

Planning Enforcement Policy

The Isle of Wight Council



April 2009

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Introduction

The Isle of Wight is a special place to residents and visitors alike. It has many historic towns, villages, buildings and historic sites. Over half the Island is designated as an Area of Outstanding Natural Beauty and its coast is recognised for its scenic, ecological and geological importance. It is home to nationally and internationally important species and their habitats.

Central to the social and economic well being of the Island and realisation of the Eco-Island Vision is the protection of these special qualities, through managing environmental change. The planning system is key to how environmental change is managed in the UK; it ensures that sensitive and irreplaceable environments and buildings are protected for the future.

Key to the credibility of the UK planning system is an effective, efficient and responsive planning enforcement service. In recognition of these considerations the Council has produced this planning enforcement policy.

The document sets out what you can expect from the Council when you report a potential breach of planning control and gives simple advice on how we will go about investigating your concerns. It sets out how the service will prioritise complaints and tells you what we will and will not do. It also contains references to other sources of further information.

A simplified flowchart is provided, though please note, that if at any time someone chooses to apply for retrospective planning permission and is refused, he/she can appeal against that decision. Individuals can also appeal against enforcement action. Planning appeals and appeals against Enforcement Notices are considered by the Planning Inspectorate. Appeals can take some considerable time to be decided, especially when they are heard by way of Public Inquiry. The Council would like to highlight that these timescales are beyond its control.

It is intended that this policy and its targets will be reviewed following 12 months from its instigation.

The priority approach to enforcement

1

Priority one cases

These are those cases which either pose an ongoing threat to public safety, or which cause irreversible damage to areas of acknowledged importance*

We aim to visit 90% of these sites within 24hrs**

2

Priority two cases

These are those cases which impact upon residential privacy or amenity, or which relate to minor breaches, or where the breach of control is not ongoing.

We aim to visit 80% of these sites within 10 working days**

3

Priority three cases

These are those cases which do not cause material harm to any acknowledged interest, and/or which are unlikely to need planning permission, or those cases where planning permission is likely to be granted.

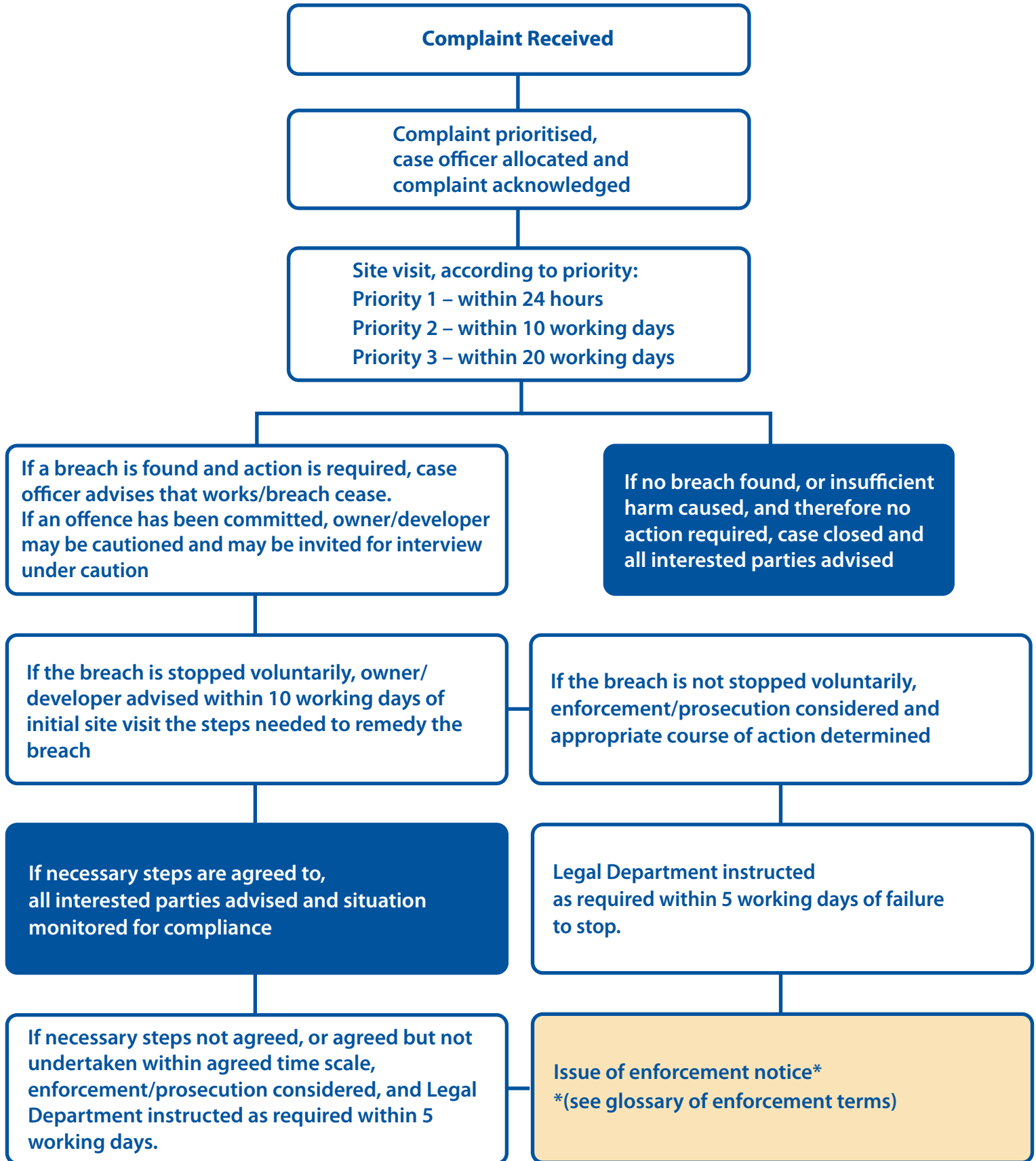
We aim to visit 70% of these cases within 20 working days**

