

Planning Enforcement Policy

Isle of Wight Council

August 2015

CONTENTS

1. Introduction.....	1
2. What is a breach of planning control?	3
3. What is the purpose of Planning Enforcement Action and what to expect when making a complaint?	7
4. The Priority Approach to Enforcement	10
Priority One:	11
Priority Two:	12
Priority Three:	13
5. How long will it take?	16
6. Simplified Flow Chart of Enforcement Investigation process	17
7. Useful Information	18
To lodge an appeal against planning enforcement notices:	18
To obtain free advice regarding breaches of planning control:	18
To find out about the services of Chartered Town Planning Consultants:	19
8. Glossary of terms and powers	20

1. Introduction

The Isle of Wight is a great place to live, work and visit. It has many historic towns, villages, buildings and historic sites. Over half the Island is designated as an Area of Outstanding Natural Beauty (AONB) and its coast is recognised for its scenic, ecological and geological importance some of which is covered by Heritage Coast Designations. It is home to nationally and internationally important species and their habitats.

The policies of the Island Plan Core Strategy seek to conserve, protect and enhance the Island and its environment, whilst allowing change to take place to make it a sustainable place to live and work. The planning system is key to how environmental change is managed in the UK; it ensures that sensitive and irreplaceable environments and buildings are protected for the future.

Local planning authorities have discretionary powers for taking whatever enforcement action may be proportionate and necessary, in the public interest, in their local area against development which is unauthorised. The Council has a number of powers to investigate and remedy breaches including those within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007, and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the Ancient Monuments and Archaeological Areas Act 1979.

The National Planning Policy Framework (NPPF, paragraph 207) recommends that a local enforcement plan should be published so that enforcement is managed appropriately to local areas.

This policy sets out the council's priorities for investigation, explains what will be investigated and what will not and outlines our general discretionary powers with regard to planning enforcement. The policy includes priorities for responses to complaints and clarifies the timescales for response by officers.

The National Planning Practice Guidance (NPPG, paragraph 3) confirms that the provisions of the European Convention on Human Rights such as Article 1 of the First Protocol and Article 8 are relevant when considering enforcement action.

Effective enforcement is important to tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area; to maintain the integrity and public confidence of the decision-making process. A local enforcement plan is important to enable engagement in the objectives and priorities to suit local circumstance; and confirm priorities for enforcement action which will inform decisions about when to take action.

In discharging its enforcement duties, the Council will need to carefully consider and focus the allocation of resources in order to use them in the most effective and efficient way. This policy sets out what you can expect from the Council when you report a potential breach of planning control and gives advice on how we will go about investigating your concerns. It sets out how the service will prioritise complaints and tells you what we will and will not do. It also contains references to sources of further information.

A simplified flowchart of the planning enforcement investigation process is also provided.

2. What is a breach of planning control?

There are two main ways in which a breach of planning control can occur:

1. Building works or engineering operations or changes in use of land or buildings that are carried out without the necessary planning permission.

However, not all works or changes of use require planning permission; many are either considered not to be development at all or are defined as permitted development, meaning that an application for planning permission is not required.

2. Where permission has been granted by the approved plans and/or the conditions attached to the approval have not been followed properly.

The way in which enforcement cases are handled is substantially influenced by the way in which legislation is framed. There are four key points which govern enforcement processes:

1. A breach of planning control is NOT a criminal offence (other than in a few limited circumstances) and therefore IMMEDIATE action is NOT usually an option;
2. Enforcement action can ONLY be taken where it is expedient to do so, which means that we cannot take action against a development which we would have granted planning permission had it been applied for in the normal way;
3. Government advice urges NEGOTIATION to try to resolve enforcement issues, other than in the most serious cases before formal action is taken. This has implications for the length of time the process can take.

4. It is open for people to apply for planning permission retrospectively in an attempt to regularise unauthorised development.

