity of the area• Unauthorised engineering operations, such as raising of ground levels or earth bunds• Unauthorised stationing of a caravan or mobile home for use as an independent dwelling• Unauthorised material changes of use of land or buildings	<ul style="list-style-type: none">• Internal works, excluding changes of use to a non-listed building• Obstruction of a highway• Parking of private and commercial vehicles on the highway or on grass verges• Parking caravans on residential drive-ways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property• Running a business from home where the residential use remains the primary use• Land ownership or boundary disputes or trespass issues as these are private matters.• Covenants imposed on property deeds as these are private matters.• Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended• Advertisements that are either excepted under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 as amended• Clearing of land of overgrowth, bushes and non-TPO trees.

PLANNING HARM

Planning harm is not defined in the Planning Regulations. The Oxford English Dictionary defines harm as: “Physical injury especially that which is deliberately inflicted, material damage, actual or potential ill effects or danger”.

Government guidance contained within the National Planning Policy Guidance advises that formal planning enforcement action should be taken when: *“There is a clear public interest in enforcing planning law and planning regulation in a proportionate way”*. Advice contained in now superseded Government publication (PPG1 1997) usefully explained that: *“The planning system does not exist to protect the private interests of one person against the activities of another.....but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest”*.

Harm caused by unauthorised development can be described as the injury caused to public amenity or public safety. Before taking planning enforcement action regard will be made to the policies contained within the Councils Development Plan and other material planning considerations.

Harm can include (this is not an exhaustive list) an unacceptable impact on:

- Planning Policy
- Visual amenities and the character of the area
- Privacy/overbearing/daylight/sunlight
- Noise/smells/pollution such as contamination
- Access/traffic/Highway safety
- Health and safety
- Undesirable precedent
- Ecology, Trees and Landscape
- Amenity standards of users of the development

In assessing the degree of harm that is caused will be assessed by the Council using the following table. .

Harm Scoring and Threshold for Taking Further Action

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

Where the score is 4 or below, the case will not be investigated further. The owner will be informed and invited to remedy or regularise any breach. Complainants will be notified that the development causes insufficient harm to warrant further action.

If the score is 5 or greater then it will be progressed for further consideration. An assessment will be made of the severity of the case to ensure the most significant cases are dealt with as a soon as possible.

ENFORCEMENT PRIORITIES

Planning Enforcement Officers receive a high number of enquiries regarding allegations of breaches of planning control every year. To ensure the most serious cases causing the greatest amount of harm are investigated with minimal delay, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

Many cases may require repeat site visits, negotiation, serving of notices on owners/interested parties and more formal action before the breach is resolved. When these occur, the Council will endeavour to keep original complainants informed at key stages during the process and indicate arrangements for this in the initial response letter.

Complainants will also be provided with the details of the lead officer assigned to deal with the enforcement enquiries should they require further updates or have new information pertinent to the investigation.

Table 1: Enforcement Priorities

Priority	Considerations	Target time for visiting
High	Irreversible Harm To The Environment <ul style="list-style-type: none">• Unauthorised works to a listed building• Irreversible harm to amenity of a Conservation Area• Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area• Works affecting a protected landscape included but not limited to a SAC, SSSI or SLINC	24 hours
Medium	Significant Reversible Harm To Amenity or the Environment <ul style="list-style-type: none">• Development prior to compliance with the discharging of conditions on a planning approval• Breach which results in serious demonstrable harm to amenity of neighbourhood• Unauthorised development which is in breach of planning policy• Source of significant public complaint• Unauthorised advertisements that have a detrimental impact on highway safety in the view of the Councils Highways service.	Within 20 working days
Low	Minor Reversible Harm To Amenity or the Environment <ul style="list-style-type: none">• Unauthorised development which is not the source of significant public complaint• Erection of unauthorised advertisements	Within 40 working days

Table 2: Target Times For Initial Response To Complaint

Priority	Response targets to caller from notification
High	Within 3 working days
Medium	Within 20 working days
Low	Within 40 working days

Enforcement Enquiries will be assessed and prioritised by the Area Manager, with supporting advice given by other Departments in the Council or Statutory Consultees where deemed necessary.

PROCEDURES

At all times, staff will follow the principles set out below and will:

- Act professionally courteously and equitably
- Endeavour to negotiate a solution to the problem where possible
- Use plain language
- Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including timescales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advice
- Keep all personal details confidential unless court action or the Freedom of Information legislation makes it necessary to release information.
- Discourage retrospective planning applications when there is no prospect of an approval
- The rights of appeal against any formal notice will be clearly explained to the person or company being investigated.
- Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent except in exceptional circumstances.
- Only take formal enforcement action where there is a breach of planning control, and where the action is proportionate and an environmental benefit is likely to result.