* *Areas of acknowledged importance are defined as:
Internationally protected sites, including SPAs, SACs, cSACs and Ramsar sites.
Nationally important sites, including AONB, SSSIs, Conservation Areas,
Listed Buildings, Historic Parks and Gardens and locally important SINCs and TPOs.*

** *Please note that during the course of our investigations the priority of cases may change, if for example new information comes to light. In such instances cases will be re-prioritised according to the above criteria.*

NB In the event we miss the target date set out above, outstanding Priority one cases will be visited within the next 24 hours, and Priority two and three cases within 3 working days of the respective target date.

Simplified enforcement flow chart



What the Council will and will not do

- 4.1 The Council will preserve the anonymity of complainants, though information will be shared internally between departments, if required to properly investigate and address the complaint. We will view breaches of planning control with impartiality and we will treat all parties with dignity and respect. We ask the same in return.
- 4.2 Anonymous complaints will not normally be investigated, although Priority one complaints will be investigated at the discretion of the Enforcement Team Leader, where it is in the public interest to do so. We will not investigate malicious, vexatious, or repeat complaints that have been made without any sound planning basis.
- 4.3 Enforcement action will not generally be undertaken in respect of very minor breaches of planning control, following the established principle of proportionality, where there is little or no public harm. Following Government guidance in PPG 18 (Enforcing Planning Controls), the Council will not enforce against domestic developments which are marginally above permitted development allowances. It will however consider each case on its merits, with regard to the circumstances. In these cases, planning enforcement is the last resort.
- 4.4 When considering enforcing against small businesses, the Council will have special regard to the potential impact of such action on the small business, and any loss of employment. The Government remains committed to creating employment which does not cause unacceptable harm, the Council must therefore protect employment for the benefit of the Island's economy, where appropriate. It will explore all alternatives to formal action, which might otherwise lead to the unnecessary closure of businesses before it takes formal action. If it does have no option but to take formal action, it will clearly explain its reasons for having to do so. However the Council cannot and will not tolerate unauthorised development by businesses, which cause irreparable damage to public amenity, or the existing use of land and buildings meriting protection in the public interest.
- 4.5 The Council will not allow protracted negotiations to delay enforcement action, where public amenity or the existing use of land and buildings merits protection in the public interest. It will not tolerate abusive or disrespectful behavior against its staff, and if its enforcement officers are considered to be at risk, it will involve the Police. It will proactively monitor approved developments for compliance.