Sometimes development is carried out without first obtaining planning permission or does not properly follow the detailed plans or comply with conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively. Situations that can be considered for planning enforcement include:

- Unauthorised building works and any other physical works that fall within the statutory definition of development;
- Unauthorised work to buildings listed as being of special architectural or historic interest.
- Unauthorised material changes of use to a building or land;
- Unauthorised display of advertisements;
- Unauthorised work to listed buildings;
- Unauthorised demolition;
- Untidy land that is harmful to the amenity of a neighbourhood or a particular part of the countryside; or
- Breaches of planning conditions that have been applied to planning permissions.

The term used to describe such cases is, *'breach of planning control.'*

Planning enforcement can only be considered where the Building Work or Material Change of Use being undertaken requires planning permission. An initial investigation by an enforcement officer will determine this.

Planning enforcement investigations cannot be initiated on the basis of hearsay or speculation regarding `development` which may or may not occur in the future. For instance the excavation for foundations to the rear of the

dwelling house is not indicative that a breach of planning control has occurred, as the resultant structure may be *'permitted development.'*

Certain types of building works or changes of use are defined as *'permitted development'* meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning (General Permitted Development) (England) Order 2015.

In addition the Town & Country Planning (Use Classes) Order 2010 details uses of land. The order is permissive not restrictive in that it details what is not a material change of use. For example planning permission is not required to change from a hot food takeaway to a shop (unless restricted by a planning condition). In all other cases planning permission is only required if a change in the use of land is a material change of use. It is a matter for the Council as Local Planning Authority to determine if planning permission is required having regard to all material planning considerations.

Help in understanding 'permitted development' rights can be found at www.planningportal.gov.uk

The following list includes some of the things we do not investigate (but that people may think we do):

- The carrying out general maintenance and improvement works which only affect the interior of a building (unless it is a Listed Building)
- Works which do not materially alter the appearance of a building (unless it is a Listed Building)
- Boundary disputes between neighbours;
- Property and land ownership issues which are not planning related;
- Persistent complaints which have previously been investigated and resolved;
- Vexatious or malicious complaints;
- Breaches of covenants between landowners;

- Loss of views;
- Competition between businesses; or
- Trespass.

It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.

3. What is the purpose of Planning Enforcement Action and what to expect when making a complaint?

Like all other local planning authorities we have discretion to take enforcement action when it is expedient to do so having regard to the local development plan and any other material considerations, including this planning enforcement policy.

Planning legislation is designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.

While the Council is keen to ensure compliance with planning controls, it has to balance the needs of a variety of interested parties including local residents; visitors, developers; and businesses. The carrying out of work or changing the use of land or buildings without planning permission is ***not*** a criminal offence, unless the works involve the demolition of an unlisted building in a conservation area or works of alteration, extension or demolition are undertaken to a listed building without listed building consent.

Whilst the Council does not condone wilful breaches of planning control, both the law and government guidance is clear that planning enforcement action is discretionary and any enforcement action taken must be proportionate to the harm generated by the unauthorised development.

Where possible, the Council aims to work with people who have breached planning controls to amicably regularise breaches. Where this is not possible the Council will take a proportionate approach to the breach depending on whether it is consistent with the Council's Local Plan Core Strategy, other material planning considerations and the level of harm it causes to other people and/or the local area.

The council recognises that effective enforcement is important as a means of maintaining public confidence in the planning system. In deciding whether to take enforcement action we will have regard to the development plan and to any other material considerations, including national policies and procedures. In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection or the natural environment. Enforcement action is discretionary and we will act proportionately in responding to suspected breach of planning control.

We will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breached of planning control. In taking formal enforcement action we will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach. The action we take will always be proportionate to the breach of planning control and the harm it causes.

Where the council considers that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. Enforcement action is not however simply taken because there has been a breach of planning control. It is not a punitive measure. We will not take formal action against trivial or technical breach of control.

The council will not actively invite a retrospective planning application where it is considered unlikely that planning permission would be granted. In such circumstances we would continue to provide advice on how to resolve the breach and would proceed with appropriate action.

