



DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE DEPUTY LEADER AND PORTFOLIO HOLDER FOR BUILT ENVIRONMENT

LOCAL ENFORCEMENT PLAN

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Head of Legal and Democratic Services, the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Democratic Services Officer by 5.00pm on Monday 6 March 2017.

Contact Officers:

Case Officer: David Townsend, Team Leader – Enforcement 01962 848371
dtownsend@winchester.gov.uk

Democratic Services Officer: Nancy Graham, Senior Democratic Services Officer, 01962 848 235, ngraham@winchester.gov.uk

SUMMARY

The Council's current Enforcement Policy, which is dated March 2009, needs to be reviewed and updated.

The National Planning Policy Framework was published in March 2012 and suggests local planning authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

A Local Enforcement Plan has now been prepared which sets out Winchester City Council's approach to planning enforcement, explains how breaches of planning control will be investigated, provides guidance on the range of options available to achieve compliance with planning control enforced by the Council, and sets out the priorities we have for investigating alleged breaches of planning control.

In addition, the Local Enforcement Plan explains that the Council has chosen to carry out proactive compliance monitoring to encourage developers to implement developments in accordance with the approved plans and comply with conditions so that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. The Plan sets out the Council's priorities for proactive compliance monitoring.

When the Local Enforcement Plan has been agreed it will be made available to the general public via the Council's website.

DECISION

That the Local Enforcement Plan, as attached as an Appendix to this Decision Notice, be agreed.

REASON FOR THE PROPOSED DECISION

Adopting a Local Enforcement Plan will ensure that the Council is complying with National Guidance, and will improve the enforcement process. It will also clarify to all interested parties how the Council prioritises and seeks to resolve alleged breaches of planning control

RESOURCE IMPLICATIONS

None specific to this Plan. The Plan will be implemented by the Development Management service using existing staff and other resources. Any additional resources needed to deal with specific breaches will need to be identified on a case by case basis; for example, where the Council is considering taking direct action itself to remedy a breach.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

The Team Leader- Enforcement attended a seminar held by the Planning Advisory Service at which good practice examples of Local Enforcement Plans were presented and discussed.

Following the preparation of the draft Local Enforcement Plan by the Team Leader – Enforcement, he has consulted the Council's Head of Development of Management, the Planning and Information Solicitor, the Portfolio Holder for the Built Environment and officers working in the Enforcement Team. In addition, he has discussed the draft with the South Downs National Park Authority's Enforcement Officer.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED
FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION
NOTICE**

None.

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR
OFFICER CONSULTED**

None

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision

Councillor Victoria Weston – Portfolio Holder for Built Environment

APPENDIX

Local Enforcement Plan

Local Enforcement Plan

Introduction

Winchester City Council places great importance on protecting our communities, our heritage and the natural environment from unauthorised development that causes harm. The Council does not condone wilful breaches of planning control. To ensure that we can take action when it is right to do so, the City Council provides a planning enforcement service which investigates complaints and provides expert advice on enforcement matters to the public.

This policy statement sets out Winchester City Council's approach to planning enforcement, explains how breaches of planning control will be investigated, provides guidance on the range of options available to achieve compliance with planning control enforced by the Council, and sets out the priorities we have for investigating alleged breaches of planning control.

Winchester City Council aims to provide an efficient planning enforcement service in a clear, consistent, proportionate and open manner.

Guiding Statement

The Council's approach to Planning Enforcement is set out in the following policy statement: ***"Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning control.***

While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the courts.

Every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications. More serious breaches which are causing harm to amenity or the environment are likely to result in positive enforcement action".

The South Downs National Park

The City Council also undertakes planning enforcement (not for minerals and waste development) in the part of the District which lies within the South Downs National Park on

behalf of the South Downs National Park Authority (SDNPA). For details of the approach to planning enforcement in the South Downs National Park please refer to the SDNPA's Enforcement Guide.