To initiate a planning enforcement investigation, complaints should normally be made in writing by letter, email or via the standard form on the Council's website at:

http://cms.walsall.gov.uk/index/environment/planning/planning_enforcement.htm

For each case submitted, a named officer will be assigned to deal with the assessment. Depending on the outcome of the investigation, the case may be escalated or closed depending on the findings. You will be notified of the name of the officer dealing with the case and the key stages in the investigation and assessment.

ANONYMOUS ENFORCEMENT ENQUIRIES

If enforcement enquiries are submitted without any contact details to enable the Council to seek further information or respond back to the person raising an enforcement enquiry, the Council will not normally pursue these items. Anonymous enforcement enquiries will only be investigated if the alleged breach relates to illegal works to a Scheduled Ancient Monument, a Listed Building or works to trees which are in a Conservation Area or trees protected by a Tree Preservation Order, subject to sufficient information to be able to clearly identify the location of where the breach is allegedly being carried out.

An enforcement enquiry will be treated as being anonymous if no details are given or all the contact details provided are unobtainable. It is beneficial for as many methods of communicating as possible are provided.

HOW TO SUBMIT AN ENFORCEMENT ENQUIRY

All enforcement enquiry made should include the following details:

- The identity and address of the enquirer
- The address at which the alleged breach of planning control has taken place
- A short description of what is alleged to be the breach of planning control
- Why the enquirer feels that the matter involves a breach of planning control
- When the alleged breach commenced
- Details of the type of harm considered to be caused by the alleged breach. The more information that can be provided then the greater the chance any breach can effectively be resolved.
- Where available, evidence can be submitted to support any enquiry. The following forms of evidence are commonly accepted:
 - Photographs
 - Video clips
 - Activity logs (blank copy at the end of this document)
 - Notes of events
 - Written statements

The name and address of all complainants is kept confidential. It may be necessary that such details are later required to be disclosed for legal reasons but prior approval will be requested if the enforcement case progresses through to the Courts.

We understand that sometimes people can feel threatened, particularly in cases which may involve keeping a log of the activities of near neighbours. Enquirers who wish to remain anonymous are advised to seek support from a Councillor who could act on their behalf and ensure their anonymity.

When an enforcement enquiry is received, it will be registered on the Council's planning database system. In some cases, not all, a site visit may be necessary before the investigating case officer can determine whether or not there has been a breach of planning control.

The enquirer will be acknowledged and will be advised which case officer will be dealing with the matter and full contact details of that officer will be given. Enquirers may contact the officer for an update and they are positively encouraged to do so should they discover any new breaches or any material change to an existing complaint.

METHODS OF COMMUNICATION

The preferred method of communication is email (excluding temporary email addresses) as this allows a written log to be kept of steps taken to resolve any outstanding matter whilst also allowing information to be fed back without additional delay. Alternative methods of communication include post and telephone either landline or mobile.

The Council though does not have the resources in place to conduct an investigation through text or social media e.g. Whatsapp, Instagram, Twitter or Facebook.

RESPONSE PROCEDURE

After receipt of an enforcement enquirer, the investigating case officer will research the planning history of the site and permitted development rights and assess whether or not the enforcement enquiry constitutes a breach of planning control.

If there has been no breach of planning control then the case will be closed and the enquirer advised of this decision.

Where it is apparent that development has taken place without the relevant valid consent in place, it is normal practice to inform the person responsible that they are in breach and to invite an application to regularise the development. This will only happen if such an application could be looked upon favourably and follows Government guidance on ensuring effective enforcement.

Where unauthorised development is identified and is not acceptable, the case officer will prepare a report to the Planning Committee outlining the planning issues arising from the breach. The report may recommend serving a statutory notice. Where necessary, liaison will take place with the Council's solicitors to agree the most appropriate course of action. Those in breach of planning control will be informed of the decision to take the matter to the Planning Committee and advised of the date of that Committee (as will the enquirers). The requirements of any formal notice will always be the minimum required to resolve the breach of planning control.

SUMMARY OF ACTIONS WE WILL TAKE ACCORDING TO THE STATUS OF AN INVESTIGATION.

