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Local Enforcement Plan

May 2017

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Preface

Harborough District Council is firmly committed to the effective and proportionate enforcement of planning control. It views breaches of planning control very seriously, with a specialist Planning Enforcement Team within the Development Management Service tasked with resolving planning breaches. In accordance with paragraph 207 of the National Planning Policy Framework (NPPF) this Local Enforcement Plan has been prepared to outline the approach that will be taken by the Council to remedy unauthorised development, and the procedures that will be followed.

For the avoidance of doubt, this Local Enforcement Plan is intended to review and replace the District Council's existing Planning Enforcement Protocol Document (October 2007) and has been produced in accordance with the guidance set out in paragraph 207 of the NPPF.

1. Legislative Framework, Guidance and Policy

1.1 Legal Context

- 1.2 The Council has the responsibility for taking planning enforcement action which it deems necessary and proportionate within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and take action to remedy breaches 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, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 1.3 Enforcement provisions within the Localism Act 2011 give Council's power to decline to determine an application for planning permission where the land subject to an existing Enforcement Notice which prevents abuses by developers/applications of twin tracking an appeal against an enforcement notice and an application for retrospective approval. The Act also gives the Council powers over a greater time period to take enforcement action against concealed breaches. The Act also provides greater penalties and increased powers to Council in relation to fly-posting and graffiti.
- 1.4 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice.
- 1.5 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a person knowingly breaching planning legislation.
- 1.6 **Harborough District Local Development Framework, Core Strategy 2006 – 2028**
- 1.7 Any enforcement action taken by the Council must be led by the policies of the relevant Development Plan currently being the Harborough District Local Development Framework, Core Strategy 2006 – 2028 and any associated Enforcement Policy (General Enforcement Policy, September 2015).

1.8 The National Planning Policy Framework

1.9 Enforcement is referred to in paragraph 207 of the National Planning Policy Framework (NPPF) 2012. The discretionary and proportionate nature of enforcement is stressed and it is suggested that 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'.

1.10 Government 'Planning Practice Guidance'

1.11 Advice from Central Government on planning enforcement is set out primarily in the 'Planning Practice Guidance' (PPG) 'Ensuring Effective Enforcement' that came into effect on the 1 March 2014. It emphasises the importance for Local Planning Authorities to prepare and adopt a local enforcement plan because it:

- Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process and;
- Recognises the need for balance where human rights or equalities issues may be engaged (whether those of the person breaching planning or persons affected), and whether the decision is to take action or to take no action

1.12 The PPG also states:

"Effective enforcement is important to:

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

2. The Council's key planning enforcement aims

2.1 The Council's key aims are to:

- a. effectively and efficiently remedy the undesirable effects of unauthorised development and breaches of planning control by working with landowners, operators, Councillors, Parish Councils and the general public;
- b. bring unauthorised activity under control, in a timely manner, to ensure that the credibility of the planning system is not undermined; and,
- c. help facilitate appropriate and high-quality development through the development management process.

3. The Council's key planning enforcement objectives

3.1 The Council's primary objective of the planning enforcement function is to remedy harm to public amenity resulting from unauthorised development, and to control it, making sure the integrity of the planning system is not undermined. In striving to achieve the objectives set out below, the Council whilst not condoning wilful

breaches of planning control, will not take disproportionate action and will not seek to “punish” those responsible for breaches by taking action against technical breaches that cause no serious harm to public amenity.

In order to meet its key aims the Council will:

- a. investigate all complaints pertaining to breaches of planning control in respect of district matters;
- b. investigate and seek to resolve breaches of planning control caused by unauthorised developments;
- c. proactively monitor consented sites regularly to verify compliance with the consent and any conditions attached to consents and seek compliance where breaches are identified;
- d. acknowledge complaints received about breaches of planning control within three working days;
- e. on receipt of a complaint undertake an initial site inspection within; one working day for top priority cases; five working days for high priority cases and ten working days for standard priority cases;
- f. decide on the most expedient course of action to deal with breaches of planning control and notify all complainants concerned within 20 working days of receiving a complaint of the planning enforcement team’s preliminary investigations;
- g. keep complainants informed of progress throughout the processes of investigating and taking action on breaches of planning control;
- h. keep all details of complainants in confidence subject to the council’s legal duty under the Freedom of Information Act 2000;
- i. always consider the expediency of taking formal enforcement action, and only taking enforcement action when it is considered essential to protect the amenity of the area, public or highway safety, and/or the integrity of the planning process;
- j. only take formal enforcement action, or require remedial action, which is proportionate to the breach;
- k. set reasonable but firm deadlines for actions required to resolve breaches of planning control, and make these clear to all parties concerned;
- l. only invite a retrospective application (without prejudice) to regularise a breach where there is a reasonable prospect that planning permission would be granted (notwithstanding the rights of an alleged offender to submit such an application);
- m. facilitate appropriate development that conforms to planning policy, and try to secure the best possible development retrospectively where suitable;
- n. proactively work and cooperate with other regulating authorities and agencies to resolve breaches of planning or other legislation, share intelligence, and reduce crime;
- o. not normally investigate anonymous, vexatious and repetitive complaints, unless they allege serious breaches of planning control which can be substantiated.

