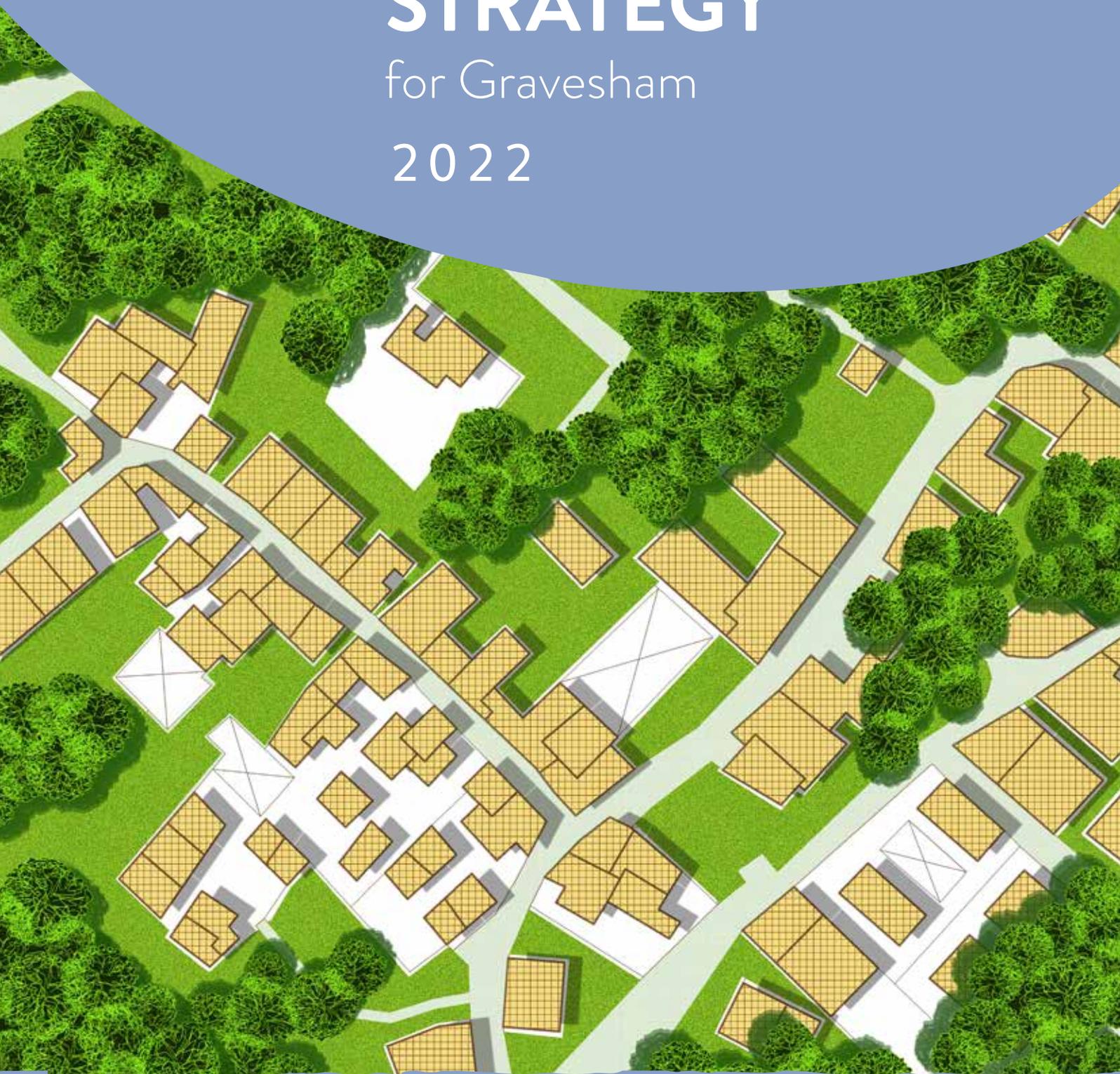


PLANNING ENFORCEMENT STRATEGY

for Gravesham

2022



Delivering a Gravesham to be proud of

CONTENTS

Foreword	3
Introduction	4
Ebbsfleet Garden City	5
What is a breach of planning control?	6
What isn't a breach of planning control?	6
Building Control	7
Health and Safety	8
Party Wall and Boundary Disputes	8
Planning Enforcement and Privacy	8
How do we undertake planning enforcement? Purpose and principles	9
Do planning regulations require individuals/organisations to be punished if they haven't followed the relevant regulations, legislation and guidance?	9
What is 'harm'?	10
How are breaches discovered?	11
Investigations and actions	11
Formal enforcement action	14
Urgent Works to Listed Buildings and Conservation Areas	16
Priorities for Action	16
Violence towards officers and members	17
Complaints about the service	17
Appendix 1: Planning Enforcement Flow Chart	18
Appendix 2: Enforcement checklist	19
Appendix 3: Example enforcement notice – operational development	22
Appendix 4: Example Stop Notice	23
Appendix 5: Example Temporary Stop Notice	24
Appendix 6: Breach of Condition Notice	25
Appendix 7: s215 Procedure and example letters	26
Glossary	32

FOREWORD TO THE PLANNING ENFORCEMENT STRATEGY



Gravesham has seen steady growth in development within its boundaries and around it for a number of years, which has been due mostly to housing targets set by Government.

We have also seen buildings destroyed without proper processes being followed.

People attempting to circumvent the planning process can cause upset and damage to the community and trust in organisations and developers.

Planning laws and regulations have changed over time and can be incredibly technical and it can feel that the council takes too long to act when we are actually gathering evidence in order to prosecute.

Major breaches of planning law are thankfully rare, but when they do occur this document provides the basis of our response to ensure the planning breach is corrected and the appropriate action is taken against those responsible.

This strategy recognises and acknowledges the hard work done by officers of this council in investigating and enforcing planning breaches.

Sometimes people are not aware they are responsible for a breach and have made a genuine mistake; others do so deliberately.

Our officers will respond in the way most appropriate to the circumstances and we as an authority will not tolerate abusive behaviour towards any of our staff.

Let's make Gravesham a place to be proud of.

Councillor Lauren Sullivan
Cabinet Member for Planning

INTRODUCTION

Gravesham is an area where there are high demands on the use of land and buildings, resulting in increasing competition between users, developers and residents. We are committed to ensuring that the built environment is of a high quality and that areas and buildings of architectural and historic interest are preserved and enhanced. This is reflected in the Borough's adopted Corporate Plan, which includes a vision objective to:

"Conserve and enhance the borough's rich historic built environment, landscape character and biodiversity as well as to respect its distinctive local character."

The Council's development management service regulates the use and development of land and buildings in accordance with the Planning Acts and related legislation. Most building works, changes of use, advertisements and works to protected trees require either planning permission or consent.

Development that takes place without the appropriate permissions or compliance with approved plans and conditions is said to be a 'breach of planning control. Such breaches are a matter of concern to the public and may require investigation. However, planning law includes a legal test of 'expediency' that requires our actions to be fair and reasonable.

Expediency depends on the degree of harm being caused and whether or not a negotiated solution is likely to be achieved, whether it is a suitable course of action in comparison with other legislation and that it is advantageous for the Council to take such action rather than other statutory organisations (such as the Environment Agency).

Whilst ensuring that any enforcement action is always commensurate with the breach of planning control it relates to, the Council will take a proactive and robust approach to protect the quality of the Borough's natural and built environment, including the Borough's heritage assets and the quality of life of local residents.

The Council also has powers to address untidy sites/land/buildings and ensure the Borough's heritage assets especially listed buildings, are conserved and protected. Where the amenity of local areas is harmed by untidy sites/land/buildings or where repairs/works are needed to listed buildings to ensure the conservation of heritage assets, the Council will utilise its powers in a fair but robust manner.