Status of the Investigation	The Council's Actions
No breach of planning control has been identified	The Council will write to the enquirer to advise them of our findings and the investigation will be closed.
A breach of planning control has been identified where it is not expedient to take action	The Council will write to the enquirer to advise them of its findings and provide an explanation as to why no action will be taken in this instance. The investigation will be closed.
A breach of planning control has been identified and retrospective planning application may regularise the breach.	<p>The Council will write to the person responsible for the breach of planning control and explain why the works/use require planning permission and provide advice on how that permission can be obtained.</p> <p>The Council expects a planning application to be submitted within 28 days. If an application is not submitted, the Council will decide whether it would be expedient to pursue enforcement action.</p> <p>The Council will write to the enquirer to confirm a retrospective planning application is being sort to regularise the planning breach</p>
A breach of planning control has been identified and the matter needs to be addressed.	<p>The Council will write to the enquirer to advise them of its findings. The case will be assigned a priority (High/ Medium/ Low) and will be assigned to an officer to resolve the matter.</p> <p>The Council will also write to the person(s) responsible for the breach to advise them what steps they need to take to address the breach of planning control and the timescales within which those steps must be taken. The Council will also advise of the consequences of not complying with its request.</p>
Further investigation is required.	<p>The Council will write to the enquirer to advise them of its initial findings. The case will be given a priority level and will be assigned to an officer to complete the investigation.</p> <p>The Council will write to the person(s) responsible for the breach to advise them of the information that it needs. This may involve issuing a Planning Contravention Notice (PCN) which must be completed and returned to the Council within 21 days. A PCN may also be issued in the above circumstances.</p>

THE EXPEDIENCY TEST

If a planning application is not submitted to regularise unauthorised works, the Council must then decide whether or not it is considered expedient to take formal enforcement action. In making this decision, the Council will have due regard to the provisions of the Development Plan and any other material considerations, to assess whether the breach causes an unacceptable level of planning harm. Matters assessed may include the location of the breach, its visual impact, its effect on neighbours' amenity or its impact on highway safety as set out on the scoring sheet above.

The Council considers it will not be expedient to pursue planning enforcement action under the following circumstances:-

- where the outcome of any enforcement action would not result in a significant environmental gain or benefit
- Where there is no evidence of a breach of planning control*.
- permission would be likely to be granted for the development without conditions**
- where the breach affects Council-owned land or is on the public highway ***

Notes

** see page 23, dealing with sporadic breaches of planning control*

*** those affected will be advised of the need to apply for planning permission and the fact that the owner/operator may encounter legal difficulties should they choose to sell*

**** in these cases, the powers available to the council as landowner or as local highway authority are likely to be more appropriate and such cases will be passed to the appropriate part of the Council for consideration*

In some cases, it may be appropriate for Officers to enter into negotiations with the alleged contravener to either secure compliance with a condition or permission, or to negotiate changes to a development to make it more acceptable in planning terms. These negotiations may negate the need for enforcement action.

IMMUNITY FROM ENFORCEMENT ACTION

Planning legislation confirms, some types of development are lawful and immune from enforcement action if they have existed for specified periods of time:

- **More than 4 years** for a building, or other construction works, external alterations to building/construction works and the use of a building as a residence
- **More than 10 years** for a change of use of land/buildings or a failure to comply with planning conditions on a planning permission.
- There is **no time limit** for the enforcement of breaches in relation to Listed Building legislation.

Officers will check planning histories, aerial photographs, and other sources, where appropriate, to test any claims of immunity. They may also invite comment from those who may know more about the issue, for example near neighbours.

If it appears that the development may be immune from enforcement action, then advice will be given on the submission of an application for a Certificate of Lawful Existing Use or Development (commonly referred to as a "CLEUD"). In such cases, the onus of proof remains with the applicant. If no such CLEUD application is made, based on the evidence before the Council, then the case will be closed as immune from enforcement, even though the breach has not been formally regularised.

HOW THE COUNCIL RESPONDS TO DIFFERENT TYPES OF BREACH

On-going breaches of planning control

Breaches of planning control involving physical works are easier to observe than occasional breaches which are often associated with changes of use.

The Council will seek to prioritise the case depending on the nature of the works and whether they are on-going or have been completed. In addition consideration will be given to whether the development is causing any irretrievable harm which maybe increasing due to the presence of the breach for example pollution to a sensitive ecological habitat.

The Council will seek to gain evidence of the breach from a number of observation points, including neighbouring properties, where permission is granted, to fully and accurately assess the scale of harm arising.

