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# Planning Services

## Local Enforcement Plan

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INVESTORS  
IN PEOPLE | Bronze

**Guildford Borough Council**  
Millmead House, Millmead, Guildford, Surrey GU2 4BB

## Table of Contents

1. Introduction.....	3
2. Breaches of planning control .....	5
3. Investigation of suspected breaches of planning control.....	8
4. Taking formal enforcement action.....	13
5. Special controls .....	19
6. Other powers .....	21
7. Communication.....	22
8. Legislation/Guidance .....	23

# 1. Introduction

## Our vision for planning enforcement

- 1.1 The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to community confidence in the planning system. It is important that the interests of residents, visitors and businesses are protected from the harmful effects of unauthorised development, in addition to protecting the local environment
- 1.2 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches, where it is appropriate to do so. We view breaches of planning control very seriously. It is our policy to exercise powers appropriately and rigorously so that development takes place in accordance with the appropriate legislation or the planning conditions and limitations imposed on any planning permission.
- 1.3 The integrity of the development control process depends on the Council's readiness to take effective enforcement action when it is justifiable. The community's confidence of the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to intervene.
- 1.4 However, the planning enforcement system does not exist to simply punish those responsible for a breach of planning control. It is an important principle of the planning system that the use of formal planning enforcement action is a discretionary power and the Council should act proportionately in responding to suspected breaches of planning control.
- 1.5 The purpose of this document is to set out the Council's specific plan for the enforcement of planning control. This policy will ensure that councillors and officers, external agencies and the community are aware of our general approach to planning enforcement.

## Principles of Good Enforcement

### Proportionality

- 1.6 Officers will consider the full range of powers when conducting investigations (this includes appropriate negotiations and retrospective planning applications) and, where appropriate, take immediate action.
- 1.7 We will minimise the costs of compliance by ensuring that any action we take is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering the expediency of action.
- 1.8 We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- 1.9 When it is in the public interest to do so, we will prosecute individuals or organisations who do not comply with any formal notice served on them. When it is appropriate, we will take direct action, having regard to degree of harm and public safety.

#### Consistency

- 1.10 We will carry out our duties in a fair, equitable and consistent manner. Staff are expected to exercise judgement in individual cases, but there will be a consistent approach to enforcement action against breaches of similar nature and circumstances.

#### Standards

- 1.11 We will draw up clear standards, setting out the level of service and performance that customers can expect to receive. We will review performance regularly.
- 1.12 The Enforcement Plan will be subject to review at least every three years, but the plan may be reviewed on a more regular basis if circumstances dictate. The standards will be available on our web site.

#### Openness

- 1.13 Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible.
- 1.14 We will discuss general issues, specific compliance failures or other problems with anyone with an interest in our service, subject to it not being covered by privacy and protection policies.

#### Helpfulness

- 1.15 We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance.
- 1.16 Officers will provide a courteous, prompt and efficient service and letters will provide a contact point and telephone number for customers to contact when seeking advice and information.
- 1.17 We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 1.18 Officers will not tolerate abusive language or behaviour either in person or in correspondence.

#### Complaints about the service

- 1.19 We will provide a well-publicised, effective and timely complaints procedure that is easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## 2. Breaches of planning control

### Legislative background

2.1 The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990 (as amended).

2.2 The Town and Country Planning Act (as amended) sets out that planning permission is required for development. Section 55 defines 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.”

2.3 A breach of planning control is defined at Section 171A as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.

### What is a breach of planning control?

2.4 The majority of planning enforcement investigations therefore involve one of the following alleged breaches:

- development (either operational development, such as building a structure, or a material change in use of land) has taken place without planning permission;
- development has not been carried out in accordance with an approved planning permission; or
- failure to comply with a condition or legal agreement attached to a planning permission.

2.5 Other matters which also fall under the scope of planning control are:

- works being carried out to a listed building which affect the historic character or setting, without listed building consent being granted;
- removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given;
- the display of advertisements, which require consent under the advertisement regulations and that consent has not been gained;
- failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory planning notice

2.6 The basic principle of planning law is that it is **not an offence to carry out works without planning permission**. Whilst such development is unauthorised, councils must consider the expediency of taking formal action. This is important to remember as members of the public often refer to illegal development or works. This is incorrect - development may well be unauthorised but it will not be illegal unless a statutory notice has first been issued and the owner or occupier has failed to comply.

