

PLANNING ENFORCEMENT CHARTER

1 April 2016

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1. Introduction to the Planning Enforcement Service

“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.”

(Paragraph 207 of the National Planning Policy Framework, published May 2012).

- 1.1 Runnymede Borough Council recognises the importance of establishing effective controls over unauthorised development and the need to protect the natural and built environment and the quality of life for residents. The purpose of this Charter is to set out the level of service that you can expect from the Planning Enforcement Team regarding investigating breaches of planning control. A breach of planning control means that a use or a building operation that requires planning permission, or other relevant planning consent, has been carried out without the appropriate consent.
- 1.2 Government policy guidance makes it clear that enforcement action is a discretionary power to be exercised by the Local Authority only when it is expedient to do so, and any action should be proportionate in respect of the breach of control. Government guidance also advises that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits, and advises that planning permission may be granted retrospectively to regularise development already carried out. While it may not always be an offence to carry out development without planning permission, it cannot be assumed that planning permission will be granted for the development retrospectively.
- 1.3 The Council’s Planning Enforcement Team operates within national legislation and Government guidance and seeks to resolve breaches of planning control through negotiation wherever possible. However, the Council will use its powers to instigate formal enforcement action where all else fails and it is expedient to do so. The Town and Country Planning Act 1990 places time limits on the period within which enforcement action can be taken. This means that in some instances development is

immune from enforcement action after either four or ten years. Any development carried out without the requisite permission will be at risk of formal enforcement action by the Council. Nothing within this document should be taken as condoning a wilful breach of planning control.

1.4 The aim of the Planning Enforcement Team is to carry out the Council's statutory responsibilities in relation to the enforcement of planning control by investigating and acting upon breaches of control in a professional, consistent manner in accordance with the Council's priorities and within the resources available. The team receives in excess of 200 new requests to investigate breaches of planning control a year all requiring a response. The Planning Enforcement Team aims to provide the principles of good enforcement as follows;

- To provide a reliable, accessible, efficient and high quality planning enforcement service to members of the public, Councillors, and others who require expert advice on enforcement issues.
- To publish clear standards of service and performance through this enforcement charter.
- To respond to all requests for investigations into breaches of planning control submitted to the Council via the [planning enforcement questionnaire](#), investigate, and take appropriate action be it informal or formal, to resolve breaches of planning control in the public interest, having regard to all material considerations.
- To be consistent in investigations and decisions and take the necessary action having regard to all relevant policies and the particular circumstances of the site and surrounding area and the level of harm being caused by the breach of planning control.
- To resolve investigations through negotiation and without formal action whenever possible.
- To provide information at appropriate times to interested parties, although details of those that raised the request will be kept confidential. Ward councillors will be kept informed.
- To take a pro-active approach and use enforcement powers to remedy serious harm to the Borough's most valuable assets and amenities including residential amenities.
- To work with other teams in the Council to address problems in a holistic manner.

What is a Breach of Planning Control?

- 1.5 Section 55 of the Town and Country Planning Act 1990 identifies development as the “carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”.

A breach of planning control broadly means the carrying out of development without a grant of planning permission from the Council, or deemed permission by government order.

A breach of planning control includes the following:

- Carrying out of development without the required planning permission
 - Changing the use of a site/building without the required planning permission
 - Failing to comply with any planning condition and/or limitation, such as a Section 106 Agreement or Community Infrastructure Levy, attached to any planning permission
 - Failure to comply with approved drawings attached to a planning permission
 - Carrying out certain demolition work in a conservation area without consent
 - Carrying out works to a listed building or protected tree without consent
 - Neglecting land or buildings to an extent which causes harm to local amenity.
- 1.6 In cases where there is householder development you may wish to consider viewing the [Planning Portal's interactive house](#) to find out if the development is permitted under the Government's General Permitted Development Order 1995 (as amended).
- 1.7 To find out whether there is an existing planning permission on the land, planning histories can be viewed through the application search link on the Council's website under the [planning application register](#).
- 1.8 Alternatively, the Council's interactive mapping system [rMaps](#) has a considerable amount of information about land and properties in the borough; there are links to planning information, including planning decision notices and planning conditions, as well as information about planning policies. Site constraints can be viewed at [rMaps](#), including areas covered by Tree Preservation Orders and Conservation Areas.

1.9 In some instances development can become immune from enforcement action, due to the passage of time. In these instances the Council will not be in a position to take formal enforcement action.

