

5 March 2013		ITEM 5
Planning, Transport and Regeneration Overview and Scrutiny Committee		
LOCAL PLANNING ENFORCEMENT MANAGEMENT		
Report of: Leigh Nicholson Development Management Team Manager		
Wards and communities affected: All	Key Decision: No	
Accountable Head of Service: Andy Millard, Head of Planning & Transportation		
Accountable Director: David Bull, Director of Planning & Transportation		
This report is public		
Purpose of Report: The purpose of this report is to advise Members of Local Planning Enforcement Management with a view to publication to manage enforcement proactively in a way that is appropriate.		

EXECUTIVE SUMMARY

In accordance with paragraph 207 of the National Planning Policy Framework (NPPF) this report outlines the recommended approach to be taken by the Council to remedy unauthorised development and the procedures that will be followed.

1.0 RECOMMENDATIONS:

- 1.1 That the Planning, Transport and Regeneration Overview and Scrutiny Committee provide views and comments on the emerging Planning Enforcement Compliance Plan to improve the standard of planning enforcement by following various principles, adopting good practice and to allow for monitoring to ensure the effectiveness and integrity of the Planning Enforcement function.
- 1.2 The Planning Enforcement Compliance Plan is proposed to be reported to the Planning Committee on 14th March 2013 (for information) and be utilised by the Development Management service from 1st April 2013.

2.0 INTRODUCTION AND BACKGROUND:

- 2.1 The Town and Country Planning Acts give the Council, as the Local Planning Authority (LPA), powers for the control of unauthorised development. This

report considers the approaches that the Council may take in investigating and remedying breaches of planning control.

- 2.2 Paragraph 207 of the National Planning Policy Framework (NPPF) provides that *“Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”* The Planning Enforcement Compliance Plan has been prepared to outline the processes and approach that will be taken by the Council to investigate and where expedient to remedy unauthorised development and the procedures that will be followed.

3.0 BREACHES OF PLANNING CONTROL

- 3.1 Planning permission is required for development work, such as new buildings, and for a material change of use of buildings or land.
- 3.2 Breaches of planning control occur in a number of ways, for example:
- Building work, engineering operations and material changes of use without planning permission;
 - Development not carried out in accordance with approved plans or in accordance with planning conditions or the terms of a legal agreement;
 - Unauthorised demolition;
 - Unauthorised work to a Listed Building which affects its character or appearance;
 - Removal of, or works carried out to, protected trees and hedgerows without consent being granted or proper notification given;
 - The display of advertisements that require express consent without that consent having been granted;
 - Land or buildings which are derelict, unkempt or overgrown and are adversely affecting public amenity. These are classed as ‘untidy sites’;

4.0 HOW WE WILL INVESTIGATE COMPLAINTS

- 4.1 Most breaches of planning control are reported to the Council directly by members of the public. We request that complaints about unauthorised development are made, wherever possible, via e-mail or via the Council’s website.
- 4.2 The Council will also be pro-active in initiating investigations where it is clear that a serious breach has occurred and it will seek compliance with conditions imposed on planning permissions.
- 4.3 Complaints will normally be acknowledged in writing by telephone or via e-mail, within 3 working days.

- 4.4 Complaints will be treated in confidence. Complainants will be treated as 'protected informants' during the investigation and their identity will not be revealed unless the courts direct otherwise. This is to ensure the safety of complainants, particularly if investigations lead to recriminations from an alleged offender.
- 4.5 Complainants will be advised that if formal action needs to be taken, the Council will be required to provide evidence of the breach and any harmful effects, so their co-operation and involvement as witnesses may be important in securing a successful outcome.
- 4.6 Anonymous or vexatious complaints will not normally be investigated unless they allege breaches of planning control that the Council considers serious and can be verified.
- 4.7 Planning Officers will be responsible for discharging and then monitoring the implementation of planning conditions. Cases will be forwarded to Planning Enforcement Officers in the team where non-compliance occurs.
- 4.8 Complaints that relate to breaches on Council owned land and the public highway will be dealt with by the appropriate land-owning Council department. A remedy using land-ownership powers is generally achieved more quickly and efficiently than when utilising planning powers.