## **What is not a breach of planning control?**

2.7 We often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what the planning enforcement service cannot become involved in:

- neighbour nuisance, boundary and land ownership disputes – these are civil matters that the Council can not get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau;
- use of/or development on the highway, footway or verge that is covered by highway legislation – please contact Surrey County Council on 03456 009 009;
- dangerous structures – please contact our Building Control section on 01483 444545;
- fly tipping;
- any matter covered by other substantive legislation such as noise and smell

## **Priorities**

2.8 To make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. This is not an exhaustive list.

### High priority

- Demolition or alterations to a listed building;
- Works to trees subject to a tree preservation order or within a conservation area;
- Demolition in a conservation area and any other works which are considered to cause significant and immediate harm to the character and appearance of the area;
- Any breach of planning control causing immediate and irreparable harm to the environment or public safety;
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months.

### Medium priority

- Development causing serious harm to the amenities of neighbours or to the environment;
- Unsightly buildings or untidy land that are causing serious harm to the amenity of neighbours;
- Development not in accordance with the approved plans, during the construction process.

### Low priority

- Any other allegations which have not been classified as high or medium priority, including:
  - Advertisements;
  - Businesses being operated from home;
  - Fences;
  - Satellite dishes;
  - Untidy land;
  - High hedge complaints.

2.9 Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

### **3. Investigation of suspected breaches of planning control**

#### **Receipt of complaint**

- 3.1 To start a planning enforcement investigation, complaints should be made by completing the standard form on our web site: <http://www.guildford.gov.uk/planningenforcement>.
- 3.2 We will only accept telephone complaints about high priority cases. These calls should be logged through our Customer Contact Centre on (01483) 50 50 50.
- 3.3 It is important we have the following information or no further action will be taken:
- name and contact details of complainant (address, telephone number and email address);
  - full address of the alleged breach of planning control, with a plan if the complaint relates to a piece of land rather than a building with an address;
  - nature of the breach;
  - details of the harm being caused by the breach.
- 3.4 All enforcement complaints are logged onto our computer system with a unique reference number so that each complaint can be monitored and the complainant updated on progress.
- 3.5 Anonymous reports of suspected breaches of planning control will not be pursued unless other evidence suggests that the breach is causing serious harm to the environment or the amenities of residents.
- 3.6 Confidentiality of a complaint's identity will be safeguarded unless it is necessary for the complainant to give evidence at an appeal.
- 3.7 We will endeavour to acknowledge your complaint within 3 working days of receipt. However, we have a committed target to meet this timescale in 80 percent of cases.

#### **Site visit**

- 3.8 A site visit will normally be required to establish whether or not a breach of planning control has occurred.
- 3.9 The initial site visit (where necessary) will be conducted within the following timescales. There will be exceptions to this, particularly in very urgent matters.
- High priority cases – within two working days;
  - Medium priority cases – within ten working days;
  - Low priority cases – within fifteen working days.
- 3.10 We will aim to meet these timescales in all cases investigated to ensure cases progress without undue delay from the outset. However, we have a committed target to meet these timescales in 80 percent of cases.

- 3.11 These targets allow officers to carry out the required level of research before visiting a site. If carrying out the initial site visit within these timeframes is problematic on a specific case the officer will notify the complainant.

### **Further investigation post site visit**

- 3.12 On completion of the initial site visit, the findings will be assessed and a view taken as to how the investigation will proceed. Each case will be judged on its own merits.

- 3.13 There are cases where the initial site visit does not provide sufficient evidence to prove whether a breach of planning control has taken place. Examples of these can include:

- businesses operated from home and whether this constitutes a material change of use. This will often depend on the level of intensity and this may not be immediately apparent from the initial site visit;
- alleged breaches of working hours conditions. If the operator denies the activity, further investigation will be required;
- building works are taking place but the owner claims it is to repair a previously existing structure. The officer will need to establish what, if anything, previously existed.

- 3.14 In these cases the person reporting the suspected breach of control will be notified **within 10 working days of the initial site visit** that further investigation is required. Further investigation may involve additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control, or the persons responsible for the land or building.

- 3.15 In some cases, we may ask the person reporting the suspected breach for further details. If the person reporting the suspected breach of planning control is unwilling to assist, this may result in the Council not being able to pursue the investigation due to insufficient evidence.