4. Breaches of Planning Control

4.1 What is a Breach of Planning Control?

4.2 Planning law defines development as either:

- Operational Development – this is anything built on, over or under land, and would include a new house, road, sewers, embankments and some forms of demolition.
- Material Change of Use - this is any change of use of a building or land and would include for example the sub division of a single dwelling house to self contained flats.

4.3 A breach of planning control is therefore defined as **development** carried out without the relevant permission first being obtained (or the activity being carried out is not being done in accordance with the approved plans/specifications and/or a planning condition attached to a permission) from the Council. Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially constitute a criminal offence. However, unauthorised works to a listed building, total or substantial demolition in a conservation area, the unauthorised display of advertisements, and unauthorised works to protected trees; do constitute a criminal offence.

4.4 Types of breaches investigated

4.5 Some examples of breaches of planning control that the Council investigates are:

- Unauthorised changes of use, for example unauthorised siting of a caravan on agricultural land being used as a person's main residence;
- Unauthorised engineering operations, such as raising of ground levels, construction of a building without planning permission;
- Breaches of conditions attached to planning permissions, such as contractor working hours, hours of operation of a business outside that specified by a planning condition; non compliance of landscaping conditions;
- Unauthorised display of advertisements, hoardings and signs;
- Unauthorised works to listed buildings, such as the removal of key internal walls, staircases and original flooring;
- Deliberate concealment of unauthorised building works or changes of use;
- Unauthorised demolition within a conservation area beyond that permitted by any order;
- Unauthorised works to trees subject to a tree preservation order (TPO) or in a conservation area;
- Untidy land where it affects the amenity of the area;
- Unauthorised works to hedgerows

4.6 Non-planning issues

4.7 The Council receives many requests regarding issues that do not involve a breach of planning control. It is important to identify the issues which are relevant to planning and those which do not come within the remit of planning enforcement.

Examples of issues that do not constitute 'development' and are not planning matters include:

- Matters relating to trees that are not within a conservation area or protected by Tree Preservation Order or a planning condition;
- Unauthorised use of the highway, for example, for car repairs or parking contraventions;
- Dangerous structures / subsidence, health and safety issues;
- Internal refurbishment of buildings that are not listed;
- Party wall or land ownership disputes;
- Covenants imposed on property deeds;
- Pests or vermin;
- Parking of caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property.

4.8 To complicate matters there have been numerous changes in planning law that allow some forms of 'development' to proceed without having to submit a planning application. The most significant of these are known as **Permitted Development Rights "PD"**. These 'rights' principally stem from a Government Order and, amongst other things, allow people to extend their homes within certain criteria without having to apply for planning permission.

4.9 These types of 'permitted development' may need to be investigated, for example, to accurately measure the size of a house extension, but many of these cases can be established as being permitted development at the point of receiving the alleged breach.

Examples of where developments may be permitted include:

- Small residential extensions;
- Satellite dishes;
- Fences and walls;
- Means of access and hardstandings;
- Outbuildings, sheds or greenhouses;
- Loft conversions;
- Internal building works;
- Certain types of advertisements; and
- The alteration or the insertion of doors or windows in houses.

5. How the Council deals with complaints of alleged breaches of planning control.

5.1 Information required

5.2 Before an alleged breach can be logged as a planning enforcement case the complainant must provide their name and full contact details including their address or/and email address, as well as the address of the property to which the allegation relates. This must be provided as the Council may be required to contact the complainant for more detailed information during the investigation of the case. Where no contact details are supplied, the alleged breach will not normally be logged as a case. Where there are only minimal details provided, the complainant will be asked to provide more information before the case can be properly registered and investigated.

5.3 Methods of submitting an alleged breach

5.4 An alleged breach should usually be submitted in writing, preferably online through the 'Enforcing Planning Rules' section of the Council's planning web pages (www.harborough.gov.uk) by using the online planning enforcement complaint form 'planning enforcement complaint'. This is the most efficient and effective way of reporting a breach of planning control. However, where it is not possible to do this, written allegations can be submitted to the Council by letter to Planning Enforcement, The Symington Building, Adam & Eve Street, Market Harborough, LE16 7AG, or email to planningenforcement@harborough.gov.uk. Providing all relevant information is supplied the case will be registered.

