



Sheffield City Council Local Planning Enforcement Plan



Contents

| | | |
|------------|--|----|
| 1.0 | Our approach | 1 |
| 1.1 | Importance of an enforcement plan | 1 |
| 1.2 | Principles of planning enforcement..... | 1 |
| 2.0 | Breaches of planning control..... | 2 |
| 2.1 | What is a breach of planning control? | 2 |
| 2.2 | Types of planning permission..... | 3 |
| 2.3 | Immunity from enforcement..... | 3 |
| 2.4 | Concealment | 4 |
| 2.5 | Expediency..... | 4 |
| 3.0 | Reporting alleged breaches | 4 |
| 3.1 | Reporting a breach | 4 |
| 3.2 | Types of development that we investigate..... | 5 |
| 3.3 | What we don't investigate..... | 5 |
| 3.4 | Required information | 5 |
| 4.0 | Enforcement powers | 6 |
| 4.1 | Site visits and rights of entry..... | 6 |
| 4.2 | What is considered? | 6 |
| 4.3 | Formal action..... | 7 |
| 4.4 | Prosecution | 7 |
| 4.5 | What happens if you're the subject of a complaint? | 7 |
| 4.6 | The enforcement process..... | 8 |
| 5.0 | Performance standards..... | 9 |
| 5.1 | Priorities | 9 |
| 5.2 | Contacting the complainant and our performance standards | 10 |
| 5.3 | Monitoring of sites | 10 |
| Appendix 1 | | 11 |
| | Formal enforcement action toolkit | 11 |

1.0 Our approach

1.1 Importance of an enforcement plan

The production of a local enforcement plan is advised within the National Planning Policy Framework (“the NPPF”) to ensure that planning enforcement remains a clear and transparent process;

‘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’ (NPPF, 2012, paragraph 207).

The importance of local enforcement plans is also mentioned within National Planning Practice Guidance which sets out the key objectives of such a plan. These include;

- allowing engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- setting out priorities for enforcement action which will inform decisions about when to take enforcement action;
- providing greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- providing greater certainty for all parties engaged in the development process.

1.2 Principles of planning enforcement

Planning enforcement aims to control planning breaches where development has been carried out without the necessary planning permissions. The NPPF states;

‘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’ (paragraph 207).

Sheffield City Council adheres to the principles of good enforcement including;

- **Proportionality** - enforcement action will be proportionate to the risks and seriousness of any breach, including any actual or potential harm caused by the breach and the economic impact of averting it.
- **Helpfulness** – where it should be possible for breaches of control to be quickly remedied, officers will give developers a chance to quickly rectify matters. All correspondence will identify the officer dealing with the matter and give contact details. Officers will not tolerate abusive language or behaviour.

- **Targeting of enforcement action** - focusing enforcement action on the most serious risks and recognise that it is not possible to prioritise all issues of non-compliance or to take action against breaches causing no significant harm.
- **Consistency of enforcement approach** - consistency does not mean uniformity, however a similar approach will be taken in similar circumstances with the appropriate exercise of individual discretion and professional judgement.
- **Transparency of how enforcement operates and what can be expected** - where non-compliance has been identified, officers will explain what must be done to remedy the breach, clearly explain the reasoning behind their decision, give reasonable timescales for compliance and provide clear instructions of what will happen if they do not comply. To improve our transparency and accountability, we will develop our web site to report on enforcement actions being taken and the progress being made.
- **Accountability for our actions** - whilst officers will have delegated powers to take urgent and routine enforcement actions, controversial or difficult enforcement decisions will be made by the Council's Planning & Highways Committee. Members of the public and businesses will know what to expect when an officer visits and how to raise any complaints they may have and we will report back on our performance.

2.0 Breaches of planning control

2.1 What is a breach of planning control?

Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 ("the 1990 Act") as;

'carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted' (s.171A).

Section 55 of the 1990 Act defines development as;

"the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land."

Development carried out without planning permission is not ordinarily a criminal offence. The exception relates to Listed Buildings, trees subject to a tree preservation order ("TPO") and advertisements displayed without consent. All other development only becomes a criminal offence if there is non-compliance following formal enforcement action. The 1990 Act defines formal enforcement action as the issue of an enforcement notice or the service of a breach of condition notice.