5.0 PRIORITISING COMPLAINTS

- 5.1 The Council will use the following classification when deciding which cases will be given priority:

5.2 Serious Breaches: Requiring immediate investigation

The following types of cases are regarded as serious:

- Works to Listed Buildings;
- Works to protected trees (either those covered by a Tree Preservation Order (TPO) or those within a Conservation Area) and safeguarded hedgerows;
- Demolition of important unlisted buildings in Conservation Areas;
- Development which may have a significant and permanent adverse environment, i.e. unauthorised mineral extraction and tipping of waste near protected sites;
- Development which results in concerns for public safety;
- Significant unauthorised building works / structures.

5.3 Urgent Complaints: Investigation to commence and complainant to be informed of progress within 15 working days

The following types of cases are regarded as Urgent :

- Operational and building works, changes of use, minerals / waste issues and non-compliance with conditions / obligations that significantly affect residential amenity;
- Operational development within Conservation Areas
- Where the opportunity to take enforcement action will shortly end due to immunity.

5.4 Non – Urgent complaints: Investigation to commence and complainant to be informed of progress within 25 days working days

The following types of cases are regarded as Non Urgent :

- Other changes of use;
- Other building works / condition of land / compliance with conditions;
- Untidy sites
- Advertisements
- Satellite dishes (conservation Areas to be prioritised);

5.5 Pro-active Investigations: No specific priority, but will undertaken as required.

The following types of cases will be monitored proactively:

- Checking of planning conditions that have not been discharged, even where a complaint has not been received.

5.6 Minerals and Waste Sites

There are no separate compliance powers for unauthorised minerals working. Therefore, complaints regarding these matters will be dealt with in the same way as all other general planning complaints. However, due to the occasionally irremediable nature of minerals working and the potential speed at which damage can be caused, the Council will undertake, as a matter of course, pro-active monitoring of Minerals and Waste planning permissions and conditions. This will involve frequent liaison with local mineral operators to ensure that planning conditions are being complied with, regular inspections and meetings discussions matters such as soil handling, archaeology and aftercare (as suggested by NPPF paragraph 114). A schedule for monitoring of minerals and waste sites will be agreed with operators.

6.0 INVESTIGATION PROCEDURES

6.1 Stage 1: Acknowledgement

On receipt of a complaint, the priority of the case will be assessed in accordance with the details above. The complaint will be acknowledged within 3 working days.

6.2 Stage 2: Initial desktop investigation

Once the complaint is acknowledged and prioritised a desk top investigation will take place. This will involve the following:

- Checking the planning / compliance / building control history for the site including conditional requirements for planning permission and Section 106 obligations;
- Checking site constraints;
- Identifying main planning policy considerations relevant to the alleged unauthorised development;
- Checking relevant legislation (i.e. does the alleged breach constitute “development”? Could it be “permitted development? What needs to be checked and measured on site?)

If it is not clear what the reported breach of planning control is, further information will be required and the investigating Officer may need to contact the complainant before proceeding to Stage 3.”

6.3 **Stage 3: Initial site visit**

The Council’s Planning Enforcement Officers will visit the site to which the alleged breach relates. This will involve:

- A considerate and sensitive approach, recognising that there may be no breach or that the breach is unintentional;
- Enforcement Officers will identify themselves when on site and explain the reason for the visit (if it is suspected that an offence has been committed the investigating Officer must have regard to the provisions of section 66 and 67 of the Police and Criminal Evidence Act 1984 in relation to cautioning suspected offenders);
- Obtaining the identity of the owner / occupier / persons responsible for the activity / development taking place;
- Recording names and addresses of all persons who have an ownership or tenancy interest in the land / property;
- Taking and recording any necessary measurements and taking photographs;
- Recording a brief site description including a description of the alleged unauthorised development;
- Identify neighbouring properties likely to be affected by the activities / development;
- If a breach of control has clearly taken place then (depending on the nature of the breach) the owner / occupier / person responsible will be contacted straight away and advised to stop work until the matter is resolved. They will be advised that any further activity / development carried out will be entirely at their own risk and may be subject to enforcement action.

6.4 **Stage 4: Action following the initial site visit**

Following the initial site visit Planning Enforcement Officers will:

- Advise the owner/occupier/person responsible for the alleged unauthorised development of the Council's intended action or options;
- available to resolve the matter, or seek further information to determine whether a breach has occurred;
- Advise complainant in writing of the initial findings and proposed action (if any).