5.5 The Council's Contact Centre is usually the first port of call if contact is made by telephone. Alleged breaches can also be made in person at the Council's offices. The planning enforcement team have a duty planning enforcement officer that can be contacted via the Contact Centre should a member of the public wish to speak to an officer directly. Although complainants are encouraged to submit written allegations, if an alleged breach is received by phone or in person, it is important that as much detailed information as possible is given to the officer, including full contact details of the complainant. To ensure all relevant information is provided, the receiving officer will use the planning enforcement complaint online form to guide them.

5.6 All complaints relating to breaches of planning control will be investigated and treated confidentially by officers of the Council. The party under investigation or other members of the public will not be allowed access to the enforcement complaint file under any circumstances. In some circumstances the party under investigation will have strong suspicions about the identity of the complainant(s) but the Council will not comment on these. Anonymous allegations will not normally be investigated

5.7 If there are enforcement matters at any time that have to be considered by a Council Committee these will be considered after the press and public have been asked to leave the meeting and will be treated as an 'exempt' item.

5.8 The Council is under a legal obligation to maintain a register of land or properties which are, or have been, the subject of an enforcement notice, and to identify these in response to local searches.

5.9. Logging an alleged breach

5.10 Within 3 days of receiving the requisite details of an alleged breach of planning control, the case will be logged on the planning enforcement database and the

complainant acknowledged. The case will be assigned a priority and a case officer in accordance with paragraph 5.11 of this document.

5.11 The priority of a case will be assigned on a case by case basis and will usually follow the following classification.

1. Top Priority Cases - where works are being carried out which will cause irreparable harm / damage.

Examples:

- a) Unauthorised works to a listed building;
- b) Lopping or felling of protected trees.

2. High Priority Cases - where works or uses are causing a significant and continued harm to amenity, time sensitive breaches or development that compromise safety.

Examples:

- a) Unsafe vehicular access;
- b) Unauthorised development where the time-limit for taking action will expire within the next 6 months;
- c) Noise from an unauthorised use disturbing a number of residential properties at anti-social times;
- d) Unauthorised buildings, uses or non-compliance with conditions which have the potential to cause serious long-term damage to the environment, which unless positive action is taken quickly are likely to become more acute; and
- e) New residential development in the countryside.

3. Standard Priority Cases – new structures or changes of use having limited degree of disturbance to local residents or damage to the environment and which do fall within the foregoing priority groups.

Examples:

- a) The unauthorised erection of an extension;
- b) small-scale domestic alterations, walls, gates, outbuildings, satellite dishes;
- c) Developments for which it is likely that planning permission would normally be granted;
- d) Minor deviations from approved plans; and
- e) Advertisements which are not compromising highway safety or visual harm.

5.12 Acknowledging an alleged breach

5.13 Once the case is logged on the database, a letter or email acknowledgement will be sent to the complainant within 3 working days of receipt of the complaint. The acknowledgement may ask for additional information and will include the case officer contact details to allow the complainant to contact the officer directly. In some cases the acknowledgement may also confirm that the works do not, or are unlikely to, require planning permission, or that they are acceptable and that formal enforcement action is unlikely to be expedient.

5.14 Resolving a breach of planning control

5.15 Every enforcement case is different and as such there are likely to be differences in the way that each case is investigated. Nonetheless, cases will normally follow the process outlined in Annex 2 of this plan.

5.16 Initial site inspection

5.17 Once the case has been logged and assigned a priority, an enforcement officer may need to visit the premises, if deemed necessary in order to help further establish the exact nature of the alleged breach. In instances where a site visit is needed, the officer will visit the site as soon as is practicable having regard to the priority of the case set out in the table below.

Priority	Visit target
Top priority cases	Within 1 working day
High priority cases	Within 5 working days
Standard priority cases	Within 10 working days

5.18 Power to enter land

5.19 Due to the nature of planning enforcement work, it may not be appropriate or possible to arrange the initial visit in advance. As such the investigating officer will not normally give advanced warning of a site visit. This may mean that access cannot be gained on the first attempt and consequently it may take longer than the initial site visit period to conduct an effective site visit. Denying access to the investigating officer is an offence and, although the officer will seek the co-operation of the owner/occupier of the premises through discussion or service of a Notice of Intended Entry (see Annex 4); the Council may seek a warrant to enter the land being investigated.

5.20 Establishing a breach of planning control

5.21 Although some breaches of planning control are immediately apparent upon the initial site visit, other breaches may be more difficult to identify and the investigation stage may take longer. An unauthorised material change of use and a breach of condition both become lawful, and therefore immune from enforcement action, after a continuous, uninterrupted period of ten years. An exception to this ten year rule applies to the unauthorised creation of a new residential unit which becomes immune from formal enforcement action after a continuous uninterrupted period of four years. Unauthorised operational development (e.g. building works) becomes lawful four years after it is substantially completed. Consequently, it may be necessary to conduct detailed investigations into the history of the site if the time periods involved are not initially clear. This may result in a case becoming re-prioritised.

