

Decision under Delegated Powers

Officer Requesting Decision

Team Leader Planning Enforcement

Officer Making the Decision

Head of Planning and Growth

Recommendation

That the changes highlighted in the Enforcement Plan attached in Appendix B be approved.

Reason

1. To implement the changes brought forward by the Levelling Up and Regeneration Act 2023, which became law on 26 October 2023 and the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 that were made on 2 April 2024 and came into force from 25 April 2024 and that included several changes to planning enforcement.
2. To ensure the Planning Enforcement Team have the necessary legislative tools available to them to carry out their roles within the team.

Authority for Decision

The authority for to amend the Enforcement Plan lies within the constitution part 8.3 'delegation of executive functions' (page 30, item 7) to the Head of Planning and Growth *"To make amendments to the Enforcement Plan in response to future legislative changes, or changes at local or regional level, in consultation with the relevant Lead Member"*. In respect of the constitution changes and the delegation of enforcement matters to officers this will be put forward when the constitution is next reviewed.

Decision and Date



6 June 2024

Background

On 26 October 2023 the Levelling Up and Regeneration Act became law. Secondary legislation was required before the additional powers for planning enforcement could come into force. On 2 April 2024 the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 was made and from the 25 April 2024 the changes to planning enforcement came into force.

The Act has introduced a number of changes which impact on planning enforcement which are contained within the following chapters.

Chapter 3 – ‘Heritage’, at s103 this introduces the power to issue Temporary Stop Notices (TSN) in respect of works to Listed Buildings.

Chapter 5 - ‘Enforcement of planning controls’ at s115 to s120 enables several changes including, time limits for enforcement, duration of temporary stop notices, enforcement warning notices, restrictions on appeals against enforcement notices, undue delays in appeals, penalties for non-compliance and the power to provide relief from enforcement of planning conditions.

Section 103: Temporary Stop Notices (TSN) in relation to Listed Buildings

Gives the local planning authority (LPA) the power to serve a TSN in relation to unauthorised works to a listed building. The power is inserted just after the power to seek for an injunction (S44A of the Planning (Listed Buildings and Conservation Areas) Act 1990).

The notice is served under S44AA of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the works which the LPA require to cease, must be in contravention of s9(1) or (2) – which is that the works do not have listed building consent (LBC), or that they breach the conditions attached to an LBC.

The Listed Building Temporary Stop Notice (“LBTSN”) can be in force for up to 56 days

Section 115: Time limits for enforcement

Section 171B of the Town and Country Planning Act 1990 (TCPA) is amended to delete the words ‘four years’ and to substitute them with ‘ten years’. This includes action against operational development, material changes of use and breaches of condition.

However, transitional provisions apply. These are:

- For breaches involving the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, where substantial completion is before 25 April 2024, the time limit is **four years from substantial completion**; and
- For breaches involving the change of use of any building to use as a single dwellinghouse where the change of use took place before 25 April 2024, the time limit is **four years from the date of the breach**.

Section 116: Duration of temporary stop notices (TSN)

S171E(7) of the TCPA is amended in order to allow TSN (this applies to Listed Building and other TSN) to be in force for 56 days – an increase from 28 days.

Section 117: Enforcement warning notices (EWN)

The TCPA is amended to include provision for LPAs in England to issue Enforcement Warning Notices (EWN). S172ZA is included in the TCPA to provide LPAs the option to issue an EWN where it appears to them that there has been a breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted. The issue of an EWN operates as “enforcement action” meaning that a subsequent notice can be issued under the second bite provisions in s171B(4) TCPA 1990, so extending the time to take subsequent enforcement action.

Section 118: Restrictions on appeals against enforcement notices

The TCPA at S174 (2)(a) and (2)(b) is amended so that if planning permission for what is alleged in an enforcement notice has been refused by the LPA and that refusal was appealed and dismissed, an appellant in an enforcement appeal cannot appeal under ground (a) (that planning permission should be granted).

This change effectively removes the possibility of a ‘3rd’ bite at the cherry. Whereas previously an applicant could apply for planning permission, appeal a refusal, then receive an enforcement notice and have ‘another go’ at obtaining planning permission through ground (a) appeal.

Section 119: Undue delays in appeals

The TCPA at S176 is amended to include the power for the Secretary of State to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal. This amendment applies to both s176 enforcement appeals and s195 certificate of lawfulness appeals.

Section 120: Penalties for non-compliance

The TCPA at S187A is amended so that the level of fine is increased and is now unlimited for non-compliance with breach of condition notices and at S216 for non-compliance with a S215 notices.

Section 121: Power to provide relief from enforcement of planning conditions (came into force 26 December 2023)

The TCPA has been amended to include S196E which provides power to the Secretary of State to provide relief from enforcement of planning conditions. The Secretary of State may use this power if it considers that it is appropriate to make the regulations for the purposes of national defence or preventing or responding to civil emergency or significant disruption to the economy of the United Kingdom or any part of the United Kingdom.

Because of the above there will need to be changes made to the Council's Constitution that will be considered by Cabinet and then referred to Council when the Constitution is next updated.

Consultation

The relevant Lead Member has been consulted on the new legislation and the proposed changes made to the Enforcement Plan and they have not made any comments.

Financial Implications

None

Risk Management

The amendments to the Enforcement Plan reflect changes in legislation and therefore there are no risks in taking this decision.

