

# LOCAL PLANNING ENFORCEMENT PLAN 2023



We will investigate impartially and assess each case on its merits, our decisions will be based upon the principles of proportionality, legality, and necessity. We will endeavour to investigate matters in a timely manner and maintain contact with interested parties throughout.

## Introduction

The Council has set out a plan to deliver its strategic priorities between 2022 and 2026 which is shaped around our four key priorities:

- One Council Delivering for Local People
- A Successful and Sustainable Growing Borough
- Healthy, Active, and Safe Communities
- Town Centres for All

For the purpose of clarity, the term Local Planning Authority also refers to the council and is interchangeable throughout this document. This plan sets out how we will work to make Newcastle-under-Lyme a better place for everyone who lives here or comes here to work, to study or for leisure. Our aims can only be achieved by taking advantage of every opportunity available and developing further opportunities through innovation and collaborate working.

The Enforcement Plan fits in with these objectives and the Council will use available statutory powers and follow national guidance in a proportionate way to ensure there is effective planning enforcement on the Borough.

Development Plans include adopted local plans and the core strategy, together with Supplementary Planning Guidance and any 'made' Neighbourhood Plans set out the planning policies against which breaches of planning control will be assessed. Any emerging planning documents may also be considered in making formal decision.

A **breach of planning control** is where a person carries out development (as defined by section 55 (1) of the Town and Country Planning Act (TCPA) 1990) to land or buildings without the required planning permission, i.e., it does not have express permission, it is not permitted development, or fails to comply with a condition or limitation of a planning approval.

Planning enforcement also investigates complaints about untidy land which adversely affect amenity and where consent is required for works to listed buildings, works to protected trees and for the display of advertisements.

As the planning system is concerned with works which physically alter the land or change it promotes the best use of land and to safeguard individuals, business, and the environment from harmful development. Planning decisions are taken within a legislative and regulatory framework and in accordance with national and local planning policies. Investigation powers are entrusted to Councils by Parliament to protect the Borough from the adverse effects of undesirable developments and neglect of open land.

The Government refers to Enforcement in the National Planning Policy Framework (NPPF). It states the following:

‘Effective enforcement is important as a means of maintaining public confidence in the planning system.’ ‘Enforcement action is discretionary, and Local Planning Authorities should act proportionately in responding to suspected breaches of planning control.’

Guidance to support this is given in the National Planning Practice Guidance (NPPG). The discretionary and proportionate nature of enforcement is referred to, and it is suggested that local planning authorities should consider publishing an Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how we will investigate alleged cases of unauthorised development and act where it is appropriate to do so and, in a proportionate manner.

Planning is about regulating the use and development of land, regarding the development plan and considering other material considerations. The Local Planning Authority has a duty to investigate allegations of breaches of planning control and it takes this responsibility seriously. In response to enquiries, our aim is for developers to carry out their development in accordance with planning permission and comply with the conditions placed upon the consent.

The Council’s powers to investigate and act to remedy breaches is set out in legislation and Regulations including 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.

More recently, the Localism Act 2011 inserted into the Town and Country Planning Act 1990 powers to restrict tactics that were seen as abuses of the planning system, such as twin tracking an appeal against an enforcement notice, limiting applications for retrospective approval where an Enforcement Notice has been issued, the power to apply to remove time limits for deliberately

concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti. The Council can consider the use of powers under the Proceeds of Crime Act 2002 (POCA) to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice should it be in the public interest to do so.

The primary role of enforcement is to investigate alleged breaches of planning control and bring about reasonable and proportionate remedial action where appropriate. Development requiring planning permission includes:

- Most types of building works
- Engineering works, and
- Material changes of use to land or buildings

In most cases, a **planning breach is not, by itself, unlawful and therefore does not constitute a criminal offence**. However, there are some cases which are unlawful such as:

- unauthorised works to a listed building including partial demolition
- non-compliance with a Stop or Temporary Stop Notice
- most unauthorised works to protected trees subject to a preservation Order or within a designated Conservation Area, and
- the display of unauthorised advertisements.
- failure to comply with a statutory notice is issued, which requires steps to be taken and the time for compliance has expired.

