

 <p><b>Reigate &amp; Banstead</b> BOROUGH COUNCIL Banstead   Horley   Redhill   Reigate</p>	<b>TO:</b>	PLANNING COMMITTEE
	<b>DATE:</b>	21 March 2018
	<b>REPORT OF:</b>	HEAD OF PLACES AND PLANNING
	<b>AUTHOR:</b>	Andrew Benson
	<b>TELEPHONE</b>	01737 276175
	<b>EMAIL:</b>	Andrew.benson@reigate-banstead.gov.uk
<b>AGENDA ITEM:</b>	10	<b>WARD:</b> All

<b>PURPOSE OF THE REPORT:</b>	To consider and adopt the Local Enforcement Plan
<b>RECOMMENDATIONS:</b>	<b>1. Note the content of the Local Enforcement Plan and approve its adoption</b>
<b>Planning Committee has authority to determine the recommendations.</b>	

## 1.0 BACKGROUND

The Local Enforcement Plan was circulated to Members in draft towards the end of 2017 for comment following endorsement by the Development Management Advisory Group (DMAG). All comments received have been considered and, where appropriate, incorporated into the attached version. The Local Enforcement Plan will be an advisory document, capable of being a material consideration although it is not official policy and so does not require formal consultation or Executive approval.

## 2.0 STATUTORY PROVISION

There is no statutory provision although Local Enforcement Plans are encouraged by the National Planning Policy Framework 2012 which states at para 207: "Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."

The purpose of this Local Enforcement Plan is therefore to manage planning enforcement in a way that is appropriate to the Borough of Reigate and Banstead. It

includes the target for investigations, priorities of different types of planning breaches, the measures that may be appropriate when it is necessary to take formal enforcement action and examples of where formal enforcement action is not considered expedient.

Whilst Local Enforcement Plans are able to set timescales for initial investigations, they are not appropriate for imposing timescales on the conclusion of breaches due to the different circumstances of each case and the various options open, such as seeking a regularisation or retrospective planning application. However other processes are in place to undertake this on a case-by-case basis.

### **3.0 CONSIDERATION**

Response to the draft version circulated has been positive with the following updated to reflect responses received:

- Confidentiality of complainants clarified (Para 6.5)
- Suggestion for potential self-certification incorporated (Para 9.3)
- Various amendments to clarify information or explain in 'plain English'
- Incorporation of page numbers within Annexe 1 for cross-referencing purposes

Once adopted the Local Enforcement Plan will supersede the previous document setting out the strategy to enforcement within the Borough "A Review of the Strategy for Planning Enforcement 2007-2008".

Although not requiring formal consultation, the Plan states how comments can be made in order to inform its subsequent review which will occur as and when it is deemed appropriate.

### **4.0 RESOURCE IMPLICATIONS**

The Plan helps set priorities and timescales to help deliver an effective enforcement service against current, finite, resources. It does not have any additional resourcing implications.

### **5.0 LEGAL IMPLICATIONS**

There is no statutory requirement for the plan and would not form adopted policy for the purposes of decision making although it would be a material consideration. As such there are not considered to be any legal implications.

## **6.0 CONCLUSIONS**

The Local Enforcement Plan will help the management of the planning enforcement service in a way appropriate to the Borough. It will assist in giving everyone involved in the planning process a better understanding of the processes, priorities and timescales involved and it is therefore recommended it be approved by the Planning Committee.

Background Papers:     None



## **Reigate & Banstead Borough Council**

# **Local Planning Enforcement Plan**

# **2018**

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## 1.0 INTRODUCTION

1.1 The National Planning Policy Framework states that:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system”.*

1.2 In Reigate and Banstead we place great importance on protecting our built and natural environment from the harmful effects of unauthorised development to ensure the Borough remains a great place to live and work.

1.3 Planning is about regulating the use and development of land, having regard to the policies of the development plan whilst taking into account other material considerations. The Council has a duty to investigate allegations of breaches of planning control and it takes this responsibility seriously. We expect developers to carry out their development in accordance with the planning permission and comply with the conditions imposed upon the consent. Where unauthorised development occurs, we will aim to regularise this wherever possible; and to tackle harmful breaches of planning by formal enforcement action.