Key Decision: No

Background Papers:

Link to Levelling up and Regeneration Act 2023 [Levelling-up and Regeneration Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/51)

Link to [The Planning Act 2008 \(Commencement No. 8\) and Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2008/15)

Appendix

Amended Enforcement Plan

DRAFT

CONTENTS	PAGE
1. Background and Overview	3
2. What is Development?	4
3. Relevant Legislation	5
4. What is a Breach of Planning Control?	6
5. Is a breach a Criminal Offence?	7
6. Principles of Good Enforcement	8
6.2 Harm	
6.3 Proportionate action	
6.4 Consistency	
6.5 Negotiation	
6.6 Standards	
6.7 Openness	
7. Prevention is better than cure	11
8. Priorities	12
9. Making a Complaint	13
10. How we investigate	14
11. No Breach of Planning Control	15
12. Breach of Planning Control - What Happens next?	15
13. Courses of Action	16
Inviting and Application	
Expediency	
Negotiation	
Taking Formal Action	
14. Enforcement Toolkit	19

15. Action under Anti-Social Behaviour Act <u>Rights of Entry</u>	210
16. Action under Anti-Social Behaviour Act <u>Rights of Entry</u>	221
17. After the Service of an Enforcement Notice	232
18. Monitoring and Compliance	254
19. Monitoring Section 106 Agreements	254
20. Futureproofing <u>Reviewing the Enforcement Plan and Service</u>	254
Glossary	276
Contact details	276

DRAFT

1. BACKGROUND AND OVERVIEW

- 1.1 **The Charnwood Borough Council Planning and Growth Local Enforcement Plan** sets out the Council's policy and procedure for enforcing planning control in the Borough. It identifies local priorities for enforcement action so the Council's enforcement resources are put to best use dealing with breaches of planning control that threaten the local built and natural environment or the amenities of neighbours. This document sets out what customers can expect from the Borough Council as the Local Planning Authority in relation to enforcement.
- 1.2 Local Planning Authorities (LPA's) have a general discretion and must only take enforcement action when they regard it expedient to do so. Action must be relative to the breach of planning control to which it relates.
- 1.3 This document sets out:
- What is 'development' and what is not
 - The relevant legislation we work with and must consider in our day-to-day duties
 - how reports of breaches of planning control are received by the Council
 - how cases are prioritised
 - how cases are investigated including the harm prioritisation assessment
 - targets and timescales
 - the powers available to the Council to take action
- 1.4 This plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) issued by the Department for Communities and Local Government which states:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They 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 appropriate”

- 1.5 The aim of this document is to clarify and set out the Council's procedure for investigating alleged breaches of planning control, when the Council will take action, what enforcement powers are available and how the Council will monitor the implementation of planning permissions. The document will set out the priorities for enforcement action, which will inform decisions about when to take enforcement action and provides greater transparency and accountability using a harm prioritisation assessment which will direct how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers.
- 1.6 A clear plan will ensure that officers, councillors and the general public will be aware of the approach to planning enforcement to ensure that the system is fair, transparent and provides greater certainty for all parties engaged in the development process.

2. WHAT IS DEVELOPMENT?

- 2.1 Section 55 of the Town and Country Planning Act 1990 defines development as:

“the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change of use of any buildings or other land”.

If any works or a change of use is not 'development', as defined, it is not a breach of planning control and the Council has no power to take any further action.

- 2.2 There are two main pieces of legislation covering development one being Planning legislation and the other Building Regulations and the two are often confused. In the main the thing to remember is:
- Planning deals with the development in principle – would the development be acceptable in terms of the visual aspects, amenity; how it fits in with neighbouring development, and the character of development, and

- Building Regulations are concerned with construction; how something is built and whether it is structurally safe when it is built and fit for purpose. Whilst the two aspects are clearly linked the legislation covering each is significantly different and is approached in different ways.

3. RELEVANT POLICY LEGISLATION AND POLICY

3.1 Legislation:

1. Town and Country Planning Act 1990
2. The Planning and Compensation Act 1991
3. The Planning and Compulsory Purchase Act 2004
4. Planning (Listed Buildings and Conservation Areas) Act 1990
5. The Localism Act 2011
6. The Town and Country Planning (Development Management Procedure) (England) Order 2015
7. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
8. The Town and Country Planning (Use Classes) Order 1987 (as amended)
9. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
10. Regulation of Investigatory Powers 2000
11. Police and Criminal Evidence Act 1984
12. European Convention on Human Rights Article 1 of the First Protocol and Article 8 and Article 14
13. Part 8 of the Anti-social Behaviour Act 2003 - High Hedge legislation

14. The Hedgerow Regulations

15. Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 –
Community Protection Notices

16. The levelling Up and Regeneration Act 2023 (“LURA”)

~~3.2 — It should be noted the government is bringing forward new legislation in the form of the Levelling Up and Regeneration Bill that is expected to be enacted in 2024 along with secondary legislation. This plan will be amended where new legislation is brought into effect and is material to this plan.~~

3.23 Policies:

1. National Planning Policy Framework (NPPF)
2. Planning Practice Guidance
3. Charnwood Local Plan (2011-2028) Core Strategy (Adopted November 2016)
4. Saved policies of the Borough of Charnwood Local Plan (Adopted 12th January 2004)
6. Adopted Neighbourhood Plans
7. Submitted Charnwood Local Plan 2021-2037
8. Joint Minerals and Waste Core Strategy prepared by Leicester City and Leicestershire County Council (2009)
9. Supplementary Planning Documents (SPD's), Neighbourhood Plans, Conservation Area Character Assessments

4. WHAT IS A BREACH OF PLANNING CONTROL

4.1 A breach of planning control is defined in section 171(A) of the Town and Country Planning Act 1990 as

“the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.”