1.10 There are certain issues that the enforcement team cannot take into account when assessing an alleged breach as they are not planning matters. These include;

- Loss of value to a property
- Competition with other businesses
- Trespass, boundary or other neighbour disputes
- Breaches of a covenant
- Matters controlled by other legislation, for example Building Regulations
- Matters relating to areas of responsibility by other authorities, for example highway matters which are the responsibility of Surrey County Council

1.11 The above are examples that are more likely to be private civil matters; the Council has no legal right of intervention in these matters.

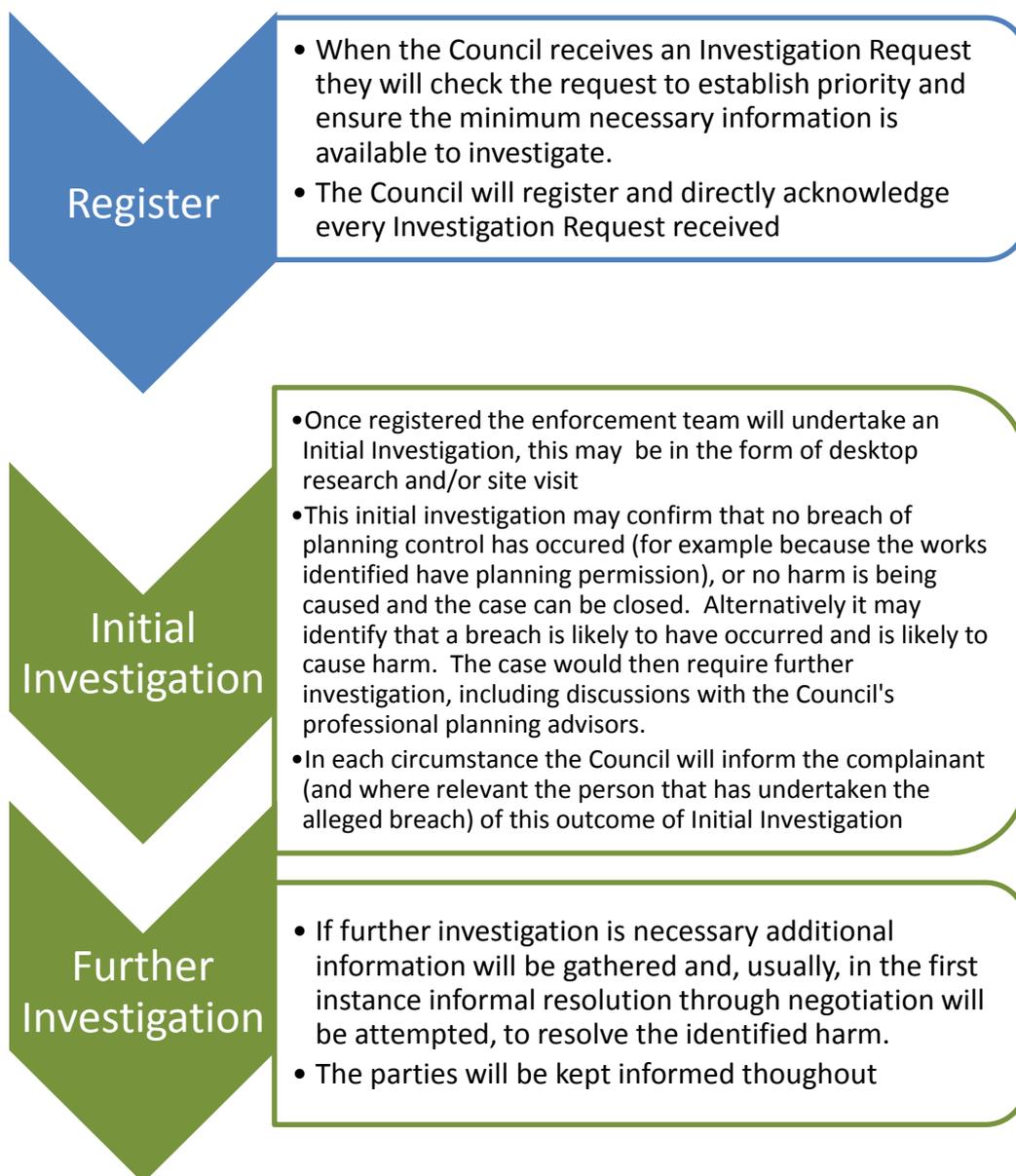
1.12 The Planning Enforcement Team also investigates requests into [High Hedges](#) which fall under Part 8 of the Anti-social Behaviour Act 2003. A separate national remediation and enforcement procedure is in place to deal with this matter.

