

Appendix

Central
Bedfordshire

Business & Regeneration Directorate

Planning Enforcement Plan

Revised Draft September 2016

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1. Introduction

- 1.1 National guidance on planning enforcement in England is given in the National Planning Policy Framework (NPPF) 2012. Government policy guidance within the National Planning Policy Framework makes it clear that:
- enforcement action is a discretionary power,
 - Local Planning Authorities should act proportionately in responding to suspected breaches of planning control
 - that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits
 - Local enforcement Plan should set out how the local planning authority is to handle alleged breaches of planning control.
- 1.2 Planning Enforcement is part of the Council's Development Management service to promote quality buildings and environments in accordance with Government policies and the Council's development policies as detailed in the emerging Local Plan for Central Bedfordshire.

Minerals & Waste Planning Authority

- 1.3 As a unitary single-tier Authority, the Council also fulfils the role of Minerals and Waste Planning Authority. The principal areas of enforcement work carried out by the Minerals and Waste Planning Authority include:
- a) The monitoring (pro-active enforcement) fee charged periodic inspection of permitted mineral and landfill related waste sites to identify and resolve non-compliances;
 - b) The regular inspection of establishments or undertakings carrying on the disposal or recovery of waste.
 - c) The investigation and resolution of alleged breaches of planning control at minerals or waste related development following receipt of a complaint.

Definitions

- 1.4 "The winning and working of minerals" includes the extraction/mining of minerals both in and under the surface and the operation of ancillary and associated plant, buildings and machinery for processing materials.
- 1.5 "Waste management facilities" include waste transfer stations, material recycling facilities, composting facilities, scrap metal operations; end of life vehicle dismantlers; incinerators, waste treatment facilities including sewage works and the disposal of waste to land.
- 1.6 The Minerals and Waste Planning Authority also carries out this work for Bedford Borough under a regularly reviewed Service Level Agreement.(SLA)

Role of the Environment Agency

- 1.7 The Environment Agency is responsible for the licensing of waste carriers and in the detailed management of both minerals and waste operations. The Minerals and Waste Planning Authority works closely with the Agency to resolve environmental issues at individual sites. The legislative powers available are different from those of the Planning Authority. The Environment Agency has a national 24 hours 7 days a week emergency number to report incidents of pollution (Call 0800 80 70 60)and has staff 'on call' to deal with emergency pollution incidents.

What the Planning Authority and the Minerals & Waste Planning Authority aim to do with regard to breaches of planning control:

- 1.8 We aim to provide a high quality re-active and pro-active approach to planning enforcement within the resources available.

The Council aims to provide the principles of good planning enforcement as follows:

- To publish clear standards of service and performance through this enforcement plan.
- To only investigate alleged breaches of planning control.
- To normally not investigate anonymous complaints and not deal with business competition complaints
- To deal with all alleged contraveners in an open, fair and professional manner
- To resolve by investigations through negotiation and without formal action whenever possible, but formal action will be taken if it is expedient to do so.
- To take action as appropriate to resolve breaches of planning control in the public interest, having regard to all material planning considerations.
- To be consistent in our investigations and decisions.
- To provide information and advice at appropriate times to interested parties on planning enforcement cases and issues.
- To keep complainants details confidential whenever possible.
- To maintain and enhance the pro-active approach to the monitoring of minerals and waste related developments in accordance with national guidelines
- To provide a pro-active approach to planning enforcement within resources available, including monitoring housing developments for compliance with pre-development conditions.

1.9 Enforcement Service Standard

- We aim to resolve 80% of re-active enforcement cases within 26 weeks of the date of receipt.
- **If formal enforcement action is taken the resolution of the case usually takes in excess of 26 weeks.***(The offender normally has a right of appeal to the Planning Inspectorate and the matter is held in abeyance until the outcome of the appeal is known.)*

1.10 Other legislative considerations

- Governments Enforcement Concordat and the Regulatory Compliance Code.
- Human Rights Act 1998
- Equality Act 2010

2 What represents a breach of planning control?

Planning Control

2.1 A breach of planning control may include any of the following:

- Failing to comply with a condition or the details of the approved plans related to a planning permission.
- Carrying out certain development without planning permission
- Carrying out certain changes of use without planning permission
- Carrying out certain demolition work in a Conservation area without consent
- Neglecting land or buildings to an extent which causes serious harm to the appearance of the area.

Please note: It is NOT illegal to carry out any of the above without the benefit of a planning permission (if needed).

2.2 **Criminal Offences:** The breaches of planning control that do constitute criminal acts from the outset and can be subject to high financial penalties if found guilty in the courts include the following: -

- Carrying out works to a protected listed building without consent
- Carrying out works to a tree within a Conservation Area without consent, or works to a protected Tree Preservation Order (TPO) tree without consent
- Displaying certain advertisements without consent

Retrospective planning applications

2.3 The Town & Country Planning legislation enables the local planning authority to process a planning application for a development or change of use of land that has already taken place without permission assuming that the correct application fee is paid and the appropriate drawings are submitted.

Please note: There is currently no financial penalty in England for carrying out the development/change of use and then making a retrospective planning application.

The handling of all planning applications is by the Development Management Area Teams and normally once a respective application is received then the Planning Enforcement case file is closed pending the outcome of the application.

Building Control is covered by the Building Regulations legislation

- 2.4 Building control is totally different to planning control and operates under its own Building Control Policy, and checks that when buildings are constructed and altered that the health, safety and welfare of people using them are ensured.
- 2.5 In recent years the Building Control service has been opened up so that any developer has the option to use other organisations other than the local authority to carry out the inspections and check the compliance with the Building Regulations.

Please note: Construction work that only needs to be the subject of Building Regulations or a Building Notice does not require to be the subject of any local or neighbour publicity. This means that the details will not be on the CBC website

3 Reporting alleged breaches of planning control

3.1 The Government is keen to encourage the economic prosperity of the individual and to ensure that the regulatory provisions associated with development work is directed to the protection of the character and appearance of the locality in the public interest. Therefore before reporting an alleged breach please:

3.2 **Check that the alleged breach is not 'Permitted Development'.**

- Refer to the Planning portal website www.planningportal.gov.uk/

3.3 **Check that the alleged breach does not already have planning approval**

- Refer to the 'Planning' section of the CBC website www.centralbedfordshire.gov.uk/

3.4 **Why is the alleged breach causing you harm?**

If any of the following apply then it is NOT a matter covered by the Planning legislation.