4.2 Planning enforcement investigations tend to involve in the main establishing:

- Whether 'Operational Development' such as building or engineering works, have been carried out without planning permission;
- Whether a material change of use of land or buildings has been carried out without planning permission;
- If development has not been carried out in accordance with an approved planning permission;
- Failure to comply with a planning condition or legal agreement attached to a planning permission;
- Unauthorised works to a Listed Building;
- Unauthorised works to trees protected by either a Tree Preservation Order or Conservation Area restrictions;
- Works to remove a protected hedgerow;
- If advertisements are displayed without advertisement consent;
- Failure to comply with an enforcement notice or other planning notices served.

5. IS IT AN OFFENCE TO CARRY OUT WORKS WITHOUT PLANNING PERMISSION?

- 5.1 People often refer to illegal development when reporting what they believe to be a breach of planning control; however, it should be recognised unauthorised development is not a criminal offence, with the exception of works to Listed Buildings and protected trees without consent, removal of protected hedges, advertisements displayed without consent and non-compliance with enforcement notices.
- 5.2 The Town and Country Planning Act 1990 enables people who have carried out development to apply for planning permission retrospectively in an attempt to regularise matters. In dealing with such applications, the Local Planning Authority must consider the application in exactly the same way as any other development, proposed or otherwise. The fact a development has already been carried out is not something that can be taken into account or that prejudices the determination of an application. However, the fact the development has occurred in whole or part may make it easier to understand what the potential impact of the development has in its surroundings.
- 5.3 The Planning Enforcement Team often receives complaints and enquiries about matters that are not a breach of planning control. Some examples are:

- Neighbour nuisance, boundary issues and access and land ownership disputes – these are not planning matters and advice should be obtained from a solicitor, surveyor or the Citizens Advice Bureau.
- The use of/ or development on the highway, footpath or verge such as 'signage' on the Highway is covered by the Highway Authority at Leicestershire County Council – call Customer Services 0116 3050001
- Monitoring of mud on the road is also covered by the Highway Authority at Leicestershire County Council – call Customer Services Tel 0116 3050001
- Dangerous structures – These are dealt with under the Building Act and Highway Act and you are advised to contact Building Control in the first instance.
- Tel. 01509 634924
- Fly tipping – If you want to report a fly-tipping issue please contact the council and ask to speak to the Street Management Team using the following link: [Forms \(charwood.gov.uk\)](https://forms.charwood.gov.uk).
- Any incidents of noise, smells or bonfires which should be referred to Environmental Health using the following link: [Forms \(charwood.gov.uk\)](https://forms.charwood.gov.uk).

Formatted: Font color: Dark Gray

Formatted: Bulleted + Level: 1 + Aligned at: 1.9 cm + Indent at: 2.54 cm

5.4 The Town and Country (General Permitted Development) (England) Order 2015 (as amended) sets out development that can be undertaken without the submission of a formal planning application. This is known as 'Permitted development'. Many of the complaints received relate to enquiries regarding permitted development which is not a breach of planning control.

6. THE PRINCIPLES OF GOOD PLANNING ENFORCEMENT

6.1 Planning enforcement is a discretionary power and each case should be considered on its own merits. In deciding what action is necessary the degree of harm the unauthorised development is causing, or likely to cause, should be considered carefully.

6.2 Harm

Harm can be caused by a number of factors or a combination of factors and what could be considered harmful in one circumstance may not be considered harmful in others and a judgement will be required. To standardise this judgement and to ensure a fair, transparent and consistent approach to

assessing breaches of planning control, a harm prioritisation assessment is used. This allows for breaches of planning control to be scored according to the seriousness of harm it causes. The scoring is based on the following criteria:

- Status of a breach
- highway safety issue
- other safety issues
- if the breach causes or potentially causes a statutory nuisance
- source of the breach
- the age of the breach
- if harm exists and whether it is irreversible
- if there is a breach of a planning condition
- if the breach occurs in a conservation area or a sensitive site
- if the development sets an undesirable precedent

Cases involving unauthorised works to listed buildings, removal of protected hedges, works to protected trees, unauthorised advertisements and retrospective refusals of planning permission will automatically be given the highest priority.

Harm in relation to planning does not include –

- Competition caused to another business
- Loss of an individual's view or trespass onto their land
- Ownership disputes
- Loss of value to a property
- Rights to light

Where a cumulative score is 4 or less it will not be considered expedient to take action as the impact on public amenity or public interest will be negligible. The case will be closed, and advisory letters sent to both offender and complainant. The offender will be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, or the compliance with any conditions attached to a planning approval. The submission of an application will not, however, be monitored or pursued. Once all parties have been notified no further action will be taken and the matter will be referred to the Head of Planning and Growth for approval to close the case file.

Cases with a harm score of 5 or more will be pursued until matters are resolved either by negotiation, the granting of conditional planning permission or the taking of formal action.

