

Harrow Council Planning Enforcement Policy (CONSULTATION DRAFT)

1.0 Introduction

- 1.1 Planning plays an important role in managing development to ensure a high quality environment, facilitating a better pattern of land use and securing the efficient use of resources. These outcomes support a number of Harrow Council's corporate objectives, including 'Keeping neighbourhoods clean, green and safe' and 'Supporting our Town Centre, our local shopping centres and businesses'.
- 1.2 The planning regime can only achieve these goals effectively if it is backed up by an effective planning enforcement service. As part of its commitment to the delivery of an efficient and effective planning enforcement regime, Harrow Council has prepared this enforcement policy.
- 1.3 This Enforcement Policy has been formulated to allow consistent and effective management of the rising demand for enforcement investigations, and to help everyone understand the basis upon which decisions surrounding planning enforcement are made.
- 1.4 The policy sets out how the service will prioritise and respond to planning breaches, and contains information for all those involved in, or affected by the enforcement process. The policy will be referred to by officers and members involved in the decision-making process, and will allow resources to be more clearly focused on Council priorities.

2.0 Legislation and policy background

- 2.1 The Town & Country Planning Act 1990 as amended (parts VII and VIII) and the Planning (Listed Building and Conservation Areas) Act 1990, provide the principal legislative basis for the enforcement of planning control.
- 2.2 Further regulations and policies deal with specific aspects of planning enforcement. Important subordinate legislation includes:
- The Town & Country Planning (General Permitted Development) Order 1995 (as amended), which allows a range of development to occur without express planning permission (subject to conditions);
 - The Town & Country Planning (Control of Advertisements) (England) Regulations 2007. This grants 'deemed consent' (with conditions) to a range of common signage.
 - The Town & Country Planning (Use Classes) Order 1987 (as amended).
 - The London Local Authorities Act 1995 (relating to advertising).
- Also relevant is the Anti-social Behaviour Act 2003 (Part 8) in relation to high hedges.
- 2.3 Enforcement powers available to local planning authorities under the Town &

Country Planning Act 1990 (as amended) and subsidiary legislation include :

- Enforcement Notices
- Breach of Condition Notices
- Stop Notices
- Temporary Stop Notices
- Planning Contravention Notices
- Injunctions
- Enforcement of duties as to replacement of trees
- Section 215 Untidy Land Notices
- Advertisement Discontinuance Notices

2.4 Additional enforcement powers available under the London Local Authorities Act 1995 (advertising), the Planning (Listed Buildings & Conservation Areas) Act 1990 and the Anti-social Behaviour Act 2003 (high hedges) include:

- Remedial Notices (high hedges)
- Listed Building Enforcement Notices
- Conservation Area Enforcement Notices

Enforcement of breaches

2.5 A breach of planning control is not a criminal offence, except where the breach involves work to a listed building. Whether or not enforcement action should be taken against a breach of planning control is entirely at the discretion of the local planning authority. The law does not place a duty on local authorities to take enforcement action.

Where a breach of planning control is identified which cannot be resolved informally, the council is required to make a judgement as to whether it is 'expedient' (appropriate) to take formal enforcement action (eg. to serve an enforcement notice or similar). A decision on the expediency of enforcement action will be based on consideration of, amongst other things:

- National and Local Plan Policies
- The level of harm caused by the breach (or which could potentially be caused if the breach is left unchecked);
- The fall-back position (ie. how the breach compares to what would have been allowed anyway, for instance under 'permitted development' regulations);
- Whether the breach would set an unwelcome precedent for development.

2.6 It is equally important to ensure that a decision not to take enforcement action is well-founded. When an unauthorised development is unacceptable on planning merits, Government guidance stresses the importance of prompt and effective enforcement action by local planning authorities.

Government guidance and policy

2.7 To support local authorities in the interpretation and operation of the enforcement regime, the government has published the following policies and guidelines:

- Planning Policy Guidance Note No. 18 (December 1991) – 'Enforcing Planning Control'
- Department of the Environment Circular 10/97 (July 1997) – 'Enforcement of Planning Control- legislative provisions and procedural guidance' (This covers a wide range of enforcement matters, including Enforcement Notices, Stop Notices, Planning Contravention Notices, Breach of Condition Notices, rights

of entry, injunctions, and prosecutions).