- 3.16 The Council can formally request information to assist with our investigations. Section 171C of the Town and Country Planning Act (as amended) provides the power to issue a Planning Contravention Notice (PCN). This can be served where a suspected breach of planning control is believed to exist. It can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Therefore, it may be several weeks until the appropriate evidence can be collected. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine of £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.

- 3.17 Under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 the Council can require the recipient of a requisition for information notice to supply in writing details of their interest in a property and provide details of anyone else having an interest in the property. A reply must be supplied within

14 days. A person who fails to comply with the requirements of a notice or makes a false statement in a reply is guilty of an offence punishable by a fine of up to £5,000.

- 3.18 Under section 330 of the Town and Country Planning Act 1990 the Council can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure to return the form or to provide a misstatement is an offence punishable by a fine up to £1,000.
- 3.19 If we conclude that another public authority is better placed to handle the issue, for example, Surrey County Council in relation to highway issues, we will refer the complaint to the relevant authority.

### **If no breach of planning control is established**

- 3.20 A significant number of investigations are closed as no breach of planning control can be established. This can occur for a number of reasons, for example:
- there is no evidence of the allegation;
  - the works do not require planning permission;
  - development has taken place but express planning permission is not required, as it benefits from planning permission granted under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and is therefore permitted development;
  - the development already benefits from planning permission granted by the Council;
- 3.21 Where this is the case the person reporting the suspected breach of control will be notified either verbally or in writing **within 10 working days of the initial site visit** that no further action will be taken. The complainant will be provided with an explanation of our reason(s).

### **Where there is a breach of planning control**

- 3.22 Where a breach of planning control has been identified, the Planning Enforcement Officer, in conjunction with the Principal Planning Enforcement Officer, will decide on the appropriate next steps. This will include a consideration of whether it is expedient to take further action. Taking formal enforcement action is only one option open to the Council. Most planning enforcement investigations will involve one of the following courses of action:

#### Breach of planning control identified: retrospective planning application invited

- 3.23 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development on a non-prejudicial basis.
- 3.24 Section 73A of the Town and Country Planning Act (as amended) sets out the provisions for dealing with retrospective applications. In determining

retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. We receive between 130 and 160 retrospective applications per year out of approximately 2500 applications. This demonstrates the important role retrospective applications play in resolving breaches.

3.25 Generally, we will not seek a retrospective planning application if we feel the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. An example is where a development is in the early stages of construction. In these cases an application may be necessary to obtain full details of the intended development. Once this information is received it would allow for a full assessment of the planning merits.

3.26 The Localism Act 2011 introduced an additional power to the Council in respect of retrospective planning applications where an enforcement notice has already been issued. Section 70C to the Town and Country Planning Act (as amended) now specifies:

'a local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.'

3.27 We will use these powers, where appropriate, to prevent delays in cases where enforcement action is being taken. However, we will also have regard to each specific case and consider whether granting permission for part of the development would result in an acceptable resolution.

#### Breach of planning control identified: negotiation

3.28 Where it is considered that the breach of planning control is unacceptable, officers will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm to amenity. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development.

3.29 In carrying out negotiations officers will have regard to the specific circumstances of the individual case. For example, where there is an unauthorised business activity, officers will consider whether relocation is possible and if so will seek to put a reasonable timescale in place that reflects the individual circumstances of that business.

3.30 Where we are unable to negotiate an acceptable solution within a reasonable timescale, formal action will be considered to prevent a protracted process. We will also consider using temporary stop notices (TSNs) to prevent the breach becoming more severe.

Breach of planning control identified: not expedient to take action

- 3.31 Where a breach of planning control is established, the first step is to consider whether it would be expedient to take formal enforcement action. Expediency is a test of whether the unauthorised activities are causing serious harm, having regard to the Development Plan policies and other material planning considerations, to justify further action. The Planning Enforcement Officer investigating the case will consider this in conjunction with the Principal Planning Enforcement Officer.
- 3.32 There are some cases where it would not be expedient for the Council to take enforcement action for example:
- there may be cases where development requires planning permission, but it is clear that retrospective planning permission or a certificate of lawfulness is likely to be granted; or
  - there may be a technical breach of planning control but that breach is so minor that it has no or very little impact on amenity, for example a domestic television aerial or the construction of a fence which is slightly higher than allowed under permitted development regulations.
- 3.33 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought.
- 3.34 Any action should also be proportionate to the breach. It would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without permission. The expediency test for taking action would not be met in these cases.
- 3.35 In such circumstances the Council will seek to persuade an owner or occupier to seek permission. However, it is generally regarded as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control and it is not proportionate to take action.
- 3.36 Where this is considered to be the case, the officer will produce a report setting out the reasons why it is not expedient to take action. Where officers conclude that it is not expedient to take action the case will be closed in accordance with the scheme of delegated powers as set out in the Council's Constitution. If the case in question has been designated as high or medium priority then the relevant ward councillor(s) will be consulted and given seven days' notice of the decision.