There is an Agreement between the Council and the SDNPA which sets out that cases will be prioritised in accordance with the SDNPA's Enforcement Guide (Priority 1 – Where damage is irreversible and prosecutable; Priority 2 – Where damage is serious; and Priority 3 – Minor breaches). The Agreement also sets out when the Council must consult the SDNPA and provides that the SDNPA may deploy its own enforcement resources to complement the enforcement resources of the Council to ensure that the most effective means of enforcement is pursued.

Government advice and legislation

The National Planning Policy Framework was introduced in March 2012. Paragraph 207 of the Framework states that:

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

In addition to the statement made in the Framework, the Town and Country Planning Act 1990 provides the main legislative background regarding breaches of planning control, along with the Planning Practice Guidance document entitled "Ensuring effective enforcement" which was published on 6 March 2014.

The purpose of planning enforcement

The integrity of the planning service depends on the Council's readiness to take enforcement action when appropriate. Planning laws and policies are designed to manage the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.

In order to undertake effective investigations it is essential that there is co-operation between the Council and other external agencies, such as the Police, Environment Agency, Hampshire County Council and Parish/Town Councils. The Council will continue to develop these relationships in the future in order to make best use of all our available resources.

What is a breach of planning control?

A breach of planning control occurs when operational development (building or other works) or a material change of use of land or a building takes place without planning consent. Examples of breaches of planning control are:

- Not building in accordance with approved plans (following the grant of planning permission);
- Failing to comply with conditions attached to a planning permission;
- Carrying out development which is not permitted because an Article 4 Direction has been made;
- Unauthorised works to listed buildings;
- Unauthorised demolition within a conservation area;
- Unauthorised works to trees subject of a Tree Preservation Order or in a conservation area;
- Engineering operations, such as the raising or lowering of ground levels and the formation of earth bunds, carried out without the benefit of planning permission;
- Display of an advertisement without the benefit of advertisement consent;
- Failure to properly maintain land so that it affects the amenity of the area;
- Failure to comply with a S106 legal agreement/undertaking;
- Unauthorised building works or changes of use of buildings or land;
- The formation of a new access or the alteration of an existing access onto a trunk road or a classified road (an A, B or C class road).

Matters that are not breaches of planning control

Examples include:

- Internal works to a building that is not a listed building;
- Obstruction of a highway or public right of way;
- Parking commercial vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property;
- Operating a business from home, where the residential use remains the primary use of the property and there is no significant impact on residential amenity or the character of the area;
- Boundary or land ownership disputes – these are a civil matter and cannot be controlled by planning legislation;
- Covenants imposed on property Deeds;
- Any development that is deemed to be ‘permitted development’ under the Town and Country Planning (General Permitted Development)(England) Order 2015 or in any statutory instrument revoking and re-enacting that Order, i.e. where it does not need the permission of the Council;
- The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road where that access is required in connection

with development permitted by any Class in Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or in any statutory instrument revoking and re-enacting that Order (other than development permitted by Class A of Part 2: “The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure”) provided there will not be significant alterations in ground levels required in order to construct the access. (A planning application will normally be required if any new access drive will cross land which is in another use, e.g. a residential driveway across agricultural land. You must obtain the separate approval of the Hampshire County Council Highways Department if a new driveway would cross a pavement or road verge.);

- Clearing land of overgrowth, bushes or trees (provided the trees are not subject to a Tree Preservation Order or within a conservation area);
- Advertisements that are either excepted from deemed or express consent under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (as amended);
- Dangerous structures;
- High hedge disputes - these are dealt with by the Planning Enforcement Team under Part 8 of the Anti-Social Behaviour Act 2003;
- The removal of countryside hedgerows – these are dealt with under The Hedgerows Regulations 1997. (You must give prior notice to the Council’s Landscape and Open Spaces Team of your intention to remove a countryside hedgerow. If the Council decide to prohibit removal of an important hedgerow, it must notify you within 6 weeks from the receipt of the notification. If you remove a hedgerow without permission (whether it is important or not) you may face an unlimited fine. You may also have to replace the hedgerow.)