Intermittent breaches of planning control

In some cases it is not possible to determine whether or not there has been a breach of planning control because the activities are sporadic. Typically, this can be a business being operated from domestic properties, a breach of opening hours restrictions or a low key change of use of a premises.

In these cases the following sequence will be adopted:

- 1) Following the initial site visit, a letter and log sheets will be sent to the enquirer asking to record activities for a 28 day period and then return the log sheets to the case officer;
- 2) The log sheets will then be assessed by the case officer and a Team Leader if deemed necessary;
- 3) If there is evidence of a breach of planning control, then a targeted inspection will be made to progress the investigation. Investigations like these may mean a number of inspections need to be made including outside normal working hours which will require authorisation. For these reasons log sheets completed by enquirers are essential for evidence collecting and hence why they are specifically requested.

If log sheets are not completed and/or not returned to the case officer then the case will be reviewed to see if the necessary information to pursue a case or whether evidence can be secured through any other reasonable means. Where this is not possible then the case may potentially be closed down. Following investigation of the enforcement enquiry, the enquirer will be informed of the Council's decision including to close a case if no breach is noted or if insufficient evidence can be collected to prove a breach. Where a case is closed the information will be retained on file as a record.

Retrospective planning applications

Requesting a retrospective planning application has the advantage of the Council being able to obtain full details of the works that have been carried out and enables interested parties to be formally consulted before an informed decision is made. It may also be possible to make amendments to the scheme or impose conditions which overcome the concerns of interested parties. A period of 28 days will normally be given for such an application to be

submitted, although this period may be reduced or increased depending on the merits of each case.

Any views or advice given by officers will be informal and will not prejudice the outcome of any planning application which is subsequently submitted. Where there are no reasons to oppose the development, in the pursuit of expediency the Council may exercise its discretion not to pursue enforcement action, as set out on page 22.

Where formal action is required and it will affect a business or commercial interest, full regard will be given to the Government's Enforcement Concordat. Where necessary those in breach will be referred to the Council's Economic Regeneration Officers, in order that efforts may be made to minimise the effects of any necessary enforcement action. For example, help in guiding the business to an alternative site where the business activity is better suited.

Timescales for compliance with any formal enforcement action will reflect the following:

- harm arising to the environment,
- harm to the amenity of the neighbours,
- needs of the business and impact on staff and customers
- impact of the enforcement action.

The Council acknowledge this may be unwelcome to the enquirer; however this judgement must be part of the process if enforcement action is taken. If the Council seeks to take a case to prosecution through the Courts, consideration will be given to whether the Council has acted in a reasonable manner.

If it can be successfully argued by a defendant that the Council has acted in an unreasonable manner then the case may be dismissed irrespective of the merits of the case or the harm arising.

For cases where the breach is causing significant harm, the Council will consider whether it is expedient to move directly to taking formal enforcement action rather than inviting a planning application. The type of enforcement action available for such cases is outlined in Appendix 1.

When a retrospective planning application is received, it will be determined on its own merits. Unless the breach is causing serious harm, it is normal practice to await the determination of the planning application before deciding whether to pursue formal enforcement action. The enforcement case will remain open until the planning application has been determined. If the retrospective planning application is approved, then the enforcement case will be closed subject to the applicant's compliance with any conditions requiring changes to the development to make it acceptable or overcome any harm. If the planning application is refused then the case will remain open until the breach is satisfactorily resolved.

PLANNING ENFORCEMENT OPTIONS

An objective of planning enforcement is resolving problems by negotiation and persuasion. However, there are a number of cases which require formal enforcement action to be taken.

Where it is deemed necessary to take such action, the parties will be advised of the action to be taken. The owner/operator affected by the notice will also be advised of any rights of appeal and the penalties for non-compliance.

The details and definitions of the main types of action are detailed in Appendix 1. In some cases, officers can act under delegated powers and in others the case will need to be reported to the Planning Committee by the Head of Planning, Environment and Transportation for authorisation of enforcement action.

Formal Enforcement Action

Both the National Planning Policy Framework and Planning Practice Guidance confirm that enforcement action is a discretionary power. Advice is given that Local Planning Authorities should act proportionately in responding to suspected breaches of planning control.

A reasonable balance needs to be achieved, between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, even though it may initially have been unauthorised. Where the balance of public interest lies will vary considerably from case to case and each case is always treated on its own merits taking into account all relevant material planning considerations.

The type of enforcement action to be pursued will be dependent on the circumstances of the case. The type of action pursued must also be proportionate to the nature of the breach of planning control. There are many different forms of enforcement action which are available to the Council and these are summarised below in Appendix 1.