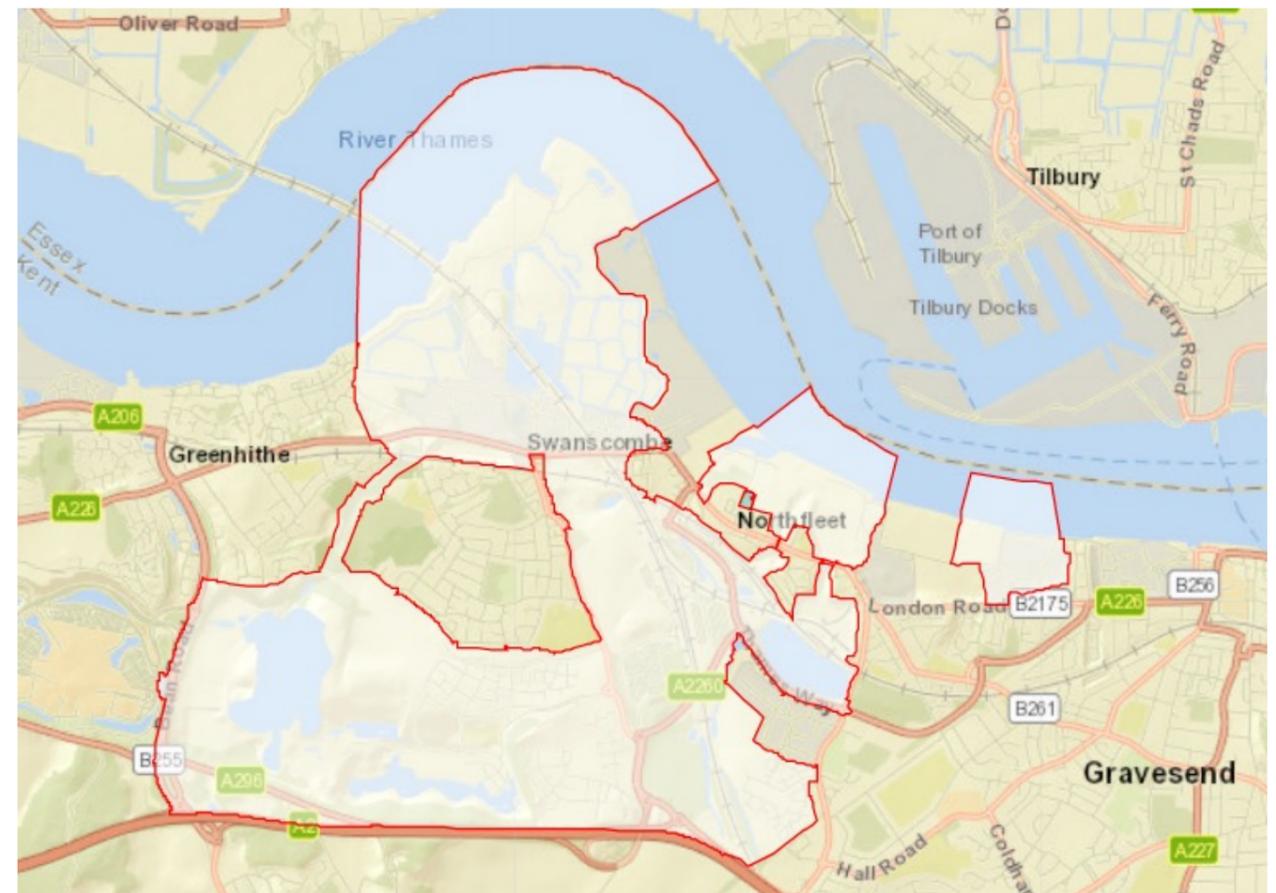
EBBSFLEET GARDEN CITY

The Ebbsfleet Development Corporation has been set up to speed up delivery of the homes and create a 21st century Garden City in north Kent. The Corporation is working with us and local communities to develop a shared vision for the area.

The Corporation is now responsible for deciding planning applications, giving

pre-application advice and carrying out planning enforcement in its area.

As such, this strategy does not apply within the Ebbsfleet Development Corporation's area. The area covered by the Ebbsfleet Development Corporation is shown below.



PLANNING CONTROL

What is a breach of planning control?

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as, the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted. Breaches of planning control include:

- Unauthorised works to listed buildings
- Unauthorised works to trees with a tree preservation order (TPO) or in a Conservation Area
- Breaches of planning conditions
- Failure to comply with a s106 agreement
- Unauthorised development works and changes of use
- Removal of protected hedgerows
- Not building in accordance with the approved plans that form part of a planning permission
- Unauthorised engineering operations, such as the creation of earth bunds
- The Council also has the power to act where a site/property has become untidy, and its untidiness harms the amenity of the surrounding area.

What isn't a breach of planning control?

Issues not considered breaches include:

- Party Wall disagreements
- Obstruction of a highway or public right of way
- Parking of vehicles on the highway or on grass verges

- Parking caravans on residential driveways
- Land ownership disputes or trespass issues
- Covenants imposed on property Deeds

The National Planning Policy Framework (NPPF) recognises that effective enforcement is important as a means of maintaining public confidence in the planning system and requires local planning authorities to act proportionately in responding to suspected breaches of planning control. This document sets out how we will deal with alleged breaches of planning control and functions as the Council's 'local enforcement plan' for the purposes of the NPPF.

Planning Practice Guidance (PPG) states that there is a clear public interest in enforcing planning law in a proportionate way. Effective enforcement is important to:

- tackle breaches of planning control which have an unacceptable impact on the amenity of the area or are otherwise seriously contrary to planning policy;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

The Council's planning enforcement service is concerned with resolving breaches of planning control, and seeks to balance the concerns of local people with the rights of owners. The Council cannot take enforcement action simply to remedy a breach of planning control, if that breach is considered acceptable in planning terms. There must be harm to public amenity, safety or the environment for enforcement action to be justified. Where harm cannot be demonstrated, it would not be justified for the Council

to enforcement action to remedy a breach of planning control. It does not, therefore, follow that because there has been a breach of planning control that enforcement action will be taken.

In considering the issue of expediency, the Council will have regard to:

- whether and the degree to which any breach of planning control unacceptably harms public amenity, safety or the environment;
- whether the existing use of land and buildings merit protection in the public interest;
- ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to be acceptable in planning terms;
- statutory time limits for taking enforcement action;
- relevant planning policies and other material considerations.

Before resorting to any formal action, there may be other approaches that the planning enforcement service explores, such as agreeing on changes to a development or activity, and encouraging the submission of a planning application.

In accordance with the NPPF and PPG the planning enforcement service will take a fair and reasonable approach in pursuing appropriate action to resolve breaches in line with the Council's agreed priorities, using the powers that are available to the Council.

All parties will be treated fairly and in accordance with the standards set out in this document.

Please note that Gravesham Borough Council is not responsible for waste and minerals. Any enforcement complaints related to waste and minerals should be sent to Kent County Council for their action. Complaints can be raised directly by using the following link <https://www.kent.gov.uk/about-the-council/contact-us>.

Building Control

Building control is dealt with separately to planning control and is not included in this plan. Building control operates under its own legislation, the Building Control Act and Approved Documents. Building Control also check that dangerous structures are made safe and that demolitions are carried out in a safe manner. Checks can be made between the plans submitted for building control and the approved plans for planning permission, to ensure that there are no major discrepancies between the proposals on the plans. We will work closely with our colleagues to resolve any matters.

If you have any queries that relate to Building Control, then please contact STG Building Control at building@stgbc.org.uk / 01634 331133

Health and Safety

The Construction (Design and Management) Regulations 2015 (CDM 2015) came into force in Great Britain on 6 April 2015. They set out what people involved in construction work need to do to protect themselves from harm and anyone the work affects.

If you see something in a workplace that you think is breaking health and safety law and is likely to cause serious harm, you can report it to the Health and Safety Executive. Please see <https://www.hse.gov.uk/contact/concerns.htm> for further details.

Party Wall and Boundary Disputes

Party wall agreements are different from planning permission or building regulations approval. Party walls stand on (between) the land of 2 or more owners and either:

- form part of a building
- don't form part of a building, such as a garden wall (not wooden fences)

Walls on one owner's land used by other owners (2 or more) to separate their buildings are also party walls.

You must tell your neighbours if you want to carry out any building work near or on your shared property boundary, or 'party wall', in England and Wales. For further details, please see <https://www.gov.uk/topic/housing/party-walls>. Works to party walls are a civil matter and outside the remit of planning enforcement. If you require assistance, please seek your own legal advice.

Land boundaries or ownership disputes are also civil matters. If you require assistance, please seek your own legal advice or discuss the matter with an RICS Surveyor. Alternatively, consider utilising RICS's neighbour disputes service. Please see <https://www.rics.org/uk/products/dispute-resolution-service/drs-services/neighbour-disputes-service/>.

Planning Enforcement and Privacy

At its heart, the planning system relies on trust and the planning enforcement team provides the backbone for ensuring this trust is maintained. We recognise that it can be difficult to report a breach and as such all complaints are treated sensitively and confidentially following best practice and the law. However, anonymous complaints cannot be accepted and if a

matter progresses to the Planning Inspectorate or Courts, details of your complaint and contact details will need to be shared with these outside bodies for your complaint to be taken into consideration.