Planning enforcement powers cannot be used in matters where there is no breach of planning control. Examples include:

- a dispute concerning a boundary matter
- covenants, deeds, or civil matters
- development permitted by Development Orders issued by Central Government, that is development that benefits from permission by virtue of the General Permitted Development Order (GPDO) or changes of use by the Use Classes Order (UCO) provided that the limits and conditions stated in the Order are met
- the display of advertisements that comply with specific conditions and limitations within the relevant class of the Advertisement Regulations may not require advertisement consent from the Local Authority.

In certain cases, developments may become established over a period of 4 or 10 years in planning law and therefore are potentially immune from enforcement action. This is a particularly complex area of planning law and particular advice should be sought.

An investigating officer must consider the impact of the unauthorised development, the options available and the time for compliance before reaching a final judgement. When considering the proportionately of taking formal action we will target our resources at the most harmful breaches of planning control. The expediency of enforcement action will be made in the context of local and national planning policies and what formal powers and options are available to seek to remedy breaches of planning control set out in **Appendix 1**.

The Enforcement Plan sets out the areas of priority to ensure effective, consistent, and transparent decision making. The Planning Enforcement team aims to deal with complaints in a clear and consistent manner based on a set of agreed objectives. As the National Practice Guidance is clear that planning enforcement action should be proportionate, the Enforcement Plan sets out clearly and transparently what is a priority for investigation and the action taken to be proportionate. Each investigation will be considered on its individual merits, the facts, and the degree of harm. In reaching this decision sometimes account will be made of any recent and relevant case law and decisions which may have a bearing on the route taken.

Decisions made by the Council on enforcement matters are recorded and published as soon as practicable after the decision. The record must contain, the title of the decision-making officer and the date the decision was taken and why. Councils must maintain a statutory register of enforcement and stop notices retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information.

The Enforcement Plan also includes appendices providing information on trees, advertisements, untidy land (Section 215 of the Town and Country Planning Act 1990) and High Hedge complaints.

Some enquiries received by the Planning Enforcement Team are not covered by planning and/or there may be more effective measures to resolve the enquiry using other legislation. Examples include land disputes, boundaries, covenants (civil matters) dangerous structures (building control), noise, smells (environmental health) and issues on the highway (Staffordshire County Council).

The enforcement register is available on the website here: Further information about the Council's planning enforcement polices and how to report planning breaches is available [online](#)

## Our Approach

The starting point to an investigation is to establish all the facts reported. It is then processed to decide if it is firstly development, then if it requires planning approval or consent. A desk top analysis is then undertaken and then a site visit (if required) then an officer's view will be made and then a decision. An investigation can be a time consuming, complex, and lengthy process. Many aspects of a case may need to be fully investigated before reaching a conclusion. The time taken to determine each case can vary depending on the site and type of breach that has been reported. The time taken may depend on many factors to which is outlined below:

- Evidence gathering
- Site visit if considered necessary
- Establishing a breach
- Awaiting the compliance of an Enforcement Notice or enforcement appeal
- Any complex legal matters or multiple enforcement considerations on the site

If you are contacted by the Council about an alleged breach of planning control you are entitled to know what the allegation is, you will also be given the opportunity to respond to the alleged breach. Your co-operation will be sought to remedy the breach of planning control and a reasonable time will be given for you to respond depending on the seriousness of the matter.

We will discuss cases with all parties with an interest in a case, although there are instances where matters of privacy prevent disclosure. Private and confidential information cannot be released to the public as it is protected under the Data Protection Act 2018. The only time an enquirers information can be made public is if that person would be willing to be witness to the offence and attends court.

### Priorities

The Council receives a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all these allegations with equal priority. It is essential to use Council resources to maximum effect. Therefore, each case is prioritised

according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council's response is fair and proportionate having regards to both the context and the nature of the breach.

Complaints will be prioritised on receipt based on what appears to be their significance and initial background checking in accordance with the enforcement priorities set out in this Plan. (see **Appendix 1**). Priority will be reassessed and kept under review when a site has been visited and as and when further information becomes available.

All decisions and use of investigatory powers will be recorded. The Council will look for and consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.