What the Council will and will not do

- 4.6 In determining whether or not to take action the Council will not give weight to considerations that are not material planning ones. For example the Council will not therefore interfere with matters of a private nature, such as land ownership or boundary disputes, as these matters are beyond the scope of the Council's planning powers. Similarly, considerations which relate to the Party Wall Act will not be investigated.
- 4.7 The Council will pay special regard to the monitoring of holiday occupancy restrictions, attached to relevant sites, in recognition of their importance in planning policy terms. The Council is developing a separate policy, which will further prioritise the approach to dealing with breaches at these sites. A further policy approach to dealing with untidy land and buildings/sites will also be developed.
- 4.8 Following Government Guidance in PPG 18 (Enforcing Planning Controls), the Council will seek planning applications for developments which are considered to be acceptable. It should be noted however that it is not a criminal offence to carry out development, without first having obtained any planning permission for it. Whilst it is obviously unsatisfactory for anyone to carry out development without first obtaining the required planning permission, Government is quite clear that an enforcement notice should not normally be served solely to regularise development which is acceptable on its planning merits, and that to criminalise those who carry out unauthorised development would be a disproportionate response.
- 4.9 Where it is clear that a development has been carried out without planning permission, but that it could be made acceptable through the imposition of planning conditions, the Council will also seek planning applications for developments which are considered to be acceptable on their planning merits. Such conditions may include, for example, hours of operation or the need for landscaping. In such cases the Council will make it clear that it does not wish the development to cease, but that it has as a public duty to safeguard the public interest by ensuring that development is properly controlled. In such cases where an application is not forthcoming, the Council will use its enforcement powers to protect the public interest. In taking such action the Council will clearly explain why it is doing so.
- 4.1.0 Where an unauthorised development is unacceptable on a specific site, but where the Council is aware that relocation to an alternative site is possible, as part of its economic development responsibilities the Council will encourage relocation to it. However where alternatives exist and an unacceptable use does not cease when it is requested that it does, the Council will use its enforcement powers to protect the public interest. If an unauthorised development is unacceptable and it cannot be relocated, but where it provides valuable employment, the Council will consider carefully how long it can tolerate an unauthorised use before it enforces against it. Naturally this will be considered on a case by case basis, balancing the need for employment against the need to protect the environment and the public interest.

What the Council will and will not do

- 4.1.1 If a development is unauthorised and where it is clearly unacceptable the Council will take vigorous enforcement action to protect the public interest. The Council cannot and will not tolerate flagrant breaches of planning control which cause serious harm to public amenity, or which cause irreparable damage to the Island's environment. The Council will work closely with other departments to ensure a fully comprehensive and corporate approach is taken to tackling serious breaches of planning control and their impact.
- 4.12 The Council will consider providing an out-of-hours emergency enforcement call-out service, and will seek to establish service level agreements with Legal Services, for the preparation of urgent action.

Performance Standards

The Council has set a number of performance standards, so that it can monitor and manage its performance against them. They are as follows:

Action	Target
Register and acknowledge complaints	100% within 3 working days
Priority one initial site visit	90% within 24 hours
Priority two initial site visit	80% within 10 working days
Priority three initial site visit	70% within 20 working days
Advise complainant of preliminary findings	100% within 20 working days*
Advise owner/operator of allegation	100% within 10 working days **
Instructing Legal Services	100% within 5 working days of formal action becoming necessary