The Council's Planning Enforcement Privacy Notice is available at <https://www.gravesham.gov.uk/home/footer/privacy/privacy-notice/privacy-notices-by-service>.

Allegations of a planning breach against a particular property or person inevitably contain personal data, and personal data is governed by the Data Protection Act 2018 (DPA 2018), and the UK General Data Protection Regulation (UK GDPR).

This legislation and regulations prohibit what information the Council can make public. Whilst the Council does maintain a list of cases where:

1. a potential breach has been reported;
2. a breach identified but the matter is under further investigation or negotiation to remedy the situation; or
3. formal enforcement action has/is being taken

this list cannot be made public. The Council recognises that a breach of planning control can be contentious and worrisome for members of the public, especially when the amenity of members of the public is directly impacted. However, in all instances, the Council is under a duty to safeguard the data of people, some of whom may be vulnerable or have protected characteristics.

As such, the information that the Council can share in relation to enforcement cases is severely restricted, whilst the Council may provide limited information about the stage of the process once a breach has been identified. The information provided will be restricted to ensure no personal data is made available.

Details regarding what formal enforcement action has been taken can be viewed as part of the Council's Planning Enforcement Register, at <https://www.gravesham.gov.uk/planning>.

How do we undertake planning enforcement? Purpose and principles

Unlawful development and neglected sites can cause serious harm to people and the built environment. The main purpose of planning enforcement is to deal with such harmful activities effectively. Our enforcement work is an important part of the Council's overall planning service.

With some notable exceptions, such as unauthorised works to listed buildings, breaches of planning control are not criminal offences. It is for the Council to decide what, if any, action should be taken in response to a breach of planning control.

A criminal offence only arises when an Enforcement Notice has been served and has not been complied with.

Each breach is considered on its individual merits whilst acting in line with the following principles:

- Proportionality – our enforcement action will be in keeping with the scale of the alleged breach and the seriousness of the harm caused.
- Consistency – as far as possible similar circumstances will be dealt with by taking a similar approach in order to achieve similar outcomes. We aim to achieve consistency in advice, responses to breaches, use of powers and decisions on whether to prosecute.
- Transparency – we will ensure that everyone involved understands our processes and procedures, including what rights of complaint and appeal may be open to them.

- Accountability – we will publish standards of service, as well as monitor and report our performance to the Council's Strategic Environment Cabinet committee.

By acting in this way we aim to:

- protect the Borough from the effects of development that is not acceptable in planning terms;
- recognise that some breaches may be unintentional;
- remedy the harmful effects of unauthorised development having considered the scale of the breach and seriousness of the harm caused;
- uphold the credibility of the planning system;
- make sure development complies with planning permissions and conditions;
- ensure that local planning policies are implemented;
- provide excellent customer service and a uniform standard of service;
- utilise resources efficiently and effectively

Do planning regulations require individuals/organisations to be punished if they haven't followed the relevant regulations, legislation and guidance?

Other than in the case of unauthorised display of advertisements or works to listed buildings, carrying out building works or a change of use without the necessary planning permission is not a criminal act and, initially, not subject to penalties such as fines or imprisonment.

If later in the process formal enforcement action is taken, such as an enforcement notice served and not complied with, then the Council has to apply to the Courts for action to be taken and penalties to be imposed, the Council cannot take unilaterally take direct action.

Planning enforcement is a discretionary

power of a local authority that should only be used to put right any harm caused by a failure to comply with planning control. However, the Council is clear that whilst any enforcement action it takes will be commensurate to the breach to which it relates to, the Council will take a proactive and robust approach to protect the quality of the Borough's natural and built environment and the quality of life of local residents.

When there is no harm, or it is insignificant, the view of the Government and Courts is that enforcement action is generally not justified. Harm requiring enforcement action would normally occur when the breach in question results in an unacceptable departure from relevant planning policies that would have justified refusing planning permission if it had been the subject of a planning application.

What is 'harm'?

Planning harm requires the use of planning judgement and requires the consideration of planning balance before a decision is made on whether or not a breach has occurred. As such, a definitive list of what constitutes harm is not available, but any identified harm must be balanced against any benefits of the development. Examples of harm could include:

- Increased risk of flooding
- Unacceptable design
- Severe harm to highway safety
- Loss of residential amenity - such as excessive overlooking of windows or gardens, loss of light, overbearing by large new buildings too close to boundaries
- Untidy land that impacts local amenity
- Detrimental impact on general amenity – when comparing against the existing character, appearance and environmental quality of a place

- Harm to heritage assets (including through unauthorised works and neglect)
- Harm to designated landscape such as Area of Outstanding Natural Beauty (AONB), Conservation Area (CA), Sites of Special Scientific Interest (SSSI), etc

The following are NOT examples of harm:

- Loss of value to a neighbouring property
- Competition to another business
- Loss of an individual's view or trespass onto someone else's land.
- Works undertaken without the landowner(s) consent
- Matters that fall within the remit of the Party Wall Act or the remit of other regulatory powers/agencies, such as Building Control, HSE - Health and Safety.

It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and is not an area where we (the Council) would be involved.

How are breaches discovered?

Breaches are brought to the Council's attention by the public, Councillors and by Council officers who monitor developments. Planning enforcement action can only be taken when works have been undertaken, or a use commenced without the appropriate permission or consent.

When an enforcement complaint is made to the Council, officers must first establish whether permission was needed: enforcement action cannot be taken if the works or use do not require permission or are permitted by the planning legislation.

A planning breach can be reported via the Council's website at <https://www.gravesham.gov.uk/home/planning-and-building/planning-enforcement/report-a-planning-breach>

Investigations and actions

All breaches must be reported in writing, preferably via our website, except where complainants are unable to do so.

The identity of a person/persons making a complaint is kept confidential unless the Council is required to release the information; for example, if a case proceeds to the appeal stage, and if a complainant's evidence is part of the Council's case, anonymity cannot be guaranteed. However, we will ask for the complainant's agreement if we need to do this. In some cases, the Council's case may be weakened by a complainant not agreeing to forego anonymity, and in such cases, it may not be expedient to proceed with formal enforcement action.

All complaints received will be logged and investigated to ascertain if there has been a breach of planning control unless they are:

- o anonymous
- o not motivated by planning harm, e.g. motivated by business competition and a neighbour dispute
- o been subject of a previous complaint
- o otherwise inappropriate

Only after establishing that there has been a breach of planning control will we undertake further investigations. Whilst some may require formal action, not all will be equally serious. We will carry out investigations thoroughly and accurately in accordance with the following priorities:

High Priority - we aim to undertake a site visit within 1 working day

- Unauthorised development that is causing immediate, serious and irreversible harm to neighbourhood facilities or other acknowledged interests, such as:
 - o Works that seriously affect the fabric of a listed building

- o Demolition work affecting a building in a conservation area;
- o Felling or lopping of a tree protected by a Tree Preservation Order or a tree within a conservation area.
- Unauthorised development causing immediate and severe harm to ecology or the public.

Medium Priority – we aim to undertake a site visit within 5 working days

- Unauthorised development that causes significant harm to an area and/or the living conditions of neighbours, such as:
 - Residential extensions resulting in unacceptable harm to residential amenity;
 - Alterations that fail to preserve or enhance the character or appearance of a conservation area;
 - Unauthorised use of a building or land;
 - Breach of a planning condition resulting in significant noise, disturbance or loss of privacy for adjoining occupiers.
 - Unauthorised development that is contrary to significant policies in the development plan, such as:
 - o Green Belt (Policy CS02)
 - o Loss of residential accommodation;
 - o Creation of sub-standard accommodation.
 - Situations where collective breaches are likely to cause significant harm to the character and appearance of a neighbourhood, contrary to development plan policy, such as:
 - o Advertisement displays
 - o Alterations contrary to an Article 4 Direction.
 - o Urgent work to Listed Buildings and Conservation Areas
 - o Lack of site maintenance impacting on amenity

Low Priority – we aim to carry out a site visit within 20 working days

- o Breaches of planning control, such as:
- o Non-compliance with conditions not covered by high or medium priorities;
- o Unauthorised development where minimal harm is anticipated;
- o Unauthorised development which is likely to comply with adopted policies, subject to a retrospective planning application;
- o Development that has been built without complying with the approved plans, but where planning permission is likely to be granted with minor amendments, subject to a retrospective planning application.

We recognise that potential breaches of planning control and investigations of possible breaches can be worrying for everyone involved and that keeping parties involved informed can assist in reducing concerns. However, the level of information the Council will be able to share will be governed by the Data Protection Act 2018 (DPA 2018), and the UK General Data Protection Regulation (UK GDPR).