- Circular 03/07 (Control of Advertisements) (England) Regulations 2007
- Circular 02/05 Temporary Stop Notice
- Best Practice Guidance on Listed Building Prosecutions (Dec 2006)
- Section 215 Best Practice Guidance (Jan 2005)
- Circular 02/02 (Enforcement Appeals Procedure)
- Circular 03/09 (Costs Awards in Appeals & Other Planning Proceedings)

2.8 Government guidance on planning enforcement is clear that the effective use of enforcement powers is central to ensuring the integrity of the planning process. However, the key factor in considering any enforcement action, as advised in Planning Policy Guidance No.18, is “whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.”

2.9 The enforcement system is designed to mitigate harm rather than to punish contraveners. Government guidance (Planning Policy Guidance 18) makes it clear that enforcement action should be commensurate with the breach to which it relates, and formal action should not be taken against minor or trivial breaches which do not harm the amenity of the locality.

3.0 Harrow’s enforcement priorities & approach

3.1 Harrow Council will take an active approach to planning enforcement to achieve the Council’s corporate aims and ensure a high quality environment and well-functioning neighbourhoods for all residents.

3.2 The planning enforcement service relies on public engagement in the process. For instance, most breaches are first brought to the attention of the Council by those affected, such as nearby residents or business owners. Information received from complainants about breaches and their effects is often essential to successful enforcement.

3.3 The enforcement service will take a constructive approach to remedying breaches, for instance by providing an opportunity for contraveners to regularise a breach, where appropriate, through the submission of a retrospective planning application.

3.4 The enforcement service will not allow procrastination (eg. a failure to provide sufficient information to allow a retrospective application to be determined) to delay formal enforcement action where necessary. Ultimately, the contravener is responsible for rectifying a breach, and for the consequences of any formal enforcement action that becomes necessary.

Regard to policy

3.5 When assessing breaches of planning control, the Council will have regard to the saved policies of the Harrow Unitary Development Plan (2004), and other adopted policies and guidance including the emerging Local Development Framework. Account will also be taken of any other material considerations relevant to the case, including government policy and guidance, the London Plan (2011), and permitted development rights.

Delegated powers

3.6 At present, the Divisional Director of Planning and the Head of Development Management have delegated powers for some enforcement and advertisement functions. Some of these powers, such as the power to enter land, have been further delegated to officers. This allows planning enforcement matters to be investigated efficiently, and for formal action to be taken quickly in urgent cases.

The remit of the planning enforcement service

3.7 Harrow's planning enforcement team undertakes investigation of a range of breaches, including:

- Unauthorised development, which can include:
 - building works
 - changes of use of a property
 - 'engineering operations' (eg. substantial earthworks)
- Unauthorised advertisements
- Works to listed buildings and buildings in conservation areas
- Breaches of conditions attached to planning permissions
- Breaches of extant Enforcement Notices and Stop Notices
- High hedges (dealt with under the Anti-Social Behaviour Act 2003)
- Untidy land
- Breaches of Tree Preservation Orders

3.8 Some problems will be more appropriately dealt with by other sections within the Council, such as Environmental Health, Building Control, or Highways Enforcement. Where appropriate, complainants will be directed to the relevant section.

3.9 It is important to note that civil disputes between neighbours- such as boundary disputes- cannot be dealt with by the planning enforcement service.

3.10 Some minor forms of development are allowed without express planning permission or consent being granted by the council (except where such rights have been explicitly withdrawn). The government's Planning Portal website contains more information on 'permitted development' rights.

3.11 Additionally, some works do not require planning permission at all. These include internal works to buildings (except listed buildings).