Breach of planning control identified: formal enforcement action is justified

- 3.37 It is open to the Council to take formal action, where it is expedient to do so. The decision on what enforcement action should be taken will depend on the individual circumstances of the case and will be a decision taken by the Planning Enforcement Officer alongside the Principal Planning Enforcement Officer. The powers available to the Council are summarised in Sections 4 to 6.

## 4. Taking formal enforcement action

- 4.1 Once the decision to take formal action has been made, we will consider the full range of powers available to ensure the most proportionate and expedient resolution. The tools available to us are summarised below. The use of these can vary depending on the nature of the breach and the level of harm caused.

### **Powers available**

#### Enforcement notice

- 4.2 Section 172 of The Town and Country Planning Act (as amended) allows the service of an enforcement notice where it is expedient to do so and one of the following has occurred: unauthorised operational development, material change of use or breach of condition
- 4.3 We are required to serve enforcement notices on the owner, occupier and any other person with an interest in the land which is materially affected by the notice.
- 4.4 An enforcement notice shall specify the steps which we require to be taken, or the activities which we require to cease, in order to achieve, wholly or partly, any of the following purposes:
- remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - remedying any injury to amenity which has been caused by the breach.
- 4.5 The notice will specify time periods for compliance from the date on which the notice comes into effect. A notice comes into effect after a minimum period of 28 days following service. There is a statutory right of appeal against the notice during this period to the Planning Inspectorate. Once the Planning Inspectorate has received a valid appeal, the enforcement notice has no effect until the appeal has been determined.
- 4.6 There are seven grounds of appeal against an enforcement notice. Any appeal may include one or all of these grounds:
- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
  - (b) that those matters have not occurred;
  - (c) that those matters (if they occurred) do not constitute a breach of planning control;
  - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - (e) that copies of the enforcement notice were not served as required by section 172;

- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

4.7 Given these rights of appeal it is important that all relevant matters are taken into account before serving an enforcement notice. This includes being clear in respect of: the specific breach of planning control; the steps required to remedy the breach; and the time required for compliance. An enforcement report will be produced by officers to consider all the issues. Costs can be awarded against parties who have acted unreasonably.

4.8 All enforcement notices are placed on the Council's enforcement register which is available to view on the Council's website:

<http://www.guildford.gov.uk/article/10489/Enforcement-Register---Planning>

#### Breach of condition notice (BCN)

4.9 Section 187A of the Town and Country Planning Act (as amended) provides the power to serve a Breach of Condition Notice (BCN) where a planning condition has not been complied with, or a deemed planning permission has been exceeded. 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. The period for compliance is a minimum of 28 days from the date the notice was served.

4.10 There is no appeal to the Secretary of State against a BCN and therefore it can offer a more expedient course of action than issuing an enforcement notice.

4.11 The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The BCN is ideal for matters where the steps to be taken are relatively simple and can be readily achieved.

#### Stop notice

4.12 Section 183 of the Town and Country Planning Act (as amended) provides for the service of a stop notice. A stop notice must be served at the same time or after the service of an enforcement notice. We will consider serving a stop notice where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the compliance period on the related enforcement notice.

4.13 The stop notice must refer to the enforcement notice, specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notice is an offence. The maximum fine on summary conviction is £20,000.

4.14 The Council must consider the use of stop notices carefully as they carry significant statutory compensation provisions.

#### Temporary stop notice (TSN)

- 4.15 Section 171E of the Town and Country Planning Act (as amended) provides councils with the power to serve a TSN. A TSN can be issued without the need to issue an enforcement notice and is designed to halt breaches of planning control for a period of up to 28 days.
- 4.16 Whilst TSNs also carry some compensation provisions these are significantly lower than with a stop notice and therefore the risk to the Council is reduced.
- 4.17 All stop notices are placed on the Council's enforcement register.