* We will move towards a system of periodic updates for Parish Councils

** In the most serious of cases owners will be advised immediately.

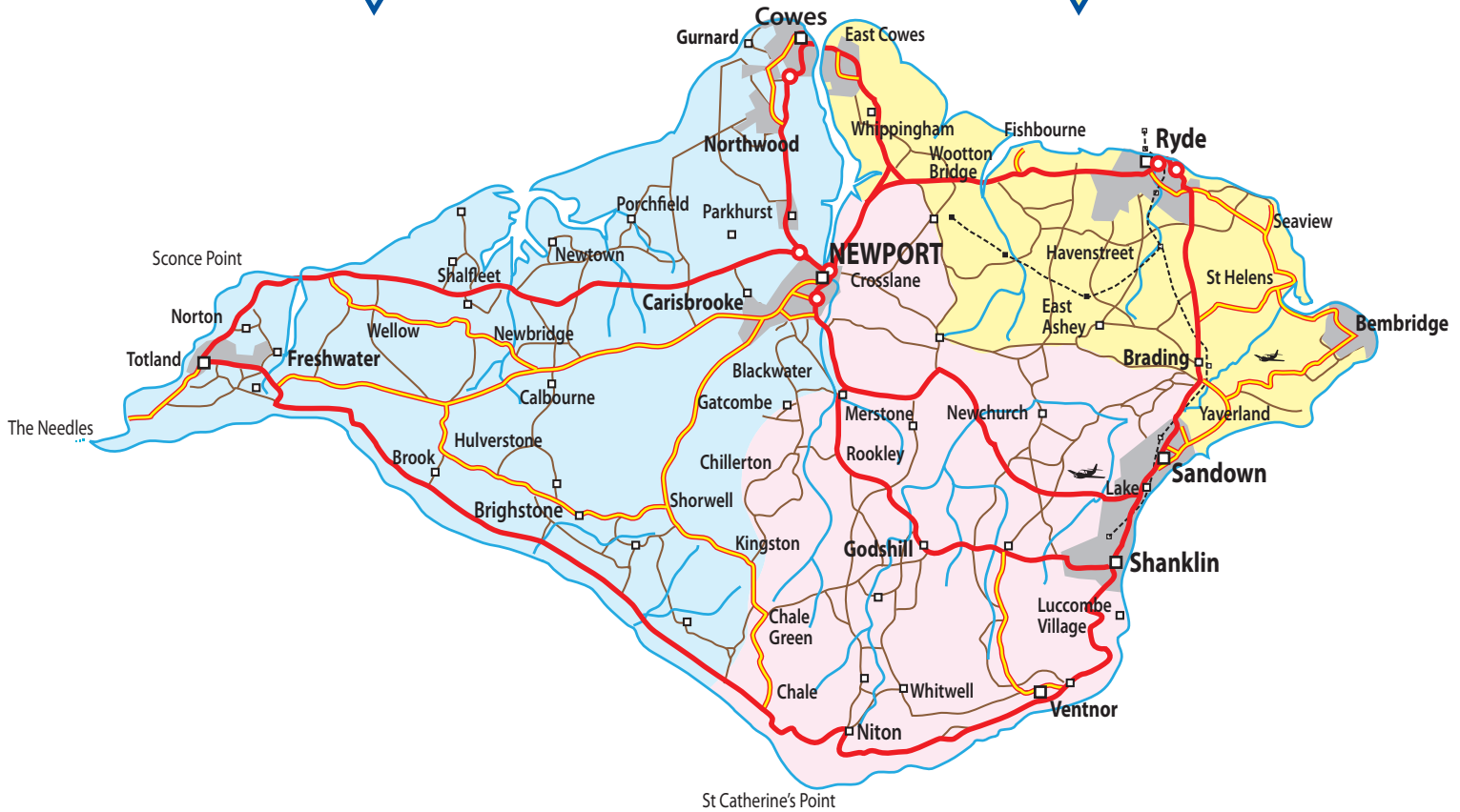
Planning Enforcement by Area

Western Area

Tel: (01983) 823552 | Fax: (01983) 823563
enforcement.team@iow.gov.uk

Eastern Area

Tel: (01983) 823552 | Fax: (01983) 823563
enforcement.team@iow.gov.uk



Central Area

Tel: (01983) 823552 | Fax: (01983) 823563
enforcement.team@iow.gov.uk

Useful Contacts

To make a complaint about a potential unauthorised development:

All complaints should be made in writing. Complaints can be submitted by completing and returning the Complaint Record Sheet, which is available from our website <http://www.iwight.com/>. A printed copy of this form is available for posting on request.

Complaints sent via Email must be sent to enforcement.team@iow.gov.uk

Emailed complaints must contain the information requested in the Complaint Record Sheet.