Principles for planning enforcement

3.12 Harrow Council's enforcement service will be undertaken on the basis of the following:

- **Responsibility:** Those who breach planning control will be considered by the Council to have responsibility for resolving the breach at the earliest opportunity. The onus for resolving the breach at all times rests with the perpetrator/owner, and the Council will act to ensure that responsibility for remedying the breach is transferred to the owner through, where appropriate, statutory notices.
- **Consistency:** Similar circumstances will give rise to similar actions, taking into account the scale of impact, matters of fact and degree, and the history of previous incidents and/or breaches
- **Proportionality:** Enforcement action will be commensurate to the seriousness of the breach.
- **Clarity:** Enforcement action will be pursued in accordance with this policy and relevant legislation and guidance. Advice will be given in plain

language. Contraveners will be given the opportunity to discuss with officers what is required to remedy the breach of planning control before a decision to take formal action is made (except where urgent action is necessary).

- Targeted enforcement: Limited resources for enforcement action will be directed towards those activities which give rise to the most significant harm to the environment. Enforcement cases will be prioritised in accordance with the principles set out in paragraph 4.16 below.

General enforcement priorities

- 3.13 The number of enforcement complaints received by Harrow has been steadily increasing over recent years. In order to deal with this increasing workload effectively, it is necessary to prioritise cases, and less serious breaches may not be pursued.
- 3.14 The way in which Harrow Council will prioritise enforcement complaints is outlined below, at 4.16.

Monitoring planning conditions

- 3.15 Conditions attached to planning permissions are not normally subject to explicit checking. However, where a complaint is received concerning non-compliance with breaches of planning conditions, or development not being built in accordance with approved plans or a certificate of lawful development, this will be investigated in the manner outlined below.

Securing compliance

- 3.16 In recent years, the Council has sought to utilise powers under the Town & Country Planning Act and London Local Authorities Act to secure compliance with statutory notices issued. These include the right to undertake works in default, to remove or “obliterate” advertisements and to prosecute offenders for the failure to comply with the terms of an enforcement notice. The Council will continue to prioritise such actions and seek full recovery of all costs, as provided for by the legislation. In addition, where justified, the Council will seek to utilise the Proceeds of Crime Act where evidence suggests that the breach of planning control has given rise to significant financial gain. A separate Planning Prosecution & Direct Action Policy has been prepared by the Council to deal with such situations.

Powers of entry

- 3.17 The enforcement team aims to visit sites regularly to monitor compliance, and its officers will therefore make unscheduled site visits for this purpose. The council has statutory powers of entry under planning legislation to enter land for the purpose of investigating potential breaches, and to serve notices. Where access to land is refused, a warrant of entry may be obtained from the courts where it is necessary to effectively investigate and resolve alleged breaches. All planning enforcement officers carry approved identification which can be produced for inspection upon request. Access may be requested to nearby properties where this is necessary to fully investigate an alleged breach. If you are unsure and wish to check that the person visiting your property is authorised to do so, you may call 020 8901 2650 during office hours.

Information sharing

- 3.18 The planning enforcement service routinely shares information with other parts of the Council in order to more effectively investigate alleged breaches, and to assist in fulfilling other council functions. However, complainants' identities will not be divulged to staff outside the Place Shaping directorate without their consent.

Human Rights Act

- 3.19 The Human Rights Act 1998 has incorporated part of the European Convention on Human Rights into English law. Under the Act it is unlawful for any public authority to act in a way which is incompatible with any Convention right. The Council takes the provisions of the Act into consideration when making a decision to take enforcement action.

A decision to take formal enforcement action must serve a legitimate aim (namely the preservation of the environment in the wider public interest) and be necessary and proportionate.

Confidentiality

- 3.20 It is important that members of the public feel confident about reporting breaches of planning control to the Council. With that in mind the Council will not disclose complainant details to external third parties without the complainant's consent. The identity of a person making a complaint will be kept confidential unless the Council is required by law to release the information. If a case proceeds to formal action, evidence from the complainant may be needed as part of the Council's case. In such cases, we will usually ask the complainant to make a statement.

4.0 The enforcement investigation process

- 4.1 The following outlines the basic process and standards for dealing with new complaints, and relates primarily to unauthorised development. Timescales for dealing with complaints regarding advertisements and high hedges may be different, and will largely be determined by the relevant legislation.