#### Section 215 notice

- 4.18 In cases where the amenity of an area is adversely affected by the condition of land or buildings, we will consider serving a notice under Section 215 of the Town and Country Planning Act (as amended). 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 it takes effect.
- 4.19 A section 215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.

#### Injunction

- 4.20 It is open to the Council to apply to the Court for an injunction under section 187B of the Town and Country Planning Act (as amended). An injunction can be applied for where there is clear evidence that a breach of planning control has happened or there is clear evidence that it is anticipated. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing or likely to cause exceptional harm.
- 4.21 It is open to the Council to grant an injunction against a person whose identity is unknown.

#### Listed Building Enforcement Notice

- 4.22 If the breach of planning control relates to a listed building, we will consider the expediency of serving a listed building enforcement notice and where appropriate, commence a prosecution in the Courts. The listed building 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.
- 4.23 There are no time limits for issuing listed building enforcement notices, although the length of time that has elapsed since the apparent breach is a relevant consideration when considering whether it is expedient to issue the notice.
- 4.24 There are eleven grounds of appeal against a listed building enforcement notice. Any appeal may include one or all of these grounds:
  - (a) that the building is not of special architectural or historic interest;

- (b) that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 38(4);
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
- (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

4.25 As noted above in relation to standard enforcement notices, the Council has to be mindful of these rights of appeal before serving a listed building enforcement notice and the officer will produce a report to consider all issues.

4.26 All enforcement notices are placed on the Council's enforcement register which is available to view on the Council's website:

<http://www.guildford.gov.uk/article/10489/Enforcement-Register---Planning>

4.27 Unauthorised works to a Listed Building is also an offence in its own right. We will consider whether it would be expedient to prosecute for these works rather than issuing a notice on a case by case basis.

### **Time limits for taking formal action**

4.28 Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, for example extensions to dwellings, new buildings and laying hardstanding; or the change of use of any building to a single dwellinghouse. Other unauthorised changes of use and breaches of conditions are subject to a ten year time limit.

4.29 After these periods the Council cannot take action and the development becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period to regularise the situation. This

involves providing evidence that proves, on the balance of probability, that the breach of planning control has occurred for the relevant time period.

- 4.30 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.
- 4.31 The Localism Act introduced a new enforcement power in relation to time limits. This allows councils the possibility to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired (see above).
- 4.32 The Council can, within six months of a breach coming to their attention, apply to the Magistrate's court for a planning enforcement order. A planning enforcement order would give the Council one "enforcement year" to take action. An "enforcement year" does not begin until the end of 22 days, starting with the day on which the court's decision to make the order is given, or where any appeal against the order has been finally dismissed. In agreeing to a planning enforcement order, the court needs to be satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons. In other words:
- Deliberate concealment of only part of the breach is sufficient to render it all open to enforcement;
  - the deliberate concealment could be to an almost negligible extent;
  - the concealment may be by anyone – it could have been by a past owner, it could even have been by a third party.

### **Failure to comply with formal notices**

- 4.33 Where a notice has been served and has not been complied with, there are three main options available to the Council to attempt to resolve the breach.

#### Prosecution

- 4.34 We will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following notices where the date for compliance has passed and the requirements have not been complied with:
- enforcement notice;
  - listed building enforcement notice;
  - planning contravention notice;
  - breach of condition notice;
  - section 215 notice;
  - stop notice.
- 4.35 Before commencing any legal proceedings we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

#### Direct action

4.36 Where any steps required by an enforcement notice or section 215 notice have not been taken within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers under section 178 and section 219 of the Town and Country Planning Act (as amended) respectively to:

- enter the land and take the steps to remedy the harm; and
- recover from the person who is then the owner of the land
- any expenses reasonably incurred by them in doing so.

#### Injunction

4.37 Where an enforcement notice has not been complied with, and the special circumstances of the case suggest direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an injunction under section 187B of the Town and Country Planning Act (as amended).

## 5. Special controls

### Advertisements

- 5.1 Unlike most spheres of planning control the display of advertisements without consent is an offence. Therefore, we have the power to initiate prosecutions without the need to issue a notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken without further correspondence.
- 5.2 Section 225 of the Town and Country Planning Act (as amended) provides powers to remove or obliterate posters and placards. We will consider using these powers as appropriate as an alternative or in conjunction with prosecution action.
- 5.3 The Localism Act introduced the following provisions in respect of dealing with advertisements: Removal Notices, Action Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court.