1.4 We recognise that the use of enforcement powers is discretionary and cannot be used just to punish people who fail to comply with planning regulations. However we also believe that the integrity of the whole planning system depends on the Council being prepared to take effective enforcement where that action is justified. The public will lose confidence in the planning system if unauthorised development is allowed to proceed without the Council taking any action.

1.5 In our approach to planning enforcement we are mindful of the advice within the National Planning Practice Guidance which explains the options for Local Planning Authorities in considering breaches of planning control. This includes the guidance contained within the National Planning Policy Framework which suggests that local planning authorities should act proportionately in responding to suspected breaches of planning control, including the expediency of action.

1.6 The purpose of this Local Enforcement Plan is to manage planning enforcement in a way that is appropriate to the area and set out how the Council will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so. This includes the target for investigations, priorities of different types of planning breaches, the measures that may be appropriate

when it is necessary to take formal enforcement action and examples of where formal enforcement action is not considered expedient.

## **2.0 PRINCIPLES OF PLANNING ENFORCEMENT**

- 2.1 We will consider what the most appropriate response is when we investigate reports of suspected planning breaches. It may be that matters can be resolved by the submission of a retrospective planning application or by negotiating the ending of a use in a reasonable timescale. Where there is significant harm being caused we will consider taking immediate enforcement action. A willingness of the party being investigated to cooperate may direct the choice of response to a breach.
- 2.2 We will liaise with our Legal team and seek to prosecute parties who ignore the Council when formal notices are not complied with voluntarily and we will take direct action if this is the appropriate action.
- 2.3 Our objective is to act fairly, consistently and transparently when investigating cases.
- 2.4 We are happy to discuss cases with all parties with an interest in a case although there may be instances where matters of privacy prevent disclosure.
- 2.5 We will work with parties with a view to securing a satisfactory conclusion, including considering the options open to both sides.
- 2.6 The Council has a duty of care to all its employees and it will not accept that its officers should be subject to abusive language, threats or unacceptable behaviour.

## **3.0 WHAT CONSTITUTES A BREACH OF PLANNING CONTROL?**

- 3.1 Section 55 of the Town and Country Planning Act 1990 defines development as 'the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change in the use of any buildings or other land'.
- 3.2 Section 171A of the Act establishes that the carrying out of development without the required planning permission and the failure to comply with any condition or limitation, subject to which planning permission has been granted, constitutes a breach of planning control.

- 3.3 The only exception to this is development 'permitted' under the General Permitted Development Order which sets out (subject to conditions and restrictions) what development can be carried out without the need to submit a planning application.
- 3.4 It is not a criminal offence to carry out development without first obtaining planning permission for it, but it may be a breach of planning control.
- 3.5 However there are exceptions to this, which are criminal offences which includes:
- Non compliance with an enforcement notice:
  - Illegal works to listed building or protected trees; and
  - Illegal display of advertisements.
- These offences can lead to prosecution from the outset.
- 3.6 Section 73A of the Act specifically provides that a grant of planning permission may relate to development carried out before the date of application. This is known as a retrospective planning application and these are dealt with in the same way as any other planning application.
- 3.7 The Act also establishes time limits on the ability of the Council to take enforcement action over a particular breach as follows:
- built development - the Council can take no action after 4 years from the date on which operations were substantially completed;
  - change of use to a single dwelling house – the Council can take no action 4 years from date of change;
  - all other changes of use – the Council can take no action 10 years after the date of change;
  - failure to comply with planning conditions – the Council can take no action 10 years from the date that the condition is breached or not complied with.
- 3.8 In all of the above cases the time limits mean that a development would be immune from enforcement action provided that the Council has not taken any action within the prescribed period. However, section 171BA allows Councils to seek a 'Planning Enforcement Order' if deliberately concealed breaches of planning control have occurred. Planning enforcement orders can be applied for at the Magistrates Court whether or not the time limits stated above have expired.
- 3.9 In considering any enforcement action, the decisive issue for the Council is whether the breach of control has an unacceptable impact in planning terms 'the expediency test'.