Enforcement action is discretionary

In most cases it is not a criminal offence to undertake development without consent although there are some exceptions including unauthorised works to listed buildings and protected trees. However, the Council has powers to require these breaches to be put right. We can do this by requiring changes to be made to the development, by getting the development removed, or by giving the development permission if we think it is acceptable.

The Government has made it clear through legislation and guidance that the response to an alleged breach of planning control is a matter for the discretion of the local authority. Not every breach of planning control justifies the taking of enforcement action. The Council must make a judgement having regard to national planning policy (including the National Planning Policy Framework), local planning policy (the Winchester District Local Plan Part 1 - Joint Core Strategy; the Winchester District Local Plan Part 2 Development Management and Site Allocations; The Denmead Neighbourhood Plan 2015), case law and any other

relevant planning considerations. These assessments are based on experience and we must also have regard to the likelihood of a successful outcome being achieved should action be instigated. To justify enforcement action there must be evidence of serious planning 'harm' arising from the development. The Council has to decide if that is the case and, if so, what it is going to do about it. Each case must be assessed on its own merits.

Factors that may be relevant to an assessment of planning 'harm' include but are not limited to:

Visual /landscape impact	Effect on protected trees
Material change in the character of an area	Impact on nature conservation interests (such as harm to protected species)
Effect on residential amenity (such as privacy/overbearing effect)	Impact on the historic environment
Impact on daylight/sunlight	Related decisions
Emission of noise/smells etc.	Cumulative impact
Impact on highway safety	Undesirable precedent
Threat to public health and/or safety	Age of breach
Flood risk	

Guidance from Central Government is that enforcement action should be a last resort and that councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to formal action such as an Enforcement Notice. Any such service of a formal notice must be proportionate and commensurate with the alleged breach of planning control.

The Council, as a public authority, is also required to consider whether enforcement action is in the public interest. This will involve giving careful consideration to the rights set out in the European Convention on Human Rights (in particular, Article 8 – the right to respect for private and family life and Article 14 – prohibition of discrimination). Regard will have to be taken of the Council's equality duty as contained in the Equality Act 2010.

This means the Council might not take formal action in all cases where there has been a breach of planning control. It will however take action where a breach causes significant harm.

How to report an alleged breach of planning control

If someone believes that a breach of planning control has occurred, they should notify the Council's Planning Enforcement Team using one of the following options:

- using the reporting page: <http://www.winchester.gov.uk/report> ;
- in writing to: Planning Enforcement Team, Winchester City Council, City Offices, Colebrook Street, Winchester, SO23 9LJ;
- by telephone: 01692 848480;

- by email to: enf@winchester.gov.uk ; or
- visiting the City Offices and speaking to one of the Planning Enforcement Team's Officers.

You will need to give:

- The address of the site or directions (we may need a plan so that we know exactly where the site is).
- Detail exactly what has happened and when it first occurred.
- Describe the 'harm' being caused, for example noise, traffic, smells.
- Provide the name and address of the landowner(s) and / or the person responsible for carrying out the works, if known.
- Provide your name, postal address, email address and telephone number. These details will remain confidential unless we need to use their evidence to support our case, for example if the matter went to court. However, we would obtain consent to do so.

Anonymous complaints will not usually be investigated unless they relate to a serious breach of planning control involving for example a matter of public health or safety (such as development causing severe pollution problems, the storage and handling of hazardous materials, the development of contaminated land), works to protected trees or works affecting heritage assets or there is evidence of significant irreversible harm. The Council will determine whether the alleged breach merits investigation. If complainants do not wish to give their personal details they will be advised to contact either their Local Ward Member or their Parish Council who may then contact the Planning Enforcement Team on their behalf.

Vexatious or malicious complaints that do not have any substantive planning reasons for the complaint will not be investigated.

What can you expect if you report an alleged breach of planning control?