We will not normally take enforcement action where there is a trivial or technical breach of control which causes no material harm to amenity or the environment.

The council will always discourage the carrying out of development without planning permission but where retrospective applications are submitted they will be treated on their individual merits.

4. The Priority Approach to Enforcement

The exercise of when to take enforcement action is solely a matter for the Local planning authority having regard to all the material planning considerations. The authority will assess each complaint which is made but the level of assessment and possible investigation will be a matter of judgement for the authority taking into account its identified priorities, resources, the planning harm which may arise and be a proportional. Each assessment of an alleged breach will take into account the particular circumstances of the case having regard to the Islands Core Strategy. The ultimate decision of the discretion whether to take enforcement action is a matter for the local planning authority.

We receive a large number of allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited and it is essential to use them to the maximum effect. Therefore each case is prioritised according to the seriousness of the alleged breach; the priority is determined by the Senior Enforcement Officer, giving highest priority to allegations of activities that are likely to cause irreversible or substantial harm in planning terms, examples of which will include unauthorised works to listed buildings, demolition works in conservation areas, works to a schedule monument or protected trees.

The enforcement team does not have the capacity to proactively monitor approved development for compliance or development of a temporary nature not causing harm.

The Enforcement Team encourages complainants to provide as much information as possible on making a complaint to assist officers in determining the priority needs for the case. This includes details as shown on the Complaint Record Sheet, which include the location and nature of the works or change of use (including photographic evidence) and the nature of the harm that the potential breach is causing.

Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows for example.

Harm to the visual amenity of an area could occur for example through unauthorised work to: - a listed building, demolition within a Conservation Area or work to a protected tree.

Once the alleged breach has been investigated each case will be considered on its own merits with regard to the circumstances and harm of the identified breach in accordance with National and Local Policy and priorities. The council will explore alternatives to formal action where appropriate to do so.

An enforcement investigation will not be initiated unless a Complaint Record Sheet has been completed in full (available at www.iwight.com). Complaints can be sent in via email or letter or by personal caller, but if calling you will be asked to provide information that is set out within our complaints form. Anonymous complaints will not be investigated.

On receipt of a completed Complaints Record Sheet, it will be at the discretion of the relevant officer of the Council (delegated through the Head of Planning and Housing Services) to determine the priority in which the authority responds to the complaint.

To make the most effective use of resources allegations about suspected breached of planning control will be investigated on the basis of an assigned priority, depending upon the nature of the breach and the degree of harm caused. The priority approach to planning enforcement is as follows;

Priority One:

These are cases which either pose a significant ongoing threat to public safety or which cause significant irreversible damage to areas of acknowledged importance (*) Examples of which may include;

- Works of alteration, extension, demolition or wilful damage to Listed Buildings
- Works comprising of the demolition of a building in a Conservation Area.
- Works to a Scheduled Ancient Monument.
- Works to trees subject of a Tree Preservation Order or in a Conservation Area
- Significant works within Nationally important sites, including AONB & Heritage Coast, Conservation Area, Registered Historic Parks and Gardens, locally important SINCs, SSSI's and locally listed buildings, structure and parks and gardens contained in the council's local list.

() - Areas of acknowledged importance are defined as: Internationally protected sites, including SPAs, SACs, cSACs and Ramsar sites. Nationally important sites, including AONB, SSSIs, Conservation Areas, Listed Buildings, Historic Parks and Gardens and locally important SINCs and TPOs.*

Priority Two:

These are cases which impact upon residential privacy or amenity, cases which impact on the economic and tourism function of the Island or harm the landscape of the countryside or designated area. Examples of which may include;

- Non-compliance with approved plans or breaches of condition where likely significant harm
- Works which are not significant but cause harm the appearance of a Conservation Area or AONB
- Material change of use which is likely to harm the amenity of an area or neighbours

- Householder works which are likely to cause significant harm to residential and local amenity, e.g. decking, balconies, fences on open plan estates
- Seriously untidy land which impacts on the character or identity of towns within the key regeneration areas, tourism industry or countryside.
- Listed buildings at risk as a result of inadequate maintenance (as opposed to actual works taking place which would be priority 1).