5.22 The Localism Act which came into effect on the 6th April 2012, introduced a new enforcement power in relation to the time limits referred to in para. 5.21 above. The new powers allow Councils the possibility to take action against concealed breaches of planning control even after the usual time limit for taking action has expired. This new procedure allows Councils to pursue a Planning Enforcement Order (PEO) through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the "4 year rule" or the "10 year rule" which would normally provide immunity from enforcement action. The use of PEO's will depend on whether or not there are other remedies available to the Council to deal with a breach of planning control but also on whether or not any "concealment" was "deliberate".

5.23 Further to this, a change of use may be non-material, incidental, or ancillary which may not require planning permission. Certain changes of use and types of operational development may constitute 'permitted development' and therefore will not require planning permission. Within this context, establishing whether or not a breach of planning control has actually occurred may require detailed measurements and calculations and/or detailed information regarding the nature of the use of the premises. This can take time to conduct but the Council has a number of tools at its disposal to aid in obtaining the necessary information:

- The owner of the premises may be invited to submit an application for a Certificate of Lawful Development for works that have been completed or an existing use. The applicant of such an application must provide evidence to demonstrate that on the balance of probability the use or development is lawful.
- The Council may issue a Planning Contravention Notice (PCN) which requires those served to provide certain information in order to help establish a breach or not.
- The Council may issue notices under s330 of the Town and Country Planning Act 1990, as to the ownership and use of the premises.
- The Council may utilise their powers of entry.

5.24 Informal resolution

5.25 It is important to bear in mind that it is not an offence to carry out development without first obtaining planning permission (with the exception of activities outlined in paragraph 4.3 of this plan). The Planning Practice Guidance 'Ensuring Effective Enforcement' sets out why early engagement is important.

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

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

5.27 Ultimately, the purpose of the planning enforcement regime is to mitigate the harm to amenity or other interests (e.g. highway safety) that may result from unauthorised development. It would be unreasonable for the Council to issue an enforcement notice solely to remedy the absence of a valid planning permission. Where the Council does issue a notice for this reason, it would be at risk of an award against them for the appellant's costs in the event of an enforcement appeal. Consequently, where it appears that there is a reasonable prospect that planning permission would be granted for the development, the Council will encourage the party responsible for the development to submit a retrospective planning application.

5.28 When considering a retrospective application for the retention of the unauthorised development or use, the full planning considerations will be taken into account. Planning considerations are considered in the context of the public interest and not personal or private interest. Consequently planning permission not being sought

prior to the development being carried out will not influence the Council's decision making and each case will be determined on its own merits.

5.29 With these points in mind the Council will 'categorise' each case as follows:

Category 1 No breach of planning control - to improve efficiency it is essential to close these cases as quickly as possible. The target time for determining whether there has been a breach is a maximum of eight weeks from receipt of the complaint.

Category 2 Breach of planning control, but not expedient to take action - even where it does not intend to pursue enforcement action in relation to a breach, the Council may still invite the perpetrator to rectify matters or make an application to regularise the position. The file will be closed once the Council has made the invitation regardless of whether or not the perpetrator rectifies the breach or makes a planning application. This does not imply that subsequent breaches will not be investigated and action taken where appropriate.

Category 3 Breach of planning control, expedient to take action - arrangements for these cases should mirror those for Category 2 breaches, except that the case remains open after the perpetrator has been invited to make an application to regularise the breach. After allowing a three-week period for the submission of an application, the Council may take further action if a valid application has not been received or the breach has not been regularised. This could ultimately result in formal enforcement action occurring.

Category 4 Serious breach of planning rules, early action needed - in such cases the invitation to make a planning application is dispensed with because it is highly unlikely to receive approval, although if one is made the Council may hold action in abeyance whilst it processes and considers the application. Unless the perpetrator rectifies the breach, the Council will move quickly to formal enforcement action. In short, it will 'fast track' Category 4 cases.

5.30 Recommending a case for closure

- 5.31 Before closing a case the enforcement officer must justify the reasons for closure. If the recommendation to close the case is agreed, the case will be closed on the Council's database and the complainant updated setting out the reasons for the Council's decision.
- 5.32 Where there is a breach of planning control but it is not considered expedient to take enforcement action, the complainant will be informed of the Council's decision with a full explanation as to the reason for closure.
- 5.33 Where a decision is made to close a case, the Council will not write to the perpetrator to say that enforcement action will not be taken where the perpetrator is unaware that a complaint has been made. In instances where the perpetrator wishes to obtain a formal confirmation that the works are acceptable, they will be advised to apply for retrospective planning permission or a Certificate of Lawfulness for an existing use or works, depending on the circumstances of the case.
- 5.34 Further where investigations establish that works or a use are "permitted development", the owner/occupier can submit an application for a Certificate of Lawfulness, although it is important to note that this type of application is not a requirement but does provide formal confirmation from the Council that the

development described in the application is lawful and does not require planning permission.