- Adverse potential loss of value to your property
- Conflict with an established Right of Light or change to a view from your property
- Alleged trespass or land ownership/boundary encroachment
- Breaches of a covenant e.g parking of a touring caravan on a drive
- Unfair competition with other businesses. e.g display of advertisement boards

These are all likely to be private civil matters. The Planning authority has no legal right to become involved and if challenged by the alleged contravener a complaint to the Council could lead to the authority being found guilty of maladministration because of the inappropriate use of resources to attempt to resolve a 'non planning' matter.

- **Is the alleged breach within the public highway?** : If YES then log a complaint via the CBC website: *Transport, roads, parking* section.
- **Does the alleged breach cause you disturbance from noise, dust, smell?** – If YES then use the CBC website (view more services) *Environmental issues* section

3.5 **Satisfied that none of the above apply then either:**

- **Complete the e-form Planning complaint on the CBC website** ; or
- **Email:** planningenforcement@centralbedfordshire.gov.uk

3.6 **Please note: Anonymous complaints will not normally be registered**

Reporting gypsy and traveller encampments

The Planning Enforcement team deals with all types of planning issues, and with regard to those who are travellers/gypsies the key issue is – **where exactly have the caravans/vehicles been parked up?**

- On the public highway or on Council land– This is for CBC Assets to handle because their involvement is to ensure that the health and safety of the persons involved is adequately taken into account. There is a standard procedure that does NOT involve Planning Enforcement.

- On private land (trespasser) – The moving on of travellers is the responsibility of the person(s) who owns the land to take action. CBC monitor progress.
- On private land where the trespass issue is not relevant. – This is for Planning Enforcement to investigate and resolve in accordance with the normal procedures.

3.7 In order to investigate a potential breach as much information as possible is required: -

- The name and address of the complainant
- The name and address of the alleged contravener
- The location of the site and the nature of the alleged breach
- The length of time that the unacceptable situation appears to have continued and an indication of whether it is still continuing
- An explanation of the harm that it is causing the complainant specifically, and the area generally

CONFIDENTIALITY: It is our policy not to reveal any information that is likely to identify the complainant, in line with the Data Protection Act 1998. We may be asked to reveal information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Any decision we make to reveal any information would need to show that there is a public interest in doing so.

4 Priorities for investigation

4.1 Due to the limited resources available it is essential that we prioritise cases in accordance with the severity of the existing breach or the potential environmental impact.

4.2 High priority cases

- Works with the potential to cause serious irreparable harm, (for example unauthorised works to a Listed Building, demolition of buildings in a Conservation Area, works to a protected tree, deposit of waste on an environmentally sensitive site), and where significant harm to amenity is likely to be reduced by immediate action.
- Non-compliance with planning permissions on construction sites, in particular where prior to commencement conditions have not been discharged.

4.3 Medium priority cases

- Ongoing breaches of an effective Enforcement or other formal Notice
- Other new complaints of serious harm to the amenities of a neighbourhood, for example unauthorised development in a Conservation Area or inert waste crushing / screening activity.

4.4 Low priority cases

- An ongoing investigation where little or no harm has been identified or where harm is easily reparable.
- All other new complaints, for example householder development involving an outbuilding or fence/wall, and certain breaches of planning conditions where development is not in progress

4.5 Enforcement Service Standard – Initial site Visit (where considered necessary)

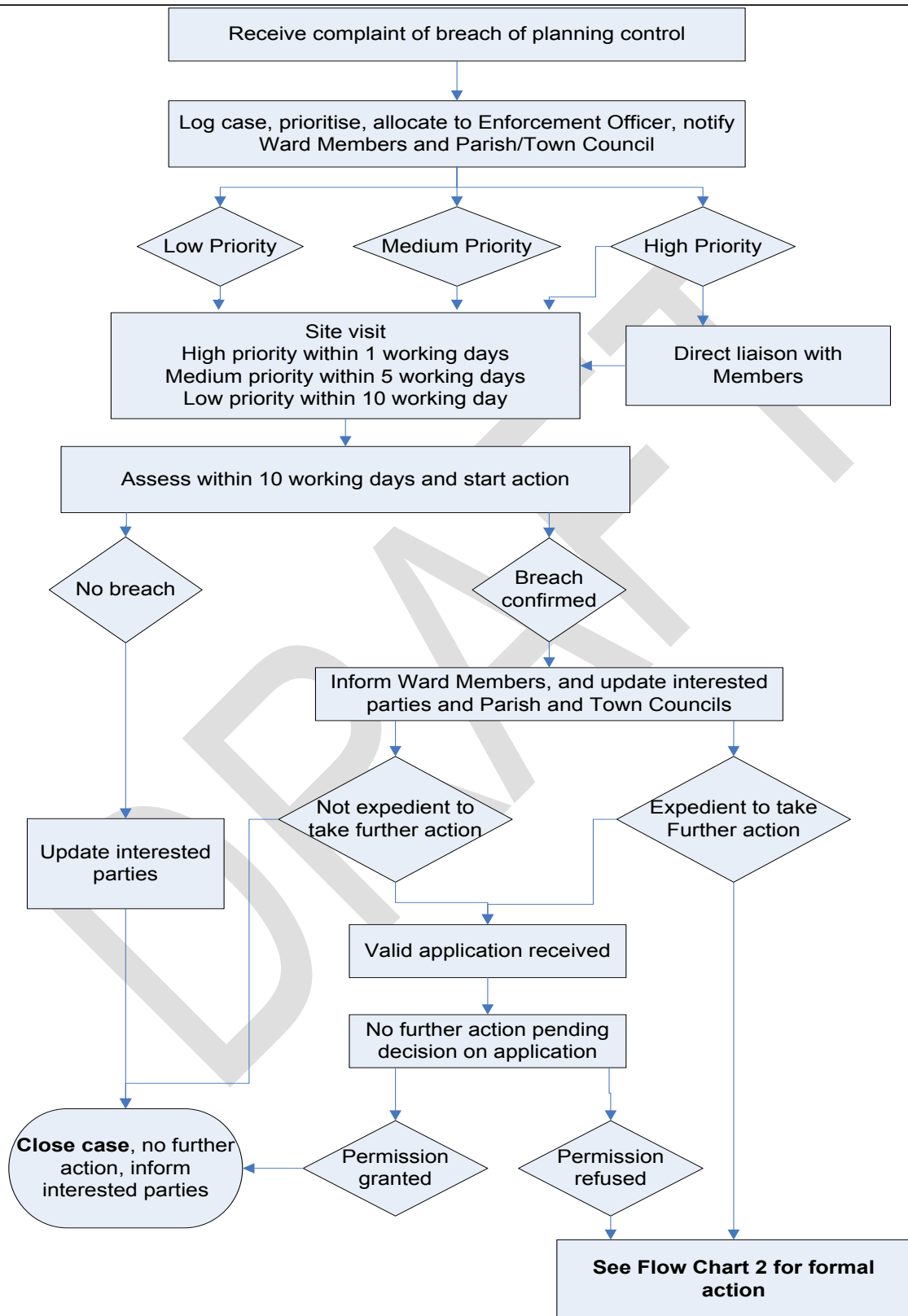
1. **High priority cases** – within one working day of receipt of the complaint.
If a very serious breach of planning control is established which is likely to cause additional harm to the locality action if left then action will be commenced immediately
2. **Medium priority cases** – within 5 working days
3. **Low priority cases** – A site visit will be made within 10 working days