Priority Three:

Cases which do not cause material harm to any acknowledged interest, and/or which are unlikely to need planning permission, those cases which are likely to be granted planning permission, or those cases which are deficient in detail as to the nature of the alleged breach of planning control. Examples of which may include;

- Untidy sites related to individual residential or commercial properties (unless falls within priority 2 above category)
- Householder development where it is unlikely to cause harm, e.g. boundary fences between neighbours, sheds, outbuildings, domestic extensions, resurfacing (not including fencing on open plan estates where the fencing would result in significant visual harm).
- Householder and commercial development where planning permission is likely to be permitted development or planning permission granted
- Minor works not in accordance with approved plans
- Advertisements / fly posting
- Satellite dishes unless affixed to a listed building
- Breach of holiday occupancy restrictions on large sites where it could be controlled by the lease arrangements

The Council will assess each complaint upon submission and may, based on the potential level of impact and need to manage staff resources, choose not to pursue the issue further.

We will promptly register cases and acknowledge them by email or letter within 5 working days of receipt and each case will be individually assessed on its merits. You will be informed of the name of the Enforcement Officer who will be dealing with your complaint and provided with a reference number. The Enforcement officer will advise you of any significant progress made as and when this occurs.

The Council aims to inspect cases (if the investigating officer deems necessary) within;

- *Priority One:* 5 working days of receipt of complaint
- *Priority Two:* 20 working days of receipt of complaint
- *Priority three:* 40 working days of receipt of complaint

We will only use this information to investigate potential breaches of planning legislation and we will use your contact details to keep you informed of progress made or any actions taken.

Your information will be held securely and will only be accessible to our enforcement section to enable them to carry out their investigations. Case detail may be shared with planning officers to determine the best course of action to deal with an alleged breach of planning control. Your information will not be supplied to anyone outside of the organisation without first obtaining your consent, unless we are obliged or permitted by law to disclose it.

We will view breaches of planning control with impartiality and we will treat all parties with dignity and respect. We ask the same in return.

We will advise all complainants and those responsible for an alleged breach of planning control as to the outcome of any investigation and what action, if any, we propose to take. In circumstances where we

conclude that it is not in the public interest to take action we will give an explanation as to why this judgement has been reached.

Where it is clear that a development has been carried out without planning permission, but that it could be made acceptable through the imposition of planning conditions, the Council will seek planning applications for developments which are considered to be acceptable on their planning merits. Such conditions may include, for example, hours of operation or the need for landscaping. In such cases where an application is not forthcoming, the Council will use its enforcement powers to protect the public interest. In taking such action the Council will clearly explain why it is doing so.