Subject to resources, the Council will:

- acknowledge complaints within 5 working days of receipt.
- treat information received in confidence, unless otherwise agreed with the complainant or required by law.
- carry out a desk top assessment of the complaint to ascertain extent of any breach (see indicative pre-assessment form in appendix)
- carry out a site visit on all complaints considered to require further investigation in line with the priority levels set out above (see indicative enforcement harm assessment form in appendix 2)

- make a preliminary assessment as to whether a breach of planning control has occurred in line with the priority levels set out above
- update the complainant at the following stages of the investigation:
 - o when a breach is established/not established and a decision made to pursue/not to pursue enforcement action.
 - o when an enforcement notice has been issued.
 - o when an appeal against an enforcement notice has been formally started by the Planning Inspectorate.
 - o when an enforcement notice has been issued.
 - o when an appeal decision is received from the Planning Inspectorate.

We will provide complainants with an update of what is happening where ever possible. However in some cases it is not practical to give a running commentary of what is happening for a number of reasons. Whilst we accept that a breach of planning control may be occurring which is causing harm, the Council also have to have regard to the rights of those being complained about as well.

Site visits are normally undertaken without prior notice, unless access is required to be arranged. This is because of the need to obtain accurate, representative and timely evidence of how a site is being used, or in terms of building works, because difficulties in contacting site managers can sometimes significantly delay an investigation.

An assessment of the extent of any breach, the degree of harm, and of the appropriate next steps will then be made. Formal action will only be taken where the breach causes unacceptable planning harm. This usually means that it would have a harmful effect on local residents or the character of an area. This judgement

will be made by reference to the Town and Country Planning Act 1990 (as amended) and all its subordinate and associated legislation, relevant national, regional and local planning policies and other material considerations, including the Human Rights Act.

The Council will work co-ordinate action between different council services to ensure the most effective remedy is used. For example, action by Environmental Protection colleagues on a noise nuisance may be a better option than lengthy planning enforcement.

Policies regarding the acceptability of development and also what needs planning permission change over time. Decisions on cases will be assessed on their individual circumstances. There will be cases where decisions on two similar developments in the same street or in the same area could be different if, for example, their impact on the surroundings differs or the policy context has changed.

Only a small proportion of complaints received result in formal action as often the quickest and best way to bring about a resolution is through negotiation. This sometimes may appear that someone is "getting away" with something or that the Council is not being robust enough in the interim period. Our officers are skilled at trying to bring about the best conclusion to all parties wherever possible. Moving too quickly to formal enforcement action, in some cases, could prolong a case by many months due to appeal processes and other challenges.

The action that we take MUST be proportionate to the breach that has occurred. The Council is impartial and will act as such at all times. It will continue to have regard to the public interest and expediency tests at all times.

Planning enforcement can be a lengthy process. The initial investigation to establish whether a breach has occurred can take weeks or sometimes longer, and there are also rights of appeal which may

be pursued before an enforcement notice can come into effect. More complicated cases can take several years to resolve, especially where it is necessary to take action in the courts.

Depending on the nature of a confirmed breach of planning control, there are a range of measures the Council can take.

Take no action: The Council may, following the initial investigation, decide that there has been no breach of planning control or that the breach is minor or insignificant in nature, or that there is insufficient evidence to pursue the matter. Development can be immune from enforcement action if the unauthorised development or change of use has occurred over a long period of time without being brought to our attention as there are certain time limits involved in relation to operational development and changes of use.

Ongoing Review: Instances where no immediate action is warranted, but there is a need to monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord before formal enforcement action is likely to become effective (such as temporary uses).

Allow Time to Remedy/Negotiate a solution: Time may be given to remedy the breach or justify its retention. Such cases may include situations where the harm is easily repairable and is not so serious as to warrant immediate action or where it may be otherwise justifiable. Where it has been established that a breach of planning control has occurred, the Council will normally attempt to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use of activity, or the modification or removal of unauthorised operational development.

However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay effective action unnecessarily. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, the Council will consider whether or not it is expedient to take formal enforcement action.

Planning Contravention Notice: This is a formal questionnaire that allows the Council to seek information about an alleged breach before deciding on a response.

Retrospective application for planning permission: Where a breach of planning control has occurred, but no harm is being caused, or any harm might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances, it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action. The Council will only invite retrospective planning applications where there is a reasonable chance that planning permission could be granted and so, by the same token the Council will not invite a planning application where it is likely to be recommended for refusal. This is because it raises false and can prolong the matter unnecessarily.

Formal enforcement action

Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers listed below is discretionary and will only be used

when it is considered expedient to do so. Any action taken must be proportionate to the breach of planning control, and each case is assessed on its own merits.

The decision to take enforcement action or commence a prosecution will be taken in accordance with the delegation arrangements detailed in the Council's Constitution.

There are rights of appeal to the Secretary of State against an Enforcement Notice / Listed Building / Conservation Area Enforcement Notice. In the case of Breach of Condition Notices and Temporary Stop Notices, there is no right of appeal to the Secretary of State, and these may only be challenged by application for judicial review to the High Court. In the case of Section 215 Notices, prosecutions and injunctions, appeals must be made through the Courts.

Enforcement Notices: This is the most common formal means of remedying unacceptable development. There is a right of appeal against a notice, which may be quashed or amended if the appeal is successful.

Breach of Condition Notices: These can be used in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission.

Stop Notice: The Council can issue a Stop Notice or Temporary Stop Notice where a breach is causing very serious or irreparable harm, and immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period.

Other statutory notices: Other statutory enforcement options available to the Council include s.215 'Untidy Land' notices, Advertisement Removal Notices, Planning Enforcement Orders and Listed Building Enforcement Notices. These will be used where appropriate.

s.215 Notice - If the Local Planning Authority considers that the condition of land or buildings is having a harmful effect on the area they may serve a Notice under Section 215 of the Town and Country Planning Act 1990.

The notice may require certain steps to be undertaken by the owner of the land to remedy its condition. Failure to comply with a Section 215 Notice is an offence that could be the subject of a prosecution. In addition, the Local Planning Authority have the power to enter the land, carry out the work and charge the cost of such work to the landowner, which may also involve a financial charge on the land. There is the right of appeal to the courts against such notices.

Court Injunction: Injunctions will only be sought in the most serious cases, where irreparable harm is being done or where other actions have failed. Significant costs are involved in bringing such actions and can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order

"Default" Powers or Direct Action: The Council may enter land to take the necessary steps to secure compliance when e.g. an Enforcement or advertisement removal notice comes into effect.

Prosecution: Before commencing any legal proceedings, the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.

- (i) Enforcement Notice
- (ii) Listed Building Enforcement Notice
- (iii) Conservation Area Enforcement Notice
- (iv) Breach of Condition Notice
- (v) Section 215 Notice
- (vi) Stop Notice

The Council will also consider commencing a prosecution in the Courts where:

- (a)** unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- (b)** an advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored
- (c)** unauthorised works have been carried out to a Listed Building
- (d)** unauthorised demolition has taken place in a Conservation Area
- (e)** the recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information.

Where enforcement action is pursued, the Council will give the owner(s) of the site where a breach has been identified:

- advice on what action needs to be taken, why and by when.
- an opportunity to discuss or respond to issues raised before formal action is taken (except in the most urgent cases), however the Council will not delay enforcement action where there is evidence of a lack of co-operation or the ongoing harm is serious. Where an application is refused for the same or similar development, further discussion will often not be appropriate;
- give advice on the consequences of failing to take appropriate remedial action leading to formal action and advice on rights of appeal

PLEASE NOTE: Court injunctions and prosecutions must firstly satisfy the evidential test and then secondly the public interest test. A case which does not pass the evidential stage must not proceed no matter how serious or sensitive it may seem.

Urgent Works to Listed Buildings and Conservation Areas

It is usually in the interest of the owner(s) of a listed building/ property in a Conservation Area to keep their property in a good state of repair. Local Authorities, such as Gravesham Borough Council can take action to secure the repair of a listed building when concerned about its continued conservation (unless the land is owned by the Crown, subject to ecclesiastical exemption). This is done through the issuing of a repairs notice or an urgent works notice. A repairs notice is concerned with long-term conservation and is a pre-cursor to possible compulsory acquisition. An urgent notice is a direct way of securing repairs urgently necessary for the preservation of a building. The Council does have powers to compulsory acquire a listed building if an owner is unwilling or unable to carry out repairs themselves and such action is required for the long-term preservation of the building.