2. How can members of the public ask the Council to investigate a potential breach of planning control?

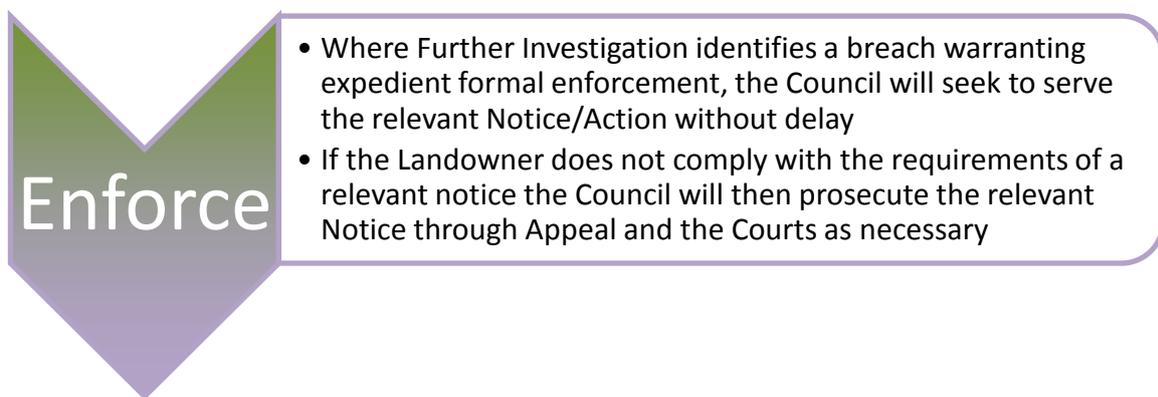
- 2.1 In addition to Council Officers identifying breaches of planning control, the Planning Enforcement Team also investigate cases requested by the public. In order that officers can carry out an investigation as swiftly and effectively as set out in this charter, as much information as possible should be provided. A [planning enforcement questionnaire](#) has been made available to assist members of the public in providing the team with relevant information and can be submitted in the first instance to raise issues of concern. Information received anonymously may not be investigated as in most cases it will be impossible to establish the impact of any potential harm or for the enforcement team to satisfy the customer service standards set out in the paragraphs below. The enforcement form and other methods for the receipt of requests for investigations will be reviewed as part of the ongoing process improvements.
- 2.2 Members of the public who may be reluctant to give their details, because they fear repercussions, are advised that their details are treated in the strictest confidence. It is our policy not to reveal any information that is likely to identify persons or people that raised the request for an investigation to take place, in accordance with the Data Protection Act 1998. We may be asked to reveal information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Any request will be subject to consideration in accordance with the legislation and information will only be released if appropriate and necessary.
- 2.3 Members of the public can also contact elected members of the Council to ask for information about a possible breach of planning control. The elected members can then take forward a request to the Enforcement Team on behalf of the resident.

3. The Council's process for investigating potential breaches of Planning control

3.1 All requests to investigate a potential breach of planning control will be managed by the Council's enforcement team in light of the principles above, and will follow a similar process. Based on the complexity of the breach and the history of a site an investigation and any final resolution can of course take very different periods of time. The diagram below is a summary of the enforcement process. A more detailed explanation is set out later in this document.



3.2 Once the Investigation phase has been completed an informal negotiated resolution will normally be sought to resolve the identified harm. This may include the request to make a retrospective application for planning permission to regularise the breach of planning control, where conditions are necessary on the new development or it is otherwise considered the appropriate step to take. However if the negotiated resolution has been unsuccessful, or if it is identified that the harm cannot be mitigate by the voluntary actions of those that have undertaken unauthorised development a report will be prepared examining the expediency of taking formal action and recommending a formal course to resolve the matter.



Enforce

- Where Further Investigation identifies a breach warranting expedient formal enforcement, the Council will seek to serve the relevant Notice/Action without delay
- If the Landowner does not comply with the requirements of a relevant notice the Council will then prosecute the relevant Notice through Appeal and the Courts as necessary

Priorities for Runnymede Borough Council's enforcement team

3.3 Due to the serious nature of some of the alleged breaches of planning control that are brought to the team's attention and the length of time that it can take to investigate a matter, it is essential that cases are prioritised in accordance with the severity of their impact.