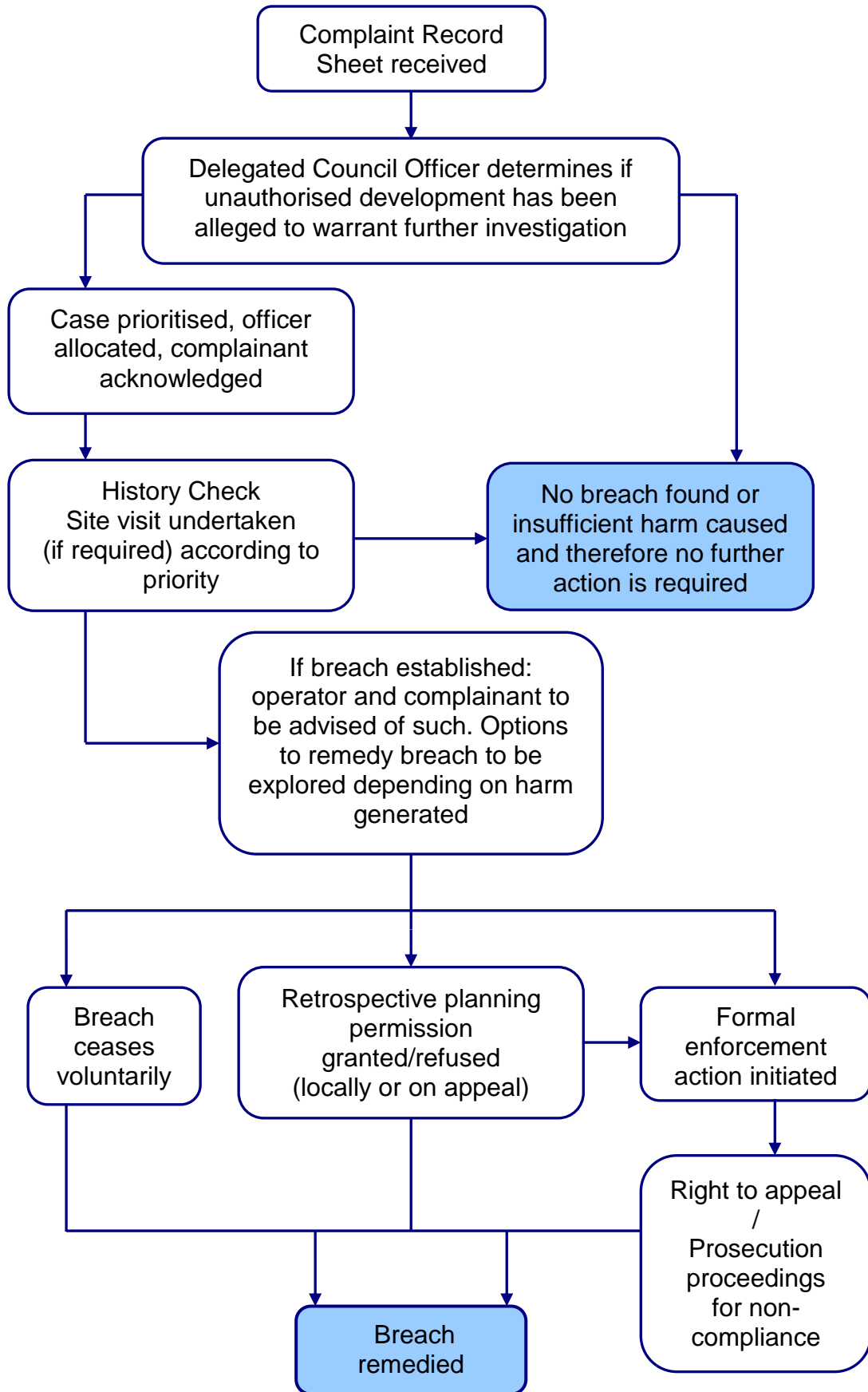
5. How long will it take?

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. Many of the reasons are already explained in information provided, but some factors which can result in apparently slow progress include:

- The gathering of evidence;
- Continuing negotiation to try and resolve the matter without pursuing formal action;
- Consideration of an application to remedy the matter;
- Awaiting determination of an appeal against formal notice.

For this reason, it is not possible to give a standard time for dealing with enforcement cases however the enforcement officers will endeavour to keep you informed as the case progresses.

6. Simplified Flow Chart of Enforcement Investigation process



7. Useful Information

All complaints should be made in writing.

Complaints can be submitted by completing the Complaint Record Sheet, which is available from our website <http://www.iwight.com>. The form is available for print and should be forwarded to Isle of Wight Council, Seaclose Offices, Fairlee Road, Newport, Isle of Wight, PO30 2QS

Complainants who have difficulty in writing down their concerns are advised to seek help from friends or relatives. Telephone complaints will not be accepted. Anonymous complaints will not be investigated. Complaints will only be investigated if the council's receives adequate information from the complainant.