4.6 Enforcement Service Standard - Planning Assessment

In all cases within 10 working days of receipt of a complaint an initial assessment of the case will be made. This may conclude that there is clearly no breach of planning control. Alternatively the evidence may indicate that:

- A minor breach has occurred that requires the submission of a planning application.
- That the owner/developer has been seen or identified and there are reasonable grounds to consider that the non-compliance can be resolved following negotiations.
- That the owner/developer has not been identified and further enquiries are needed
- That urgent formal action (temporary stop notice or injunction) should be taken in order to prevent any further irreparable harm to the amenity of the area

Flow Chart 1 – Planning Enforcement Process



5. The investigation of alleged breaches of planning control.

5.1 **Enforcement Service Standard - Initial timescale**

- All complaints of a potential breach of planning control are registered on the computer system with a unique reference number within 3 working days.
- All complainants are provided with an email* acknowledgement within 3 working days of receipt. The acknowledgment sets out the address of the alleged contravention and the details of the alleged breach. **Where no email address is available then the acknowledgement is by phone.*

5.2 **Enforcement Service Standard - Ward Member & Parish/Town Council Notification**

The relevant Ward Councillor(s) and the Clerk to the relevant Parish/Town Council is provided by email with the following in all re-active investigation cases received.

- **Notification of receipt:** Within 2 working days of receipt a notification letter is sent that has the following:
 - The address of the alleged breach
 - The type/brief description of the alleged breach
 - The unique computer generated file reference number for the case
 - The name of the Enforcement Officer who is to carry out the investigation.
- **Notification of breach worthy of investigation:** Within 2 working days of the conclusion that a breach has been established and that requires further negotiations and/or enquiries need to be made a notification letter is sent by email which gives the address of the breach and confirms that there is a breach of planning control.
- **Notification of decision to close the investigation case:** Within 2 working days of the decision taken by the Appeals & Enforcement Team Leader a notification letter is sent by email. The letter gives the address of the alleged breach, the case file reference and the reason why the case file has been closed.

5.3 **Enforcement Service Standard - Contact with the alleged contravener**

- Where an inspection onto the land/premises or property is required to be carried out then the Enforcement Officer will normally make contact with the occupier, introduce himself/herself and explain the purpose of the visit. If necessary contact details will be left.
- Within 10 working days of the first site visit the Enforcement Officer should be in a position to clarify whether or not there has been a breach of planning control, and if there has been a breach explained the options available to resolve matters.
- Throughout the investigation the contact with the contravener will be carried out in a professional manner, either by phone, email, letter or on site. Where necessary there will be liaison with other specialists within CBC or other external parties; such as the Environment Agency, local Wildlife trust to resolve the breach.
- If the negotiations are not successful within a reasonable time period, then the possibility of taking formal enforcement action will be considered and made known to the contravener.
- Within 2 working days of the closure of the investigation case the alleged contravener will be informed of the reason for the outcome, either by phone or by email.

5.4 **Enforcement Service Standard: Contact with the complainant(s)**

- Within 21 working days of receipt of the complaint the allocated Enforcement Officer will make contact with each complainant of the outcome of the Case Assessment.
- If the case requires to be the subject of negotiations then any complainant can contact the allocated Enforcement Officer by phone or email for up-dates
- All complainants are made aware by email or phone when a formal enforcement notice or similar has been served on the contravener by the Planning Authority.
- All complainants are notified by letter/email when the contravener has submitted an appeal to the Planning Inspectorate following the service of an enforcement notice
- Within 2 working days of the closure of the investigation case each complainant will be informed of the reason for the outcome, the reason either by phone or by email.

TYPES OF INVESTIGATION OUTCOMES

5.5 **No material breach**

- The scale and or location of the works falls within the amount of development or change of use that can be carried out without planning permission. The exact details of what is 'permitted development' are set out by Central Government in the Town and Country Planning (General Permitted Development) Order 1995) and subsequent amendments.
- There is no development – *For example a moveable slide or an inflatable paddling pool is placed in a rear garden of a house.*
- It is not a planning matter – for example land boundary dispute, highway works.

5.6 **Factors that influence the time taken to resolve an identified breach**

- The nature of the alleged breach
- The extent of investigations that need to be carried out
- The harm which is being caused
- The resources that are available

5.7 **Not expedient to take any action.**

- The work carried out represents a minor breach and does require to be the subject of a planning application (with the appropriate fee). The contravener has been given the opportunity to submit a retrospective planning application but has failed to make a submission within a reasonable time period.
- The breach is minor and the harm it causes is not significant. In our opinion formal action would not be in the public interest. In reaching such a decision we must balance the harm being caused against the likely success at appeal of any formal action.