6.3 Proportionate action

In considering enforcement action, the decisive issue for the Council is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings that merit protection in the public interest. Enforcement action must always be proportionate to the severity of the harm being caused. It should not be taken solely to 'regularise' development which is acceptable on its planning merits but for which planning permission has not been obtained.

The Council will consider the full range of powers when conducting investigations. The full range would include negotiation and retrospective planning applications and where appropriate formal enforcement action.

6.4 Consistency

Planning Enforcement Officers will carry out their duties in an equitable and consistent manner. They will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of a similar nature and circumstance. This does not imply uniformity but a full consideration of all the circumstances of a case guided by the council's adopted Development Plan, Supplementary Planning Documents and Design Guidance to establish what reasonable and adequate requirements there are to remedy the breach. The Council will achieve this by:

- Following advice within the Government guidance contained within National Planning Policy Framework, Planning Practice Guidance, planning policy and best practice and the Council's overarching Enforcement Policy,
- Adhering to the planning policies within our adopted Development Plan and Supplementary Planning Documents in the interests of protecting our Conservation Areas, Listed Buildings as well as other designated land and features,
- Keeping up to date with Government guidance, case law and leading court decisions.

6.5 Negotiation

In all but the most serious cases, the Council will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner. The negotiations aim to achieve one or more of the following outcomes:

- to undertake work to comply with the planning permission granted if there is one,
- To apply for planning permission for the works undertaken or a variation to the works that are more likely to secure permission,
- To remove an unauthorised development,
- To cease an unauthorised use,
- To alter developments to ensure compliance with permitted development rights.

Negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable in planning terms, or to compel it to stop.

6.6 Standards

There are clear standards setting out the level of service and performance that customers can expect to receive when they submit a complaint (See Section 10). The Service will review performance regularly and publish results on a quarterly basis and report this to the Plans Committee and the relevant Ward Members where activities are occurring within their Ward.

6.7 Openness

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

7. **PREVENTION IS BETTER THAN CURE**

- 7.1 The Council believes prevention is better than cure and that it should work with customers to advise and assist with compliance. Anyone using the Service can expect:

- A courteous, prompt and efficient service; all correspondence will provide a contact person and telephone number for customers to contact the named officer when seeking advice and information.
- Services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- Officers will not tolerate abusive language or behaviour either in person, over the telephone or in correspondence.
- Well publicised, effective and timely complaints procedures easily accessible to business, public, employees and consumer/resident groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained with details of the process and the likely time-scales involved.

-

Formatted: Indent: Left: 2 cm, No bullets or numbering

DRAFT

8. PRIORITIES

8.1 To make the most effective use of resources, all reports of alleged breaches of planning control or legal agreement will be assessed and as detailed in section 6.2 a harm prioritisation assessment will be undertaken. Cases which receive a score of 5 or above will be fully investigated. The investigating officers dealing with these cases are professionally trained to assess the evidence before them against legislation, policy and guidance before making a decision in respect of the necessary action considered appropriate and proportionate to remedy the breach of planning control. Therefore as to whether harm is being caused by the breach and what level of harm this is, is a professional judgement and will be detailed on the harm assessment form used to assess the breach.

The list below is not exhaustive but details the types of cases likely to fall within in each priority level:

8.2 High Priority

- Any unauthorised development or non-compliance with a planning condition or legal agreement which is causing immediate and irreparable harm to the environment or public safety.
- Unauthorised works to a Listed Building,
- Any breach of planning control causing serious loss of residential amenity,
- Unauthorised removal of a protected hedge,
- Demolition in a conservation area that is causing immediate and irreparable harm to the heritage asset,
- Unauthorised works to trees subject to a Tree Preservation Order (TPO) or located within a conservation area,
- Unauthorised development that has gone undetected, is causing harm and the statutory time limit for taking enforcement action will expire in the next six months,
- Unauthorised display of advertisements
- Retrospective refusals of planning permission

Formatted: Bulleted + Level: 1 + Aligned at: 2.01 cm + Indent at: 2.65 cm

8.3 Medium Priority

- Activities resulting in some disturbance and loss of amenity to third parties

- Activities likely to be adversely affecting the environment, but not irreparably.
- Breaches that are contrary to well established planning policies for example; -an unauthorised change of use to a House in Multiple occupation in breach of the Article 4 Direction Order in Loughborough
- Development that causes harm to the amenities of neighbours
- Development not in accordance with the approved plans
- High Hedge Complaints

8.4 Low Priority

- Minor breaches of conditions not causing any immediate harm
- Activities causing minimal disturbance to third parties, if any
- Untidy land issues

8.5 Factors that will also need to be considered when prioritising cases

- Time limits for enforcement action to be taken
- Previous case history
- Likelihood of the breach being repeated
- The overall, probable, public benefit of formal action.

9. **MAKING A COMPLAINT**

9.1 The Council relies on the public to bring to our attention the majority of breaches of planning control. Complainants can be assured their details will always be kept confidential. The only time complainants' details may have to be disclosed would be if ordered to do so by a Judge in a Court of Law.

9.2 You can report a breach of planning control you in the following ways:

By email at: development.control@charnwood.gov.uk

By filling out a report form on our website using the following link: [Report work without permission - Charnwood Borough Council](#)

By Telephone – 01509 634570

By letter to: Planning Enforcement, Planning and Regeneration, Charnwood Borough Council, Southfields, Loughborough, LE11 2TN.