Complaints sent via Email must be sent to enforcement.team@iow.gov.uk and must include a completed Complaints Record Sheet.

Contact details: Isle of Wight Council, Seaclose Offices, Fairlee Road, Newport, Isle of Wight, PO30 2QS or Tel: 01983 823552

To lodge an appeal against planning enforcement notices:

Appeals are dealt with by the Planning Inspectorate.

Appeals can be lodged on-line via <http://www.planning-inspectorate.gov.uk/>

The Planning Inspectorate can be contacted at: The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or Tel: 0117 372 6372

To obtain free advice regarding breaches of planning control:

Planning Aid provides free, independent and professional town planning advice and support to communities and individuals who cannot afford to pay fees to a planning consultant.

It complements the work of local planning authorities, but is wholly independent of them.

Visit Planning Aid at www.planningaid.rtpi.org.uk or phone 0870 240 7552.

To find out about the services of Chartered Town Planning Consultants:
The Royal Town Planning Institute maintains regional lists of Chartered Town Planning Consultants, who may be employed to help you if instructed. Copies of the list of Consultants for the Isle of Wight area can be downloaded from www.rtpi.org.uk

8. Glossary of terms and powers

This glossary explains what the various acronyms referred to in this policy are, and what they mean. It also lists the main planning enforcement notices/powers which the Council has at its disposal, in order to tackle different breaches of planning control.

AONB - Area of Outstanding Natural Beauty. An AONB is an area of countryside with significant landscape value that has been specially designated by the Countryside Agency (now Natural England) on behalf of the United Kingdom Government. Approximately half the Island is designated as AONB.

Breach of Conditions Notice (BCN) - Many planning permissions are granted subject to conditions. Where a condition is not complied with the Council can serve a breach of condition notice. Such notices set out the steps to be taken to remedy the breach and the time within this must be done. There is no right of appeal against these notices; failure to comply with the terms of a notice is an offence.

cSACs - cSACs are areas which are candidates for SAC designation.

Enforcement Notice (EN) - Enforcement notices are legal charges on land or property, served at the discretion of the Council. An enforcement notice can require the cessation of an unlawful use of land and/or the removal or modification of buildings or structures that do not have planning permission. Failure to comply with a valid enforcement notice is an offence, which would make the guilty person liable on summary conviction to a fine up to £20,000. There is a right of appeal against an enforcement notice.

Injunction - The Council may apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person concerned is unknown. An

injunction can be sought whether or not other enforcement action has been taken. The Council will only apply to the Court for an injunction in exceptional cases of serious harm. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Listed Building Enforcement Notice (LBEN) - This type of notice is similar to an enforcement notice, but is used where works have been carried out to a Listed Building without the benefit of Listed Building Consent, or where works are in contravention of a condition of such consent. Such a notice can require works to be carried out in order to alleviate harm caused to the building. A right of appeal exists against these notices. Any unauthorised alteration of a listed building constitutes a criminal offence and those carrying out the works can be prosecuted.

Planning Contravention Notice (PCN) - In deciding whether or not to serve an enforcement notice the Council must, as far as possible, be sure of its facts. Sections 171C and 171D of the Town and Country Planning Act 1990 provides for the service of a Planning Contravention Notice. Such a notice requires the recipient to provide information about any operations or activities being carried out on land, to enable the Council to ascertain the facts. Failure to comply with the requirements of a Planning Contravention Notice within 21 days is a criminal offence. The penalty for non-compliance with a Planning Contravention Notice can result in a fine of up to £1,000. If any person makes a false or misleading statement he/she shall be guilty of an offence on conviction with a maximum penalty £5,000.

Prosecution - The Council can initiate Court proceedings where a formal Notice has been breached. Additionally, legal proceedings may be commenced for unauthorised works without the necessity of serving any formal Notices. For example, unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. Prosecution will only be considered if there is sufficient evidence and a prosecution will only be brought if it is considered to be in the public interest to do so.