3.4 In determining the prioritisation of enforcement cases, and when judging the expediency and appropriateness of taking enforcement action the harm that is caused by unauthorised development is carefully considered.

3.5 Harm can arise through a range of factors, for example:

- (i) Noise nuisance or other disturbance from a business operation
- (ii) Danger and disturbance due to significantly increased traffic numbers or increases in the use of heavier goods vehicles on non-classified roads

- (iii) Loss of privacy, overshadowing or loss of natural light from unauthorised development
- (iv) Visual harm to the character of an area
- (v) Risk of pollution that may affect people or the natural environment
- (vi) Loss or damage of protected trees or to protected heritage buildings
- (vii) Untidy land that harms the amenity of the surrounding area
- (viii) Unauthorised development that undermines the credibility of adopted national or local planning policies, such as the protection of the Green Belt

3.6 As defined by national law and guidance, certain matters which may be of concern to complainants are not, however, considered to result in 'planning harm':

- Competition caused to another business
- Loss of an individual's view
- Loss of value to a neighbouring property

3.7 As well as identifying the nature of any harm caused by unauthorised development the enforcement team will also consider the scale and impact of that harm. Additional priority may be given where harm is having a disproportionate effect on local residents, or the harm is impacting on a larger number of people.

3.8 In setting priorities the enforcement team will also consider whether the harm being caused is irreparable, such as a report of someone undertaking works to fell a protected tree, and otherwise whether earlier intervention may particularly assist, such as taking an opportunity to seek the cessation of unauthorised works before they commence or interrupt an unauthorised use before it becomes established.

3.9 Finally the enforcement team will need to consider whether the identified harm is in fact best dealt with by another regime, either within the Council or within a different public body which has the responsibility or powers to resolve any identified harm, either more effectively or as they have the responsibility to do so. Examples of this might be liaison with the Council's own Licensing Team, or referral of matters to another agency such as Natural England in respect of harm to protected species, or the County Council in respect of unauthorised deposition of waste materials.

3.10 The table below sets out how the Planning Enforcement Team will prioritise requests for investigating breaches of planning control, having considered the harm and impacts noted above.

<p>High Priority</p>	<ul style="list-style-type: none"> • Breaches of planning control which have the potential to cause serious irreparable harm (for example unauthorised works to a listed building, demolition of buildings in a conservation area, works to a protected tree) • Breaches of planning control where the harm is very significant to either public amenity or to residents • Breaches of planning control where significant harm is likely to be reduced by immediate action. • On-going breaches of an effective Enforcement Notice
<p>Medium priority</p>	<ul style="list-style-type: none"> • Breaches of planning control causing demonstrable harm to the public amenities or to residents. • Breaches of planning control where the time limit for formal enforcement action will expire within the next six months.
<p>Low priority</p>	<ul style="list-style-type: none"> • Breaches of planning control where little or no harm has been identified or where harm is reparable, particularly where those breaches have arisen from genuine error by individuals. • Breaches which are temporary in nature. • Breaches of planning control relating to the placement of advertisements. • High Hedges which are subject to a separate regime

What does the Council do with my request to investigate an alleged breach of planning control?

Acknowledgement of request to investigate an alleged breach of planning control - Registration of an Investigation Request

- 3.11 Officers aim to acknowledge receipt of all enforcement questionnaires within 1 working day. Where email addresses are provided this acknowledgement will be via email. A reference number for the investigation will be provided. A member of the public can contact the Customer Services team to check progress.

Establishing whether there has been a breach of planning control at the site:

The Initial Investigation –

- 3.12 There are many instances where an activity or building works that have been reported to the Planning Enforcement Team do not require planning permission, or planning permission has already been granted. Therefore Officers will review the planning history and undertake a desktop review of the site in order to understand if there is a breach of planning control at the site and what priority it should be assigned.
- 3.13 Where appropriate a site visit also may be undertaken. The Enforcement Officer will not visit neighbouring properties unless a specific request is made or it is necessary in order to understand the impact of the breach of planning control.
- 3.14 In certain circumstances it may also be necessary to obtain certain facts through the service of a Planning Contravention Notice, which is a formal request for information, on the owners or occupiers of a site.
- 3.15 Checks may also be made with other relevant Council departments such as Building Control, Licensing, Environmental Health, Housing, Council Tax and our partner agencies to establish any background to the case.