The complainant should be prepared to tell the investigating Officer what harm is being caused to them by unauthorised works or change of use of the land; and of any harm being caused from any of the activities that are being carried on. This can help establish what harm is being caused and/or the level of harm being caused. The investigating Officer can then determine an appropriate time to visit the site to verify the complaint and/or to witness the reported breach of planning control.

6.5 Stage 5: Further investigation/obtaining information

Depending upon the outcome of Stage 4, it may be necessary for the Council to:

- Monitor activity on site to collect further information or evidence about the alleged breach;
- Carry out covert surveillance strictly in accordance with the provisions of the Regulation of Investigatory Powers Act (RIPA);
- Serve a Planning Contravention Notice (PCN) or a requisition for information under Section 330 of T&CP Act or Section 16 of the Local Government (Miscellaneous provisions) Act 1976. These require the recipient to provide information relating to the alleged breach and who has an interest in the site within 21 days;
- Carry out a Land Registry search to establish ownership of the land (if registered) ;
- Carry out a search of the Council Tax and/or the Business Rates databases to establish who the responsible person or company may be (if registered);
- Carry out a search of the Companies House database to establish who the directors of the company are;
- Consult the parish council, City Council Ward Members, neighbouring residents and other agencies
- Consult neighbours if appropriate;
- Liaise with other Council services and external agencies.

6.6 Stage 6: Action following investigation

Once the investigative stages are complete the Council will follow one of the following courses of action and will advise the complainant of the decision:

- If a complaint relates to a non-planning matter, no action will be taken. Such non-planning matters include disputes over land ownership and boundaries, restrictive covenants and legal agreements, moral and ethical concerns, and competition and private interests;
- In cases where a non-planning related complaint can be dealt with by another Council service or another agency then relevant information will be passed to the appropriate organisation;
- If a complaint relates to an activity, building or operational works that constitutes "permitted development" or is lawful, no further action can be taken;
- If the complaint relates to a very minor breach and formal action would not be justified, then no further action will be taken;
- If investigations indicate that a material breach of planning control has occurred then the Council will either invite a planning application to regularise the development (and impose appropriate planning conditions) or commence formal enforcement action.

6.7 ENFORCEMENT DECISION MAKING

All decisions in respect of whether enforcement action is taken, and the type of any such action, are delegated by the Council's constitution to the Head of Planning and Transportation. However, in certain circumstances, matters will be referred to the Planning Committee for a decision. The Committee will consider enforcement issues as a quasi-judicial body and make decisions based on the evidence and information submitted. Should an enforcement complaint be referred to the Committee for a decision, both the complainant and the alleged offender will be advised and given the opportunity to submit comments, for inclusion in the relevant Committee report.

7.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED, AND WHAT ACTION MIGHT BE TAKEN?

7.1 When a breach of planning control is identified any action taken will be proportionate to the nature and seriousness of the breach. Regard will be given to the following:

- National Planning Policy Framework, and relevant planning policy contained in Circulars)
- Core Strategy Development Plan Document
- Site Allocations Development Plan Document

- The provisions of the Human Rights Act 1998
- The Planning history of the site
- Adopted Planning Obligations Strategy

7.2 Many breaches of planning control can often be resolved informally by negotiation and the Local Planning Authority will continue to do this. Formal action will only take place where it is expedient and where other means to resolve the problem have failed. The Council will take enforcement action, including the service of an Enforcement Notice, when it is necessary to protect the amenity of the area, public, or highway safety, and to maintain the integrity of the development management process within its administrative area. The impact of some developments is more harmful than others and therefore action taken will be in the public interest and will be commensurate with the breach of planning control. It would not normally be expedient for the Council to take formal enforcement action against a trivial or technical breach of control that causes little or no harm to the amenity of the local area or to neighbours.

7.3 When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. This may be:

- If the breach is minor with no significant effects – that no formal compliance action will be taken;
- If the development is in line with the relevant Development Plan policies and other material considerations but needs to have conditions imposed to control its impact either now or in the future, the Council will seek to regularise the unauthorised development by asking for a “retrospective” application for planning permission or advertisement consent;
- If the breach is immune from compliance action due to the passage of time (four years for physical development and ten years for most changes of use and breaches of planning condition) and has not been deliberately concealed an application for a Certificate of Lawful Development may be invited. Such an application would need to be supported by appropriate documentary evidence to prove immunity;
- If permission is unlikely to be granted - the Council will ask for the use to cease or the unauthorised development to be removed. Depending upon the nature of the breach, the Council will follow one of the following options:
 - a) Set a timescale for the person in breach to voluntarily comply.
 - b) Serve a formal Notice (Enforcement, Listed Building or Breach of Condition) setting a period for compliance not less than 28 days with the exception of a Temporary Stop Notice, or Stop Notice.

c) Serve a Stop Notice or Temporary Stop Notice in the most serious cases requiring the work/use to stop immediately.

d) Serve an injunction.