Enforcement cases may require repeat site visits, negotiation, and formal action before the breach is resolved. When these occur, Enforcement Officers will keep original complainants informed of progress and indicate arrangements for this in the initial response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation. There may be occasions where we will require more information and may ask a complainant to keep a diary of activity to substantiate a complaint.

### **Proportionality**

We will deal with each case on a priority basis following an initial investigation to establish the facts and will refer to records and relevant policies. Depending on the seriousness of the situation, we will generally seek to afford an opportunity of remedying the breach of planning control without formal action but may choose to prosecute if an offence has occurred. In considering whether formal action is expedient in planning terms, we will generally pay regard to any personal circumstances or undertakings given, the history of the site or use and whether time limits are approaching which would confer immunity on unlawful development. Planning enforcement action should be sensitive to the intent and context of the owner and the development. For example, a householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear and flagrant breach of a planning decision or a serious case of harm.

We will rigorously pursue any outstanding Section 106 planning obligation payments and if applicable other forms of developer contribution which are due and have not been paid at the appropriate trigger point.

## Reporting an alleged 'breach' of planning control

To report an alleged breach of planning control, a complainant is required to complete an online form. The online form can be found [here](#)

The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters where there is a potential breach of other legislation will need to be referred onto relevant regulatory authorities by the complainant. The complainant will be advised accordingly.

Civil matters between individuals or landowners will not be dealt with e.g., boundary disputes, competition with other businesses or breaches of covenant.

The planning history of a site will always be investigated to establish any planning permissions or whether the works are permitted development.

An assessment will be made by the council regarding the nature and degree of harm of any breach in relation to relevant planning policy, legal context, and the need for remedial action. The Council will consider how best to proceed with the investigation and what actions may be taken. Sometimes there are several options which could potentially be taken and there may be cases where other agencies will need to be involved where a breach cuts across different regulatory bodies.

**Anonymous complaints about a third party will not be investigated.** The identity of persons reporting suspected breaches will be treated as confidential by Councillors and officers of the Council.

Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to, or support for, an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.

The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the LPA are set out in the Planning Enforcement Toolkit (see **Appendix 2**). In some cases, several of the available powers available may be used.

### Seek Advice

The Council will follow through any complaint that is valid and take appropriate action where a breach or a criminal offence is found. You may wish to seek advice from a specialist in this field such as a Chartered Town Planner. The Royal Town Planning Institute web site has links to a directory of planning professionals.

If a matter does proceed to formal enforcement action the Notice(s) served will be available to the public and will also appear as a charge on the relevant property for land charges purposes. This may make it difficult to buy or sell a property affected in the future.

If you are contacted by the Council in respect of an enforcement matter, then please do not delay in responding.

# Appendix 1: Prioritisation of Enforcement Cases

Priority	Description	Response time
<b>High</b>	<ul style="list-style-type: none"> <li>• Unauthorised demolition, partial demolition or significant alteration of a building that is listed, buildings in a conservation area Conservation Area and any public house</li> <li>• Unauthorised works to a Listed Building</li> <li>• Potential irreversible harm to the amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or within a Conservation Area</li> <li>• Non-Compliance with pre - commencement planning conditions where work has substantially commenced on site which are significant e.g., remediation of contaminated land</li> </ul>	Within 1-2 working days
<b>Medium</b>	<ul style="list-style-type: none"> <li>• A breach which may result in serious demonstrable harm to the amenity of the neighbourhood</li> <li>• Unauthorised development in a designated area e.g., conservation area or green belt</li> <li>• Non-Compliance of planning conditions (other than pre- commencement conditions referred to above)</li> </ul>	Within 10 Working Days
<b>Low</b>	<ul style="list-style-type: none"> <li>• Unauthorised development which is not the source of public complaint</li> <li>• Erection/display of Advertisements</li> <li>• Untidy Land or Buildings</li> <li>• Non-compliance with Section 106 Planning Obligations</li> </ul>	Within 20 working days

<b>No Action</b>	<ul style="list-style-type: none"><li>• If more appropriate to be investigated by another department, agency, or organisation</li><li>• Matters not subject to planning control</li></ul>	N/A
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# Appendix 2: The Planning Enforcement Toolkit

The main options to tackle possible breaches of planning control are:

## No formal action

Early engagement is important, and the property/landowner is advised to take immediate action when advised by the Council of an issue.