We will (where necessary):-

- Investigate alleged breaches of planning control reported to the Council;
- Keep your personal details confidential at all times, unless required to disclose as part of Court proceedings;
- Register your complaint within 5 working days, providing you with an acknowledgement and reference number with a named officer as the point of contact;
- Give the case a priority based on the Council's published priority table which is contained in this policy document
- Check the site planning history;
- Visit the site within the requisite time period (see priorities below) – planning enforcement officers have powers of entry onto sites and premises to investigate alleged breaches of planning control;

- Take photographs when on site and measurements if necessary;
- Establish whether or not we believe there is a breach of planning control;
- Find out the details of the landowner;
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner);
- Issue a Planning Contravention Notice (a formal request for information) if necessary;
- Keep you informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved;
- Actively pursue your complaint to a conclusion;
- Investigations into alleged breaches of planning control may take some time as cases can be complex and raise a variety of issues that need careful consideration. However, we will seek to close most cases within 12 weeks from the date of receipt;
- In cases where we decide there has not been a breach of planning control we will close the case and notify you;
- In cases where there may be a technical breach of planning control, but the harm caused is insufficient to warrant formal action, we will inform you of the reason for not taking formal action and close the case (we will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation);
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern rather than issuing a formal Notice in the first instance, unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

When a breach of planning control is found to have occurred and it is causing significant 'harm' the case will be pursued until such a time that the matter is satisfactorily resolved by reparation or the breach is regularised or found to be lawful or the decision is taken that it is not expedient to pursue any further for other sound planning reasons.

In the event that a formal notice is served and not complied with, your case will be pursued through the Magistrates' Court or Crown Court where necessary and appropriate. Exceptionally the Council may decide to carry out works required in an Enforcement or other Notice which is not being complied with and will seek to recover the costs of doing so. Such action will be pursued where resources allow.

We will not re-open a case that has been closed unless there is a significant new piece of information or change on site.

How will we prioritise your complaint?

In order to make the best use of the resources available, it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. The level of priority will be decided on receipt of a case, by the Team Leader - Enforcement, although there may be instances when the priority needs to be increased or decreased once the full facts of the case are known.

Priority 1 – Cases where damage is ongoing/irreversible/criminal offence

(A site visit will take place within 1 working day of receipt)

- Works being carried out that are causing physical damage to a designated heritage asset (listed buildings, demolition of a building or other structure in a conservation area, scheduled ancient monuments and registered parks and gardens)
- Unauthorised works to trees subject of a Tree Preservation Order or to trees in a conservation area

Priority 2 – Where damage is serious

(A site visit will take place within 10 working days of receipt)

- Stationing a new residential caravan in the countryside (including gypsy sites and travelling showpeople sites)
- All other residential dwellings in the countryside
- Works not in accordance with a planning permission
- Householder development
- Commencement of development (following the grant of planning permission) without discharging 'pre-commencement' conditions – except for issues such as landscaping or means of enclosure, which are unlikely to require immediate action
- Building / engineering works that are causing harm to the landscape, a conservation area, a scheduled ancient monument or a Site of Special Scientific Interest
- Development which is likely to give rise to a serious risk of harm to public health, public safety or compromise highway safety (including a Breach of Condition)

Priority 3 – Other breaches

(A site visit will take place within 15 working days of receipt)

- All other breaches of conditions
- Changes of use not covered by Priority 1 or 2
- Earthworks and changes to land levels
- Display of advertisements
- Agricultural developments
- Equestrian related developments
- Gates, walls, fences
- Satellite dishes
- Untidy land

How long will the investigation take?

The speed at which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads. However, officers will, in general, aim to confirm whether there is a breach of planning control and set out the Council's position in writing to the land owner/developer and the complainant within 8 weeks of a complaint being received.

As explained above, it takes time to properly investigate and resolve alleged breaches of planning control because it is important for the Council to make informed decisions and for relevant parties to be given the opportunity to make informed decisions and for relevant parties to be given the opportunity to carry out corrective action where appropriate. For example, investigations can involve:

- Gathering of evidence
- Awaiting the submission of a retrospective application
- Awaiting the decision from a submitted retrospective application
- Negotiation to try to resolve a breach
- Time periods for compliance once a notice has been served
- Awaiting the result of an appeal against a formal enforcement notice
- Considering the personal circumstances of the person(s) who the complaint has been made against

What are the possible outcomes of an investigation?