In considering whether to pursue enforcement action, the Council must also take into account the Human Rights Act 1998 and the Articles contained therein with particular reference to the Right to a Fair Trial, the Right to a private family life and the protection of property.

The Council also has a duty to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups in the carrying out of their functions, in accordance with The Equality Act 2010.

Once the decision has been made to pursue formal enforcement action, the relevant notice will be issued by the Council. When a Notice has been issued the Enforcement Public Register is also updated as a matter of course. If a notice is subsequently complied with the Register is also updated. An electronic version of the Enforcement Register can be viewed on the Council's website and this is updated on a quarterly basis. Enforcement notices once served stay with the land in perpetuity and do show up on local land charge searches.

Depending on the type of enforcement action pursued, there are various rights of appeal, which may suspend the effect of a notice until the appeal is heard. Further information on this is contained within Section 1.

Formal notices give the person responsible for the breach a specified time limit in which to remedy the breach. Once this time period has expired the case officer will check whether the

notice has been complied with. If the notice is complied with, no further action will be taken by the Authority and the file closed. If, however, the notice has not been complied with, the case officer, liaising with the Council's solicitor must consider whether or not to prosecute as this is a criminal offence. The Council will also consider applying for an Injunction requiring an activity to cease or for certain development to be removed. In some cases the Council may take Direct Action, also known as Default Action to secure compliance. These forms of action are explained in more detail in Appendix 1.

Prosecutions

Failure to comply with any requirement of a statutory notice is a criminal offence and the Council will normally take legal action in such cases.

It is the responsibility of the case officer, Team Leader and Development Management Group Manager, in conjunction with the Council's solicitor, to ensure that the law is properly applied. Where breaches of planning control lead to criminal offences being heard in Court, there is also an obligation to ensure that all relevant evidence is put before the Court and that the disclosure obligations are complied with. The decision to prosecute will also take account of the evidential and public interest tests and tests set out in the Code for Crown Prosecutors which include:

- The age and evidence of the state of health of the alleged offender.
- The likelihood of re-offending.
- Any remedial action taken by the alleged offender.

All prosecution action will be taken in accordance with the Police and Criminal Evidence Act and a copy of appropriate material will be made available to meet the relevant requirements of this Act.

Where it is considered in the public interest to do so, the Council is likely to make a costs application to the Court in order to recover its expenses in pursuing prosecution cases.

In the event of legal proceedings, a successful outcome may depend upon the willingness of enquirer to appear as witnesses at Court. Whilst we will not divulge who the enquirer is, in such an event their identity will enter the public arena.

The progress of cases that have resulted in formal notices being issued are reported to the Planning Committee on a quarterly basis.

Where a criminal offence has occurred, and the Defendant(s) has been found guilty, the Local Planning Authority may request that the Court makes a Confiscation Order under the Proceeds of Crime Act 2002. The Confiscation Order will relate to any financial benefit arising from a criminal activity.

Direct Action

There are a small number of cases where Statutory Notices are issued and not complied with and successful legal proceedings fail to resolve the breach. Similarly, there are cases where prosecution will clearly not be effective.

Provision under existing legislation is made for the Council to take direct action, to enter the land and remedy the problem (Town and Country Planning Act 1990, under section 178 and section 219)

Direct action will be only be taken after full consultation has been taken with all relevant parties (and this will depend on the nature of the case) and only if authorisation has been given by the Planning Committee. Reports to Planning Committee on such matters will be considered in private session in accordance with the Local Government Act 1972 to ensure that the case is not prejudiced.

If direct action is taken the cost to the Council can be considerable. A charge in favour of the Council for the cost of the action will be registered on the land to ensure that money raised by any future sale will be used to recoup the Council' costs. Other actions to recover the money will be considered, where appropriate.

APPENDIX 1 – ENFORCEMENT TOOLKIT

The following section of this Local Enforcement Plan provides a summary of the various tools available to deal with alleged breaches of planning control. The Local Planning Authority must assess, in each case, which power (or combination of powers) is best suited to dealing with any particular anticipated/apprehended, or actual, breach of control to achieve a satisfactory, lasting and cost effective remedy, having regard to the circumstances of the case.

It should also be noted that the type of enforcement action taken should be commensurate and proportionate with the breach of planning to which it relates.