5.8 Please note: *The decision to progress taking action against a breach of planning control should not be solely on the grounds that the contravener has failed to submit a retrospective planning application and pay the appropriate planning fee*. In normal circumstances it is not a criminal offence to carry out development/change of use without planning permission.*

5.9 Suggested Recommendation: Within current national legislation all Planning Authorities are able to charge fees to determine a planning application, to provide pre-application advice and for the regular monitoring of mineral and landfill waste type developments in their area. To achieve some degree of fairness it is hoped that in the near future a national penalty fee will be able to be imposed for all those identified as carrying out development/change of use without planning approval who fail, when requested to make

a retrospective planning application or refuse/fail to make a ground a) planning merits appeal when served with an Enforcement Notice.

PLANNING INVESTIGATION CASES RECEIVED – Year 2015

5.12 In the twelve month period the total number of complaint case files opened = 610

The major type of cases handled was as follows:

• New building works (extensions, sheds, fences)	= 207	36%
• Changes of use (land, buildings)	= 145	25%
• Non-compliance with approved plans/permissions	= 150	26%
• Display of advertisements	= 40	7%
• Untidy land/premises	= 12	2%
• Mineral & Waste issues	= 14	2%
	Total = 568	
• Miscellaneous	= 42	

5.13 **Negotiations** – Wherever possible we will try to resolve the breach through negotiation if a planning application is unlikely to be successful. Where this fails and it is considered expedient, formal legal action under the provisions contained within the Town & Country Planning legislation will be taken in liaison with CBC Legal Services.

PLANNING ENFORCEMENT – FORMAL ACTION TABLE 2015 (Jan – June 2016)

5.14 In the same twelve month period the total number of cases the subject of formal legal enforcement action = 22 (less than 4% of annual cases received)

Injunction	= 1	(1)
Enforcement Notice + Stop Notice	= 0	()
Temporary Stop Notice	= 2	(3)
Enforcement Notices	= 13	(6)
Breach of Condition Notices	= 4	()
Section 215 (Untidy land) Notices	= 2	(1)

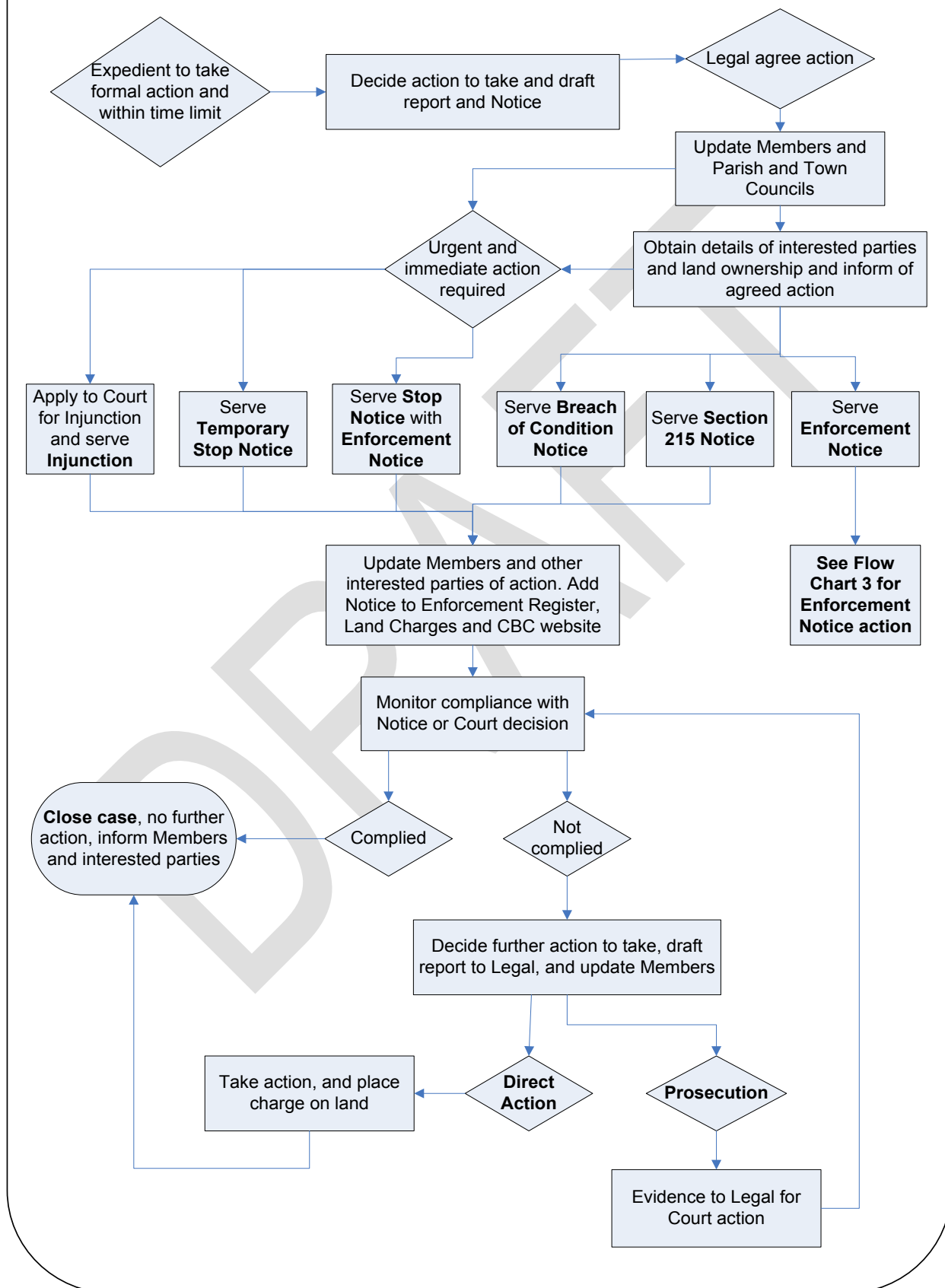
Taking formal enforcement action

5.15 Planning enforcement functions have been delegated to officers so that officers can make decisions on behalf of the Council without reference to Committee. When formal enforcement action is proposed then this is subject to a confidential Officer report for approval by the Planning Enforcement Team Leader, or the Minerals & Waste Team Leader (where applicable) prior to consultation with Legal Services.

5.16 The level of action carried out by the Council has to be commensurate with the planning breach identified or in certain circumstances the potential harm likely to be caused by the breach of planning control. This is reflected in the “*resource commitment (RC)*” needed.