Separate legislation provides for urgent works to secure repairs to scheduled monuments. In Conservation Areas and usually at the request of a local authority, the Secretary of State has the power to direct that the urgent works provisions also apply to an unlisted building in a conservation area if the preservation of the building is important for maintaining the character or appearance of the conservation area.

Priorities for Action

Cases will be prioritised according to the seriousness of the alleged breach and the harm that is being caused. It will not be possible for the Council to pursue all cases.

Once a commitment is made to formal action it is essential to meet timescale and procedural requirements of the legal process, such as appeal deadlines. Ongoing cases will therefore be given priority over new complaints.

The following indicates how the various types of enforcement cases will be prioritised and how resources will be allocated (the highest priority is first and lowest priority is last):

Types of enforcement cases
Ongoing court or appeal proceedings
New complaints of serious irreparable harm
Ongoing breach of an enforcement notice which has come into effect and is causing serious planning harm
Identified breach causing serious harm
New complaints of serious harm to the amenities of an area
New complaints where the time limit for taking action expires imminently
Systematic breaches of planning control which may set a precedent giving rise to more widespread harm
Ongoing Investigations where no harm has been identified or minor harm is reparable
All other new complaints
Ongoing investigations where a breach has not been identified

The enforcement service will manage its resources to ensure that the highest priority complaints can be addressed without undue delay, with the response to lower priority complaints being adjusted accordingly. To ensure that an adequate overall service is provided, the allocation of resources will be periodically reviewed. The quality of evidence and support provided by complainants can also have a significant bearing on the outcome of an investigation and where such support is likely to increase the chances of a successful outcome, the matter may be given a higher priority.

Communication

All communications will be timely, clear and where possible in plain English and will distinguish between planning judgements and legal requirements.

In respect to interactions with the any potential contravener, the Enforcement Team will engage with the landowner or their appointed representative, and raise compliance failures. With full consideration given to their views before considering the most appropriate course of action.

Once a complaint has been received, the Enforcement Team will communicate mainly with the potential contravener(s), with updates provided to the original complainant in line with Data Protection and GDPR Regulations/ Policies . Updates on complaints with a high profile / high interest will be provided by other means of communication e.g. for example, by creating a new entry on our Planning Enforcement sites webpage and then encouraging / signposting interested parties to that page so that there is wider availability of the most up-to-date information.

Violence towards officers and members

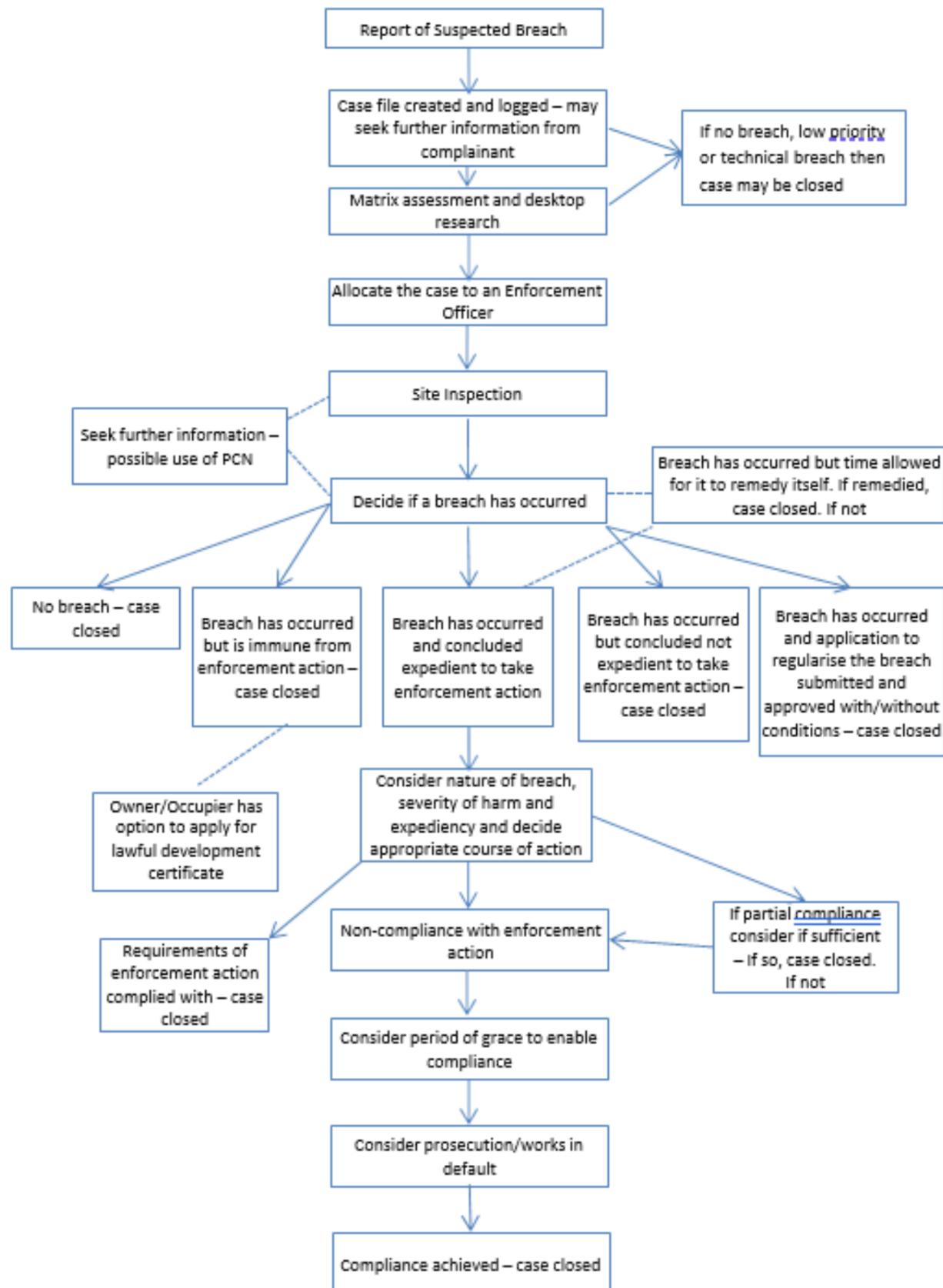
The Council is committed to ensuring that its Officers and Councillors are able to carry out their work safely and without fear and will use legal action to prevent abuse, harassment or assaults on Officers and Councillors.

Complaints about the service

The Council has a complaints system. This procedure can and should be used by any person who is dissatisfied with any aspect of their dealings with the Council, including any deviation from the provisions of this Enforcement Policy.

How to make a complaint
<https://www.gravesham.gov.uk/home/footer/contact-us/make-a-complaint/overview>

Appendix 1: Planning Enforcement Flow Chart



Appendix 2: Enforcement checklist

ENFORCEMENT PRE-ASSESSMENT FORM		
Provide Summary of Alleged Breach:		
Complainant		Public Cllr GBC Police STG Other
Degree of Harm:	Widespread local none	
Irreversible Harm:	yes no	
Article 4 Direction:	yes no	
Conservation Area	yes no	
Listed Building (or affecting character or setting of)	yes no	
TPO	yes no	
Sensitive site: (please provide details)	yes no	
Any Other Observations:		
Priority Status:		High Medium Low
Completed By:		
Dated:		

TO BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT

Planning Balance		Consideration
Is the breach:	worsening stable	
Highway Safety Issue:	yes no	
Other Safety Issues:	yes no	
Causing a Statutory Nuisance	yes no	
Complainant:	Members, immediate neighbour, staff Other, Parish Council Anonymous, malicious	
Age of breach:	Within 6 months of immunity Less than 1 month More than 1 year old	
Degree of Harm:	widespread local none	
Irreversible Harm:	yes no	
Breach of condition or Article 4	yes no	
Flood Risk	zone 3 zone 2 zone 1	
Conservation Area (or adjacent to)	yes no	
Listed Building (or affecting character or setting of)	yes no	
Special Exercise: (please provide details)	yes no	
Sensitive site: (please provide details)	yes no	
Undesirable Precedent: (please provide details)	yes no	
Planning Balance, has a breach occurred that requires enforcement action: Yes/No		
If yes, is informal or formal action being pursued? Informal/Formal		
Has due regard been given to the provisions of the Human Rights Act? Yes/No		
Has due regard been given to the potential impact on health, housing needs and welfare of those affected by the proposed action and those affected by the breach? Yes/No		

GUIDANCE ON HARM ASSESSMENT CRITERION

IS THE BREACH?

ongoing = for operations = building works are in progress

For Change of use (COU) = is it intensifying – increasing activity – continuing residential occupation