- 3.10 Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site). Enforcement action should usually only be taken where the development is contrary to both local and national planning policies.
- 3.11 Where the Council's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required.

#### **4.0 TYPES OF ENFORCEMENT COMPLAINT TO THE COUNCIL**

- 4.1 It is important to define what is viewed as an enforcement complaint. In this context, a complaint is considered to be a notification to the Council of a possible breach of planning control. Reflecting the diverse nature of planning enforcement within the authority, breaches are likely to consist of the following:
- the carrying out of development where no planning permission exists;
  - the carrying out of development which deviates from that which has been granted planning permission;
  - the breach of a condition imposed under an extant planning permission;
  - the unauthorised display of advertisements;
  - unauthorised works to a listed building;
  - unauthorised works to a protected tree; and,
  - untidy land issues.
- 4.2 It is also important to stress that, at the outset, all complaints relate to alleged breaches of control and it is for the investigating officer to determine whether the breach exists in reality.
- 4.3 Some complaints which are received by the Planning Enforcement Team are not matters covered by planning and/or there may be more effective measures to resolve the complaint using other legislation. Examples include works on the highway, or dangerous structures or problems of noise and smells. The Team will try to pass such complaints on to the most appropriate body to deal with the problems and may carry out joint visits where a matter crosses various authorities. The objective is to achieve the most speedy and effective resolution to the problems at hand.

## 5.0 HOW DO WE PRIORITISE OUR RESPONSE?

5.1 In order to act effectively the Planning Enforcement Team prioritises enforcement complaints based on the likely extent of harm and permanence. Standard response times for investigating alleged breaches of control are set out below within Table 1.

**TABLE 1: Prioritisation and target response times for investigation of potential breaches of planning control**

NATURE OF BREACH	TARGET RESPONSE TIME	PRIORITY
<ul style="list-style-type: none"> <li>• Activities that have the potential to cause irreparable harm to the environment, especially sensitive sites such as Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty etc.</li> <li>• Unauthorised works to a listed building.</li> <li>• Unauthorised works to protected trees. (Trees subject to Protection Orders and Trees in Conservation Area)</li> </ul>	<p>As soon as possible (and at least within 1 working day)</p>	<p>1</p>
<ul style="list-style-type: none"> <li>• Activities resulting in some disturbance and loss of amenity to third parties.</li> <li>• Activities that are likely to be adversely affecting the environment, but not irreparably.</li> <li>• Breach of planning condition</li> <li>• Change of use</li> <li>• Unauthorised works to listed buildings or protected trees where those works have ceased.</li> </ul>	<p>Within 5 working days</p>	<p>2</p>
<ul style="list-style-type: none"> <li>• Minor breaches of condition.</li> <li>• Activities causing minimal disturbance to third parties, if any.</li> <li>• Unauthorised advertisements.</li> <li>• Untidy land issues.</li> <li>• Business from home</li> </ul>	<p>Within 10 working days</p>	<p>3</p>

- 5.2 Whilst the above table indicates the priority response time for investigating reported planning breaches, it should be noted that the time for resolution will vary depending on the nature of any action undertaken. Where resolution involves an appeal to the planning inspectorate or prosecution through the courts, breaches can take months or even years to resolve.

## 6.0 HOW WE DEAL WITH REPORTED BREACHES

### Reporting a suspected breach

- 6.1 Breaches of planning control can be made by e-mail, post, or via the Council's website:

Website: [http://www.reigate-banstead.gov.uk/homepage/76/report\\_it](http://www.reigate-banstead.gov.uk/homepage/76/report_it)

E-Mail: [planning.enforcement@reigate-banstead.gov.uk](mailto:planning.enforcement@reigate-banstead.gov.uk)

By Post:

**Planning Enforcement  
Reigate & Banstead Borough Council  
Town Hall  
Castlefield Road  
Reigate  
Surrey  
RH2 0SH**

- 6.2 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.
- 6.3 See 6.5 below. It is Council policy to treat anonymous calls or letters as the lowest priority and may not be investigated. We ask that all enforcement service requests are made in writing. This helps us monitor the number and type of cases received and may be useful later on if formal action is pursued. During an enforcement investigation, the identity of a complainant is kept confidential, so you may write to the Council with confidence. If however the enforcement investigation proceeds to prosecution it may be necessary to

reveal the Court the complainants details. However, where a telephone message is initially received relating to a potentially urgent and serious transgression that is likely to result in irredeemable harm (for example, works to a listed building or works to protected trees), it is at the officer's discretion whether or not to waive the need for a complaint to be made in writing.