- **Injunction** (High level RC due to immediate Court involvement)
- **Enforcement Notice with Stop Notice** (High level RC due to potential high financial compensation costs)
- **Temporary Stop Notice** (Normal level RC – Notice limited to 28 day period)
- **Enforcement Notice & Listed Building Enforcement Notice** (Normal level RC)
- **Listed Building Repairs Notice** (Normal level RC)
- **Breach of Condition Notice** (Low level RC)
- **Section 215: Untidy land/condition of building Notice** (Low level RC)

Flow Chart 2 –
Planning Enforcement Formal Action



6. Enforcement Powers

Please Note: If the breach is on Council owned land or highway land then it is for the Council's Assets Team or the Highways Team to resolve because as owner of the affected land there are other enforcement related powers available.

6.1 Planning Contravention Notice (PCN)

- A legal request made by the Council to obtain relevant information
- A list of questions about the site, the circumstances surrounding the alleged breach and land ownership is sent to the contravener.
- 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.

Depending upon the quality and quantity of the information provided in the PCN will determine whether or not there is reasonable justification for formal Planning enforcement action to be taken.

6.2 Section 16 Local Government (Miscellaneous Provisions) Act 1976 and Section 330 Town and Country Planning Act 1990

- A legal request primarily intended to establish information about the ownership and other interests in the land/property/premises where the alleged breach has taken place.
- 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.

6.3 Planning Enforcement Order

- The Localism Act 2014 has introduced the power for Local Planning Authorities to apply to the Magistrate's Court for a Planning Enforcement Order.
- A Planning Enforcement Order may be used if we discover a breach of planning control that has been concealed from the Council.
- If the Order is made by the Court we then have a further year in which to take formal action such as serving an Enforcement Notice.
- An Order is useful where an unacceptable use or development would become immune from enforcement action due to the passage of time and where the Council can prove that the use or development has been deliberately concealed.

- 6.4 When formal enforcement action is to be taken, we will seek to ensure that all people served with notices, including for example those with low literacy rates, or disabilities, understand what action is to be taken, and what is required by the notice.

EXPEDIENCY TO TAKE ACTION

- 6.5 If planning permission is considered to be unlikely to be granted for the retention of the development carried out because, for example of its detrimental impact on the neighbourhood then the Council will ask for the built development to be removed. The person(s) responsible for the breach of planning control will be made aware that formal action will be taken by the Council.

- Officers have delegated powers to issue formal notices if it is expedient to do so having regard to the development plan and other material considerations.
- The Council must be able to justify taking formal action, and be sure that the steps specified in the notice and the period for compliance with each step is reasonable,

so that the Council can justify the action taken in the event that an appeal is lodged against the formal notice.

TYPES OF PLANNING ENFORCEMENT POWERS

6.6 Injunction

- The Council can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. All injunctions are handled by Legal Services.
- Essential that the Council prepare a high level of legal evidence to convince a judge that an injunction is necessary
- Monitoring the compliance of injunctions is done by Planning. Failure to comply with an injunction is a very serious legal matter handled by Legal Services.

6.7 Stop Notice with Enforcement Notice

- Stop Notice has to be served with an Enforcement notice
- Only applicable if considered that the continuing activity is causing irreparable and immediate significant harm
- Stop Notice takes effect three days after it is served and work must immediately stop. It remains in force even when an appeal against the Enforcement notice is lodged.
- Significant financial compensation liabilities for the Council if the enforcement notice is quashed.
- No right of appeal and failure to comply with a Stop Notice is a criminal offence.

6.8 Temporary Stop Notice (TSN)

- Used to stop further activity or development immediately to safeguard the amenity of the area and prevent further irreparable harm.
- Notice does not have to be accompanied by an Enforcement Notice.
- It cannot require unauthorised works to be removed and it cannot prohibit the use of a building as a dwelling.
- A Temporary Stop Notice may be served to prohibit the unauthorised stationing of caravans used as main residences. (Refer to Appendix A The Department for Communities and Local Government document “Dealing with illegal and unauthorised encampments”).
- The TSN takes effect for up to a maximum of 28 days only.
- There is no right of appeal to the Secretary of State but a judicial review can challenge the validity and propriety of our decision.

6.9 Enforcement Notice

- The Notice is served on the land owner and all other parties that have some control over the land/buildings where we are satisfied that there has been a serious breach of planning control that is contrary to policy and or amenity considerations.
- One or more Notices may be served at the same time on the same site to cover different types of breaches of planning control.
- Every Notice must set out clearly the necessary steps to resolve the breach and set out a reasonable compliance period.

Please Note: All those served an Enforcement Notice have a right of appeal to the Planning Inspectorate (PINS). The PINS appeal suspends the Notice. **No further action can be taken by the Planning Authority until the outcome of the appeal is known. A PINS appeal can take up to 12 months (or more) to determine.**

6.10 ENFORCEMENT NOTICE APPEAL PROCEDURE

- All interested parties, including Ward Councillors and the clerk to the respective Parish/Town Council are notified of the appeal and informed by letter of how they can make representations to the Planning Inspectorate.(PINS)
- Appeals may be determined by way of an exchange of written representations, a hearing or public inquiry before a Planning Inspector.
- Irrespective of the procedure chosen by PINS an enforcement appeal is likely to take between 20 – 28 weeks to determine.
- The outcome may be to quash the Enforcement Notice, grant planning permission for what is alleged in the Notice, dismiss the appeal, or dismiss the appeal but make revisions to the Enforcement Notice.
- If the appeal is dismissed, new periods of time to comply with the Notice may apply. The compliance period for the Notice starts from the date of the appeal decision letter from PINS.

Please Note: If the compliance requirements of an Enforcement Notice have not been carried out and the compliance period has expired then it is a criminal offence.

6.11 Breach of Condition Notice (BCN)

- This is served on the land owner and the party considered responsible for the breach. It is used when there is a non compliance with one or more specific conditions on a specific planning permission decision notice.
- In the first instance we would normally negotiate to try to secure compliance with the condition
- The Notice must set out clearly which condition on which permission has not been complied with, and set out the works required to be carried out to address the breach.
- There is no right of appeal to the Secretary of State against a Breach of Condition Notice. We will use this procedure in preference to the service of Enforcement Notices where appropriate.