5.35 Notifying complainants

5.36 Where an investigation has been resolved, the Council will inform the complainant of its intention to close the case, stating the reasons for doing so. This can be communicated by letter, email or by telephone, and the enforcement data base updated accordingly.

6. Formal Action

6.1 Taking formal action - serving notices

6.2 If informal negotiations fail or a retrospective planning application is refused, the Council will consider the expediency of taking formal action by serving a notice. The case officer will complete an enforcement report with a recommendation to take formal enforcement action, setting out the planning considerations and assessing the level of harm that is caused by the development. The action has to be agreed by various officers of the Council, and signed by the Council's Corporate Director under the Council's delegated procedures. The ward Member will be advised of the proposal to take formal action. Once a notice has been served, the ward Member and Parish Council will be sent a copy of the notice and will be kept informed at key stages throughout the investigation thereafter. Those residents most likely affected by a development will also be informed of any enforcement notice appeals so that they have the opportunity to make representations to the Planning Inspectorate.

6.3 A record of all notices are kept on an enforcement register and also recorded on the Land Charges Register. It should be noted that enforcement cases where no formal action has been taken (or yet to be taken) will not show up on land searches. The enforcement register is a public record and can be viewed on request.

6.4 Where enforcement notices are appealed against, the notice will be held in abeyance pending the outcome of the appeal. The appeals process is often a lengthy one and can take several months to resolve.

6.5 Prosecutions and Injunctions

6.6 Where there is a breach of the requirements of a notice, the party concerned is guilty of an offence and the Council can initiate prosecution proceedings. It may also be necessary to prosecute for offences such as unlawful advertisements, unlawful works to trees in a conservation area or the subject of a Tree Preservation Order, conservation area and listed building breaches and also for non compliance with Planning Contravention Notices, and s330 notices.

6.7 In initiating prosecution proceedings, the Council will have regard to the Crown Prosecution Service's tests of prosecution:

- i) Does the prosecution have a realistic prospect of success?
- ii) Is it in the public interest to prosecute?

In certain cases it may be appropriate to seek an Injunction. This may include situations such as multiple prosecutions that have not resulted in compliance with

the notice and ongoing destructive works to a listed building, or continued non compliance with a notice.

7. Working with other regulating authorities and external agencies

7.1 There is often overlap in the investigation of breaches of planning control between other regulating authorities and agencies e.g. the County Council, Environment Agency, the Police and other Council services. In all cases that potentially involve the other regulatory authorities or agencies, consultations and discussions will take place to see which body is in the better position to lead the investigation and, if necessary, take action.

7.2 Where an activity does not fall within the remit of the Council's planning enforcement team to investigate, the investigating officer will refer the issue to the relevant body and advise the complainant accordingly. Sometimes the responsibilities of two or more authorities may overlap and in these situations the Council will seek to work together with those other agencies. Where this is the case, a course of action will be determined and the complainant advised accordingly along with relevant contact details.

8. Disclosure of information

8.1 The Council will treat all complaints received in confidence. All personal information will be stored, handled and processed in accordance with the requirements of the Data Protection Act 1998.

8.2 The nature of planning enforcement work means that investigations may ultimately result in court proceedings. As such, it may sometimes be necessary to withhold certain information from both the complainants and the perpetrator. The Council will always endeavour to provide as much information as possible, however the extent of information disclosed will inevitably vary from case to case. The Council will have regard to the requirements of the Freedom of Information Act 2000 in providing disclosures.

9. Monitoring of conditions

9.1 As well as investigating alleged breaches of planning control the Council will as resources permit, undertake pro-active monitoring of planning conditions. This will be achieved by monitoring a random sample of approved applications to ensure that the works are being carried out in accordance with the attached conditions.

10. Verbal/physical abuse towards officers

10.1 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and where appropriate will use legal action to prevent abuse, harassment or assaults on officers.

Review

This plan will be reviewed whenever there is a significant change in legislation, national or local policy.

Contacts

Planning Enforcement contact details:

Development Management,
Planning Enforcement,
The Symington Building,
Adam and Eve Street,
Market Harborough,
Leicestershire,
LE16 7AG.
T: 01858 828282
E: planningenforcement@harborough.gov.uk
W. www.harborough.gov.uk/planning

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Annex 1: The Enforcement Concordat

This document sets out clear service and performance standards and performance the public can expect to receive based on the following principles:

Proportionality

Any action that is taken will relate to the seriousness of any breach.

Consistency

The Council will adopt a consistent approach to dealing with breaches of planning control by adhering to this document. National and regional best practice will be followed through research, and communication with other authorities. The Council will share information with other regulatory bodies, subject to data protection legislation and confidentiality. The Council will ensure that planning enforcement is delivered in a fair, consistent and equitable fashion.

Transparency

The Council will make every effort to help people understand what the law requires of them and make clear what needs to be done, and not done, to achieve compliance. The Council will also make clear what people should do if they are not happy about any action taken or a decision not to take action.