### **Keeping customers informed**

- 6.4 Procedurally, every reported breach received by the Council is logged so that a permanent record is kept. The logging of complaints enables officers to ensure that all complaints are followed up and action is taken as appropriate. It also enables officers to ensure that all complainants are kept informed of the outcome of their complaint, where this is deemed appropriate.
- 6.5 Anonymous complaints will not normally be investigated but all complaints shall be treated on a confidential basis, unless the complainant gives express authorisation for his/her identity to be revealed. This is subject to compliance with the requirements of The Freedom of Information Act and The Data Protection Act.
- 6.6 When complaints are received the following targets apply:
- a) Within 3 working days - acknowledgement to complainant.
  - b) Within 10 working days of the first site inspection - The complainant will be notified of initial findings.
  - c) When an enforcement notice or other formal action has been authorised, we will let the complainant know within 10 working days.
  - d) When the case is closed - we will inform the complainant of the outcome within 10 working days.

### **What happens next?**

- 6.7 Once a complaint has been received an investigating officer will be allocated to the case, who will, establish the planning history, and then make a site visit as required in accordance with the timescales set out above.
- 6.8 If it is found that a breach of control has occurred a decision on how to pursue the case will be taken. Please see the flowchart in Appendix 1 for information.

### **No breach has occurred**

- 6.9 Many of the complaints we receive reveal that there is in fact no breach of planning regulations taking place. The suspicions may be unfounded, or the works that are taking place do not need planning permission. Works may

constitute permitted development, or planning permission may already have been granted.

- 6.10 The complainant will be notified of the outcome of the investigation and either the case will be closed, or what further action will be taken / is proposed

**Expediency of action**

- 6.11 If a breach is found to have occurred a decision will need to be made regarding the expediency of taking formal enforcement action. Enforcement action will only be taken where it is in the public interest to do so and the serving of an enforcement notice will usually be a last resort.

- 6.12 In addition to cases where a use or development is lawful through the passage of time (see paragraph 3.7), Government guidance advises that enforcement action not normally be in the public interest where:

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

- 6.13 In such cases the person responsible for the breach may be invited to submit a retrospective application to regularise the development. The timeframe given for this will vary depending on the complexity of the issue given this will dictate the level of information required to accompany an application. However, it is not an offence to carry out development without first obtaining planning permission and there are cases where negotiation does not work and an application to regularise is not forthcoming. In such cases the full circumstances of the case will be considered but it is seldom practical to serve an enforcement notice purely because an application to regularise the unauthorised development has not been forthcoming. This is because the National Planning Practice Guidance cites the issue of an enforcement notice being issued purely on the ground that an application has not been submitted to regularise a proposal as an example of unreasonable behaviour when costs may be awarded against a Council.

- 6.14 If an application to regularise has not been forthcoming within the prescribed period but enforcement action is not deemed expedient then full written justification for this approach will be captured on the enforcement case file (and reported to the Chairman and Ward Members).

### **Cases needing further investigation**

- 6.15 Sometimes an initial site visit is not conclusive, for example, where it is necessary to establish the exact way that a use is operating and what the impact is. Often the question of whether a change of use has occurred is a matter of fact and degree where judgements as to intensity of usage have to be assessed. This may involve monitoring activity levels over a period of time or liaising with other agencies and departments to see if they are able to take action to resolve a problem. It is not always possible for officers to keep a regular check on sites. Where breaches are intermittent, we will on occasions, ask residents to keep a diary or log of activity levels in order to build a picture of how a use is operating and what its effects are. This is to ascertain whether the activity amounts to a breach of planning control.
- 6.16 One of the tools available to gather information regarding a suspected breach is for the Council to serve a Planning Contravention Notice which requires the recipient to provide information, such as when a use commenced (and what that use entails) or when the building was completed. This investigatory stage can take a number of weeks/months as we establish whether there is a breach, and if there is, what the appropriate action the Council should pursue.