Stable = for operations = work complete

For Change of use (COU) = No change in degree of activity or appearance

HIGHWAY SAFETY

YES = New/alterd access to a highway, significant increase in use of access, creates on street stopping and or parking

OTHER SAFETY ISSUES

YES = Hazardous materials stored, potential fire risk, interference with safety of other uses/users

CAUSING STATUTORY NUISANCE

YES = Where dust, vibration, smell, fumes, light creating adverse physical effect upon health, and or where Environmental services are taking action

COMPLAINANT = Self explanatory

AGE OF BREACH = self explanatory

DEGREE OF HARM

This is where one must assess if the work / COU causes any harm to the area and if so whether that harm is widespread or localised

Widespread – more than 10 residential properties directly affected, major policy breach i.e. dwelling in countryside or commercial operation in countryside, can be seen over several tens of metres, pollution is air borne and carried over neighbourhood

Local – this is where there is harm but only to immediate neighbours affected

IRREVERSIBLE HARM

YES = effectively a planning judgement as to whether retention of works/COU can be permitted without causing permanent damage to the environment or living conditions [would it be refused pp]

FLOOD RISK = Development within its respective Flood Risk Zone [graded 1 to 3] 10

BREACH OF PLANNING CONDITION OR ARTICLE 4 RESTRICTIONS

This will be a matter of fact and thus either yes or no

CONSERVATION AREA OR ADJACENT

This will be a matter of fact and thus either yes or no

LISTED BUILDING OR ADJACENT

This will be a matter of fact and thus either yes or no

SPECIAL EXERCISE

This relates to whether the breach lies within a specific special project area e.g. regeneration area. Or is part of a specific proactive enforcement project

SENSITIVE AREAS

This will be a matter of fact and thus either yes or no.

With considerations such as whether an Area of Outstanding Beauty (AONB), Site of Special Scientific Interest (SSSI), Ramsar Site, Area of archaeological importance, Scheduled Monument

UNDESIRABLE PRECEDENT

A matter of judgement i.e. if similar work/COU occurred would undermine an important planning principle for the area or cumulatively cause harmful change to character of the area.

Appendix 3: Example enforcement notice – operational development

Note 1: Wording for enforcement notices for a material change of use or failure to comply with a condition would need to reflect different types of breaches of control, remedies and time period for enforcement action.

All notices must comply with the requirements of Section 172 and Regulation 4 – Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 and should attach a copy of the Planning Inspectorate note on how to make an appeal against an enforcement notice.

Note 2: Every copy of the enforcement notice must also be accompanied by an Explanatory Note that complies with Regulation 5 – Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002

Note 3: Regulation 13 – Town and Country Planning General Regulations 1992 requires that notices and envelopes be marked with the words: "Important – This Communication affects your Property".

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY TOWN AND COUNTRY PLANNING ACT 1990

(As amended by the Planning and Compensation Act 1991) ENFORCEMENT NOTICE

ISSUED BY: Gravesham Borough Council

1. THIS NOTICE is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

THE LAND TO WHICH THE NOTICE RELATES

Land at [address of Land], shown edged in [a distinctive colour] on the attached plan.

THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the erection of [describe the development], in the approximate position marked with a cross on the attached plan.

REASONS FOR ISSUING THIS NOTICE

[Include the reasons why the local planning authority consider it expedient to issue the notice and all the policies and proposals which are relevant to the decision to issue an enforcement notice]

WHAT YOU ARE REQUIRED TO DO

[Explain what steps the local planning authority require to be taken [or what activities are required to cease to remedy the breach]]

TIME FOR COMPLIANCE

[Identify the time period after which this notice takes effect]

WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on [specific date, not less than 28 clear days after date of issue], unless an appeal is made against it beforehand.

Dated: [date of issue]

Signed: [Council's authorised officer]

On behalf of: [Council's name and address]

Nominated Officer: [Name of contact officer]

Telephone Number: [of Nominated Officer]

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before the date specified in paragraph 7 of the notice.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal [link to <http://www.planningportal.gov.uk/uploads/pins/enfinfosheet.pdf>]

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Appendix 4: Example Stop Notice

Model stop notice

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(As amended by the Planning and Compensation Act 1991)

STOP NOTICE

SERVED BY: Gravesham Borough Council herein after referred to as "the Council".

To: [name of intended recipient of the notice]

1. On [date], the Council issued an enforcement notice (a copy is attached to this notice) alleging that there has been a breach of planning control on [description of the land to which the notice relates].

2. THIS NOTICE is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry of the period allowed for compliance with the requirements of the enforcement notice on the land described in paragraph 3 below. The Council now prohibit the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE LAND TO WHICH THIS NOTICE RELATES

Land at [address of land, or description of relevant part of the land to which the enforcement notice relates], shown edged in [a distinctive colour] on the attached plan.

4. ACTIVITY TO WHICH THIS NOTICE RELATES

[Specify the activity required by the enforcement notice to cease, and any activity carried out as part of that activity, or associated with it.]

5. WHAT YOU ARE REQUIRED TO DO

Cease all the activity specified in this notice.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on [date] when all the activity specified in this notice must cease.

Dated: [date of notice]

Signed: [Council's authorised officer]

On behalf of [Council's name and address]

Nominated Officer [Name of contact officer]

Telephone Number [of Nominated Officer]

ANNEX WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 6.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AGAINST THIS NOTICE.

It is an offence to contravene a stop notice after a site notice has been displayed or the stop notice has been served on you (section 187(1) of the 1990 Act). If you then fail to comply with the stop notice you will be at risk of **immediate prosecution** for which the maximum penalty is an unlimited fine. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with [Council's nominated officer to deal with enquiries, address and telephone number]. If you need independent advice about this notice, you are advised to contact a lawyer, planning consultant or other professional adviser specialising in planning matters urgently. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review. Area designation guidance

Appendix 5: Example Temporary Stop Notice

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compulsory Purchase Act 2004)

TEMPORARY STOP NOTICE

SERVED BY: Gravesham Borough Council herein after referred to as "the Council".

TO: [name of intended recipient of the notice]

1. The Council considers that there has been a breach of planning control on the land described in paragraph 3 below. The breach of planning control is ...
2. This temporary stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 4 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE REASONS FOR ISSUING THIS NOTICE

[Briefly specify the reasons why the temporary stop notice has been issued. There is no requirement to outline specific policies from the development plan.]

4. THE LAND TO WHICH THIS NOTICE RELATES

Land at [address of land, or description of relevant part of the land to which the temporary stop notice relates], shown edged in a distinctive colour on the attached plan.

5. ACTIVITY TO WHICH THIS NOTICE RELATES

[Specify the activity required by the temporary stop notice to cease, and any activity carried out as part of that activity, or associated with it.]

6. WHAT YOU ARE REQUIRED TO DO

Cease all the activity specified in this notice.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on [date] when all the activity specified in this notice must cease. This notice will cease to have effect on [date 28 days after it takes effect].

Dated: [date of notice]

Signed: [Council's authorised officer]

On behalf of [Council's name and address]

Nominated Officer [Name of contact officer]

Telephone Number [of Nominated Officer]

ANNEX WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE AGAINST THIS NOTICE.

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you (section 171G(1) of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of prosecution, for which the maximum penalty on conviction is an unlimited fine. If you are in any doubt about what this notice requires you to do, you should get in touch immediately with [Council's nominated officer to deal with enquiries, address and telephone number]. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

Appendix 6: Breach of Condition Notice

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compensation Act 1991)

BREACH OF CONDITION NOTICE

SERVED BY: Gravesham Borough Council herein after referred to as "the Council".

TO: [name[s] of person[s] responsible for the alleged breach of condition]

1. **THIS NOTICE** is served by the Council, under section 187A of the above Act, because they consider that [a condition] [conditions] imposed on a grant of planning permission, relating to the land described in paragraph 2 below, [has] [have] not been complied with. The Council consider that you should be required to [comply] [secure compliance] with the condition[s] specified in this notice. The Annex at the end of this notice contains important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at [address of land], shown edged in [a distinctive colour] on the attached plan.

3. THE RELEVANT PLANNING PERMISSION

The relevant planning permission to which this notice relates is the permission granted by the Council on [date of issue of permission] for [description of development] Ref [Council's reference number].

4. THE BREACH OF CONDITION

The following condition[s] (has)(have) not been complied with:

[State the terms of each condition which has not been complied with.]

(1) (2) (3)

5. WHAT YOU ARE REQUIRED TO DO

As the person responsible for the breach[es] of condition[s] specified in paragraph 4 of this notice, you are required to [comply][secure compliance] with the stated condition[s] by taking the following steps:

[State clearly the steps to be taken in order to secure compliance with the condition[s] in paragraph 4 above.]