No breach established – Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased or the development is permitted development or no development has taken place.

There is a breach of planning control but not considered expedient to pursue formal action – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and should be used proportionately and so for minor and technical breaches, which cause little or no planning harm, it may not be considered expedient to pursue, i.e. the breach is too minor to warrant the time and expense of pursuing further.

The development is lawful and immune from enforcement action - This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the Council. There are certain time limits involved in relation to operational development (buildings and other works) and changes of use; for further details please contact the Enforcement Team who will be happy to provide advice on this issue. Where the person responsible for the breach claims immunity from enforcement action they may be asked to submit an application for a Certificate of Lawful

Use or Development which will enable the Council to make a formal decision on whether the breach has become lawful by the passage of time and is therefore immune from enforcement action. These time limits may also be affected where there is evidence that the alleged breach has been deliberately concealed from the Council. This is explained in more detail below under the heading “Deliberate Concealment – Planning Enforcement Orders”.

Negotiations take place to find a solution – In accordance with Government guidance, the first priority is to try and resolve any breaches of planning control through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not however allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective application – In accordance with Government advice, the Council will firstly seek to negotiate a solution to any alleged breach of planning control. By entering into negotiations with the parties involved, a solution may be found which could involve the cessation of any unauthorised change of use or building operations, the removal of any unauthorised building works or items constituting a material change of use of land, or the remedy of any breach by the submission of a retrospective planning application which is subsequently permitted.

A retrospective application will be invited where we consider that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions. However, the fact that an application is made does not necessarily mean it will be approved.

Minor or technical breaches of planning control may not be pursued in the event that a retrospective application has been requested and not submitted or where it is not considered expedient to do so.

Under-Enforcement - Where development has been carried out without planning permission, and where the development could be made acceptable by imposing conditions, a retrospective application may be invited. If after a reasonable period of time the owner or occupier of the land fails to submit such a planning application consideration will be given to serving an Enforcement Notice which “under-enforces”; that is, it has the effect of granting planning permission subject to the terms of the Enforcement Notice being complied with in full. This will only be used where it is considered that the harm caused by the unauthorised development is such that it can be made acceptable if controlled by restrictions or requirements imposed by a Notice. In such circumstances the Council will notify the owner or occupiers of the land, the complainants and the Local Ward Member, and where appropriate the Parish Council, of the intended course of action.

Formal Action - The Council considers that the harm caused by the unauthorised development is unacceptable and it is therefore necessary to take formal enforcement action to remedy the breach of planning control. The more common forms of enforcement action are listed below:

- The service of a Planning Contravention Notice (PCN) under Section 171(c) of the Town and Country Planning Act 1990 that requires an owner or occupier of land to provide information in relation to the land or activities on the land where a breach of planning control is believed to be taking place
- The service of a Request for Information (RFI) under Section 16(1) of the Local Government (Miscellaneous Provisions) Act 1976 or Section 330 of the Town and Country Planning Act 1990 that requires details to be provided of any owners, occupiers or any other persons with an interest in the land
- The service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 that identifies a breach of planning control and requires specific steps to be undertaken to remedy the breach
- The service of a Listed Building Enforcement Notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that requires specific steps to be undertaken to bring a listed building back to its former state or to carry out work to alleviate the effects of unauthorised works or to bring the building into the state it would have been if the terms of any listed building consent had been observed
- The service of a Breach of Condition Notice (BCN) under Section 187(a) of the Town and Country Planning Act 1990 to secure compliance with conditions imposed on a planning permission
- The service of a Stop Notice or a Temporary Stop Notice (TSN) under Section 183 and Section 171(e) of the Town and Country Planning Act 1990 requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. Before issuing a Stop Notice the Council will carry out a cost / benefit analysis so that any costs incurred by the developer by having to stop works are fully taken into account and weighed against the harm being caused and the likelihood of planning permission being granted. A TSN is not issued in conjunction with an Enforcement Notice and will last a period of up to 28 days after it is served. There is no right of appeal against either a Stop Notice or a TSN.
- The service of a Notice under Section 215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land and buildings.