Ramsar sites - Ramsar sites take their name from the location of the first meeting of the Convention on Wetlands of International Importance which was held in Ramsar, Iran in 1971. The designation is attributed to wetland sites of international importance. Originally this primarily focused on sites that were of international importance to birds but the scope of the designation has now been extended and recognises wetlands as an ecosystem that are extremely important for biodiversity conservation in general and for the well-being of human communities.

Repairs Notice & Compulsory Purchase Orders - The Council has power under the Planning (Listed Building & Conservation Areas) Act 1990 to serve a Repairs Notice on the owner of a listed building specifying those works it considers reasonably necessary for the proper preservation of the building. If after a period of not less than 2 months, it appears that reasonable steps are not being taken for the proper preservation of the listed building, the Council can begin compulsory purchase proceedings under section 48 of the Planning (Listed Building & Conservation Areas) Act 1990. It is however the very last resort to secure the survival of a listed building. A Repairs Notice allows for a much more comprehensive repairs than an Urgent Works Notice, although the works are limited to the condition of the building as of the date of listing.

SACs - Special Areas of Conservation. SACs are a European designation awarded to sites that will make a significant contribution to conserving the habitats and species listed on Appendix I and II of the Directive. The listed habitats and species are those considered to be most in need of conservation at a European level.

Section 215 Notice (s215 Notice) - Section 215 (s215) of the Town & Country Planning Act 1990 provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to the Council that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the

steps that need to be taken, and the time within which they must be carried out. The Council also has the power under s219 to undertake the clean-up works themselves and to recover the costs from the landowner. Like all planning powers, the use of s215 by the Council is discretionary. A s215 notice can be appealed in the Magistrates Court.

Section 330 Notice (s330 Notice) - A notice served under Section 330 of the Town and Country Planning Act 1990 enables the Council to demand information from the occupier of land, as to his/her interest in it. Such a notice is served as a precursor to an enforcement notice being served. It is a legal obligation to return within 21 days and a criminal offence to withhold or give false information.

SINC - Site of Importance for Nature Conservation Interest. The Council may designate certain areas as being of local conservation interest. This is the lowest tier of conservation designation and varies in terms of what it seeks to conserve, from area to area.

SPAs - Special Protection Areas. SPAs are a European designation classified in accordance with the EC Directive on the Conservation of Wild Birds. The designation is attributed to sites for rare and vulnerable birds, listed in Annex 1 of the birds directive, and for regularly occurring migratory species.

SSSI - Site of Special Scientific Interest. SSSI designation was first developed in 1949 in order to provide statutory protection for sites offering the best examples of the UK's biodiversity as well as geological or physiographical features. In 1981 the designation was re-enacted under the Wildlife and Countryside Act and has been further amended by the Countryside and Rights of Way Act in 2000 and the Nature Conservation Act 2004.

Stop Notice (SN) - If the Council considers that an unauthorised development or use may cause long term and severe damage to the local area and needs to be stopped immediately, it may serve a stop notice. Such notices can only be served once we have served an Enforcement Notice. A stop notice has the

effect of immediately halting unauthorised development. Failure to comply with a stop notice is an offence, which would make the guilty person liable on summary conviction to a fine up to £20,000. There is no right of appeal against a stop notice.

Temporary Stop Notice (TSN) - A Temporary Stop notice can be served without the need for an Enforcement Notice to have been served. It takes effect immediately from the date and time of service and lasts for 28 days. The Council can serve a further notice on the expiry of the 28 days.

Urgent Works Notice - The Council has power under the Planning (Listed Building & Conservation Areas) Act 1990 to execute any works which appear to them to be urgently necessary for the preservation of a listed building. There are restrictions to this power relating to the use and occupation of the building. This power can also be used on an unlisted building in a conservation area but only within the consent of the Secretary of State. The Notice states the works the council will undertake if the owner fails to do so within a specified time period. The Council may then seek recover of the cost from the owner.