Or in person at reception at the Council Offices; by completing a form, opening hours are 9.00 – 16:00 Monday to Friday. Reception is not open on Bank Holidays or weekends.

- 9.3 When a complaint is received it is recorded on a database and the following information will be required:
- a. Full details of the address of the alleged breach of planning control
 - b. Full details of the nature of the breach and the harm it is causing
 - c. Name and address and contact details of the complainant
 - d. When the breach of planning control first took place

The complaint will be given a unique reference number so the complaints can be easily identified and monitored.

- 9.4 To avoid malicious complaints and the unnecessary waste of resources, anonymous complaints will be passed to the Team Leader to decide whether or not it is considered the nature of the complaint warrants further investigation. The local authority cannot use its resources effectively if there is not sufficient evidence available to clearly demonstrate a breach of planning control has occurred..
- 9.5 When making a complaint, in order to assist Officers with any assessment of harm and priority, it would be helpful if full details of the issue can be provided and if the issue is in relation to an activity, a diary of times and events and activities over a week will assist, if it is in connection with something being built i.e. a building, a wall or fence then photographs of the issue and an explanation of the harm that it being caused will also assist officers in making a judgement as to expediency and priority.

10. HOW THE COUNCIL WILL INVESTIGATE

- 10.1 The first stage of any investigation is to determine whether or not there has, in fact, been a breach of planning control. The investigation can be concluded with no further action being necessary if there is no breach of planning control. This can sometimes be ascertained just by a discussion with the complainant on the phone prior to submission of any complaint.
- 10.2 When a complaint is received the following targets apply:
- a. An acknowledgement letter will be sent within 3 working days

- b. A site visit will be conducted within 10 working days
- c. The complainant will be notified of the initial findings within 15 working days which may include confirmation as to whether or not there is a breach of planning control
- d. When a decision is made to serve a formal notice the Council will inform the complainant within 5 working days
- e. After the service of a formal notice and period of compliance expired a check for compliance will be undertaken within 5 working days.
- f. When a formal notice is served the Council will confirm the details with the complainant after 5 working days

11. IF NO BREACH IS CONFIRMED

11.1 The case will be closed and the Council will confirm to the complainant the findings. A large number of investigations by the Planning Enforcement Team are closed as there is no breach of planning control established. In these cases no further action can be taken. Some examples of reasons cases are closed with no breach are:

- Development has taken place but a planning application is not required as the development is 'Permitted Development' meaning planning permission is deemed to be granted under the Town and Country Planning (General Permitted Development) (England) Order 2015;
- There is insufficient evidence to confirm the allegation;
- The development already has planning permission.

12. WHERE THERE IS A BREACH OF PLANNING CONTROL

- 12.1 Where a breach of planning control is established and considered unacceptable by use of the harm prioritisation assessment, the first step in the vast majority of cases would be to negotiate a resolution.
- 12.2 Each step of investigation and any decision making will be recorded on the case file including both internal discussions and meetings and any correspondence with both the alleged offender and complainant. Whilst enforcement cases are confidential it is important for the integrity of the service to retain records of the considerations and decision-making process.

13. COURSES OF ACTION AVAILABLE

13.1 Most planning enforcement cases will involve one or more of the following courses of action.

13.2 Inviting an application

Where it is considered that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm being caused or prevent harm in the future, a retrospective planning application will be invited.

13.3 In determining retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise planning permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant.

13.4 Prior to inviting any planning application a view would be taken whether or not the development is acceptable. An application would not be encouraged if it was felt the development was unacceptable. Sometimes it is initially unclear as to whether a development is acceptable in planning terms. An example is where a development is in the early stages of construction. In these cases an application may be necessary to obtain full details of the intended development. Once received the information would allow for a full assessment of the planning merits.

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

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

13.6 The authority will use these powers where appropriate to prevent delays in cases where enforcement action is being taken. However, regard must be paid to each specific case and consider whether granting planning permission for part of the development would result in an acceptable resolution.

13.7 Expediency – taking no further action

Whilst many would see it as unfair and unsatisfactory for anyone to carry out development without first obtaining planning permission an enforcement notice should not be issued solely to regularise development which is acceptable on its planning merits, but for which planning permission has not been sought. In such circumstances the Council will seek to persuade an owner or occupier to seek permission retrospectively.

13.8 Planning Enforcement also investigates many minor or 'technical breaches' of planning control. Common examples of these include the construction of a fence or the construction of an out-building in a residential curtilage slightly higher than allowed under permitted development regulations, where no significant harm to amenity is being caused. In these cases, it would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without requiring submission of a planning application. As such the expediency test for taking action would not be met. The Council will in these cases work with owners to regularise or remedy the works but ultimately it is highly unlikely that formal action would be warranted in the case of a technical breach of planning control where no significant harm is caused and the harm prioritisation assessments scores 4 or less.

13.9 Where it is concluded that it is not expedient to take action the case will be closed in accordance with the harm score assessment and scheme of delegated powers as set out in the Council's Constitution.

13.10 Negotiation

Where it is considered that the breach of planning control is unacceptable, attempts to negotiate a solution without recourse to formal enforcement action will be made, unless of course the breach is continuing to cause irreparable harm to amenity. Negotiations may involve the reduction or cessation of unauthorised development. In carrying out negotiations the Council will have regard to the specific circumstances of the individual case.