OBTAINING INFORMATION

There are three 'requisition' powers for planning enforcement purposes:

- Section 330 of the Town and Country Planning Act 1990 (as amended)
- Section 16 of the Local Government (Miscellaneous Provisions) Act 1976
- Section 171C of the Town and Country Planning Act 1990 (as amended)

Section 330 of the Town and Country Planning Act 1990 (as amended)

This power may be used in order to obtain relevant information at an early stage of the enforcement process. It involves serving a notice on either the occupier of the premises or the person receiving rent for the premises. This form of notice may also be used for investigating enforcement under the Planning (Listed Buildings and Conservation Areas) Act 1990.

Section 16 of Local Government (Miscellaneous Provisions) Act 1976

These provisions are primarily intended to enable an authority to establish the facts about ownership of land.

Section 171C of the Town and Country Planning Act 1990 (Planning Contravention Notice)

The main method for Local Planning Authorities to obtain information about activities on land, when it appears to the Local Planning Authority that a breach of planning control has occurred, is to serve a Planning Contravention Notice (PCN). A PCN takes the form of a series of questions relating to the suspected breach of planning control. It is an offence to fail to respond to the notice within 21 days, or to make false or misleading statements in reply. This notice however is not available for use in respect of suspected works to Listed Buildings or protected trees.

POWERS OF ENTRY FOR ENFORCEMENT PURPOSES

In addition to the investigative powers outlined above, case officers also have powers to enter land, specifically for enforcement purposes. This right is limited to what is regarded as necessary, in the particular circumstances, for effective enforcement of planning control. A notice period of at least 24 hours is required before entry can be demanded to a dwelling house. Prior notice is not required for access to domestic outbuildings or garden land, industrial, commercial or farmland.

A new Code of Practice introduced in April 2015 recommends that contact should be made with owners/occupiers before exercising powers of entry, unless it is impracticable to do so or would defeat the purpose of the inspection. The full version of the code can be found at: <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

Powers of entry also exist in accordance with a warrant, and procedures in respect of those matters can also be found within the above Code of Practice.

The following section refers to types of formal enforcement action which may be taken by the Local Planning Authority in order to require a particular use or development to cease or for works to be removed or modified:

ENFORCEMENT NOTICE

An Enforcement Notice can only be served when the Local Planning Authority is satisfied that there has been a breach of planning control and when it is considered expedient to do so. An Enforcement Notice requires specific steps to be taken which may include a use to cease or for a structure to be removed. It must also specify the period for compliance.

An Enforcement Notice must contain an explanation of the reasons it is being issued. The reasons should be carefully considered and be specific to the case. Failure to comply with an Enforcement Notice is a criminal offence.

The recipient of an Enforcement Notice has a right to appeal to the Secretary of State. Such an appeal will suspend the effect of the Notice until the appeal is determined. If an appeal is lodged all complainants and interested parties will be advised of the appeal details and how to make representations.

LISTED BUILDING ENFORCEMENT NOTICE

A Local Planning Authority may serve a Listed Building Enforcement Notice if unauthorised works have been or are being carried out to a listed building. Like an Enforcement Notice the recipient of this type of Notice has a right to appeal to the Secretary of State.

BREACH OF CONDITION NOTICE

This form of notice may be used as an alternative to the Enforcement Notice to remedy against failure to comply with any condition attached to a planning permission or limitation specified in the Town and Country Planning (General Permitted Development) Order 2015. It does not apply to breaches of conditions attached to listed building consent or advertisement consent. There is no right of appeal against a Breach of Condition Notice.

STOP NOTICE

When the effects of unauthorised activity are seriously detrimental, a Stop Notice may be served to ensure that an activity does not continue if an appeal is lodged against the Enforcement Notice. A Stop Notice can only be served where an Enforcement Notice has been issued. A Stop Notice can relate to any, or all, of the uses or activities specified in the Enforcement Notice. It does not apply to works to a Listed Building.

It is an offence to contravene a Stop Notice. Whilst there is no right of appeal against a Stop Notice, the validity of a Notice or the decision to issue the Notice can be challenged in the Courts by an application for Judicial Review.

TEMPORARY STOP NOTICE

Where the Local Planning Authority considers that a breach of planning control should stop immediately it may serve a Temporary Stop Notice. Such a notice expires 28 days after it has been served and during this period the Council must decide whether it is appropriate to

take further enforcement action. Once a Temporary Stop Notice has been served it is not possible to serve further Temporary Stop Notices for the same breach of planning control.

There are restrictions on the use of temporary stop notices; for example, such a notice cannot prohibit the use of a building as a dwelling house and may not prevent the continuance of an activity which had been carried out for a period of four years.