### **Retrospective Planning permission**

- 6.17 The Town and Country Planning Act states that it is not an offence to carry our work without first obtaining planning permission and explicitly allows planning applications to be submitted retrospectively.
- 6.18 We will not invite the submission of a retrospective application if it is considered that planning permission is unlikely to be granted, for example if the proposal is clearly contrary to planning policy. However, it is the applicant's right to submit an application if they wish. The only time where this option may be closed is where an enforcement notice has already been served against the development to which the application relates. In such cases the Council has discretion to decline to determine such applications, especially if it is used as a means of delay to resolve such matters. However, each case would be judged on its individual merits.

### **Negotiating an Acceptable Outcome**

- 6.19 Where a breach has occurred and it is considered that the development is unacceptable the enforcement team will normally try to resolve the matter without recourse straight to enforcement action, unless it is clear that irreparable or significant harm is being done to amenity. We will seek to persuade the person responsible for the breach to either reduce or stop the

development that is causing a problem or to modify the development in a manner that would make it acceptable.

- 6.20 We will conduct negotiations in a positive manner and will seek to achieve a resolution within a realistic timescale, based on the works involved to make the breach acceptable. However, where negotiations fail to reach a satisfactory conclusion or become unduly protracted, then the Council will not hesitate to take formal planning enforcement action, using all the powers open to it, including the use of Temporary Stop Notices to stop breaches escalating.

## **7.0 FORMAL ENFORCEMENT POWERS**

- 7.1 There are a number of different notices and/or actions that are able to be taken by the Local Planning Authority. These can be summarised as follows:

- Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice
- Section 215 Notice

### Prosecution options

- Injunctive Action
- Fines
- Formal Cautions

### **Enforcement Notice**

- 7.2 An Enforcement Notice is issued in the majority of cases where formal enforcement action is taken. It specifies the breach and sets out prescriptive steps, with specific timescales, for remedying the breach. A notice can be served in respect of:

- operational development
- material change in use of land,
- breach of a condition attached to an extant planning permission.

- 7.3 Such a notice must be served on the owners, occupiers and all other parties with an interest in the land that is materially affected by the service of the notice. In order to ascertain the parties against whom the Enforcement Notice should be served, a Planning Contravention Notice (PCN) is often issued. A person who is served with a PCN has 21 days to reply and faces a fine of £1,000 for failing to complete and return the Notice and a fine of up to £5,000 for knowingly providing false information. This notice is also entered onto the



local land charges, and is disclosed in the event that the land is sold or changes ownership, as the notice remains in place

- 7.4 It is important that the wording of the enforcement is clearly and carefully drafted in order to justify the taking of enforcement action. Officers will produce a report to justify, in planning terms, the taking of enforcement action, having due regard to all material planning considerations, weighing such matters as the human rights of those being enforced against, against the harm being caused by the breach. The actions proposed within this report need to be authorised by delegated Senior Officers before being sent to the Council's Legal team to consider and draft the notice(s) ready to be served by the Planning Enforcement Team.
- 7.5 An Enforcement Notice must come into effect not less than 28 days after its date of issue. There is a right of appeal to the Planning Inspectorate, as set out under Section 174 of the Town and Country Planning Act 1990 (as amended) and such an appeal must be lodged before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided.
- 7.6 There are 7 grounds on which an Enforcement Notice can be appealed:
- a) That, planning permission ought to be granted for the works enforced against or if it relates to a breach of a condition that condition should be discharged
  - b) That the breach claimed has not occurred
  - c) That the matters being enforced against do not constitute a breach of planning control
  - d) That when the notice was served no enforcement action could be taken
  - e) That the enforcement notice was not served on all parties with an interest in the land
  - f) The steps required exceed what is required to remedy the breach or to remedy any injury caused by the unauthorised development
  - g) The period for compliance falls short of what is reasonably required to be allowed.
- 7.7 Failure to comply with the requirements of an Enforcement Notice is a criminal offence which is liable, on summary conviction, to a fine not exceeding £20,000 per offence, or on conviction on indictment to an unlimited fine.
- 7.8 Section 173A of the Town and Country Planning Act 1990 gives Local Planning Authorities the power to withdraw an Enforcement Notice issued by them. Equally, the Planning Authority may relax or waive any of the requirements of the notice or extend the time for compliance. This can be done both before and after the notice has taken effect and all parties to the Notice will be informed.