The Planning Policy Guidance (PPG) states that local planning authorities should usually avoid taking formal enforcement action where:

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

An outstanding breach of control may affect the sale and marketing of a property. The Council will not be able to expedite any subsequent retrospective application to rectify a breach which may put the sale/purchase at risk.

## Retrospective planning applications

The PPG advises that where the LPA considers that a retrospective application is the appropriate way forward to regularise the situation, the owner and occupier may be invited to apply under Section 73A of the Town and Country Planning Act 1990 without delay. **It should not be assumed that permission will be granted** – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. The PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

## Lawful Development Certificates

There are two types of certificates.

**Existing development:** If it is considered that a breach has become immune from enforcement action, the owner/occupier may be able to apply for a Lawful Development Certificate. The certificate, if granted would confirm that the breach is lawful for planning purposes.

**Proposed development:** This is used where a formal decision is sought from the local planning authority as to whether a specified development is lawful and therefore is 'permitted development' under the current regulations and therefore does not require planning consent, such as an extension to a dwelling. This is a widely used approach as, if granted the development becomes immune from any future enforcement action. It is popular when selling/buying a property as it avoids any ambiguity and delay as to whether an extension for example, was permitted development when it was built and can therefore lead to a smooth property transaction.

## Planning Contravention Notice

This can often be the first formal step in resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may advise of a date, time, and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the local authority. An opportunity to make such representations must be made. This is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information referring to these rights.

## Requirement to provide information.

There are powers under legislation (Section 330 of the Town and Country Planning Act 1990) that can also be used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. It is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Convictions currently carry a fine.

## Rights of Entry

The Town and Country Planning Act specifies the purposes for which entry to land including buildings may be authorised, to ascertain or determine:

- whether there is or has been any breach of planning control
- whether any of the LPA's powers should be exercised

- how such power should be exercised
- whether there has been compliance with any requirement arising from earlier enforcement action

A record will be made of the inspection with appropriate photographs. Entry to a dwelling house cannot be demanded as a right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates' Court for a warrant to allow entry. The PPG refers to these rights. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

### **Breach of Condition Notice**

This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition but may be served in addition to an enforcement notice, perhaps as an alternative to a Stop Notice. It can only be challenged by judicial review. Following the end of the period for compliance, any conditions and any specified steps will be in breach of the notice and guilty of an offence.

### **Enforcement Notice**

The notice may be served up to four years after substantial completion of building operations or ten years after a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know exactly what (in the LPA's view), constitutes the breach of planning control and what steps the LPA requires to be taken to remedy the breach. Once an enforcement notice has been issued it will appear as 'a charge' on the land. It will be served on any person that has an interest in the land which may typically include any bank or institution where there is for example a mortgage on the property.

The Enforcement Notice will set out a timetable for compliance, the steps needed to be taken, and the date that the Notice takes effect, which is a date at least 28 days after the notice is served. Any person served with the Notice can use the period between the service of the Notice and the date it comes into effect to appeal to the Planning Inspectorate against the Notice. If an appeal is lodged, the Notice has no effect until the appeal has been determined.

There are 7 grounds on which an Enforcement Notice can be appealed:

- That Planning Permission ought to be granted for the works enforced against or if it relates to a breach of a condition that condition should be discharged.
- That the breach claimed has not occurred
- That the matters being enforced against do not constitute a breach of planning control

- That when the notice was served no enforcement action could be taken
- That the Enforcement Notice was not served on all parties with an interest in the land.
- The steps required exceed what is required to remedy the breach or to remedy any injury caused by the unauthorised development.
- The period for compliance falls short of what is reasonably required to be allowed.

An enforcement notice may under enforce, by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect. However, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using direct action powers.

### Planning Enforcement Order

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a Planning Enforcement Order (PEO). Where a PEO is granted, the LPA will have a year to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10-year periods for immunity will not apply in cases of a concealed breach. An application for a PEO must be made within 6 months of the LPA becoming sufficiently aware of the breach to justify enforcement action being taken. A Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. This is a recent addition to the enforcement powers that a council may have and there have been several significant and high-profile cases across the country when concealment has been uncovered.