DISCONTINUANCE NOTICE

The Town and Country Planning (Control of Advertisement) Regulations enable a Local Planning Authority to take discontinuance action against any advertisement, which normally has the benefit of any of the categories of deemed consent.

A Discontinuance Notice may only be served if the planning authority is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. There is a right of appeal against a Discontinuance Notice.

SECTION 215 NOTICES /UNTIDY LAND NOTICE

Under Section 215 of the Town and Country Planning Act, a Local Planning Authority may serve a notice on the owner or occupier of the land, if it appears that the amenity of a part of their area, or an adjoining area is adversely affected by the condition of the land. A Section 215 notice may deal with 'buildings' as well as land. There is an appeal provision, where the recipient may challenge the notice in the Magistrate's Court.

Dilapidated buildings may also be open to action under the Building Act 1984 and these cases will be referred to Building Control immediately following a site inspection. These are frequently also vacant, and can quickly generate a lot of concern for neighbours. The issues vary a lot between different sites, and the Council needs to decide whether or not the land and/or buildings are detrimental to the amenity of the area (as this is the test set out in the legislation).

High priority cases may, for example, be where:

- A significant part of the land or the exterior of the building is seriously visually damaging to the area (for example the roof and the façade may be damaged or missing, or demolition rubble left in place)

AND

- The land is in a prominent location

It will not normally be possible to take action simply because the building is not secure or because of the presence of graffiti. Nor will it be possible to take action where the problem relates to the accumulation of a small amount of materials that may attract vermin. In these cases other parts of the Council may be able to act. Where a referral is considered necessary, this will be done as soon as possible.

COMPLETION NOTICE

A Completion Notice may be served if the Local Planning Authority is of the opinion that development (which has started within the statutory 3 year period) will not be completed within a reasonable period. For this type of Notice, the period for compliance has to be a minimum of 12 months. The Local Planning Authority must also refer the Notice to the Secretary of State for confirmation. There is a right of appeal against a Completion Notice.

INJUNCTION

A Local Planning Authority can apply to the High Court or County Court for an Injunction to restrain an actual or apprehended breach of planning control. An Injunction can be sought whether or not other enforcement action has been taken and when the identity of the person responsible for the breach is unknown.

When a planning obligation (Section 106 agreement) has not been complied with the Council may apply for an Injunction to secure compliance with the legal agreement. A Local Planning Authority may also apply for an injunction to restrain a breach or apprehended breach of tree preservation or Listed Building control.

The decision whether to grant an injunction is always in the absolute discretion of the Court. The Court will need to be satisfied in the case of every injunction application that enforcement action in this form is proportionate.

TREE REPLACEMENT NOTICE

In the case of protected trees, it is a criminal offence to:

- Cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order (TPO) or;
- Wilfully damage, top or lop a tree protected by a Tree Preservation Order in a way that is likely to destroy it.

If any of these works are carried out, the Council must decide whether or not to prosecute. A Local Planning Authority may issue a Tree Replacement Notice requiring the owner to plant a tree or trees of appropriate size and species if a tree has been removed in contravention of a TPO or if a protected tree has been removed because it was dead or dangerous.

The cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of trees within a Conservation Area is also a criminal offence. A Tree Replacement Notice can also be served in respect of the unauthorised removal of tree(s) in a Conservation Area. An appeal can be lodged against a Tree Replacement Notice

HEDGEROW REPLACEMENT NOTICE

It is a criminal offence to intentionally or recklessly uproot or otherwise destroy a hedge protected by the Hedgerows Regulations 1997 (which includes hedgerows on or adjacent to agricultural, equine or common land etc.). If any of these works are carried out, the Council must decide whether or not to prosecute.

A Local Planning Authority may issue a Hedgerow Replacement Notice requiring the owner to replant a hedgerow of appropriate size and species if a hedgerow has been removed in contravention of these Regulations. An appeal can be lodged against a Hedgerow Replacement Notice.

HIGH HEDGE REMEDIAL NOTICE

The Local Planning Authority may issue a High Hedge Remedial Notice if an evergreen/semi evergreen hedge is found to be a 'nuisance' when assessed in accordance with the Anti-Social Behaviour Act 2003, part 8, High Hedges. If an owner or occupier of the land where the hedge is located fails to comply with the Notice the owner or occupier will be guilty of an offence. An appeal can be lodged against a High Hedge Remedial Notice.