13.11 Where initial attempts at negotiation fail; formal action will be considered to prevent a protracted process. Where unable to negotiate an acceptable

solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation the case will proceed with formal action where it is expedient to do so. Negotiation is an essential part of the enforcement process. Extensions to any deadlines will only be granted where a clear indication exists that the alleged offender is cooperating with the Council and the apparent harm is minimal. Reasons for granting the extension, as well as any new deadline, will be recorded on the case file.

13.12 Taking Formal Enforcement Action

The Council will consider the full range of powers to ensure the most appropriate, proportionate and expedient resolution including whether any other public authority is better able to take remedial action. The full range of powers available is explored in more detailed below. The use of these powers can vary depending on the nature of the breach and the level of harm being caused. There is 'no one size fits all' approach; action would be dependent on the circumstances and detail of each case.

13.13 Time limits for taking enforcement action

~~Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, for example extensions to dwellings, new buildings and the laying of hardstandings; or in the change of use of any building to a single dwellinghouse, from the date of commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10-year limit.~~

Section 171B of the Town and Country Planning Act 1990 sets out the time limits for taking enforcement action. Following 25 April 2024, s171B is amended by LURA so that the time limit for taking any form of enforcement action is 10 years. This includes action against operational development, material changes of use and breaches of condition.

However, transitional provisions apply. These are;

- For breaches involving the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, where substantial completion is before 25 April 2024, the time limit is **four years from substantial completion**; and

Formatted: Indent: Left: 1.25 cm, Line spacing: Multiple 1.15 li

Formatted: Font: 12 pt

Formatted: Font:

Formatted: Indent: Left: 1.25 cm, Space Before: 0 pt, Line spacing: Multiple 1.15 li

Formatted: Indent: Left: 1.12 cm, Tab stops: 1.75 cm, Left + Not at 0.95 cm

- For breaches involving the change of use of any building to use as a single dwellinghouse where the change of use took place before 25 April 2024, the time limit is four years from the date of the breach.

Formatted: Indent: Left: 1.75 cm, Tab stops: 1.75 cm, Left

Formatted: Indent: Left: 1.12 cm, Hanging: 0.63 cm, Right: 2.83 cm, Line spacing: Multiple 1.13 li, Tab stops: 1.75 cm, Left

Formatted: Font:

- 13.14 After these timescales the Council cannot take action and the use or development becomes immune from enforcement action. A landowner can then apply for a Certificate of Lawful Existing Use or development (CLEUD) if they can satisfy with evidence 'on balance of probability' the use or development is immune from enforcement action.
- 13.15 Serving an enforcement notice in respect of a particular development will 'stop the clock' in relation to these time limits. Therefore, where the Council considers a breach of planning control may be close to the relevant time limit it may seek to serve an enforcement warning notice or an enforcement notice to prevent a lawful development situation whilst still able to do so.
- 13.16 The Localism Act has also introduced a new enforcement power in relation to time limits. This allows councils the possibility of challenging what they believe to be a concealed breach of planning control even after the usual time limit for enforcement has expired.
- 13.17 The Council can, within six months of a breach coming to its attention, apply to the Magistrates Court for a Planning Enforcement Order. A planning enforcement order would allow one year to then take enforcement action. In agreeing to a planning enforcement order the court need only be satisfied, on the balance of probabilities, that the apparent breach, or any matter constituting the apparent breach has to any extent, been deliberately concealed by any person or persons.

14. ENFORCEMENT POWERS TOOLKIT

- 14.1 Below are set out the various enforcement powers available to the Council. This is by no means intended to set out in full all the detailed legal considerations, but simply tries to explain the general nature of the powers. In all cases the Council will seek to use the most effective tools available to remedy a breach of planning control.
- 14.2 **Planning Contravention Notice** – is a formal requisition for information and can be served on any interested party where it is suspected there may be a

breach of planning control. They contain a number of relevant questions relating to the alleged breach, nature of the breach, timescales etc and can be tailored to meet the details of the case under investigation. There is a timescale of 21 days from service of the notice for a response to be submitted. Failure to respond to the Notice within a specified timescale is a criminal offence which can result in a prosecution in the Magistrates Court.

14.3 **Section 330 Notice** –requires information from any occupier of land asking what his/her interest is in it. Failure to respond within 21 days from service is a criminal offence which can result in a prosecution in the Magistrates Court.

14.4 **Enforcement Notices** can be served in relation to unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. For these Notices there is at a minimum a 28-day period before the notice comes into effect and there is a right of appeal to the Planning Inspectorate.

14.5 **Enforcement Warning Notices** can be served when there has been a breach of planning control that is not so harmful to require an immediate enforcement notice but requires regularisation by way of a conditioned planning permission. Enforcement officers might typically write to developers informally inviting an application, with enforcement notice or breach of condition notice only being issued in the absence of an application (or its subsequent refusal). The issue of an EWN operates as “enforcement action” meaning that a subsequent notice can be issued under the second bite provisions in s171B(4) TCPA 1990, so extending the time to take subsequent enforcement action.