Targeting

Enforcement efforts will be directed against those whose activities pose the most serious risks or create the most damage to the public interest and those who have a history of non-compliance.

Openness:

The planning enforcement service will provide information in plain language and disseminate the information as widely as possible. Planning enforcement advice will be clear, confirmed in writing and clearly distinguish between legal requirements and best practice. Progress updates on planning enforcement will be reported to the Council's Planning Committee on a three monthly basis.

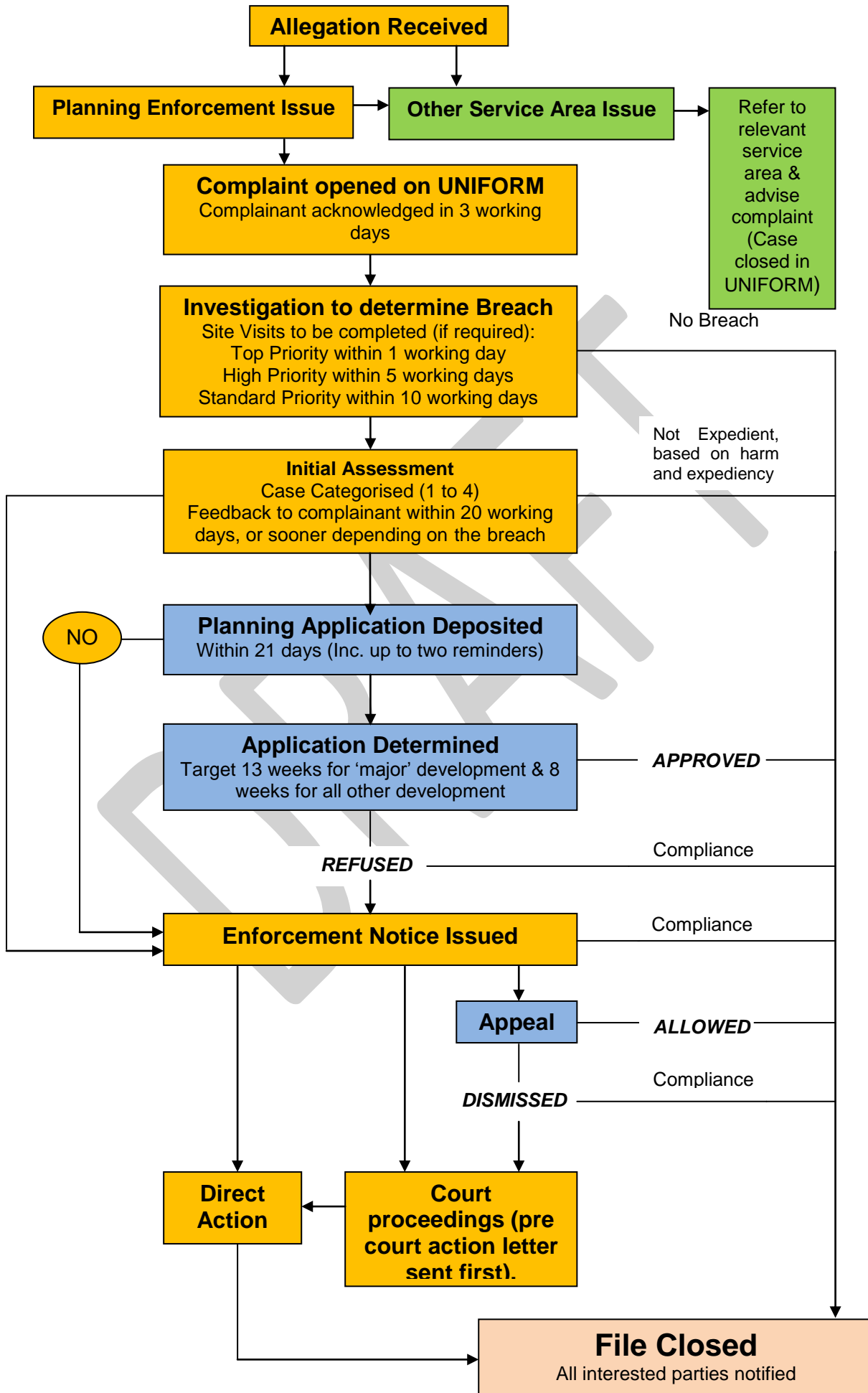
Helpfulness

Complainants and Councillors will be kept informed of progress with investigations and actions taken. All communications will be responded to as promptly as possible and officer contact details provided.

Procedures:

The procedures for carrying out the planning enforcement function are set out in this document.