- 7.4 If the person responsible for the unauthorised development has sought to deliberately conceal the development so that it is not discovered until the normal period for enforcement action has passed, the Local Planning Authority may apply to the courts for a Planning Enforcement Order (PEO) within six months of the date if it has sufficient information about the breach of control to justify the application to the court for a PEO. If it is satisfied on the balance of probabilities that a PEO is justified the courts can authorise the service of an Enforcement Notice.
- 7.5 Landowners and others should be aware that under the provisions of the Localism Act 2011, where breaches of planning law have occurred prior to 6 April 2012 and where the time limits for enforcement have expired prior to 6 April 2012 then the LPA cannot apply for a PEO. However, where time is still running after 6 April then an unlawful use or development could be the subject of a PEO in the future.
- 7.6 The decision to serve a formal Notice is discretionary and is made on a case by-case basis.
- 7.7 This decision must be taken only after proper consideration of the relevant facts and the planning merits of the case. 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 within each step is reasonable.
- 7.8 Where necessary, the Council can serve a notice to require any relevant activity to cease, either temporarily (a Temporary Stop Notice) to prevent damage occurring whilst the situation is investigated and resolved, or permanently (a Stop Notice).
- 7.9 The requirements of both types of Stop Notice should “*prohibit only what it is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area*”. Stop Notices are particularly useful if the continuation of unauthorised works will result in the further loss of environmental features.
- 7.10 There is also provision, if the circumstances warrant it, to obtain a planning compliance injunction to restrain an actual or anticipated breach of planning control.

8.0 ENFORCEMENT ACTION

The Town and Country Planning Act 1990 (as amended) defines taking enforcement action as either the issue of an Enforcement Notice or the service of a Breach of Condition Notice.

8.1 Enforcement Notice

The Notice shall:

- State the nature of the alleged breach as either development without planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted;
- Identify the land to which the notice relates;
- Clearly state the matters that appear to constitute a breach of planning control ;
- State the Council's reasons for issuing the Notice, including any relevant policy of the Development Plan;
- Specify the calendar date on which the notice will take effect (not less than 28 days after service to allow for an appeal);
- Specify the steps which the Council require to be taken or the activities which the Council require to cease in order to remedy the breach or any injury to amenity it has caused;
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the impact of the breach (where appropriate different periods may be given for each step).

8.2 The steps to be taken will be expressed in plain language so that anyone required to implement them will understand. This will also make checking for compliance easier and ensure a successful prosecution if the Notice is not complied with. The Enforcement Notice may require the restoration of the land to its condition before the unlawful development took place; the demolition or alteration of any building or works; the discontinuance of the use of the land; or the carrying out of any building works or other operations. The purpose of these requirements will be to:

- a) Remedy the breach by making the development comply with the terms (including any conditions or limitations) of any planning permission granted in respect of the land (whether that permission has been granted by the Council following a planning application, or by the General Permitted Development Order under "permitted development rights"); or
- b) Remedy the breach by discontinuing any unauthorised use of the land, or by restoring the land to its condition before the breach took place or;
- c) Remedy any injury to amenity that has been caused by the breach.

8.3 Breach of Condition Notice

The Breach of Condition Notice (BCN) is an alternative to an Enforcement Notice for remedying a breach of planning control arising from failure to comply with any condition or limitation subject to which planning permission has been granted. There is no right of appeal, and the threat of prosecution may be sufficient in itself to secure compliance with the condition or limitation. The BCN may be served alone or in addition to an Enforcement Notice.

8.4 A BCN will not be appropriate in all cases where a condition (or conditions) has not been complied with. In deciding whether to serve a BCN the Council will consider whether prosecution is likely to secure compliance with the condition(s) in the particular circumstances of the case. If not, then an Enforcement Notice may be preferable. The BCN shall:

- Specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). Thus the BCN may be mandatory (requiring something to be done) or propitiatory (requiring something to stop). It can only seek to secure full compliance with the condition(s);
- Specify a period for compliance, which will not be less than 28 days.