How quickly will my investigation request be dealt with?-

3.16 All requests to investigate a breach of planning control will be prioritised depending on their seriousness and the amount of harm being caused. The [table](#) in section 3 sets out how cases are prioritised and [section 4](#) sets out the course of action available to Officers to resolve the breach.

In the initial investigation phase this means:

- High Priority – Investigation will be immediately commenced, with complainant informed of initial investigation outcome within 5 working days
- Medium Priority – Investigation will be commenced within 5 working days, with complainant informed of initial investigation outcome within 10 working days
- Low Priority - Investigation will be commenced within 10 working days, with complainant informed of initial investigation outcome within 15 working days

3.17 The time it takes to undertake further investigation and bring a conclusion to an investigation will vary depending on the nature of the breach, the extent of the investigations that need to be carried out, the harm which is being caused and the resources that are available. The Planning Enforcement Team has a target to close the same number of investigation requests as it receives, within any one period¹.

3.18 In cases where an Enforcement Notice has been served, the recipient has the right to appeal to the Secretary of State. If an appeal is lodged you will be notified, made aware of any timetable and advised how you might make representations. The Council will provide expert witnesses to give evidence in support of the Council's decision in the event of a public inquiry, and provide full statements in the case of hearings. You will subsequently be notified of the outcome of the appeal decision and the implications.

Notification of progress -

3.19 The Planning Enforcement Team aim to keep those who requested an investigation informed of progress throughout the process. In addition of the outcomes of the initial investigation highlighted above the Council will also keep complainants informed of the progress of relevant further investigations not less than monthly until

¹ Planning Business Centre Plan

a case is closed, or alternative communication is agreed. However, if a resident wishes to receive an update on the progress of an investigation into an alleged breach of planning control at any time they are encouraged to contact the Planning Enforcement Team via the details outlined at the beginning of this document.

What is the role of Elected Members in the enforcement process?

- 3.20 Elected Members often raise investigations, either from their own experience in their local areas, or on behalf of local residents who do not feel able to do so. Councillors are able to pass information back to the enforcement team to provide important information in respect of potential or ongoing breaches of planning control. They can also play a beneficial role in signposting residents and local people to the Council's website and officers, should anyone need advice on what needs planning permission or where enforcement action is likely to be necessary.
- 3.21 Elected Members are also kept informed of all enforcement cases in their Ward that have gone through the Initial Investigation and require further investigation or formal enforcement action.

What does the Council do if it is my land or business that is being investigated?

Establishing whether there has been a breach of planning control at the site –

- 3.22 Officers will review the planning history and undertake a desktop review of the site in order to understand if there is a breach of planning control at the site and what priority it should be assigned. It is acknowledged that in many instances, where an investigation has been requested, the activity or building works that have been reported to the Planning Enforcement Team do not require planning permission, or planning permission has already been granted
- 3.23 Where appropriate a site visit may be undertaken and photographs will be taken of the development subject of investigation. You can expect the Enforcement Officer to introduce themselves to you and explain the purpose of their visit. Officers of the Council will have photographic ID which they can show you.

- 3.24 Officers will treat you politely and with respect and it is expected that this will be reciprocated. The Council takes threats against any of its Officers seriously and the matter will be reported to the Police who will be requested to attend any future site visits.
- 3.25 It should be noted that Enforcement Officers have powers to enter land to assess whether there has been a breach of planning control under S196A of the Town and Country Planning Act 1990 (as amended).
- 3.26 In certain circumstances it may also be necessary to obtain certain facts through the service of a Planning Contravention Notice, which is a formal request for information, on the owners or occupiers of a site. Recipients of such a Notice are required to provide information as requested, within 21 days of the date of the Notice. There is an opportunity for recipients of a Notice to visit the Civic Offices to clarify matters during this period.
- 3.27 Checks may also be made with other Council departments such as Building Control, Licensing, Environmental Health, Housing, and Council Tax to establish any background to the case.

What happens next?