Formatted: Font: Not Bold

14.6 **Listed Building Enforcement Notices** are served where unauthorised works have taken place on a Listed Building and requirements are made to remove these works or improve on their impact. There is again at a minimum a 28-day timescale for the Notice to take effect and a right of appeal to the Planning Inspectorate.

14.7 **Listed Building Temporary Stop Notices** this would be served where there is irreparable harm being caused to the Listed Building and where the harmful works needs to be stopped immediately and the usual enforcement process would be too slow. There is a right of compensation available to the developer if they can show the Local Planning Authority acted inappropriately or unnecessarily by stopping the works.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

14.8 Breach of Condition Notice requires immediate compliance with a condition attached to a planning permission. These notices are suitable for specific breaches of planning conditions that need to be corrected within a specified deadline. There is no right of appeal against these notices.

14.97 Stop Notices would usually be served where there is irreparable harm being caused and where the harmful development needs to be stopped immediately and the usual enforcement process would be too slow. A Stop Notice will always require an enforcement notice to be served at the same time. There is a right of compensation available to the developer if they can show the Local Planning Authority acted inappropriately or unnecessarily by stopping the development.

14.108 Temporary Stop Notice The service of a Stop Notice allows time (28 days) for negotiating. There is no right of appeal against a Temporary Stop Notice. The Council is only liable for compensation if the developer can show that they did not breach planning control.

14.119 Section 215 Notices A Section 215 – Untidy land notice - can be served on any interested party where land or buildings have become untidy and are considered to adversely affect the amenity of an area. Once complied with there is no on-going requirement to comply with the notice; therefore, once the land is cleared or tidied a new notice would be required for each breach after that. There is a right of appeal against these notices which lies with the Magistrates Court.

14.12 Planning Enforcement Orders the Local Planning Authority can apply to the local Magistrates' Court for an order against a person who deliberately conceals unauthorised development. The order, if granted, enables the Local Planning Authority to take action in relation to an apparent breach of planning control, notwithstanding that the time limits may have expired.

15. ACTION UNDER ANTI-SOCIAL BEHAVIOUR LEGISLATION

15.1 Community Protection Notices (CPN) – section 43 Anti-social Behaviour, Crime and Policing Act 2014 – Intended to prevent unreasonable behaviour that is having a negative impact on the local community's way of life. A written warning must be issued before a CPN can be used. There is a right of appeal to a Magistrates Court within 21 days of issue. Failure to comply with the requirements of a CPN can result in a fine or the issue of a Penalty Notice.

- 15.2 **High Hedge Remedial Notice** – These notices can be served if following a High Hedge complaint action is considered necessary. There is a right of appeal and failure to comply can result in prosecution and or action in default. ie. Where the Local Planning Authority will undertake the work themselves and recharge back to the offender/land owner. These notices have an on-going requirement for compliance once served and in effect.

16 RIGHTS OF ENTRY

- 16.1 It is important to recognise that under the provisions of Section 296A of The Town and Country Planning Act 1990 certain rights of entry into land and property to investigate any alleged breach of Planning Control are given to local authorities.
- 16.2 Rights to enter without warrant.
- (1) Any person duly authorised in writing by a local planning authority may at any reasonable hour enter any land—
- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
- (b) to determine whether any of the powers conferred on a local planning authority by this Part should be exercised in relation to the land or any other land;
- (c) to determine how any such power should be exercised in relation to the land or any other land;
- (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,
- if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable hour enter any land to determine whether an enforcement notice should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose.
- (3) The Secretary of State shall not so authorise any person without consulting the local planning authority.

(4) Admission to any building used as a dwellinghouse shall not be demanded as of right by virtue of subsection (1) or (2) unless twenty-four hours' notice of the intended entry has been given to the occupier of the building.

17. AFTER AN ENFORCEMENT NOTICE IS SERVED

17.1 Once an Enforcement notice is served the recipient will either:

- Comply with the notice
- Appeal to the Planning Inspectorate against the service of the notice
- Fail to comply with the notice either in part or whole and risk prosecution, injunctive action or Direct Action.

The Appeal Process

17.2 Once a notice is served, the recipient will have until the Notice comes into effect in which to appeal to the Planning Inspectorate against the Enforcement Notice. An Appeal can be a lengthy process and can be dealt with by the Planning Inspectorate in a number of ways –

- a. by written representations;
- b. the hearing process, or
- c. a formal Inquiry process.

17.3 There are 7 possible Grounds of Appeal against an Enforcement Notice;

1. Ground A – That planning permission should be granted for the development;
2. Ground B – That the breach of control alleged in the Notice has not occurred as a matter of fact;
3. Ground C – There has been no breach of planning control and the development undertaken does not amount to development under section 55 of the Act, or that the change of use is not a material one. i.e. it is;
 - Permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015; or
 - that the change of use is Permitted by the Town and Country Planning (Use Classes) Order 1987 (as amended);
 - Has been carried out in accordance with a planning permission.

4. Ground D – When the Enforcement Notice was issued it was too late to take Enforcement action;
5. Ground E – The notice was not properly served;
6. Ground F – That the steps in the notice exceed what is required to remedy the breach of planning control;
7. Ground G – That the time for compliance is unreasonable and more time should be allowed to achieve compliance.

17.4 Section 118 of the LURA amends section 174 of the Town and Country Planning Act 1990 to reduce the circumstances in which an appeal against an enforcement notice can be made where an application has already been made to regularise the breach. In short, it effectively removes the ground (a) appeal so that there is only one opportunity to obtain retrospective planning permission.