#### Removal notices

- 5.4 This provides the power to seek removal of any structure used to display an advertisement. Where the notice is not complied with we may undertake the works in default and recover the expenses for doing so.

#### Action notices

- 5.5 Where there is a persistent problem with unauthorised advertisements an action notice can be issued specifying measures to prevent or reduce the frequency of the display of advertisements on the surface. Again where the notice is not complied with we may undertake the works in default and recover the expenses for doing so.

#### Power to remedy defacement of premises

- 5.6 Where a sign has been placed on a surface that is readily visible from somewhere the public have access, and is considered by us to be detrimental to the amenity of the area or offensive, a notice may be issued requiring the removal or obliteration of the sign. As with the above provisions failure to comply with the notice will allow us to undertake the works in default and recover costs (costs cannot be recovered where the sign is on a flat or house or within the curtilage of a house).

### Trees

- 5.7 The Town and Country Planning Act 1990 (as amended) requires appropriate consent to be gained for works to trees which are protected by a Tree Preservation Order (TPO) or within a Conservation Area. An offence will be committed should these works be conducted without following the relevant procedures. Therefore, as with unauthorised advertisements, a prosecution can

be sought without the requirement to issue a notice. However, such action would not remedy the harm caused.

- 5.8 It is open to the Council to issue replacement notices, requiring trees to be replanted. Section 207 of the Town and Country Planning Act (as amended) provides this power in relation to trees covered by a TPO. Section 211 provides this power in relation to trees within a Conservation Area.

## **6. Other powers**

### **High hedges**

- 6.1 From the 1 June 2005, councils have the power, under Part 8 of the Anti Social Behaviour Act 2003, to adjudicate on disputes over high hedges. The Council does charge for this service.
- 6.2 Further information about this process can be obtained from the Government's publication "High Hedges: complaining to the council" which can be accessed from the Gov.uk website, or alternatively through the link on our planning enforcement website.

### **Entry onto land**

- 6.3 Under the provisions of Section 196A the Town and Country Planning Act (as amended) officers have the right of entry onto land and buildings land when pursuing effective planning control for the following purposes:
- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
  - (b) to determine whether any of the powers conferred on a local planning authority should be exercised in relation to the land or any other land;
  - (c) to determine how any such power should be exercised in relation to the land or any other land;
  - (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land;
- 6.4 Officers also have a right of entry to determine whether an enforcement notice should be issued on that or any other land.
- 6.5 Twenty four hours' notice must be given for access to a residential property.
- 6.6 If access is denied, or the matter is urgent, a warrant can be applied for from the Magistrates Court. Officers will exercise these powers where appropriate, particularly where their use is essential to the collection of evidence relating to an alleged breach of planning control. An obstruction of these powers is an offence which is subject to prosecution.

## 7. Communication

7.1 We recognise the importance of keeping individuals up to date with our progress. Some investigations can take longer than others, but we will endeavour to contact you at key stages in our investigation:

- We will acknowledge your complaint within three working days.
- We will update you on our progress within 10 working days of the site visit. The update will depend on the individual circumstances of the case. If we are not able to visit the site within the agreed timescales, we will let you know.
- We will update you at key milestones thereafter e.g. you will be advised if a planning application is invited; when a planning application is received; when the Council issues a notice etc.
- We will update you when we close the file in which you have an interest.

7.2 Whilst we will aim to meet these guidelines on all cases, we have a committed target to meet these timescales in 80 percent of cases.

## 8. Legislation/Guidance

8.1 The following list sets out the main legislation and guidance, which is considered directly relevant to planning enforcement. This is not intended to be an exhaustive list.

- Town and Country Planning Act 1990 (as amended) – this is the primary legislation relating to planning, which has been amended by subsequent legislation
- Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) – this is the primary legislation relating to listed buildings and conservation areas, which has been amended by subsequent legislation
- Police and Criminal Evidence Act 1984 (as amended)
- Regulation of Investigatory Powers Act 2000 (as amended)
- The Hedgerow Regulations 1997
- The Town and Country Planning (General Permitted Development) (England) Order 2015
- The Town and Country Planning (Development Management Procedure)(England) Order 2015
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Circular 11/95 - Use of conditions in planning permission (Appendix A only)