(1) (2) (3)

[and] [ceasing the following activities:]

[State clearly the activities which must cease in order to secure compliance with the condition[s] in paragraph 4 above.]

(1) (2) (3)

Period for compliance: [not less than 28 days] beginning with the day on which this notice is served on you. [Different periods may be specified for each requirement].

Dated: [Date of notice]

Signed: [Council's authorised officer]

On behalf of: [Council's name and address] Nominated Officer: [Name of contact officer]

Telephone Number: [of Nominated Officer]

ANNEX WARNING

THIS NOTICE TAKES EFFECT IMMEDIATELY IT IS SERVED ON YOU IN PERSON OR ON THE DAY YOU RECEIVED IT BY POST.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AGAINST THIS NOTICE.

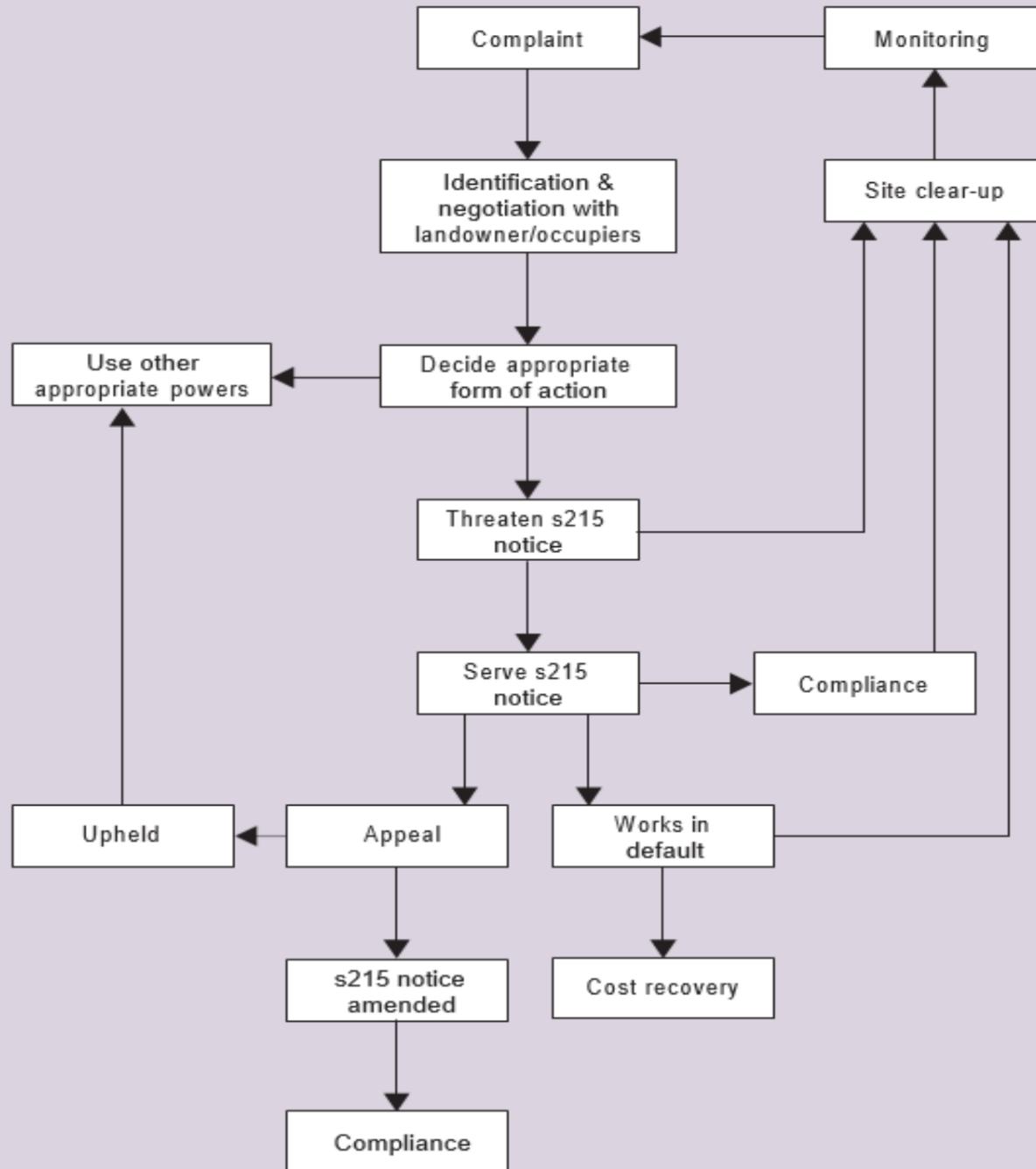
It is an offence to contravene the requirements in paragraph 5 of this notice after the end of the compliance period. You will then be at risk of immediate prosecution in the Magistrates' Court, for which the maximum penalty is [standard level 4] for a first offence and for any subsequent offence.

If you are in any doubt about what this notice requires you to do, you should get in touch immediately with [Council's nominated officer to deal with enquiries, address and telephone number].

If you do need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

Appendix 7: s215 Procedure and example letters

SECTION 215 PROCEDURE



EXAMPLE: FIRST WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

As you may know, Gravesham Borough Council is committed to ensuring that improvements are carried out to buildings in [eg general/specific area] whose external condition has deteriorated. Improving such buildings has been identified by local people as a key priority for the Council and as a result of this a number of buildings across the Borough have been brought to a satisfactory condition.

The external appearance of the above mentioned premises is a source of concern primarily because of [the condition of render, external metalwork, paintwork, windows, grilles, doors]. The Council is writing to you today as the proprietor of the above mentioned premises as identified by the Land Registry. Its purpose is to respectfully request that works be carried out to remedy the poor external condition of the building in the near future, and to ascertain whether you have any plans in this regard. I would emphasise that your property is not being treated in isolation.

The owners of other premises in the vicinity are being similarly contacted.

I advise that if prompt progress is not made in terms of remedying the poor external condition of the premises and a guarantee given to the Council by you that such works will be undertaken, the Council has the option to take enforcement action under Section 215 of the Town and Country Planning Act 1990. This is a course that the Council would wish to avoid if at all possible. It is hoped, therefore, that your co-operation can be relied upon in terms of improving the building in the near future and giving a guarantee to that effect.

EXAMPLE: FIRST WARNING LETTER – BUILDING & LAND IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I have received a complaint in respect of the condition of your property at the above address. A recent visit by a Council officer has confirmed that its condition is unsatisfactory and is causing concern.

In these circumstances I must ask you to undertake the following works within 21 days from the date of this letter, to abate the nuisance and bring the property back to an acceptable standard:

[1. ...]

I advise that failure to comply with this request will leave the Council with no option but to consider action pursuant to Sections 215-219 of the Town & Country Planning Act 1990 (as amended). This could include formal action by way of service of a Notice, which will legally require you to undertake the work set out above. This is a course of action the Council would rather avoid and I seek your co-operation by carrying out these works. Such works will contribute towards achieving an [urban renaissance in [area]].

I enclose with this letter a Notice pursuant to Section 330 of the Town and Country Planning Act 1990 (as amended), which requires you to provide information about the ownership of the property and of any other person who may have an interest in it.

WARNING – Failure to respond to the enclosed Notice is a criminal offence punishable in the Magistrates Court with a fine of up to £1,000. It is also a criminal offence to make a false statement in response to this Notice. On conviction in the Magistrates Court this offence is punishable with a fine of up to £5,000 or in the Crown Court which a fine, imprisonment, or both. The Local Authority may prosecute this matter in the Courts should there be a breach of this or any subsequent Notice.

Please complete in full the Notice reply form and return to me [using the enclosed stamped addressed envelope] within 21 days of the date of this letter.

Should you wish to discuss any of the above in detail, you can contact the officer named above on the number given, who will be pleased to assist you. It is my hope that this matter can be resolved in a spirit of mutual co-operation.

EXAMPLE: SECOND WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

The Council last wrote to you about this matter on ... A copy of that letter is attached for your information. The Council has not received a response from you.

I advise you that, unless the Council hears from you within five working days of the date of this letter, outlining the steps you are going to undertake to remedy the external condition of the premises, then it will take enforcement action under Section 215 of the Town and Country Planning Act 1990. This enforcement action will require the improvements to be carried out. As you can appreciate this is a course that the Council would wish to avoid. The matter however now rests with you.