Please Note: The compliance requirement of a BCN remains applicable at all times after the date of compliance unless the BCN is withdrawn or superseded by a new permission/condition.

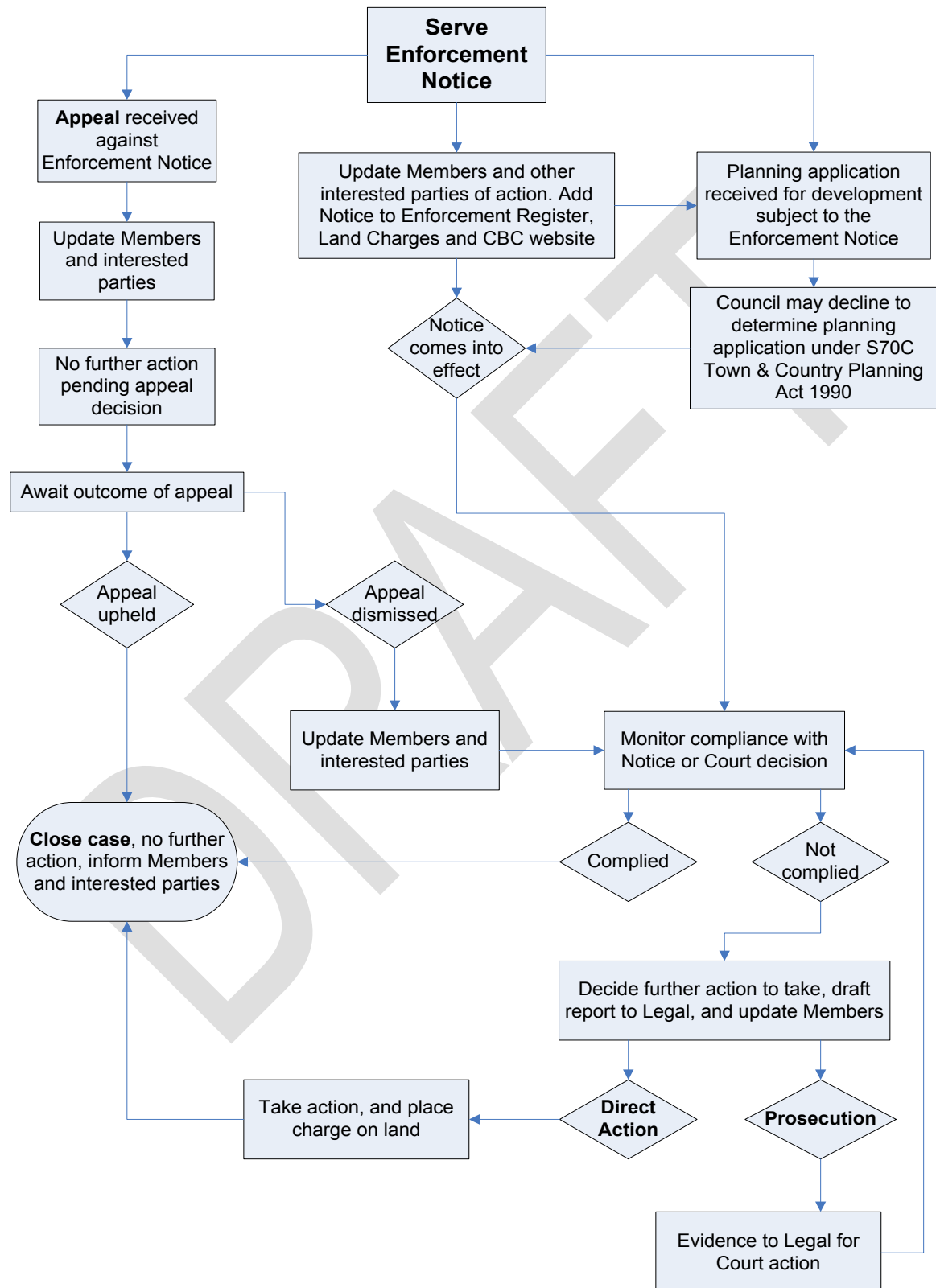
It is a criminal offence to fail to comply with a Breach of Condition Notice.

PUBLIC ACCOUNTABILITY OF THE PLANNING ENFORCEMENT POWERS

6.12 To ensure that all Members of the Council are kept regularly aware of the instances where Planning Enforcement or the Minerals & Waste Planning authority has had reasonable grounds for taking formal enforcement action under the Town & Country Planning legislation a summary table of the 'live' cases is included in the public agenda of each of the Development Management Committee meetings. The information provided for each of the sites includes:

- A description of the breach of planning control stated on the Notice
- The relevant dates of service, compliance period on the relevant type of Notice served
- The date when an appeal was made to the Planning Inspectorate(PINS) if applicable
- Whether the Notice has been complied with
- Commentary box to inform Members and the public of the latest position at the site

**Flow Chart 3 –
Planning Enforcement Formal Action for Enforcement Notice**



7. Non Compliance with a formal Notice

Please Note: Non compliance with the requirements of an Enforcement Notice or a Breach of Condition Notice after the compliance period has expired is a criminal offence.

- 7.1 If the Notice has not been complied with a report will be prepared by Planning Enforcement and submitted to the Council's Solicitor for consideration of commencing prosecution proceedings, and the persons responsible will be informed of this action. In such cases external circumstances will be taken into consideration that may affect compliance with a Notice.

Prosecution

- 7.2 We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors: -
- **Evidential test.** We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.
 - **Public interest test.** We will only bring a prosecution where this is in the public interest, and other methods of seeking compliance with a Notice have failed.
- 7.3 Court proceedings can take a considerable time, and further action may still be required to seek compliance with a Notice. A prosecution may be the Council's last resort, as the Council aims to resolve the breach of planning control and the harm this has caused to the neighbourhood, and not just to seek to punish those responsible for the breach of control.

Please note: Often there can be significant financial benefits obtained by the contravener in association with the continue non-compliance with a Notice. The Council will always consider taking action through the courts under the Proceeds of Crime Act legislation (POCA) to collect this financial gain in addition to planning prosecution action.

Direct Action

- 7.4 We do have the power, in special circumstances and as a last resort, to ensure a formal notice is complied with by carrying out the required steps ourselves in default of the owner or occupier's action. We would consider direct action for example where a Section 215 (untidy land) Notice has not been complied with. We will seek to recover costs incurred from the owner.