Expectations of complainants

- 4.2 Enforcement complaints may be submitted by individual residents, Residents' Associations, Councillors, Council officers, or any other interested parties.
- 4.3 Anonymous complaints will not normally be accepted. (Complainants' details will be treated as confidential- see above). Complaints can be made verbally or in writing, provided the complainant gives his/her name and address. Complaints which appear to enforcement officers to be spurious or vexatious in nature will not be pursued.
- 4.4 When making a complaint, the full address details of the relevant property should be provided (or a sufficiently detailed description of the location where there is no exact address).
- 4.5 Specific details of the alleged breach and how it affects the complainant should also be provided.
- 4.6 Where a change of use is alleged, but this cannot be readily confirmed by the

enforcement team, a complainant may be asked to keep 'diary sheets' to record relevant activity over a period of weeks. Where a complainant does not agree to keep such diary sheets or to allow them to be used as evidence (ie. at an appeal), the investigation may be closed.

- 4.7 For 'high hedge' complaints, government guidance sets out a process of informal negotiation with the owner of the hedge which complainants are expected to follow prior to contacting the local authority. More information is available at <http://www.direct.gov.uk/en/HomeAndCommunity/index.htm> ('Your neighbourhood, roads and streets' / 'Dealing with a dispute about a high hedge')

Expectations of owners/occupiers

- 4.8 It is recognised that some breaches of planning control are unintentional. However, where a breach is identified, it is expected that the responsible person(s) will engage positively with the Council to resolve the problem, and show genuine commitment to regularising the breach. In all cases, the burden is on the contravener to resolve or regularise breaches of planning control. If a contravener fails to take the opportunity provided by the Council to remedy the breach, then formal enforcement action will be considered.
- 4.9 Where a retrospective planning application is invited, a contravener who chooses this course of action will be expected to make the application quickly-- usually within 28 days.
- 4.10 Where a planning application is made but has not been validated (eg. due to a lack of required information or plans) this will not normally be treated as a legitimate reason for delaying formal enforcement action. The applicant will be expected to provide the necessary information without delay.
- 4.11 Where an application has not been invited (because it is unlikely that planning permission would be granted), but one is made anyway, this will not normally be treated as reason to delay formal enforcement action.
- 4.12 In cases where a contravener asserts that a breach has become lawful because it has been occurring/in place for more than 4 or 10 years (as relevant), there is an expectation that the contravener will furnish the council with sufficient evidence to show that this is the case. (This will normally need to be in the form of an application for a Certificate of Existing Lawful Use or Development).
- 4.13 Owners of Listed Buildings will be expected to maintain their building in good order, and to take the utmost care to ensure the necessary consents are obtained before undertaking any works.
- 4.14 All owners/occupiers will be expected to check the status of any tree before undertaking works to it. Ignorance of the existence of a Tree Preservation Order will not be treated as a legitimate excuse for having breached such an order.
- 4.15 In 'high hedge' cases, owners/occupiers will be expected to respond to the reasonable concerns of their neighbours, and to engage in good faith with both neighbouring occupiers and the Council.

Prioritisation and initial investigation of complaints

- 4.16 All complaints received will be prioritised by the Enforcement Manager (or an authorised officer) under one of the following four headings:

A Urgent: Cases where immediate and irremediable harm is being caused,

eg. significant works to or demolition of a listed building, the felling of trees covered by a Tree Preservation Order; and demolition in Conservation Areas where the effects of the breach are considered serious.

- B High priority:** Cases where significant and ongoing harm is likely being caused to the amenity of a locality, or where it is essential to establish the nature of the breach quickly. This would normally include noisy, smelly or unsightly business uses in residential areas, or major unauthorised works within a conservation area or Green Belt.
- C Standard cases:** Other cases which are important to investigate, but do not have the environmental, safety or financial implications of the higher categories. This will include most extensions to dwellings, high hedge investigations and unauthorised signage.
- D Low priority:** Technical or minor breaches where little or no planning harm seems likely to be caused, and all cases which appear to be trivial, vexatious or spurious (including those cases where an unrelated dispute between neighbours seems to be the impetus for the complaint).