- 3.28 Once it has been established that there is a breach of planning control the landowner/occupier will be advised what steps that can be taken to address or resolve the breach of planning control. It may be of benefit to the landowner/occupier to seek professional advice.
- 3.29 In some cases, the solution to regularise the breach of planning control will be to submit a valid retrospective planning application or application with amendments to the development. Officers will advise of an appropriate time period to do so. However, where the Planning Enforcement Team considers that the nature of the breach is so serious and requires immediate action, the Council reserves the right to pursue formal action. A table showing the types of formal enforcement action that can be taken against those with an interest in the land where there is a breach of planning control is listed at [annexe 1](#).
- 3.30 Where a planning application is submitted and approved to remedy a breach of planning control no further action will be taken against the landowner/occupier other than to ensure there is compliance with any conditions imposed on the permission. If

the planning application is refused the landowner/occupier has the right to appeal the decision. The lodging of an appeal does not prevent the Council from taking enforcement action if it is considered expedient to do so.

Will the Council take formal enforcement action against me?

- 3.31 Enforcement Officers work hard to resolve breaches of planning control without the need for formal enforcement action to be taken in accordance with good practice. However, where it is considered that the harm to the environment and neighbouring amenities is significant and/or irreparable and a landowner/occupier does not take action to remedy a breach of control, authorisation for formal enforcement action will be sought in accordance with the Council's constitution. Where formal action is authorised you and anyone else with an interest in the land will be served with a copy of the Notice/s.
- 3.32 Where there are breaches of planning control involving Listed Buildings, Tree Preservation Orders and advertisements these are **criminal offences** and the Council has the power to prosecute directly in the Magistrates Court.

What happens if I have been served with an Enforcement Notice?

- 3.33 Where an Enforcement Notice has been issued, with the exception of a Breach of Condition Notice, landowners/occupiers will be able to exercise their right to appeal the decision of the Council. Information about how to appeal an Enforcement Notice will be included within the documentation served and is also available on the [Planning Inspectorate website](#). It should be noted that an Enforcement Notice remains a charge on the land unless it is quashed by way of an appeal, planning permission is subsequently granted or the Notice is withdrawn.
- 3.34 Once an Enforcement Notice has taken effect and the compliance period (stipulated on an Enforcement Notice) has expired, a site visit will be undertaken by Officers to check compliance with the requirements of the Notice. Recipients of a Notice should consider carefully the consequences of not complying with the requirements as it is a **criminal offence** for which they can be liable to prosecution proceedings being taken against them, resulting in heavy fines or even imprisonment. In circumstances where there is non-compliance with the requirements of a Notice, the Council will consider commencing prosecution proceedings where there is sufficient evidence and it is in the public interest to do so. There is also the possibility that the Council will take steps to remedy the breach of planning control itself by direct action.

What happens after planning permission has been granted?

- 3.35 As well as investigating breaches of planning control the Planning Enforcement Team will also monitor the implementation of planning permissions and specifically conditions attached to that permission. Applicants are expected to submit all information required to comply with conditions, including pre-commencement conditions. If no such information is submitted, the Planning Enforcement Team, will, in cases where the environment is sensitive (for example Green Belt, Flood Plain, Contaminated land) or residential amenities are at risk, contact the applicant/developer to ascertain progress.
- 3.36 In certain instances, Development Management Officers may also make specific requests of the Planning Enforcement Team to check compliance with conditions. For example to check that obscure glazing, flood protection measures or renewable energy measures have been installed where required or ensuring that a use granted for a temporary permission had ceased at the end of the relevant period. Another example would be to check that there had been the removal of buildings in the Green Belt where it was justified in order to grant planning permission for a development. In such instances, Officers will undertake a site visit to check the development against the permission and approved drawings.
- 3.37 In instances where development commences and it is found that the development is not being carried out in accordance with the approved plans, the Planning Enforcement Team, will assess the cases and take the appropriate course of action as set out in [section 4](#) below.

4. How will the Council address breaches of planning control?

- 4.1 The Council has a range of possible courses of action available once a breach of planning control has been identified. These are listed in further detail below.
- 4.2 The decision as to what course of action to take in cases of unauthorised development or illegal works to trees and Listed Buildings will be taken with due regard to the impact on public amenity, the nature of the breach and the relevant local plan and National Planning Policy Framework. The course of action pursued by Officers will be proportionate to the breach of planning control to which it relates.