EXAMPLE: LETTER TO ACCOMPANY S215 NOTICE AND GUIDANCE TO MAKING AN APPEAL AGAINST S215 NOTICE

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I wrote to you on [date] concerning the above and seeking your co-operation in improving the condition of your property. You were invited to discuss this matter with my Officer if you wished.

A further inspection has been conducted and revealed that there has been no significant improvement in the condition of the property since I last wrote to you. [I note that you have failed to return the Section 330 Notice as required within the

period stated. I remind you that failure to complete the Notice is a criminal offence and can give rise to prosecution.]

Consequently, you will now find enclosed with this letter a formal Notice pursuant to Section 215 of the Town and Country Planning Act 1990 (as amended), together with information concerning your right of appeal to the Magistrates Court. The Notice details the list of requirements that I consider are the minimum works required to bring the property back to a reasonable standard and which will rectify the adverse effects your property is having on the amenity of the neighbourhood.

I would still urge you, even at this late stage, to take the required action to resolve this matter as detailed in the Notice, within the next 28 days from the date of this letter.

Your failure to comply with this Notice will leave me with several courses of action. Either or all of these actions may be pursued as follows:

1. A prosecution in the Magistrates Court for non-compliance with the s215 Notice – which could result in a substantial fine if found guilty of an offence.
2. The Council carrying out the works required by the Notice followed by action in the County Court to recover, from you, all expenses and costs reasonably incurred by such action.
3. Registration with HM Land Registry of a charge on your property, recoverable should your property be sold.

You may consider that these actions are radical steps that should be avoided. But I must make clear that, unless the requirements of the Notice are complied with in

full, and within the specified period, I will proceed with a course of action described above.

RIGHT OF APPEAL AGAINST SECTION 215 NOTICE SECTIONS 217-218 OF THE TOWN AND COUNTRY PLANNING ACT 1990

217—(1) A person on whom a notice under Section 215 is served, or any other person having an interest in the land to which the notice relates, may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal against the notice on any of the following grounds:

(a) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;

(b) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from the carrying on of operations or a use of land which is not in contravention of Part III;

(c) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority, who served the notice, or of any adjoining area;

(d) that the period specified in the notice as the period in which any steps required by the notice are to be taken falls short of what should reasonably be allowed.

(2) Any appeal under this section shall be made to the Magistrates Court acting for the petty sessions in which the land in question is situated.

(3) Where such an appeal is brought, the notice to which it relates shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On such an appeal the Magistrates Court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not material.

(5) On the determination of such an appeal the Magistrates Court shall give directions for giving effect to their determination, including, where appropriate, directions for quashing the notice or for varying the terms of the notice in favour of the appellant.

(6) Where any person has appealed to a Magistrates Court under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

218—Where an appeal has been brought under section 217, an appeal against the decision of the Magistrates Court on that appeal may be brought to the Crown Court by the appellant or by the local planning authority who served the notice in question under section 215.

EXAMPLE: WARNING OF DIRECT ACTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 215: ENFORCEMENT NOTICE SERVED REGARDING THE POOR CONDITION OF LAND AT ...

You are advised to read this letter very carefully and contact the Council immediately at the address or phone numbers given above if you have any queries.

On [specify date] you were served with a formal notice under Section 215 of the Town and Country Planning Act 1990 requiring you to take steps to remedy the condition of land at the above mentioned site. That Notice should have been complied with by [specify date]. It has not been.

The purpose of this letter is to inform you that the Council now intends to carry out the steps required in accordance with Section 219 of the Town and Country Planning Act 1990. Contractors appointed by the Council will start those works on [specify date]. Upon completion of those works, the Council will actively recoup its costs from you by placing a charge on your property.

Failure to comply with a Section 215 Notice is an offence under Section 216 of the Town and Country Planning Act 1990. Accordingly, I must advise you that the Council now intends to pursue a prosecution with immediate effect. Because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

EXAMPLE: WARNING OF PROSECUTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 216: OFFENCE OF FAILURE TO COMPLY WITH NOTICE SERVED UNDER SECTION 215: EXTERNAL CONDITION OF ...

The Council has received no correspondence or undertakings from you in respect of the above mentioned premises despite its letter and the enforcement notices served upon you dated [specify dates] under Section 215 of the Town and Country Planning Act 1990 (copies attached for information). The time period for compliance with the notices expired on [specify date]. Failure to comply with it is an offence. In the absence of the required works having been carried out, I have to advise you that the Council is left with no alternative but to commence legal proceedings with immediate effect. Clearly, the Council would wish to avoid such a course and if the required works now start and are brought to a swift and satisfactory conclusion then the situation will be reviewed. In the meantime, because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

GLOSSARY

Breach of condition(s) notice (BCN): A breach of condition(s) notice under Section 187A of the Town and Country Planning Act 1990 requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the Local Planning Authority in the notice. There is no right to appeal against this notice and prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition(s) notice.

Consistency: This relates to taking a similar approach in similar circumstances, where possible to achieve similar results. We also intend to be consistent in how we treat customers.

Direct Action: The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases and when resources allow. The Council will seek to recover all cost associated with carrying out the works in default.

Discontinuance notice: Where a person has displayed an advertisement with deemed consent that the authority is satisfied causes a substantial injury to the amenity of the area or is a danger to members of the public, a discontinuance notice can be served under Regulation 8 of the Town and Country Planning (Control of advertisements) (England) Regulations 2007 seeking the removal of the advert.

Enforcement notice: The enforcement notice allows the Council to formally require a breach of planning control to be remedied. Government guidance states that enforcement notices should only be served when expedient to do so. Failure to comply within the specified time-frame is a criminal offence which can lead to prosecution proceedings. Enforcement notices can be appealed and the Planning Inspectorate can decide to uphold the notice, amend it or have it quashed.

Expediency: The Council's planning enforcement powers are discretionary and Government expectations are that we should not take further action simply because there has been a breach in planning control. Enforcement action should only be taken where the Council is satisfied that it is 'expedient' to do so, having regard to the provisions of the development plan and to any other material planning considerations. In making this assessment the Council will gather evidence regarding the nature and scale of the breach, and whether it unacceptably affects public amenity and / or the built or historic environment

Injunction: An injunction is a court order that orders one or more parties to carry out or refrain from doing a specific act or acts. Failure to comply with the requirements of an injunction amounts to a criminal offence.

Letter before action: A formal letter which sets out the alleged breach in planning control and suggested remedy

Listed building enforcement notice: A Listed Building enforcement notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 will require the recipient to secure compliance with the terms of the notice. Works to listed buildings without consent is a criminal offence and prosecution may occur alongside the enforcement notice, subject to severity/context. There is a right of appeal of this notice.

Negotiation: Negotiation is encouraged in all but the most serious cases as the best way to resolve a breach and in some cases can be more expedient than issuing an enforcement notice.

Planning contravention notice (PCN): This is a notice which allows the Council to collect evidence which will help to determine if a breach is taking place and the next steps. The owner and/or person responsible have 21 days to respond and failure to do this may result in prosecution.

Planning enforcement order: Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A planning enforcement order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Proportionality: Enforcement action will be appropriate to the scale of the alleged breach and the seriousness of the harm caused.

Prosecution: It is a criminal offence not to comply with the requirements of a statutory notice, to display an advertisement without consent or undertake works to a listed building without consent. The Council can prosecute or formally caution.

Section 215 notices: Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The council has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Stop notice: This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where stop notices are issued the council may be liable to pay compensation if it is later decided that the stop notice was not appropriate. For these reasons, serious consideration needs to be given to the appropriateness of serving a stop notice.

Temporary stop notice: These are similar to stop notices but take effect immediately from the moment they are displayed on a site and last for up to 28 days. A temporary stop notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment or public safety. It may be issued even when planning permission has been granted for development, for example, in a case where the developer is not complying with conditions attached to the permission.

Transparency: Intention that everyone involved with cases understands our processes and procedures, including what rights of complaint and appeal may be open to them.

Urgent works notice: This is a notice under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that applies to unoccupied listed buildings in serious disrepair. It enables the Council to order urgent works to preserve the building, for example to make it weather tight and secure. If the notice is not complied with the council may carry out the works in default and recover the costs from the owner.

Rights of Entry: Rights of entry are an emotive matter (especially when residential property is involved), can cause great resentment and should be used only when normal powers of persuasion and discussion have proved fruitless. Section 196 of the Town & Country Planning Act 1990 allows entry at any reasonable hour providing there are reasonable grounds for believing that entrance is required to ascertain whether there is or has been any breach of planning control on the land or any other land. 24 hours notice must be given to the occupier of any building used as a dwelling. Where obstruction is considered under Section 196B a warrant from the Magistrates Court