4.17 As every enforcement complaint is unique, the category assigned will be a matter of judgement on the part of the Enforcement Manager. Generally, extra weight will be given to cases which are nearing the statutory limit for taking enforcement action (generally either 4 or 10 years), to breaches which affect land in a green belt or conservation area, or where large numbers of nearby occupiers are directly affected.

4.18 Subject to workload and available resources, within two working days of a complaint being received, it will be:

- registered on the Council's computer system and acknowledged in writing of receipt by the enforcement section (the officer's contact details will be provided to the complainant);
- Allocated a priority by the enforcement manager and allocated to an officer for investigation.

4.19 Following the receipt of a complaint, the officer will investigate the planning history of the site, and in some cases this may determine that no breach of control has occurred. In such cases the case will be closed and the complainant will be notified accordingly.

4.20 An initial site inspection for establishing a planning breach will be undertaken as follows:

A (Urgent)	Normally on the same day
B (High priority)	3 working days
C (Standard cases)	20 working days
D (Low priority)	As resources permit

4.21 Site investigation details and all records including date of investigation, photographs etc. will be properly recorded and kept on the Council's computer system. Photographic records will be supplemented where required by a location plan showing the position from which all photographs were taken.

Further Investigation

- 4.22 Within 5 working days of a site visit at which it is established that a breach of planning control has occurred, the person responsible will be advised:
- of the nature of the alleged breach;
 - of the steps required to remedy or regularise the situation;
 - that he/she has a right to make a retrospective planning application (where this is the case);
 - of the prospects of any such planning application being approved;
- 4.23 Where there is a reasonable prospect of planning permission being granted, the person responsible will be advised of the time allowed for the submission of a retrospective application. (In most cases this will be 28 days, but sometimes longer for complex cases).
- 4.24 If it is clear that planning permission is unlikely to be granted for an unauthorised development or use:
- the person responsible will be advised accordingly at this stage;
 - the complainant will be informed of the action(s) officers propose to take (if any) and the likely timescales involved.
- 4.25 In case of the receipt of a retrospective planning application, the application will be dealt with by Development Management in the normal way.
- 4.26 In some cases, it may be established at this initial stage of enquiry that a criminal offence appears to have been committed (eg. certain works to Listed Buildings, unauthorised advertising, or contravention of a Tree Preservation Order). In such cases, the next steps including further contact with the owner/occupier will be dependent on legal considerations. More information is contained in the attached policy on direct action and prosecutions.

Assessing the expediency of taking formal enforcement action

- 4.27 All proposals must be assessed against the policies of the Development Plan, which currently comprises the Harrow Unitary Development Plan (2004), the London Plan (2011). Both are subject to change. The Council has also adopted a number of Supplementary Planning Documents (SPDs) for the purpose of making planning decisions, and there is a range of government guidance in relation to specific aspects of planning.
- 4.28 In cases where planning permission is refused, and it is considered expedient to take formal enforcement action, the person responsible for the breach will be informed of the Council's decision.
- 4.29 In some cases it may be decided that it is not expedient to take any action because the development is acceptable in planning terms or the damage caused by the breach is minimal or technical. In such cases, a record will be kept of the reasons for the decision, and the complainant will be informed.

5.0 Monitoring/statistics

- 5.1 Progress on enforcement cases are currently reported to the Council's Planning Committee. Details of the numbers of complaints received, the type of cases under investigation and the number of cases resolved will be provided to

members.