Annex 2: The Enforcement Process



Annex 3: GLOSSARY OF ENFORCEMENT TERMINOLOGY (in alphabetical order)

A

Amenity

The word Amenity is not defined in legislation but in planning terms it is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as:

- Types of land uses
- Quality of buildings
- Juxtaposition of buildings
- The provision of open land or trees; and
- The inter-relationship between all the different elements in the environment. For example, an area with well-maintained houses that give occupants space and privacy would be said to have better amenity than houses that are overlooked by their neighbours or are located next to a noisy factory

Specifically residential amenity may take into consideration privacy – whether there is overlooking over and above that which already exists, any overbearing impact, or overshadowing or loss of light.

There is no right in planning law to a particular view and the Council cannot take into consideration loss of monetary value of a property.

Authorised Development

Development, including the use of land that has the necessary planning permission to take place. Planning conditions will be attached to the permission to control the development

B

Breach of Planning Control

Development that is not in compliance with the terms of a planning permission or development that is unauthorised (for example, it does not have planning permission)

C

Certificate of Lawfulness of Existing Use or Development

Under planning law, landowners can apply for a Certificate that confirms that the use of the land or development established on the site, is lawful; for example, because it has been there for a long time. For uses it is 10 years with the exception of residential which is 4 years. For works (operational development) it is 4 years

Complainant

The person reporting a potential breach of planning control.

Compliance

Development should accord (that is, be in compliance) with the terms of the planning conditions attached to the necessary planning permission. With regard to compliance following the service of a Notice, it will be the specified time given following on from when the notice takes effect.

E

Enforcement Action

Must only be taken when the breach of planning control is unacceptable on planning grounds and it is in the public interest to take action. The precise form of any action taken against a breach of planning control is within the discretion of the District Council, and can be subject to Judicial Review. Informal action is preferable and involves resolution through negotiation and may lead to a retrospective planning application to 'regularise' the activity. Formal action, which must be appropriate and proportionate, involves the use of a range of enforcement 'tools'(see Annex 4),including breach of condition notices, enforcement notices, temporary stop notices, stop notices, injunctions, and direct action.

Enforcement Investigation

Process of gathering evidence to determine whether a breach of planning control has taken place or is taking place. It involves the use of a range of tools including statutory power to enter land, planning contravention notices, and requisition notices (see Annex 4)

Expedient/Not Expedient

It must be remembered that the Council does not have to take enforcement action even if there is a breach of planning control. Enforcement action is Discretionary.

In deciding whether or not to take enforcement action the Council will:

- Balance the seriousness of the breach of planning control
- Balance the level of Harm that it causes
- Consider the likely chances of success in pursuing enforcement action against the seriousness of other enforcement complaints and the available resources

Having weighed up these factors the Council will make a decision as to whether it will take action i.e. whether it is Expedient to take action

H

Harm

Factors that contribute to an assessment of planning Harm include:

- Visual impact, change in character, ecology
- Privacy, overbearing, sunlight/daylight, noise/harm (NB latter may also be actioned under the Environmental Protection Act)
- Increase in traffic/safety
- Undesirable precedent
- The cumulative effect on an area of the planning breach.

O

Over-enforcement

Where the enforcement action taken is disproportionate to the harm caused. Maladministration could arise in such cases

P

Permitted development (PD)

Under planning law, some development is 'permitted' and does not require planning permission from the relevant local planning authority. Reference will be made to the General Permitted Development Order (GPDO) which sets out those areas where PD rights exist subject to conditions

Planning Conditions

Detailed clauses attached to a planning permission that specify what is permitted and what is not permitted through the granting of the permission. Used to control, for example, the impact of the development on the environment and on local amenity.

R

Retrospective Planning Application

A planning application that is submitted for approval after the development has commenced or taken place. It may be used to 'regularise' unauthorised development that has come to light following an investigation. A retrospective application may be encouraged by the District Council where the application is likely to be approved with conditions in order to avoid the need for formal enforcement action.

U

Unauthorised Development

Development, including the use of land that does not have the necessary planning permission to take place, or is not considered to fall under Permitted Development.

Under-enforcement

Where the Council decide that formal action is not required to remedy the whole of the breach of planning control, this is known as "under enforcement".

Annex 4: Types of Enforcement Action – The Tools

Enforcement Action

The Town and Country Planning Act 1990 (as amended) defines taking formal "enforcement action" as the issue of an enforcement notice or the service of a breach of conditions notice. Failure to comply with either constitutes an offence. There are also a number of supplementary powers granted to the Council as Local Planning Authority (LPA) that allow other types of notice to be served. Failure to comply with these notices is also an offence.

1. Enforcement Notices

If it is expedient to do so, an enforcement notice may be served where the LPA believes there has been a breach of planning control involving an unauthorised material change of use, operational development or breach of a condition. The enforcement notice will state the reasons for action being taken and specify the steps which the LPA require to be taken in order to remedy the breach. There is a right of appeal by recipients of the notice to The Planning Inspectorate against an enforcement notice.