### **Listed Building Enforcement Notice**

- 7.9 This is very similar to the Planning Enforcement Notice in that it specifies the unauthorised works to the relevant listed building, specifying requirements to take to remedy the harm within a set timescale. It can be served on its own – for example, where unauthorised works to a listed building only required listed building consent and did not require planning permission – or it can be served in conjunction with a Planning Enforcement Notice. As with the planning notice, there is a right of appeal against the Listed Building Enforcement Notice, with the appeal having to be made before the notice takes effect.
- 7.10 Works to a listed building without the appropriate consents is a criminal offence. A local planning authority has also been given an express power to apply to the court for an injunction where it considers it necessary or expedient to restrain any actual or apprehended breach of planning control. The power is available whether or not the authority has exercised or is proposing to exercise any of its powers to serve an Enforcement Notice.

### **Stop Notice**

- 7.11 A Stop Notice can only be served with an Enforcement Notice, although the latter can be served on its own. The service of a Stop Notice is essential where the local planning authority considers it expedient to stop an activity before the associated Enforcement Notice comes into effect. It is used as a means of stopping development that is likely to result in irreparable harm to the environment or where ongoing activities are causing a major adverse impact on the amenity of adjoining landowners.
- 7.12 There is no right of appeal against a Stop Notice. An appeal against an Enforcement Notice will hold the requirements of that notice in abeyance, but the requirements of the Stop Notice to cease a particular activity remain effective. However, because a Stop Notice is preventing an activity from continuing, there is a risk that a claim for compensation could be made against the local planning authority.
- 7.13 Non-compliance with the requirements of a Stop Notice is an offence, punishable by a maximum fine on summary conviction of £20,000 and, on conviction on indictment, to an unlimited fine.

### **Temporary Stop Notice (TSN)**

- 7.14 This notice can be served where an activity or any part of it must be stopped immediately. The Temporary Stop Notice can only stop the activities for a limited time, while the Council decide whether or not to take further

enforcement action. A TSN only lasts for 28 days. The notice has takes effect immediately from the date a copy is displayed on site and is usually used as an emergency measure to cease development that poses immediate harm to its local amenities.

- 7.15 It is an offence to contravene a TSN after a site notice has been displayed or the temporary stop notice has been served. (Section 171E(4) of the 1990 Act), failure to comply with the TSN is an offence and can result in immediate prosecution in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction or indictment is unlimited.

### **Breach of Condition Notice**

- 7.16 A Breach of Condition Notice (BCN) may be served where there has been a breach of a condition that is attached to an extant and implemented planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for judicial review. The BCN will set out the necessary remedial action to ensure compliance with the condition being breached, it takes effect immediately with a minimum period of 28 days for compliance.
- 7.17 There are advantages and disadvantages to serving a BCN over an Enforcement Notice, and these are set out in detail within 'Enforcing Planning Control: Good Practice Guide for Local Planning Authorities'. However, where there is concern about the validity of a condition, the local planning authority is best advised to issue an enforcement notice that cites a breach of condition, therefore allowing the transgressor a right of appeal. This would prevent the need for a judicial review and likely costs arising from it.
- 7.18 The penalty for breaching the requirements of a BCN is a maximum fine on conviction of £2,500.

### **Section 215 Notice**

- 7.19 Where the Local Planning Authority is concerned about the condition of land or buildings, and where that condition is considered to be adversely affecting amenity, the Council is able to issue a notice under Section 215 of the Town and Country Planning Act 1990. This is sometimes known as an 'untidy land' notice. Not only can it require land or buildings to be tidied, it can also require the demolition of derelict buildings. It should be noted that the land in question should be visible from public vantage points and have an adverse impact on the amenity of the area for a Section 215 Notice to be served. There is a right of appeal against such a notice, but this is made to the Magistrates' Court.