If enforcement action is considered to be necessary, the Enforcement Team will instruct the Council's Legal Team and aim to issue an Enforcement Notice or other relevant Notice within 28 days of sending those instructions. The Council's Team Leader - Enforcement has delegated powers to authorise enforcement action in most cases which means that the

decision to take enforcement action does not need to be referred to the Council's Planning Committee.

Right of Appeal

The recipient of an Enforcement/Listed Building Enforcement Notice has the right to lodge an appeal before the requirements of the Notice are due to take effect (normally 28 days after a Notice is issued). Appeals are decided by an independent Planning Inspector and it will take several months or longer in complex cases before there is a decision. If there is an appeal interested parties will have an opportunity to make representations to the Planning Inspectorate.

Failure to comply with the requirements of a Notice

Where a landowner/occupier or other person responsible for a breach of planning control does not comply with an Enforcement Notice (after either the appeal process has been exhausted and the Notice has been upheld or the Enforcement Notice has come into effect without an appeal being made), the Council can:

- Take direct action to remedy a breach. Where such action is taken the Council will seek to recover the costs of undertaking the works from the landowner or a charge will be placed on the land. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it can involve a significant cost implication to the Council. Such action will only be considered exceptionally and will be subject to appropriate resources being identified.
- Prosecute land owners who fail to comply with an Enforcement Notice within the compliance period. In most cases this will be the preferred method.
- Prosecute land owners who have committed other criminal offences (unauthorised works to protected trees and listed buildings and the display of advertisements without consent).
- Apply to the County Court or High Court for an injunction in serious cases.

Enforcement Register

The Council has a statutory duty to hold and maintain an enforcement register. This records details and basic information about what notices have been issued. The notices contained in the register are:

- Enforcement Notices
- Breach of Condition Notices
- Full Stop Notices
- Temporary Stop Notices.

The enforcement registers are public records and hard copies of the notices can be viewed at the City Offices, Colebrook Street, Winchester. It is planned to make the Council's register available on the Council's website.

A separate register is kept by the Council for notices issued in the South Downs National Park within the Winchester District. The South Downs National Park Authority also has a register which can be viewed on its

website: <https://www.southdowns.gov.uk/planning/enforcement/planning-enforcement-register/> .

Deliberate Concealment - Planning Enforcement Orders

In accordance with Sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Council can apply to the Magistrates' Court for a Planning Enforcement Order to be made if it finds that an owner/occupier has deliberately concealed an unauthorised development. In these circumstances, the Council will need to produce evidence that the owner/occupier has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the Council about it. An application must be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the Council's knowledge.

If a Planning Enforcement Order is made, the Council is able to take enforcement action in relation to a breach of planning control notwithstanding that the time limits for taking enforcement action may have expired. If an Order is granted the Council has a further 12 months to complete its investigations and take formal action.

It may not be necessary for the Council to apply for a Planning Enforcement Order where there has been a concealment of a breach of planning control as the Courts have decided that a breach of planning control will not become immune from enforcement action where there has been deliberate concealment. If this happens, the Council will consider issuing an Enforcement Notice even where the immunity period appears to have passed.

What happens if an allegation is made that you have breached planning control?

If a complaint is received either you will be contacted (where your details are known to the Council) or the site will be visited by an Enforcement Officer. The purpose of this visit is to establish the facts and whether there is any basis to the allegations made. The investigating Officer will, where necessary, take measurements and photographs of the development or activity taking place. The site inspection may be undertaken without any prior notification. Enforcement Officers do have a right to enter land to undertake an investigation.

If it is established that there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. If you have no involvement with the identified breach no action will be taken against you although if you are the land owner, if an Enforcement Notice is issued, we are required to serve a copy on you.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through negotiations or the submission of a retrospective planning application, formal action may be instigated.