6.0 Contact the planning enforcement service

6.1 Telephone: 020 8901 2650

Email: planningenforcement@harrow.gov.uk

Post: Head of Development Management
Planning Services, 3rd Floor, North Wing
Civic 1
Station Road
Harrow
HA1 2UY

Harrow Council Planning Enforcement (Prosecution & Direct Action) Policy (CONSULTATION DRAFT)

1.0 Introduction

- 1.1 The integrity of the planning regime is ultimately dependent upon the ability to ensure that adequate sanctions are able to be imposed upon offenders.
- 1.2 This policy outlines the Council's approach to taking direct action, prosecution, and applying for court injunctions for planning related matters.
- 1.3 There are a range of offences under the Town & Country Planning Act 1990 (as amended) (the Act) and related legislation. These include offences under the following sections of the Act:
- Failure to comply with a Temporary Stop Notice (171G)
 - Obstructing the taking of steps to comply with an Enforcement Notice (178)
 - Failure to comply with an Enforcement Notice (179)
 - Reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice (181)
 - Failure to comply with a Stop Notice (187)
 - Failure to comply with a Breach of Condition Notice (187A)
 - Carrying out unauthorised works on a tree protected by a tree preservation order (210)
 - Carrying out unauthorised works to a tree in a conservation area (211)
 - Failure to comply with a section 215 notice (216)
 - Unauthorised display of an advertisement (224)
- 1.4 There are a range of further offences under the Act and related legislation such as the Planning (Listed Buildings & Conservation Areas) Act 1990. These include:
- Making unauthorised works to a listed building
 - Unauthorised demolition in a conservation area
 - Providing false information in relation to planning applications, applications for certificates of lawfulness, Planning Contravention Notices and certificates of interest in land
 - Wilfully obstructing a person acting in the exercise of a right to enter land under the Act (eg. to investigate alleged breaches).

2.0 Deciding a course of action

- 2.1 The Council will expect all extant statutory notices to be complied with in full. Where this does not occur (or where advertising signage has not been removed as requested or unlawful works to listed buildings or trees covered by Tree Protection Orders has taken place), consideration will be given to prosecuting, cautioning or, where appropriate, taking direct action.
- 2.2 In cases where a statutory notice such as an Enforcement Notice has been issued by the Council but has not been complied with, the options open to the Council include :
1. Prosecution;
 2. Injunction where necessary
 - 3 Formal caution, or;
 4. Taking direct action (ie. to hire contractors to go on site and undertake the necessary works).

- 2.3 In deciding a course of action, the Council's principal aim will be to remedy the harm caused by the breach. Normally this will entail securing compliance with a statutory notice (or removing advertising) as quickly and as effectively as possible. Generally, consideration will be given to the following when deciding a course of action:
- The seriousness of the harm caused by the breach
 - The likelihood of securing a conviction in a court
 - The value of demonstrating that a particular type of breach will not be tolerated
 - Whether the works for compliance would be simple and straightforward and are therefore amenable to direct action
 - The cost to the council of taking direct action, and the likelihood of recovering costs in the short term
 - The likelihood of the breach being quickly re-established if direct action is taken
- 2.4 In some cases, it may not be expedient to take further action. This may include cases where there has been only partial compliance with a statutory notice, but where the planning harm of the breach has effectively been remedied, or where extenuating circumstances mean the chances of a meaningful fine being imposed by a court are slim.
- 2.5 Where it is expedient to take further action, the circumstances of the case will determine if prosecution, formal caution or direct action is most appropriate. In the case of offences relating to Listed Buildings and Tree Preservation Orders, direct action would often not be feasible.
- 2.6 In the most serious cases, it may be expedient both to take direct action and to caution or prosecute the offender to ensure the breach is rectified as quickly as possible.
- 2.7 In many cases, it may be necessary to invite a suspected contravener to an interview under caution (in accordance with procedures set out in the Police & Criminal Evidence Act) in order to gather sufficient evidence to determine the most appropriate course of action and to progress the case.

3.0 Prosecution / formal caution

- 3.1 With some exceptions (eg. advertising signage, listed building works and breaches of Tree Preservation Orders), most breaches of planning control do not constitute a criminal offence. However, it is a criminal offence not to comply with the requirements of a statutory notice such as an Enforcement Notice once it has come into force and the compliance period has lapsed. The Council may initiate prosecution or formally caution a suspect for offences under the planning acts.