Option 1 – no further action is deemed appropriate

- 4.3 After undertaking an investigation the Planning Enforcement Team may decide not to take any further action. This might be because there is no actual breach of planning control or the works might be within the scope of development that can be carried out without planning permission (permitted development). Note that the exact details of permitted development are set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
- 4.4 Once a case has been initially investigated, if there is a trivial or technical breach of planning control, such as a slight variation in plans, Officers may conclude that it is not expedient to take action. This might be because the breach is minor and the harm it causes is not significant, and formal action would not be in the public interest. Generally, it will be regarded as unreasonable for the Enforcement Team to issue an Enforcement Notice solely to remedy the absence of a valid planning permission if it is concluded that there is no significant planning objection to the unauthorised development.
- 4.5 When deciding whether it is expedient to take formal planning enforcement action a judgement will be made on the planning issues involved, the relevant government and local planning policies and the likelihood of planning permission being granted for the breach. If the decision is made to take no further action, then the file will be closed and Officers will notify everyone who has been involved in the investigation. Officers will also, without prejudice to the outcome, notify the landowner/occupier that they can make a planning application to seek regularisation if it is deemed appropriate.

- 4.6 It is acknowledged that householders, undertaking development may not have had prior access to independent professional advice to ascertain whether or not planning permission would have been required. In cases where there is reliance on the General Permitted Development Order (GPDO) 1995 to grant permission but a specified limitation has been exceeded or condition not met, enforcement action is unlikely to be pursued in order to remedy a slight variation in excess of what would have been permitted by virtue of the GPDO provisions unless there is identified significant harm.

Option 2 – further investigation required

- 4.7 It may be necessary to carry out further investigations to determine the extent of the breach, history of the breach etc. This may involve a number of additional site inspections, research, seeking advice from other services or agencies or further information from those who requested an investigation, site owners or other interested parties.
- 4.8 In certain cases Officers may request that the person reporting the suspected breach of planning provide a written log detailing the dates, times, duration and nature of the suspected breach to assist in the investigation. This information can be very important in furthering the investigation into a suspected breach of planning control. Officers may also serve a Planning Contravention Notice or Requisition for Information to obtain information relating to the suspected breach or site ownership details.
- 4.9 Under Sections 171B (A-C) of the Town and Country Planning Act 1990 (as amended), where it appears to Officers there may have been a breach of planning control that has been deliberately concealed an application can be made to a Magistrates' court (within six months of its discovery) for a Planning Enforcement Order in relation to that apparent breach of planning control. The Order, if issued, gives Officers a further year in which to take action, even after the time limits to take enforcement action have expired.

Option 3 – Negotiate a solution

- 4.10 Where it has been established that a breach of planning control has occurred and the harm is irreparable or permanent. Officers will normally attempt to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. However, these negotiations will not be allowed to hamper or

delay the consideration of formal enforcement action where the breach of control causes serious harm to amenity. Where Officers are unable to negotiate an acceptable solution within a reasonable timescale, they will consider whether or not it is expedient to take formal enforcement action.

- 4.11 It is recognised that in some instances landowners/occupiers have carried out unauthorised development in good faith believing no planning permission is required. In cases where it is found that a breach of planning control relates to a small business or self-employed person, it is acknowledged that responding to enforcement action may represent a financial burden. Officers will be considerate of this but the harm to residential amenities or the environment will be fully taken into account in considering how to progress the investigation. In light of the Government and corporate objectives to achieve economic growth, advice will be given where appropriate as to how a business may be enabled to continue to operate subject to any planning objections being addressed and without continued harm to the local amenity. Enforcement Officers will explore whether there are opportunities for the business operation to relocate to a more suitable location; however, it is not within the remit of the Planning Enforcement Team to be responsible for finding alternative premises.
- 4.12 If a landowner/occupier is reluctant to enter into a discussion or a mutual compromise cannot be reached, then it will be made clear that the Council will not allow the development to go ahead by default and proportionate action will be taken to remedy any harm prior to formal action being undertaken

Option 4 – Retrospective application for planning permission

- 4.13 Where a breach of planning control has occurred and Officers have identified that little or no harm is being caused, or any harm might be removed or alleviated by the landowner/occupier changing the works undertaken, or controlling the development through the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter.
- 4.14 In circumstances where a retrospective planning application is submitted for the same development the subject of an Enforcement Notice, the Local Planning

Authority has the authority to decline to determine such applications in accordance with the Localism Act 2011.