## **PROSECUTION OPTIONS**

7.20 The Council recognises the use of the criminal process to institute a prosecution as an important part of enforcement once other options have been explored without success. Before embarking upon prosecutions we need to be satisfied that there is a realistic chance of securing a conviction and also that the prosecution is in the public interest.

7.21 Failure to comply with Enforcement Notices constitutes a criminal offence. In addition, the carrying out of unauthorised works to listed buildings and demolition of unlisted buildings in a conservation area are also criminal offences in their own right. Unauthorised works to protected trees whether they are covered by Tree Preservation Orders, or non protected trees in conservation areas, are also a criminal offence. There are powers to prosecute persons who illegally display advertisements although we will normally offer the opportunity to remove any illegal advertisements. It is also open to the Council to remove/obliterate illegally displayed advertisements.

### **Injunctive Action**

7.22 Where the local planning authority deems it expedient to restrain any actual or apprehended breach of planning control it may apply to the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its powers to enforce planning control. The taking of such action is not to be taken lightly, but is critical where ordinary enforcement powers are unlikely to stop unauthorised activities.

7.23 Failure to comply with the terms of an injunction is in contempt of court. The court has discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

### **Formal Caution**

7.24 The Local Planning Authority will consider Formal Cautions as an alternative to prosecution. Examples of where they may be appropriate are:

- to deal quickly and simply with less serious offences;
- to divert less serious cases away from the court process;
- to deter repeat offences.

7.25 Before a caution is administered the officer will ensure:

- there is evidence of the offender's guilt sufficient to sustain a prosecution;
- the offender admits the offence;
- the offender understands the nature of the formal caution and agrees to be cautioned for the offence.

7.26 Formal cautions are administered in accordance with Home Office guidelines.

### **Planning Enforcement Order**

7.27 Section 171BA of the Town and Country Planning Act 1990 allows a local planning authority that discovers an apparent breach of planning control to apply to a magistrate's court for a planning enforcement order, within six months of discovery. That order allows the authority an 'enforcement year' in which to take enforcement action, even after the time limits in section.171B of the *Town and County Planning Act 1990* have expired.

7.28 Planning enforcement orders can only be made by a magistrate. In assessing the local authorities application for a planning enforcement order the magistrate's court may make a planning enforcement order only if it is satisfied, on the balance of probabilities, that the "actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach. The court must also consider the application just to make the order.

### **Direct Action**

7.29 Where the requirements of an enforcement notice or a Section 215 Notice has not been complied with, it is open to the Council to enter the land and take the steps to remedy the harm and recover from the owner of the land any expenses incurred.

### **Proceeds of Crime Act (POCA)**

7.30 Where an operator has benefited financially from unlawful development/uses and has sufficient realisable assets the Council may seek an application under the POCA legislation to allow for the confiscation of assets equivalent to the value achieved through the unlawful development.

## **8.0 PROCESS AND TIMESCALES**

8.1 Any reported breaches will be investigated in accordance with the timescales contained within Table 1. If a breach is found to have taken place then,

consideration will be made as to the most effective enforcement options available, depending on the nature of the breach.