DIRECT ACTION /DEFAULT POWERS

Section 178 of the 1990 Act allows Local Planning Authorities to enter land and carry out any of the requirements of a Notice themselves. The Local Planning Authority may recover any expenses reasonably incurred with the direct action from the owner of the land. Such expenses, until recovered, become a charge on the land, binding on the successive owner.

LEGAL AGREEMENTS

Legal agreements under Section 106 of the Town and Country Planning Act can be used to restrict development or the use of land. They may also be used to require specific operations

or activities to be carried out. The advantage of this approach is that the legal agreement goes with the land and not an individual and therefore remains in perpetuity.

Should a site be sold on, the requirements of the legal notice have to be taken on by the new owners. The requirements of the notice also apply if the land is rented or leased.

SECTION 225A: REMOVAL NOTICES

Section 225A allows a Local Planning Authority to remove, and then dispose of, any display structure in their area which, in the Local Planning Authority's opinion, is used for the display of advertisements in contravention of the regulations. This power is subject to the Council first serving a 'Removal Notice' upon the persons who appear to be responsible for the structure. There is a right of appeal against a Removal Notice to the Magistrate's Court.

In 2014 new powers were introduced for Councils through the Anti-Social Behaviour, Crime and Policing Act 2014. Those powers which can be used to deal with planning enforcement enquires relating to the following:

- illegal hoardings;
- fly-posting;
- graffiti; and
- unauthorised advertisements alongside highways.

COMMUNITY PROTECTION NOTICE (CPN)

This can be used where the behaviour of a person, business or organisation is considered to have a detrimental effect on the quality of life of those in the locality. The behaviour has to be of a persistent or continuing nature. This form of action can be used as an alternative approach to Section 215 notices referred to above. There is a right of appeal and the failure to comply with a CPN is a criminal offence.

In April 2012 new powers were introduced through the Localism Act 2010 which includes the following requirements:

- someone to stop doing specified things
- someone to do specified things
- someone to take reasonable steps to achieve specified results.

Due to their wide scope, CPN's can be issued by a number of departments in the Councils and each case will be determined on the particular circumstances.

SECTION 70C: DECLINE TO DETERMINE A RETROSPECTIVE APPLICATION

A Local Planning Authority may decline to determine a retrospective application for development which is the subject of an Enforcement Notice served after 6 April 2012.

SECTION 171BA –: PLANNING ENFORCEMENT ORDER

A Local Planning Authority may apply to the Court for a Planning Enforcement Order if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from formal enforcement action if it has been deliberately concealed.

APPENDIX 2: REVIEW OF THE LOCAL ENFORCEMENT PLAN

This document will be reviewed annually to ensure that it remains current and consistent with best practice. Reviews will take into account any changes to current legislation and/or guidance and also comments received from residents, customers, businesses and visitors to the Borough.

To enable continuous improvement of the enforcement function, the key elements of this Local Enforcement Plan will be reviewed. These key elements include:

- relevant policies
- type of breaches of planning control
- resources available
- procedures for investigating complaints
- tools available to enforce breaches of planning control

The operational review of these elements will enable the Council to identify where best to target resources and meet the obligations imposed upon changing legislation, procedures and practices.

Help us to help you

We are constantly looking at ways to improve our services and welcome comments on this Enforcement Policy and any other matter relating to our Service. Contact details are given below:

By Post

Development Management
Planning, Environment and Economy
Civic Centre
Darwall Street
Walsall, WS1 1DG

By Telephone

Planning Help Line: 01922 652677

By E-mail

planningservices@walsall.gov.uk

Advice on how to make an enquiry about unauthorised development or what to do if you carry out works or a change of use without planning permission can be obtained from the Councils Planning web site at:

(www.walsall.gov.uk/planning)



Walsall Council

APPENDIX 3: REFERENCE SOURCES

National Planning Policy Framework/National Planning Policy Guidance

Information on planning enforcement can be found on the Governments website at www.planningportal.gov.uk.

Walsall Planning Policy Framework

The strategic planning aims of the Council are set out in the Development Plan, which is a group of documents comprising the following:-

The Black Country Core Strategy:

http://cms.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

The Unitary Development Plan (UDP):

http://www.walsall.gov.uk/index/environment/planning/unitary_development_plan/udp_documents.htm

The Emerging Walsall Site Allocations Document and Town Centre Area Action Plan:

http://cms.walsall.gov.uk/index/environment/planning/planning_policy/planning_2026.htm





Please complete the log sheet below for a period of one calendar month (at least 28 days), recording as much detail as possible.

[illegible]