9.0 APPEALS

9.1 Section 174 of the Town & Country Planning Act 1990 (as amended) provides a right of appeal to the Secretary of State against an Enforcement Notice. The appeal needs to be lodged before the Notice takes effect. Details of how to appeal will be included with the Enforcement Notice. There are a number of possible grounds of appeal, including legal grounds, concerning the validity of the Notice, grounds relating to over-compliance (for example, that the time for compliance is too short or the works to be undertaken are more than is necessary) and relating to the “deemed” application (i.e. that permission ought to be granted for the development that has already been carried out). There is a fee payable for Enforcement Notice appeals which relate to a ‘deemed application’. Further advice is available at <http://www.planningportal.gov.uk/> Since 6 April 2012 it is no longer possible to make an appeal against an Enforcement Notice on ground ‘a’ (that planning permission should have been granted) after a planning application has been submitted and refused for the same development.

9.2 A local planning authority may decline to determine an application for planning permission for the development of a parcel of the land if that land, or any part of it, is the subject of an existing enforcement notice which relates, to the matters specified in the enforcement notice as constituting a breach of planning control.

9.3 Furthermore, once a planning Enforcement Notice has been issued the land owner or other interested party cannot appeal a previous decision of the LPA

to refuse planning permission for the same development. Any appeal must then be made against the Enforcement Notice. This prevents landowners having two 'bites of the cherry' or extending the life of an unauthorised development.

- 9.4 There is no right of appeal to the Secretary of State against a BCN. The applicant can submit an appeal against a planning condition when the planning permission is first issued, or can submit a subsequent application to remove or vary the condition.

10.0 PROSECUTION

In certain circumstances, the Council can immediately instigate prosecution proceedings, without first having to serve a Notice. Further information in respect of these powers is listed at Section 16. These instances include:

- Unauthorised works to a Listed Building;
- Damage to a tree covered by a Tree Preservation Order or within a Conservation Area;
- Damage to safeguarded hedgerows;
- Unauthorised display of an advertisement.

11.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

As soon as the compliance period for an Enforcement Notice or a BCN has passed, Officers will carry out further investigations to confirm whether the breach is continuing. Further negotiations may be necessary to ensure full compliance with the Notice. If there are grounds to suspect that a criminal offence has been committed, any evidence gathered from a site inspection may have to be carried out under caution. Any interviews would then be carried out in accordance with the provisions of the Police & Criminal Evidence Act 1984 (PACE).

- 11.1 When the Council believes that an Enforcement Notice has been fully complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity. However, compliance with an Enforcement Notice does not discharge it. The Notice will remain as a charge on the land to prevent any re-occurrence of the breach.
- 11.2 An offence occurs if an owner/occupier fails to comply with the requirements of an Enforcement Notice or BCN. It is only at this time that a breach of planning control becomes a criminal offence. The Council will take firm action where the requirements of an Enforcement Notice have not been complied with. Such action may involve:
- Prosecution of the parties concerned in the local Courts (depending upon the availability, nature and strength of evidence);
 - The issue of an injunction through the High Court;

- Direct, or 'default' action by the Council. The Council will then seek to recover the costs of such action from the party responsible for the breach.
- 11.3 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. If someone is found guilty of failing to comply with the terms of an Enforcement Notice, a maximum fine of £20,000 may be imposed by the Magistrates Court. For cases which are decided by the Crown Court there is an unlimited fine. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.
 - 11.4 Failure to comply with a BCN carries a maximum penalty, on summary conviction of this offence, of a "level 4" fine on the standard scale, currently £2,500, as provided by the Criminal Justice Act 1991. A person may be convicted of a second, or subsequent, offence where the person responsible has been prosecuted and fined but still fails to comply with the notice. It is a defence for anyone charged with this offence to prove that he or she had a reasonable excuse for failing to comply with the requirement of a notice.
 - 11.5 Any prosecution action will be taken in accordance with the provisions of the Code for Crown Prosecutors. This Code, produced by the Crown Prosecution Service, seeks to ensure that prosecutions are carried out in the interests of justice and not solely for the purpose of achieving a conviction.
 - 11.6 The Council will not necessarily withdraw from taking action in the Courts once it has commenced, even where the breach of planning control may be rectified before the case is heard, particularly where the Council has incurred significant costs. This will be considered in the Public Interest and on Legal advice in pursuit of a successful conviction.
 - 11.7 In the case of a persistent offence involving an unauthorised activity, an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.
 - 11.8 In certain circumstances the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise, for example, when the breach of planning control has not been remedied, despite the imposition of successive fines by the Courts. In such cases the Council will seek to recover its costs, possibly in the form of a charge on the land, which is recoverable at the time of any future sale of the land or property.
 - 11.9 If an Enforcement Notice is served against a development, and an appeal is subsequently lodged with the Secretary of State (for example, on an application for planning permission or 'Listed' building consent), the outcome of the appeal will normally be awaited prior to the taking of further action to secure compliance with the Enforcement Notice.