### Stop Notice

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice will only be served in exceptional circumstances when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area.

### Temporary Stop Notice

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the locality.

## Listed Building Enforcement Notice

A Listed Building Enforcement notice can be served against unauthorised works that damage the character and/or fabric of a listed building. There is no time limit in which such an enforcement notice can be served. There are five important differences between planning enforcement and listed building and conservation area enforcement, namely:

- there are no application fees for listed building consent or relevant demolition
- there are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration
- carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, **is an offence** whether an enforcement notice has first been issued
- carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990

Listed Building Consent and planning permission for relevant demolition cannot be granted retrospectively. A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned, or fined by the courts

## An Injunction

Injunctions may be sought in the most serious cases, generally where irreparable harm is being done or is apprehended, or where other actions have been or would be ineffective. Section 187B of the Town and Country Planning Act applies where the LPA considers it expedient to restrain actual or apprehended breaches of planning control. Section 44A of the Planning (Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. A Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify, to the best of their ability, the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- photographic evidence of the persons concerned
- affidavit evidence provided to or by LPA officers
- reference to registered vehicles known to belong to, or be used by, a person(s)/company

There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

### Unauthorised Advertisements

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether to prosecute in the interests of **amenity or public safety**.

In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice under S225 of the Act. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner. There is a right of appeal to the Magistrates Court on the following grounds:

- that the display structure concerned is not used for the display of advertisements in contravention of regulations
- that there has been some (material) informality, defect, or error in, or in connection with, the notice
- that the period between the date of the notice and the time specified in the notice is not reasonably sufficient for the removal of the display structure
- that the notice should have been served on another person.

If the notice is not complied with, the Council is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying out works under an enforcement notice. The Council may also prosecute for non-compliance.

If a person is found guilty of an offence under The Control of Advertisement Regulations, then they may have to pay a fine per advert.

Advertisements on the highway will normally be dealt with by Staffordshire County Council as the highway authority as they have powers to remove unauthorised signs such as fly posters and to prosecute.

### Section 215 Notices.

Tidy land and property means an area looks well cared for and contributes to people feeling safe in that neighbourhood. If untidy sites are left, they become worse, and the area starts to

feel neglected. Untidy sites may not be dangerous to public health, but they can be an eyesore, which means it is detrimental to the local amenity.

Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may serve a notice requiring the land to be tidied up.

There is a right to appeal to the Magistrates' Court on several grounds.

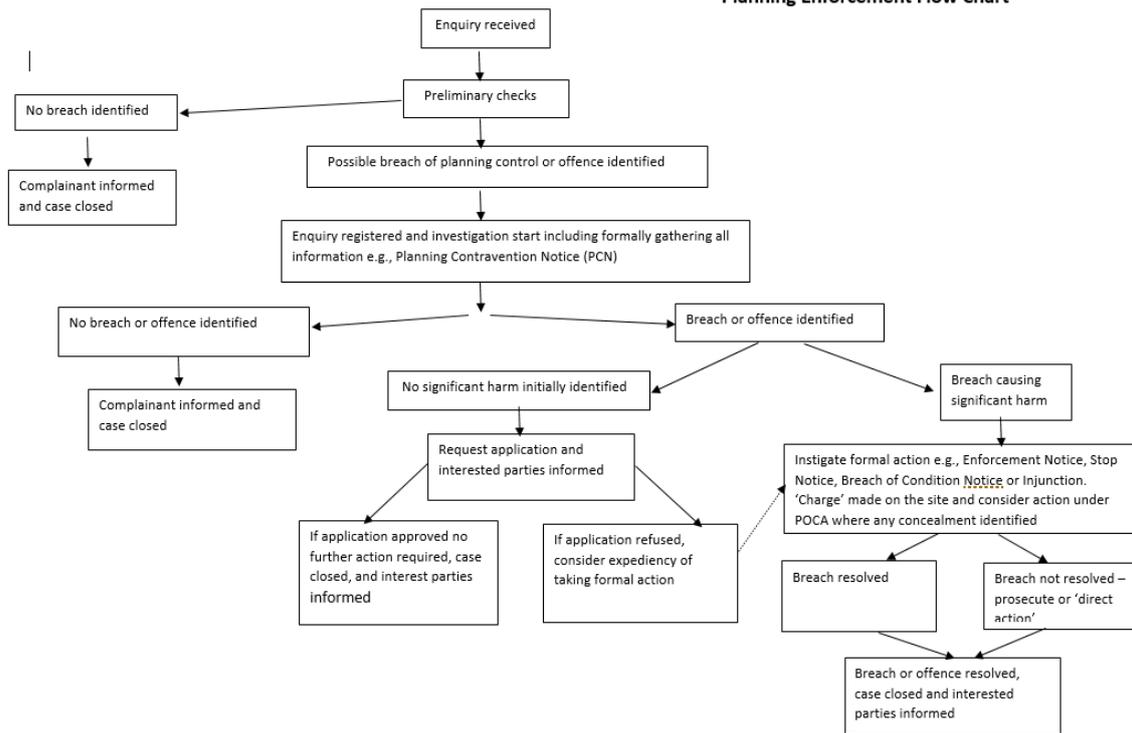
If the notice is not complied with, the LPA is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying out works under an enforcement notice. The Council may also prosecute for non-compliance.