After planning permission has been granted - Proactive Compliance

In addition to the Enforcement Team's role in reacting to complaints about alleged unauthorised developments or breaches of condition, the Council has two Compliance and Monitoring Officers who check that developments are being implemented in compliance with planning permissions and other consents.

It is the responsibility of individual developers to comply with the conditions imposed on a planning permission or consent or with any Section 106 agreement/undertaking. Failure to comply can affect not only the quality of the environment in the District or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consent in the first instance. It may even negate the planning permission.

The Council has chosen to carry out proactive compliance monitoring to encourage developers to implement developments in accordance with the approved plans and comply with conditions so that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. By carrying out proactive compliance monitoring the Council aims to reduce the number of retrospective enforcement complaints received.

A) What are our priorities for Proactive Compliance?

In order to be proactive but recognising that resources are limited the Council must operate a risk-based approach in deciding which cases are to be investigated or monitored. In so doing the resources available must be provided in a targeted and focused way.

Priority will be given to monitoring the following developments:

- All developments involving 10 or more dwellings or residential development greater than 1 hectare in area
- All commercial developments over 1000sq metres floor area or 0.5 hectares in area.
- All decisions subject to a planning agreement (Section 106)
- Problematic sites such as those involving significant level changes or contamination.

In these cases, decisions will be taken on a case by case basis and the decision to pursue any breaches found during inspections will be informed by the overarching framework for decision making as set out in this Plan. Any other developments may be inspected on a random basis (including by a Development Management planning officer) at any time to ensure compliance.

B) The job of the Compliance and Monitoring Officers

They:

- proactively monitor planning conditions to ensure that development proceeds in accordance with approved plans and undertake any necessary site inspections to confirm either compliance with the conditions or potential breaches of planning conditions/requirements of legal agreements
- liaise with developers and/or agents on major or specifically identified development sites to prevent breaches of planning conditions/legal agreements and to ensure that development proceeds with the least disruption as possible
- proactively give advice to developers and service users, where appropriate, on the need to comply with conditions imposed on planning permissions or legal agreements
- where it is necessary and expedient, actively stop development on sites that are proceeding without complying with planning agreements or conditions by the use of Temporary Stop Notices (TSN) and/or Enforcement Notices and Stop Notices or Breach of Condition Notices.

Communication

We send lists of new enforcement complaints received and cases that have been closed on a bi-monthly basis to Ward Councillors and Parish Councils. We will provide updates on particular cases on request but we will not provide a routine commentary on progress as this requires resources that are better used in pursuing investigations. Any queries on specific cases should be directed to the Planning Enforcement Team on 01962 848480.

Complaints about the Enforcement Service

If you are unhappy about the level of service you have received from the Planning Enforcement Team or how the process has been managed then you may firstly discuss your concerns with the Team Leader - Enforcement or take it further through the Council's Corporate Complaints Procedure <http://www.winchester.gov.uk/councillors-committees/complaints/> . If you remain dissatisfied by the Council's response then you may write to the Local Government Ombudsman who may investigate your concerns; however please note that the Local Government Ombudsman will only investigate if the Council's complaints process has been completed.

Contact Details

Planning Enforcement Team,
Winchester City Council, City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ

Phone: 01962 848480 Email: enf@winchester.gov.uk

Other useful links

<http://www.winchester.gov.uk/planning/>

<https://www.southdowns.gov.uk/planning/>

<https://www.southdowns.gov.uk/planning/enforcement/sdnpa-enforcement-guide/>

<http://www.planningportal.gov.uk/permission/house>

<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

<http://www.winchester.gov.uk/planning/planning-enforcement/hedges/>

<http://www.winchester.gov.uk/planning/landscape---countryside/hedgerows/>

<http://www3.hants.gov.uk/archives/hals-collections/hedgerows.htm>

<http://www3.hants.gov.uk/roads/apply-droppedkerb.htm>

<http://www3.hants.gov.uk/mineralsandwaste/monitoring-and-enforcement-homepage.htm>

<http://www.environment-agency.gov.uk/>

<http://www.landregistry.gov.uk/>