11.10 Where the Secretary of State has previously considered the matter at appeal and found in favour of the Council, compliance with the requirements of the Notice will be rigorously pursued.

11.11 If a Breach of Condition Notice (BCN) has not been complied with or a breach re-occurs the party responsible will be asked to state what steps have occurred to secure compliance with the conditions specified in the Notice. If no reasonable steps have been taken or any reasonable explanation is not given the Council will normally pursue a prosecution.

12.0 OTHER PLANNING COMPLIANCE POWERS

12.1 Some breaches of planning control are the subject of separate legislation.

These include:

- Listed buildings
- Advertisements/signage
- Trees
- Land adversely affecting public amenity

12.2 Where the legislative requirements are the same, this policy will form the basis for any action taken by the Council on these matters.

12.3 Listed Buildings

The Council attaches particular importance to ensuring that any alterations to Listed Buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.

12.4 It is an outright offence under Section 9 of the Act to carry out unauthorised works to a Listed Building that would affect its character. The owner of a Listed Building, 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 fine and/or a term of imprisonment of up to two years. There is no time limit upon the Council to pursue Listed Building compliance action.

12.5 A Listed Building Enforcement Notice may be served requiring remedial works to the building within a certain time period. There is a right of appeal to the Secretary of State, but failure to comply with the Notice is an offence, which is liable to a fine.

12.6 Advertisements

The display of advertisements/signs is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). They are divided into three main groups:

- Those that are 'expressly' excluded from planning control
- Those which have 'deemed consent' whereby the Council's consent is not required provided the advertisement falls within certain categories:
and
- Those for which the Council's consent is always needed

12.7 The Advertisement Regulations are complicated and seek to control, amongst other things the height, size and illumination of advertisements.

12.8 Anyone who displays an advertisement, without the necessary consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Council may not initially consider it necessary to prosecute. Instead, it may invite the advertiser to apply for the consent needed, and, if refused, there will be a right of appeal to the Secretary of State. Displays of an advertisement after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution. The fine on conviction shall not exceed level 4 on the standard scale and in the case of a continuing offence one-tenth of level 4 for each day during which the offence continues after conviction.

12.9 Any form of fly posting (that is, displaying an advertisement without landowners consent) is an offence, which is immediately open to prosecution or to the removal or obliteration if the Council decides to take such action. If the advertisement identifies the advertiser the Council must give 2 days' notice before obliteration or removal takes place. These powers of obliteration and removal were extended by the Localism Act 2011.

12.10 Advertisements that are being displayed on the 'Highway' or Council owned land without their consent is unauthorised and illegal. The Council may remove such advertisements from its land and without warning to those who are displaying the advertisement. Individual cases will be referred to the relevant department (Highways or Lands). In cases where unauthorised advertisements are linked to other unauthorised advertisements on privately owned land, enforcement Officers may seek their removal with the consent of Highways and/or Lands as a more effective and efficient way of working.

12.11 **Trees**

Under Section 198 of the Town and Country Planning Act 1990 the Council has the right to make provision for the preservation of trees in its area by issuing a Tree Preservation Order (TPO).

12.12 Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a

protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. The offence is liable, on summary conviction, to a fine of up to £20,000 and on indictment to a further fine. Most established trees (except fruit trees) in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act and the same penalties for offences apply.

12.13 If any person contravenes the provisions of a tree preservation order otherwise than as mentioned above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

12.14 Consent is not required for the following works to trees that are the subject of a Tree Preservation Order:

- Works to trees that are dying or dead or have become dangerous;
- Works to trees authorised by the grant of planning permission;
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade.

12.15 However, the Council encourages all owners of trees covered by a Preservation Order to consult the Council before undertaking works on the tree(s).