Option 5 – Formal enforcement action

- 4.15 Where it has been established that a breach of planning control has occurred and substantial harm has been caused it will normally be the case that the Council will use its statutory powers to take action to remedy the breach. The use of these powers listed in annex 1 are discretionary and will only be used when it is considered expedient to do so. Any action taken must be proportionate to the breach.
- 4.16 When an Enforcement Notice has been served details of the Notice are entered into the Planning Enforcement Register which is available for public inspection at the Civic Offices.
- 4.17 There are rights of appeal to the Secretary of State against an Enforcement Notice/ Listed Building/Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices there is no right of appeal to the Secretary of State and these may only be challenged by application for judicial review to the High Court. In the case of [Section 215 Notices](#) (a section 215 Notice can be served to require a land owner to remedy the condition of a building or land where the condition is adversely affecting the amenities of the area), prosecutions and injunctions, appeals must be made through the Court system.
- 4.18 In respect of breaches of planning control involving Listed Buildings, Tree Preservation Orders and advertisements these are **criminal offences** and the Council has the power to prosecute directly in the Magistrates Court.
- 4.19 Some requests for investigation can result in issues that affect a number of Council services or public bodies, not just planning legislation. In these instances the Council will try to remedy the breach by using the most effective tools available and seek to avoid duplication of work. For example, where an unauthorised development is causing a statutory nuisance, it will, in some instances, be more effective for the matter to be pursued by the Council's Environmental Protection Team rather than the Council's Planning Enforcement Team. A joint working protocol is in place between these two teams of the Council to ensure efficient sharing of information and resources. The Planning Enforcement team also works alongside external organisations including Surrey Police, Surrey Fire and Rescue Service, the Environment Agency and Surrey County Council.

Annex 1: Formal Enforcement Proceedings

ENFORCEMENT ACTION	DESCRIPTION
Enforcement Listed Conservation Area Notice, Building/Area Enforcement Notice	<p>Where a breach of planning control is resulting in harm to amenity or conflicts with planning policies and could not be overcome by the imposition of conditions on an approved planning application.</p> <p>The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.</p>
Stop Notice	<p>Where a breach of planning control is causing very serious harm to public amenity and the environment, and in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice. A Stop Notice cannot be used to prevent the use of a building as a dwelling.</p> <p>The Stop Notice will refer to the Enforcement Notice to which it relates, specifically the activity or activities that are required to cease and the date that it takes effect.</p>
Temporary Stop Notice	<p>This differs from the normal Stop Notice powers because the Temporary Stop Notice does not have to wait for an Enforcement Notice to be issued. In addition the effect of a temporary stop notice will be immediate. A Temporary Stop Notice cannot be used to prevent the use of a building as a dwelling.</p> <p>The Temporary Stop Notice will set out the activity that the Council thinks is a breach of planning control. It will also set out the Council's reasons for issuing the Temporary Stop Notice.</p>
Breach of Condition Notice	<p>Where the breach of planning control relates to non-compliance with a condition on a planning permission.</p> <p>The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.</p>
Section 215 Notice (In respect of untidy land)	<p>In cases where the amenity of an area is adversely affected by the condition of land or buildings.</p>

The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that the Notice takes effect.

Planning Enforcement Order

Under new provisions of the Localism Act 2011, where an apparent breach of planning control has been discovered that has been deliberately concealed the Council will consider applying to the Magistrates Court for a Planning Enforcement Order, within six months of its discovery. If successful, the Order enables a further year in which to take enforcement action, even after the time limits in section 171B of the 1990 Act have expired.

Prosecution

The Council will consider commencing a prosecution in the courts against any person who has failed to comply with the requirements of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.

The Council will also consider commencing a prosecution in the Courts where unauthorised works have been carried out to TPO trees or trees in a Conservation Area, as well as unauthorised works to a listed building, demolition in a Conservation Area, advertisements or where the recipient of a Planning Contravention Notice or Requisition for Information has failed to provide a response within the prescribed period or supplied false or misleading information.

Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Injunction

Where the breach or apprehended breach is so significant that immediate action is required to prevent any further damage. May also be used where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control. The Council will only consider such action if the breach is particularly serious and is causing, or is likely to cause, exceptional harm.

Direct Action

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a Section 215 notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Sections 178 and 219 of the Town and Country Planning Act 1990 (as amended) to :-

- (a) Enter the land and take the prescribed steps; and
- (b) Recover from the person who is then the owner of the

land any expenses reasonably incurred by the Council in doing so.