- 8.2 The original complainant will be kept informed as per the timescales set out in paragraph 6.6
- 8.3 Where a retrospective application is invited, 28 days will normally be allowed for submission of the application although a longer period may be accepted if the application will require more complex plans or reports to be prepared/undertaken.
- 8.4 On expiration of the agreed period for application submission, if no application is received, a decision will be made on the expediency of taking action (please see flow chart in Appendix 1).
- 8.5 If formal enforcement action is required, following initial investigations, the time period for issuing a notice will depend on a number of factors such as: the priority of the breach, the degree of harm and risk of immunity, the time required to collect all necessary information and undertake the legal processes to serve.
- 8.6 There are strict time limits for service of copies of the enforcement notice. The legislation states that the service of a notice shall take place:
  - (a) not more than 28 days after its date of issue; and
  - (b) not less than 28 days before the date specified in it as the date on which it is to take effectThe enforcement notice must specify the date on which it comes into effect; after which date no appeal can be submitted. The enforcement team will then serve Notice on the offender either by recorded delivery post, by the erection of the notice in a prominent position on site, or in person or hand delivery to the address where the breach is occurring, or a variation of all these methods whichever is deemed to be appropriate. Once the notice takes effect the owner of the site will have a specified time limit (usually between 28 days and 12 months) to carry out the required works
- 8.6 An appeal can be made by the offender to the Secretary of State (via the Planning Inspectorate). The Inspectorate appoint an independent Inspector to deal with the matter in much the same way as a planning appeal against the refusal of planning permission is dealt with. If an appeal is lodged then the Notice is suspended while the appeal is being determined. The timescale is then dependent on the Planning Inspectorate but more complex enforcement appeals can take over a year to be heard/concluded.

- 8.7 If an appeal has been lodged and is dismissed by the Inspector or if the offender has not chosen to appeal, then the Council will monitor the breach during the compliance period. If full compliance is achieved then no further action will be taken. However, if the offender does not comply with the Notice by the expiry of the compliance period then work will commence on preparing evidence to support prosecution, direct action or an injunction as deemed appropriate.

## **9.0 MONITORING IMPLEMENTATION OF PLANNING PERMISSIONS**

- 9.1 Once planning permission is granted, it may be necessary to get formal approval of any details required by conditions. It is therefore imperative that land owners carefully read their permission once it is received ensuring that works do not commence on site in breach of planning conditions.
- 9.2 The onus is on the land owner or developer to make sure that all the necessary consents are in place before work starts, and to make sure that all the conditions are complied with. The Development Management department do not write to developers reminding them of their responsibility to discharge conditions.
- 9.3 There is currently no requirement to inform the Development Management Team when work will start on site, however, developers will have to notify the Council's Building Control Service (Southern Building Control) that they are going to start building works. There may be occasions where land-owners are asked to self-certify the development or uses for which they have consent and we will actively seek to adapt our procedures whenever necessary when new reoccurring breach trends occur
- 9.4 If conditions have not been discharged or contributions not paid, a new investigation is opened and conducted in accordance with the process set out above.

## **10.0 REVIEW OF THE LOCAL ENFORCEMENT PLAN**

- 10.1 The Council will review this plan from time to time and at least every five years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures.
- 10.2 This document is not subject to formal public consultation. However, comments on this document will be welcomed and will be considered as part of the review

process, (please email comments to [planning.enforcement@reigate-banstead.gov.uk](mailto:planning.enforcement@reigate-banstead.gov.uk)).

## 11.0 COMPLAINTS

11.1 If you have any queries or concerns regarding the procedures undertaken as part of a planning enforcement investigation, these should be discussed initially with the Enforcement Case Officer who can advise the reasons for the steps taken and discuss whether other options are available.

11.2 We do however recognise that there will be instances where customers remain dissatisfied with the process undertaken. To deal with such circumstances the Council does operate a formal complaints process, details of which can be viewed at <http://www.reigate-banstead.gov.uk/info/20314/complaints>

## 12.0 USEFUL CONTACT DETAILS

### Contact Us:

Planning Enforcement Team  
Development Management  
Reigate and Banstead Borough Council  
Town Hall  
Castlefield Road  
Reigate  
Surrey  
RH2 0SH

Web: [www.reigate-banstead.gov.uk/info/20043/planning/99/planning\\_enforcement](http://www.reigate-banstead.gov.uk/info/20043/planning/99/planning_enforcement)

Email: [Planning.enforcement@reigate-banstead.gov.uk](mailto:Planning.enforcement@reigate-banstead.gov.uk)

### Useful Web Links

The National Planning Practice Guidance gives a useful overview of planning enforcement:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

The Planning Portal provides basic information on Permitted Development rights & the ability to submit a planning application online:

[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

## APPENDIX 1: FLOWCHART OF ENFORCEMENT PROCESS