Formatted: Font: (Default) Arial, 12 pt, Font color: Auto

Formatted: Font: (Default) Arial, 12 pt, Font color: Auto

17.5 If the appeal against the Notice does not succeed the formal notice will then come into effect. If the appeal is successful and/or planning permission is granted, then this is usually the end of the matter other than monitoring compliance with conditions. If the notice is upheld or there is no appeal but it is still not complied with, the Council can then take steps to prosecute the offender in Court.

Court and Direct Action

17.65 Prosecutions will be undertaken in incidences such as unauthorised works to Listed Buildings and protected trees, demolition in Conservation Areas, the illegal display of advertisements and failure to comply with an enforcement notice.

Injunctive action

17.76 This is used where a breach of planning control is severe or there is a threat of it becoming severe. Injunctions can also be used in longstanding cases where the offender has failed to comply with an Enforcement Notice and the harm is on-going and needs to be resolved. Under section 187B of the Town and Country Planning Act 1990 Injunctions can also be used to stop an anticipated breach of planning control. The Council will always look to recover the costs of taking this sort of action as it can be expensive for the public purse even if this results in placing a charge on the land to aid future recovery.

Formatted: Indent: Left: 0 cm, Hanging: 1.27 cm

Direct action

17.87 Direct action will be used where it is considered necessary to ensure remedial works are undertaken to secure satisfactory compliance with an Enforcement Notice. In such cases it may also be necessary to apply for an injunction to prohibit parties from entering the land during the period when direct action is taken. The Council will look to recover the costs of taking direct action from the offender when put in the position of taking such action even if this results in placing a charge on the land to aid future recovery.

18. MONITORING AND COMPLIANCE

18.1 In some cases when planning permission is granted it may be necessary to impose conditions requiring further details to be submitted or for the development to be undertaken in a certain way. The onus is on the developer to make sure all necessary consents are in place and all conditions are complied with.

18.2 There is no formal requirement to monitor the implementation of developments or check compliance with planning conditions however there is a commitment at Charnwood to monitor all major developments and to encourage developers to comply with the conditions of their planning permissions to ensure developments are in accordance with the approved plans. Any breaches of conditions that are uncovered by the monitoring process will be dealt with in the same manner as any other planning breach of control.

19. MONITORING SECTION 106 LEGAL AGREEMENTS

19.1 As well as planning conditions imposed on a development, it may also be the case a legal agreement will be signed between parties involved in the development to secure planning obligations, which aim to provide either financial contributions or requirements to undertake work that cannot be conditioned as part of the development. As with the planning conditions there will be triggers for the requirements of the agreements to be complied with and these will be monitored, by the S106 Developer Contributions Monitoring Officer, to ensure where possible that contributions are paid to the Council and the requirements are completed.

20. REVIEWING THE ENFORCEMENT PLAN AND SERVICE

- 20.1 The Council will review this plan from time to time and at least every three years to take into account any changes to legislation and relevant government guidance and the Council's procedures. Reviews will enable this policy to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements and changes in the Council's Constitution.
- 20.2 The Council will strive to provide the highest possible quality of service delivered in a fair and consistent manner. Customer suggestions are therefore welcome as to how improvements can be made to the planning enforcement service. Alternatively, problems may occur from time to time and any difficulties concerning the enforcement service should be brought to the attention of the Team Leader, Planning Enforcement.
- 20.3 If still dissatisfied a complaint may be submitted to the Council's formal complaints procedure and subsequently the Local Government Ombudsman. Details of both are on the Council's website using the following link: [Complaints Process - Charnwood Borough Council](#) or can be requested.

GLOSSARY

Amenity – This is not defined in legislation but in planning terms is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as: types of land uses; the quality of the buildings; setting and position of the buildings; the provision of open land and trees; and the interrelationship between the different elements in the environment.

Residential amenity - may take into consideration privacy and exposure to noise – whether there is any overlooking over and above what already exists, any overbearing impact, or overshadowing, or loss of light. There is no right in planning law to a particular view and the Council cannot take into account consideration of loss of monetary value of a property. Nor can the Council take into consideration matters which may be controlled under other legislation, for example light pollution from security lighting, or boundary disputes.

Expediency – Enforcement action is discretionary. The Council does not have to take enforcement action even if it identifies a breach of planning control. In deciding whether or not to take action the Council will balance the seriousness of a breach of planning control; the level of harm that it causes; and the likely chances of success in pursuing enforcement action. Having weighed up all of these factors the Council will make a decision as to whether we will take action. ie. if it is expedient to take action.

Contact Details

The Planning Enforcement Team can be contacted in the following ways:

In writing by letter:

Planning Enforcement,
Planning and Regeneration,
Charnwood Borough Council,
Southfields,
Loughborough
LE11 2TN

By email – Development.control@charnwood.gov.uk

Via the website – Charnwood.gov.uk - Report work without planning permission

https://www.charnwood.gov.uk/pages/report_work_apparently_being_done_without_planning_permission

By telephoning – 01509 634570

In person at the above address at the Council's main office - It may not always be possible to see an Enforcement Officer without a prior appointment as a lot of the work undertaken by the team involves being out on site however someone at reception will be able to take details.

DRAFT