Please note: Where the Council cannot immediately recover costs we will register a charge on the property/land with the Land Registry so that the costs are obtained back when there is a change of ownership of the property/land.

Planning Enforcement Register

- 7.5 When formal enforcement action has been taken, (for example serving an Enforcement Notice), the details are entered into the Planning Enforcement Register by site address and available for public inspection on the Councils website at <http://www.centralbedfordshire.gov.uk/planning/enforcement>

8. Monitoring Planning Conditions and Planning Obligations

Conditions on Planning Permissions

8.1 Planning permission is often granted subject to certain conditions. There are three types of conditions:

- **Pre Commencement conditions** – These require that details or action to be taken before any development takes place.
- Conditions to be discharged during the implementation phase:
- Conditions related to the built development or change of use

8.2 Pre commencement conditions

- These are set out **in bold type** on the permission decision notice
- Require action or details to be submitted by the developer for approval before the development commences.
- Failure to comply with this type of condition may invalidate the planning permission and/or lead to enforcement action.
- A Temporary Stop notice (TSN) may be served to ensure that no further work takes place until requested details of materials for example are submitted and approved by the Planning authority.

8.3 Recent case law has sought to distinguish between conditions requiring no work to take place until certain actions have taken place or details submitted, and conditions which require details to be submitted before development commences. The former are true pre-development conditions. Case law will continue to influence our interpretation of pre-commencement conditions.

Please note: In September 2016 the national government in England issued a consultation paper on the use of pre commencement conditions and requested responses by November 2016. The related issue is whether the condition is equally effective if it can be more realistically be discharged whilst the project is implemented

8.4 Conditions that require to be discharged during the implementation phase

- It is the developer's responsibility to ensure that all work progresses in accordance with approved plans and details. For example where the approval of external brick/tiles is required by condition, or the details of landscaping need to be submitted that this is done at the correct time so the relevant condition can be discharged.
- When it is brought to the attention of the Council by a concerned neighbor that these types of conditions have not been discharged then an investigation case file will be opened and the developer contacted.
- If within a reasonable time period (usually 4 weeks) the requested details have not been submitted then formal action may be taken either by the service of a Breach of condition Notice or Enforcement notice.

- Once the developer is made aware of the non compliance then he will be advised that any further work related to the breach will be “*at their own risk.*”

8.5 Conditions related to the approved built development or change of use.

- An investigation into the non-compliance of these types of conditions will only be carried out as a result of a complaint received where some type of harm or nuisance is being caused. For example hours of operation are not in accordance with the hours permitted by a condition to the planning permission.
- The alleged breach of planning control may lead to either a Breach of Condition Notice or Enforcement Notice being served. The contravener may also make a planning application to remove or vary the restriction.

RESIDENTIAL: Removal of Permitted Development Provisions

- 8.6 Where the residential Permitted Development (PD) provisions for extensions and/or the placing of structures within the residential curtilage of houses has been removed by condition on a planning permission any complaints made by those directly affected by the work carried out which has not been the subject of a planning application in the normal manner.

Please Note: Under normal circumstances, the Council will not investigate general (commonly termed ‘*tit for ‘tat*’) complaints made about extension work in the general locality that may also be in an area where Permitted Development (PD) rights have been removed. This is not considered in the public interest because the aim of the enforcement service is to resolve breaches where some amenity and/or policy harm has been caused.

MINERAL PERMISSIONS: SITE MONITORING

- 8.7 Conditions on planning permissions for mineral workings are monitored pro-actively by the Council’s Minerals and Waste Planning Authority. Mineral extraction and landfill operations are large scale developments which, by their nature, have the potential to cause significant harm to the amenity of the local area, often over a period of many years or even decades. It is therefore essential that these developments are regularly and proactively monitored through from the implementation to the final land restoration phase.
- 8.8 On all active mineral sites the monitoring is carried out with regard to the compliance with the conditions on the relevant planning permission(s) for the particular site and operator. Two types of report are prepared:
- **Annual audit report:** Comprehensive report with the precise wording of each condition included, and checked at a pre-arranged site inspection with the operator
 - **Focussed report:** A summary of the relevant permission with wherever possible a Yes/No compliance box completed.
- 8.9 Associated with both types of reports is a reminder box to enable the Planning Authority to remind the operator of the need to submit certain information at some forthcoming date to comply with a specific condition.
- 8.10 Following the site inspection the Monitoring Report is sent to the operator and where non compliances have been identified assists in discussions to resolve the breach and so reducing the likelihood of the need to serve a formal Breach of condition Notice.

NATIONAL FEE CHARGE MONITORING

- 8.11 Since 2006 all mineral operators or developers in England who are considered to be carrying out a landfill type operation are obliged by legislation to pay a nationally set fee

for each site monitoring inspection carried out by the Minerals & Waste Planning Authority (The current 2016 fee is £331 per visit at an active site). An active site may require four visits each year to ensure that the identified non compliances have been resolved by the time of the next visit. The annual finance generated from this pro-active enforcement work is sufficient to employ a full-time Monitoring Officer (Minerals & Waste) in the Council's Minerals and Waste Team.

PLANNING OBLIGATIONS

- 8.12 Planning obligations are Planning Agreements or Unilateral Undertakings that relate to large scale developments, usually new housing, and often aim to ensure that the associated infrastructure and community facilities are provided at the appropriate time.
- 8.13 **Planning Agreements** (also known as Section 106 Agreements) are agreements made between the Local Planning Authority and a developer. Unilateral undertakings are made by the developer. Both aim to make proposed development acceptable and accord with planning policies. Such obligations may restrict development or use of land, may require certain operations to be carried out, or may require payments to be made to the Authority.
- 8.14 Particular staff in Development Management monitor the planning obligations to ensure that operations are carried out and payments made within the required timescales.

Breach of a Planning Obligation

- 8.15 Planning obligations run with the land so if the terms of an obligation are not complied with any enforcement action may be taken against persons acquiring an interest in the land. Should there be a breach of a formal obligation there are three methods of enforcement open to the Council:
- We can apply to the Court for an **Injunction**. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.
 - We can **enter the land to complete works** and will seek to recover costs where certain operations or works have not been carried out, but must give at least 21 days notice of our intention.
 - We may **place a charge on the land** in order to assist the Council in proceedings to recover costs incurred.