Formal caution

- 3.2 The purposes of a formal caution are:
- to deal quickly and simply with less serious offenders
 - to prevent unnecessary appearances in the criminal courts; and
 - to reduce the chances of re-offending.
- 3.3 The following conditions should be met before a caution is administered:
- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction
 - the offender must admit the offence
 - the offender must understand the significance of the caution and give

informed consent to being cautioned

Prosecution

3.4 The Council can also institute criminal proceedings against a claimant. Prosecution will be considered in the most serious cases.

3.5 The charge that may be brought against a defendant will depend on a number of factors including :

- the seriousness of the offence;
- the adequacy of the court's sentencing powers; and
- the evidence available to prove the charge.

The evidential test

3.6 Any case being considered for prosecution or formal caution will firstly be assessed against the 'evidential test'. In order for a case to pass the evidential test, there must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge,

3.7 As part of the process the Council must consider what the defence case is and how it is likely to affect its case.

3.8 'A realistic prospect of conviction' means that a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction, officers would have regard to whether the evidence available can be used in court and also whether or not it is reliable.

3.9 Where the evidential test is met, consideration must also be given to whether the 'public interest test' is met.

The Public Interest Test

3.10 When considering which course of action is the most appropriate the Council will consider the factors outlined below. This is called 'the Public Interest Test'. Generally, The more serious the offence, the more likely it is that a prosecution will be in the public interest.

3.11 Factors weighing in favour of prosecution are:

- a conviction is likely to result in a significant sentence
- the defendant's previous convictions or cautions are relevant to the present offence
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- the offence, although not serious in itself, is widespread in the area where it was committed
- the offence was committed over a significant period of time
- the feature that was altered or destroyed was important
- the feature cannot be replaced or replicated

3.12 Factors weighing *against* prosecution are:

- the court is likely to impose a very small or nominal penalty
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- there has been a long delay between the offence taking place and the date of the trial (unless the offence is serious, the delay has been caused in part by the defendant, the offence has only recently come to light or the complexity of the offence has meant that there has been a long investigation)
- a prosecution is likely to have a very bad effect on the victim's physical or mental

health, always bearing in mind the seriousness of the offence

- the defendant is elderly or is, or was at the time of the offence suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated; or
- the defendant has put right the loss or harm that was caused (but the defendant must not avoid prosecution simply because they have repaired the damage)

Procedure

- 3.13 Prior to initiation of prosecution or formal cautioning, the Council will write to the parties concerned reminding them of the requirements of any relevant notice issued and the relevant date by which compliance was required (or in the case of advertising, the necessity of removing the unauthorised signage). Further notification will be given of the Council's decision to prosecute where necessary.
- 3.14 Once prosecution has commenced, subsequent compliance with the requirements of any notice would not normally be a reason to withdraw proceedings.
- 3.15 Where a breach continues following successful prosecution, consideration will be given to initiating further prosecution and/or direct action.

4.0 Direct action

- 4.1 The Council will normally only take direct action where it is feasible to do so taking account of the resources at the Council's disposal and the nature of the breach involved. Where compliance would involve extensive, complicated, or expensive building or engineering works, direct action may not be feasible. In such cases, prosecution would normally be pursued instead.
- 4.2 It is normally not possible to effectively take direct action against an unauthorised change of use.
- 4.3 The Council will advise owners/occupiers of its intention to take direct action prior to any direct action being taken, however they would not necessarily be informed of the exact date that this would occur.

5.0 Injunctions

- 5.1 The Council may apply to a court for an injunction to restrain a breach of planning control that is occurring or is reasonably expected to occur. The granting of an injunction is at the discretion of the court.. This measure is generally only used as a 'last resort' in very serious cases where immediate action is urgently necessary (eg. the destruction of a listed building).

6.0 Recovery of costs

- 6.1 The Council will seek to recover costs associated with the enforcement of planning control wherever feasible. This may include placing a charge on the subject land at the Land Registry, recovery of unlawful earnings under the Proceeds of Crime Act, and applying for costs at appeals where a defendant has behaved unreasonably causing the Council to incur unnecessary costs.
- 6.2 Measures to retrieve monies gained unlawfully will be utilised where possible under the Proceeds of Crime Act, both to recover costs and to ensure an effective disincentive to breaching planning control.