### **Direct Action or Default Action**

This may be used in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g., Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.)

Direct action is normally a course of last resort. The Council will seek to recover all expenses reasonably incurred from the owner(s) of the land.

**Planning Enforcement Flow Chart**



## Other Enforcement Powers

### High Hedge Enforcement

If a complaint has been properly made and the Council decides that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is carried out under the Anti-Social Behaviour Act 2003 and is known as a Remedial Notice. This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although the Council cannot require such action, the hedge owner is able to go further than the remedial notice requires e.g., remove the hedge completely. The remedial notice becomes ‘a charge’ on the property and legal obligations under such a notice pass to any subsequent owners.

### Tree Protection

Trees may be protected by legislation enshrined in the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012, by being subject to a Tree Preservation Order (TPO) or being situated within a Conservation Area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission. In certain circumstances trees may be protected by conditions attached to a planning permission.

## Compliance

Where a permission is granted for works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or relevant Operational Services Officer. This is to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as British Standard (BS) 3998 'Tree Work: Recommendations', and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the tree itself and of the protected tree stock within the borough. Compliance should be the starting point of any enforcement policy.

## Specific Tree Protection

Where trees are protected by a TPO, the LPA's consent is normally required prior to undertaking any works to the tree, felling or removal and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

Where trees are protected by inclusion in a conservation area six weeks' notice must normally be served on the LPA of any proposal to carry out works on the tree, felling or removal. During the six-week period, the Authority is required to consider the need to make a Tree Preservation Order. If the LPA takes no action within six weeks, the works may go ahead as notified.

Planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the LPA to vary or remove a condition (such as to allow the removal of a tree). If planning conditions are not complied with, the LPA is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

Contraventions of the tree protection legislation often come to light because of complaints received by the Council. Cases may also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council's Landscape Officer will also make a site visit.

Person(s) responsible will be identified and contacted as soon as possible. They will be asked to give their comments on the incident and any relevant background information that they may want us to consider such as reports on the health, condition, and safety of any tree(s).

If on receipt of this information it appears that the person(s) in question may have committed an offence and the council require answers to questions that may be considered as evidence, they will normally be invited to the Council's offices to undertake a recorded interview under caution. This will be conducted under the Police and Criminal Evidence (PACE) Act 1984. In some cases, it may however be necessary to caution a suspect during a site visit.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator and in accordance with both the Data Protection Act 2018, implementing the GDPR and the Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court, it is most likely that they will be required as a witness in which case, and as such their identity will not remain confidential. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Alleged offenders will be given adequate and fair opportunity to give their side of events during investigations.

### **Possible actions by the Council**

The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include:

- initiate a prosecution (which may be for destroying the tree or lesser works to it)
- administer a simple caution whereby the offender signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence
- require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990 or serving a replanting direction under section 207 of the same Act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting

### **Replanting**

In incidents where the tree has been destroyed, a replacement tree will need to be replanted. This replacement would normally be planted in the planting season following the incident. In

cases where this does not happen a Tree Replacement Notice (TRN) may be considered. Any replacement tree is subject to the same protection as the original tree that was lost.