9 Enforcement Action for Listed Buildings, Protected Trees, Untidy Land and the display of advertisements

Listed Buildings

- 9.1 The Council attaches particular importance to ensuring that any alterations to listed buildings are properly monitored. There are within the CBC area a total of over 1500 listed buildings
- The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation.
 - It is a criminal offence under the legislation to carry out unauthorised works to a listed building which could affect its character.
 - The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory.
 - A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment.
 - There is no time limit upon the Council to pursue Listed Building Enforcement Action.
 - A Listed Building Enforcement Notice or Repairs Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to the Planning Inspectorate.
 - Failure to comply with a Listed Building Enforcement Notice is an offence, which is liable to a substantial fine on summary conviction.

Protected Trees

- 9.2 Under the Town and Country Planning legislation the local planning authority has the right to make provision for the preservation of trees in their area by making Tree Preservation Orders.
- Any person that carries out works to protected trees (TPO) without the appropriate prior approval has carried out a criminal offence, who is liable, if found guilty on summary conviction, to a substantial fine under the legislation.
 - In addition to the criminal penalties for the felling or other unauthorised works to protected trees, the landowner is also under a duty to replace a protected tree that has been removed. The Council may serve a **Tree Replacement Notice** to require a suitable replacement tree to be planted or the Council may do the work and recover costs from the landowner.
 - **Trees in Conservation Areas** are also afforded a degree of protection under the planning legislation because trees are often considered to make a significant positive contribution to the visual amenity of a Conservation Area. Unauthorised work to and/or removal of trees without prior notification constitutes an offence. However the Council will exercise discretion in deciding whether or not it is appropriate to pursue prosecution.

Section 215 Notice: Untidy land and/or buildings

- 9.3 If the visual appearance of the private land or buildings is considered to have a seriously detrimental impact on the amenity of an area then the use of Section 215 Notice may be appropriate.
- A warning letter is first sent to the land owner advising that the current condition of the site is unacceptable and needs immediate attention.
 - A period of negotiation may be reasonable if the land owner provides a positive response and some actions are carried out to address the key issues.
 - The Section 215 Notice if served requires the owners and occupiers of the land to take certain steps as specified, related to the characteristics of the site to secure an improvement in its appearance within a given time scale.
 - The recipient(s) have a right to appeal to a magistrates' court.
 - Failure to comply with the notice is an offence and the Council has on certain occasions taken prosecution action in the Magistrates Court to penalize those responsible for the non compliance.
 - There are no time limits over when the Section 215 Notice can be served
 - The same site may be the subject of more than one Section 215 Notice if the appearance of the land/property/premises returns to be unacceptable.

Advertisements

- 9.4 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2010. An application to display an advertisement is decided in the interests of amenity and public safety. The rules are complicated and seek to control amongst other things the height, size, and illumination of advertisements.
- It is an offence to display an advertisement without the consent required
 - It is open to the Council to take a prosecution in the Magistrates Court for an offence under the Advertisement Regulations. The continued display of an advertisement without consent, or after consent has been refused, may well result in prosecution. On conviction a fine may be imposed by the Court with an additional daily fine on conviction of a continuing offence.
- 9.5 Advertisements are divided into three main groups: -
- Advertisements with 'express consent' – not controlled by the Council.
 - Advertisements with 'deemed consent' - the planning authority's consent is not required provided the advertisement meets certain criteria.
 - Advertisements which require to be the subject of advertisement consent from the local planning authority.

Advertisements placed within the public highway

- 9.6 Any complaints received about obstructions or presence of advertisements displayed on public highway verges and pavements is a matter for the CBC Highways Section to resolve. Their contact details are via the CBC website : *Transport, roads, parking* section.

9.7 Free standing Placard and poster displays

- The Council can remove or obliterate any placard or poster displayed illegally.
- We are required to give at least two days notice in writing, or other appropriate format, to anyone we can identify as being responsible for displaying unauthorised placards or posters
- The Council can also remove advertisement display structures providing it has first served a Removal Notice.

10 Conclusion

- 10.1 It is the Council's policy to provide a reliable, efficient and good quality corporate planning enforcement service, maximising the use of the resources available, to protect the local environment and the level of amenity enjoyed by local residents and local businesses.

Please Note: It is essential that Planning enforcement resources are not used to handle non-planning issues.

For example, the investigation of the display of property sale boards following a complaint solely made by a business competitor. This is because not only would there be an adverse impact upon the efficiency of the legitimate planning enforcement service to the local community, but because everyone has a right to make a formal complaint if it is considered that the actions taken by Council are unreasonable or unjustified. The Council may be found guilty of maladministration because in these circumstances the actions taken to require the removal of the property boards may be considered to be not in the public interest but in the specific interests of a particular business competitor.

- 10.2 Planning is a LAND USE discipline and Planning Enforcement is essentially involved in the investigation of alleged breaches of planning control and their resolution by negotiation and co-operation whenever possible.
- 10.3 **The Enforcement Service standard** is to aim to resolve 80% of cases received within a period of 6 months. In the April-June 2016 period the figure was 78%.
- 10.4 In general **over 95%** of investigation cases are closed/resolved without the need for formal enforcement action.

Please Note: In the annual period from January to the end of December 2015 more than 500 case files were opened. In the same period formal enforcement action was taken with regard to a total of 22 sites. This represents about 4% of the number of cases opened in the same period.

Require further information about the Planning Enforcement Service?

- 10.5 The Team Leader contacts are as at September 2016:

Sue Cawthra: Enforcement & Appeals Team Leader
Phone 0300 300 4369 (normally available Monday, Tuesday and Thursday)
Email: sue.cawthra@centralbedfordshire.gov.uk

Area of responsibility: Enforcement procedures associated with the investigation of all types (other than mineral and waste matters) of re-active planning non-compliance complaints.

Roy Romans: Minerals & Waste Team Leader
Phone 0300 300 6039
Email: roy.romans@centralbedfordshire.gov.uk

Area of responsibility: Minerals & waste issues associated with the investigation of re-active planning non-compliance complaints and the pro-active monitoring of compliance with planning conditions at all minerals and waste sites.

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