12.16 The Council will consider whether a replacement tree should be planted if a protected tree has been removed. This would be the responsibility of the landowner to carry this out and irrespective of who carried out those works. The Council will first seek this voluntarily replacement of the tree prior to considering serving a Tree Replacement Notice to ensure that the tree is replaced with the same or an alternative species of similar size and stature.

12.17 Land Adversely Affecting the Amenity of the Neighbourhood – Untidy Sites

Under Section 215 of the Town and Country Planning Act 1990, the Council may take steps to require land to be tidied up when its condition adversely affects the amenity of the area. The Council may serve a Notice on the owner and occupier of the land requiring steps to be taken within a specified period. The Notice becomes effective after 28 days.

12.18 There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the Notice has no effect pending the outcome of the appeal, but once the Notice does take effect it is an offence not to carry out the steps required. If the Notice is not complied with the Council may prosecute the owner for the offence of non-compliance, or enter the land to carry out the required works and recover all associated costs from the owner.

12.19 If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. The Council also has powers under Environmental Health legislation to resolve untidy site

problems. Planning Enforcement Officers will liaise with other Council services to ensure that the most appropriate and effective remedy is sought.

13.0 REASONS FOR RECOMMENDATIONS:

Paragraph 207 of the NPPF advises ‘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 breach of planning control

13.1 The Planning Enforcement Compliance Plan responds to the NPPF and sets out clear standards and processes. The performance of the service will be continued to be measured and the results published via quarterly performance reports.

13.2 This Plan will be reviewed whenever there is a significant change in legislation, national or local policy, or otherwise every 2 years.

14.0 CONSULTATION (including Overview and Scrutiny, if applicable)

The views of the Planning, Transport and Regeneration Overview and Scrutiny Committee are being sought on the proposals contained within this report.

15.0 IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

Development Management seeks to ensure that residents, the working population and visitors to the Borough are safeguarded from harm being caused by unauthorised development, or land uses in accordance with the Council’s Policies, objectives and national guidance. Our aims are to provide a high quality and accessible service and to contribute to ensuring a safe, clean and green environment to build pride, respect and responsibility in Thurrock’s communities.

16.0 IMPLICATIONS

16.1 Financial

Implications verified by: **Sean Clark Head of Corporate Finance**
Telephone and email: **01375 652010**
sclark@thurrock.gov.uk

Any additional financial costs as a result of enforcement action has to be met from within existing resources.

16.2 **Legal**

Implications verified by: **Philip Cunliffe-Jones, Principal Regeneration Solicitor**
Telephone and email: **01375 652822**
PCunliffe-Jones@thurrock.gov.uk

The power to take enforcement action is discretionary. It should only be taken where the Local Planning Authority is satisfied that there has been a breach of planning control and it is expedient to take action, having regard to the provisions of the development plan and to any other material considerations. Whether it is expedient for the authority to take action or vary or withdraw a formal notice requires a thorough assessment of the relevant factors in every case. This is a continual monitoring process and the decision whether or not to pursue or vary enforcement action against any breach of planning control is delegated to both the Planning Officer and to the Head of Legal Services.

The 1997 Good Practice Guide stated that a complete documentary record of all investigation is essential. Wherever possible, it should include photographic records which are signed and dated by the person taking the photographs. All photographic records should be supplemented by a location plan showing the position from which each photograph was taken. Statutory powers supplement the right to take such records. Since then, however, aerial photographs and Google-earth records may supplement the records.

The NPPF states that the Local Enforcement Plan should set out how the implementation of planning permissions is monitored as well as investigation of alleged cases of unauthorised development and taking action. The implementation of Planning Permissions will in future trigger Community Infrastructure Levy and needs no additional layer of procedure.

The Local Planning Enforcement Plan should be published on the Council's web site.

16.3 **Diversity and Equality**

Implications verified by: **Samson DeAlyn**
Telephone and email: **01375 652472**
sdealyn@thurrock.gov.uk

There are no diversity or equality implications noted in this report as it deals with planning issues and decisions which need to be taken within statutory guidelines.

16.4 **Other implications** (where significant) – i.e. **Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental**

None.

APPENDICES TO THIS REPORT:

N/A

Report Author Contact Details:

Name: Leigh Nicholson

Telephone: 01375 652228

E-mail: lnicholson@thurrock.gov.uk