Contact details: Isle of Wight Council, Seaclose Offices, Fairlee Road, Newport, Isle of Wight, PO30 2QS or Tel: 01983 823552

To lodge an appeal against planning enforcement notices:

Appeals are dealt with by the Planning Inspectorate. Appeals can be lodged on-line via <http://www.planning-inspectorate.gov.uk/>

The Planning Inspectorate can be contacted at: The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or Tel: 0117 372 6372

To obtain free advice regarding breaches of planning control:

Planning Aid provides free, independent and professional town planning advice and support to communities and individuals who cannot afford to pay fees to a planning consultant.

It complements the work of local planning authorities, but is wholly independent of them.

Visit Planning Aid at www.planningaid.rtpi.org.uk or phone 0870 240 7552.

To make a complaint about the Council's Planning Enforcement Team:

We aim to get things right. However, when things go wrong we aim to put things right quickly, informally and without fuss. A formal complaints procedure is available if we are unable to resolve a customer's complaint on an informal basis.

Complaints can be submitted at <http://www.iwight.com/complaints/>

Alternatively, you can contact us at: Isle of Wight Council, Seaclose Offices, Fairlee Road, Newport, Isle of Wight, PO30 2QS or Tel: 01983 823552

To find out about the services of Chartered Town Planning Consultants:

The Royal Town Planning Institute maintains regional lists of Chartered Town Planning Consultants, who may be employed to help you if instructed. Copies of the list of Consultants for the Isle of Wight area are available at our Seaclose offices, or can be downloaded from www.rtpi.org.uk

To make a complaint to the Local Government Ombudsman:

The Local Government Ombudsman (LGO) is able to investigate certain types of complaints against councils if you remain dissatisfied after using our complaints procedure, which you must exhaust before the Local Government Ombudsman will investigate.

The relevant contact details are: Local Government Ombudsman, C/o The Oaks, Westwood Way, Westwood Business Park, Coventry, CV4 8JB or Tel: 024 7682 0000

Glossary of terms and powers

This glossary explains what the various acronyms referred to in this policy are and what they mean. It also lists the main planning enforcement notices/powers which the Council has at its disposal, in order to tackle different breaches of planning control.

SPAs - Special Protection Areas. SPAs are a European designation classified in accordance with the EC Directive on the Conservation of Wild Birds. The designation is attributed to sites for rare and vulnerable birds, listed in Annex 1 of the birds directive, and for regularly occurring migratory species.

SACs - Special Areas of Conservation. SACs are a European designation awarded to sites that will make a significant contribution to conserving the habitats and species listed on Appendix I and II of the directive. The listed habitats and species are those considered to be most in need of conservation at a European level.

cSACs - cSACs are areas which are candidates for SAC designation.

Ramsar sites - Ramsar sites take their name from the location of the first meeting of the Convention on Wetlands of International Importance which was held in Ramsar, Iran in 1971. The designation is attributed to wetland sites of international importance. Originally this primarily focused on sites that were of international importance to birds but the scope of the designation has now been extended and recognises wetlands as an ecosystem that are extremely important for biodiversity conservation in general and for the well-being of human communities.

AONB - An Area of Outstanding Natural Beauty. An AONB is an area of countryside with significant landscape value that has been specially designated by the Countryside Agency (now Natural England) on behalf of the United Kingdom Government. Half the Island is designated as AONB.

SSSI - Site of Special Scientific Interest. SSSI designation was first developed in 1949 in order to provide statutory protection for sites offering the best examples of the UK's biodiversity as well as geological or physiographical features. In 1981 the designation was re-enacted under the Wildlife and Countryside Act and has been further amended by the Countryside and Rights of Way Act in 2000 and the Nature Conservation Act 2004.

SINC - Site of Importance for Nature Conservation Interest. The Council may designate certain areas of being of local conservation interest. This is the lowest tier of conservation designation and varies in terms of what it seeks to conserve, from area to area.

Glossary of terms and powers

Planning Contravention Notice (PCN) - In deciding whether or not to serve an enforcement notice the Council must, as far as possible, be sure of its facts. Sections 171C and 171D of the Town and Country Planning Act 1990 provides for the service of a Planning Contravention Notice. Such a notice requires the recipient to provide information about any operations or activities being carried out on land, to enable the Council to ascertain the facts. Failure to comply with the requirements of a planning contravention notice within 21 days is a criminal offence. The penalty for non-compliance with a Planning Contravention Notice can result in a fine of up to £1,000. If any person makes a false or misleading statement he/she shall be guilty of an offence on conviction with a maximum penalty £5,000.