2. Breach of Condition Notices (BCN)

A BCN may be served where a condition attached to a planning permission is not being complied with. The BCN will specify the steps which the LPA require to be taken in order to secure compliance with the condition as is specified in the notice. There is no right of appeal against a BCN to the Planning Inspectorate; however recipients of such notices can appeal in the magistrate's court.

3. Stop Notices

In certain cases, a stop notice can be served in order to cease an unauthorised activity on the land. A stop notice can only be served at the same time as, or after, the service of an enforcement notice. There is no right of appeal against a stop notice, only the enforcement notice to which it is attached. The LPA will be at risk of compensation if it is used in inappropriate cases.

4. Temporary Stop Notices (TSN)

In certain cases, a TSN can be served before an enforcement notice has been served in order to cease an unauthorised activity (a use and/or a building operation) on the land. These notices remain in effect only for a maximum of 28 days.

5. Section 215 Notices

Where the condition of land is adversely affecting the amenity of the area, the LPA may serve a notice under s215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land. The s215 Notice will specify the steps that the LPA require to be taken in order to remedy the condition of the land. There is a right of appeal in the Magistrates' Court against a s215 Notice.

6. Tree Replacement Notices

Where a protected tree is removed, uprooted, or destroyed without prior consent, the LPA can serve a tree replacement notice requiring, within a specified period, the replanting of a tree of a specified size and species. There is a right of appeal against a Tree Replacement Notice.

7. A Planning Enforcement Order

This is a new provision introduced in the Localism Act 2011 which came into force in England and Wales on the 6 April 2012. This measure is used where a breach of planning control has been concealed, and where the LPA can show 'deliberate concealment' of a breach of planning control, the LPA may apply to the Magistrates Court for a planning enforcement order (PEO)

8. Planning Contravention Notices (PCN)

Where it appears as though there may have been a breach of planning control in respect of any land, the LPA may serve a PCN requiring information about activities on land. There is no right of appeal against a PCN and failure to respond is an offence.

9. Section 330 Notices (Requisition Notice)

An investigation tool that requires the person on whom it is served, to provide details about land-use/ownership, and may be the precursor to the issue of a formal notice. It also warns the recipient that enforcement action is being considered, and is often enough to satisfactorily resolve the breach of control, the latter is also applicable to the service of a PCN.

10. Discontinuance Notices

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the LPA to serve a discontinuance notice against any advertisement, or the use of any advertisement site, which normally has the benefit of deemed or express consent. There is a right of appeal against a discontinuance notice.

11. Notice of Intention to Inspect

This notice is formal confirmation of the LPA's intention to enter land without a warrant. If entry to the land (or any part of it) is refused, that person obstructing the officers will be committing an offence and the LPA will obtain a warrant to gain entry. There is no right of appeal against a notice of intended entry.

12. Removal Notice

This notice under section 225A of the 1990 Act, introduced by the Localism Act, gives all LPAs the ability to remove and then destroy any unauthorised 'display structure' used for the display of advertisements in their area, and reclaim the costs of doing so.

'Display structure' is defined by s.225A as:

- a hoarding or similar structure used, or designed or adapted for use, for the display of advertisements;
- anything (other than a hoarding or similar structure) principally used, or designed or adapted principally for use, for the display of advertisements;
- a structure that is itself an advertisement; or
- any of the fittings used to support the display

13. Action Notice

This notice was introduced by the Localism Act under section 225C of the 1990 Act, and gives power to all LPAs to serve an 'Action Notice' where they have reason to believe that there is a persistent problem with the display of unauthorised advertisements on a surface of: any building, wall, fence or other structure or erection; or any apparatus or plant in their area, setting out the reasonable steps required to be taken not less than the end of 28 days from the date of the notice for the removal of the advertisements.

If the Action Notice is not complied with, the LPA can take these actions itself and recover the costs (save where the surface is a surface of a dwelling house).

14. Prosecution

The Council will consider commencing prosecution in the Courts against any person who has failed to comply with the requirement(s) 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 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 listed buildings, 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 time period or supplied false or misleading information.

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

15. Injunction

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 consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing or likely to cause exceptional harm.

16. 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 (Untidy Land) notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Section 178 and 219 of the Town and Country Planning Act 1990 (as amended) to: (a) enter the land and take the steps; and (b) recover from the person who is then the owner of the land any expenses reasonably incur

Annex 5: Planning Enforcement Service Standards

PLANNING ENFORCEMENT SERVICE STANDARDS*	STANDARD TARGET
Cases responded to within target dates: Top priority cases Within 1 working day High priority cases Within 5 working days Standard priority cases Within 10 working days	90%
Planning Enforcement Cases closed within 8 weeks of registration where no formal action is deemed necessary or appropriate.	80%
Serve Enforcement Notice within 28 days of instruction	100%
Complainants updated on progress of planning enforcement investigations within 20 days of receipt of complaint	90%

* NB – all of the time periods identified are working days.