Section 330 Notice (s330 Notice) - A notice served under Section 330 of the Town and Country Planning Act 1990 enables the Council to demand information from the occupier of land, as to his/her interest in it. Such a notice is served as a precursor to an enforcement notice being served.

Enforcement Notice (EN) - Enforcement notices are legal charges on land or property, served at the discretion of the Council. An enforcement notice can require the cessation of an unlawful use of land and/or the removal or modification of buildings or structures that do not have planning permission. Failure to comply with a valid enforcement notice is an offence, which would make the guilty person liable on summary conviction to a fine up to £20,000. There is a right of appeal against an enforcement notice.

Listed Building Enforcement Notice (LBEN) - This type of notice is similar to an enforcement notice, but is used where works have been carried out to a Listed Building without the benefit of Listed Building Consent, or where works are in contravention of a condition of such consent. Such a notice can require works to be carried out in order to alleviate harm caused to the building. A right of appeal exists against these notices. Any unauthorised alteration of a listed building constitutes a criminal offence and those carrying out the works can be prosecuted.

Breach of Conditions Notice (BCN) - Many planning permissions are granted subject to conditions. Where a condition is not complied with the Council can serve a breach of condition notice. Such notices set out the steps to be taken to remedy the breach and the time within this must be done. There is no right of appeal against these notices, failure to comply with the terms of a notice is an offence.

Glossary of terms and powers

Section 215 Notice (s215 Notice) - Section 215 (s215) of the Town & Country Planning Act 1990 provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to the Council that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. The Council also has the power under s219 to undertake the clean up works themselves and to recover the costs from the landowner. Like all planning powers, the use of s215 by the Council is discretionary. A s215 notice can be appealed in the Magistrates Court.

Stop Notice (SN) - If the Council considers that an unauthorised development or use may cause long term and severe damage to the local area and needs to be stopped immediately, it may serve a stop notice. Such notices can only be served once we have served an Enforcement Notice. A stop notice has the effect of immediately halting unauthorised development. Failure to comply with a stop notice is an offence, which would make the guilty person liable on summary conviction to a fine up to £20,000. There is no right of appeal against a stop notice.

Temporary Stop Notice (TSN) - A Temporary Stop notice can be served without the need for an Enforcement Notice to have been served. It takes effect immediately from the date and time of service and lasts for 28 days. The Council can serve a further notice on the expiry of the 28 days.

Injunction - The Council may 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 concerned is unknown. An injunction can be sought whether or not other enforcement action has been taken. The Council will only apply to the Court for an injunction in exceptional cases of serious harm. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Prosecution - The Council can initiate Court proceedings where a formal Notice has been breached. Additionally, legal proceedings may be commenced for unauthorised works without the necessity of serving any formal Notices. For example, unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. Prosecution will only be considered if there is sufficient evidence and a prosecution will only be brought if it is considered to be in the public interest to do so.

Glossary of terms and powers

Urgent Works Notice - The Council has power under the Planning (Listed Building & Conservation Areas) Act 1990 to require urgent works necessary for the preservation of unoccupied listed buildings and buildings in conservation areas. If the works required are not carried out, the Council may complete them itself and recover the cost from the owners.

Urgent Repairs Notice - A Repairs Notice can be served under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990, only in relation to a listed building. Under these notices the Council can require a building owner to comply with a schedule of works, which can be used to put the building back into the condition as of the date of listing. The works allow for a much more comprehensive repairs scheme than the Urgent Works Notice. The method of enforcing this notice is to make a Compulsory Purchase Order. The compulsory purchase power is provided under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which can allow for the compulsory acquisition of a listed building in need of repair. It is however the very last resort to secure the survival of a listed building.

Building Preservation Notice - This is a notice served by the Council in respect of an unlisted building, perceived as being of architectural or historic interest. The effect of such a notice is to give a building or structure temporary listed status, which allows time for the Secretary of State to decide whether or not to confirm the buildings listed status.