2.2 Types of planning permission

All development (as defined by reference to section 55 of the 1990 Act) requires planning permission, of which there are two main types.

‘Deemed’ planning permission

Some types of development can be carried out without having to apply for written planning permission, this is sometimes known as ‘permitted development’. In these circumstances legislation is deemed to grant planning permission. In order for works to gain deemed planning permission, development must meet certain criteria and conditions set out in The Town and Country Planning (General Permitted Development) (England) Order 2015.

In addition the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) grants deemed consent for advertisements that satisfy the relevant criteria and conditions.

‘Express’ planning permission

All development that is not granted consent by deemed planning permission requires ‘express’ planning consent from the Council. This requires a formal written planning application to be submitted to the Council. Planning applications are usually dealt with by Planning Officers under the Council’s scheme of delegation. More contentious applications are often dealt with by the Council’s Planning & Highways Committee. All planning applications are subject to public notification to nearby residents, relevant consultees and Parish Councils, and are available for comment from any member of public.

2.3 Immunity from enforcement

Section 171B of the 1990 Act restricts the Council’s ability to take enforcement action after certain periods of time have elapsed. These time periods are dependent on the type of breach. In these instances, development without planning permission becomes immune from enforcement action.

- For building, engineering, mining or other operations, action cannot be taken after four years beginning with the date on which operations were substantially completed.
- For a change of use of a building to a single dwelling house, action cannot be taken after four years beginning with the date of the breach.
- For any other breach, action cannot be taken after ten years beginning with the date of the breach, including a continuous breach of planning conditions.
- It should be noted that there is no time limited in respect of listed buildings and in this regard enforcement action can be taken at any time.

2.4 Concealment

The Localism Act 2011 introduced new powers by inserting a new section 171BA into the 1990 Act. This new power permits the Council to take enforcement action against deliberate concealment of breaches of planning control after the usual time limit for enforcement action has expired. The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. If such an order is granted by the magistrates this allows the Council an additional 12 months in which to take enforcement action.

2.5 Expediency

Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the Council's discretion to use enforcement powers. In accordance with section 172 of the 1990 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (eg, amenity, design).

If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unlikely. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.

3.0 Reporting alleged breaches

3.1 Reporting a breach

If you are concerned about any development that you believe may be unauthorised, please report a complaint to the Council. The easiest way to report a breach is through our online form. However it is also possible to request a paper copy.

Online form:

https://service.sheffield.gov.uk/selfservice/L15_Portal.html?formname=PlanningEnforcement

Complainants should provide their contact details, including their name and address, when reporting an alleged breach so that they can be contacted for further information if necessary, and to keep them informed about the progress of the investigation. Anonymous complaints or complaints with limited personal or incorrect details will not be dealt with, unless it is regarding a Listed Building, TPO or unauthorised development within an area subject to an Article 4 Direction (i.e. an area that has had permitted development rights removed), as the impact of the development on the complainant is considered during the investigation.

The subject of a complaint will be public information; however the identity of the complainant will be kept confidential. It is possible however, that the person who is

the subject of the complaint may draw their own conclusions about the source of such. In some cases, a court may ask that personal information has to be made available; however this is very unusual.

3.2 Types of development that we investigate

There are a number of matters that do not fall within planning control and therefore no planning enforcement action can be taken. The following is a list of some of the examples of what the planning service can and cannot investigate.

- Carrying out development where no planning permission has been sought;
- Carrying out development which deviates from that which has been granted planning permission;
- Breach of conditions which were imposed under an existing planning permission;
- Unauthorised change of use;
- Unauthorised display of advertisements;
- Unauthorised works to a Listed Building;
- Unauthorised works to a protected tree;
- Unauthorised works in a Conservation area or a protected area such as greenbelt;
- Untidy land.

3.3 What we don't investigate

- Matters controlled under building regulations such as dangerous structures;
- Private issues between neighbours (that don't involve material planning considerations)
- Opposition to business competition;
None material planning considerations such as loss of property value or loss of view;
- High hedges;
- Land ownership issues;
- Party wall disputes.

If a breach of planning control is confirmed then we will initially try to resolve the issue through negotiation and informal action, however, in some case due to the level of harm it may be considered appropriate to take immediate formal enforcement action. (See 4.6 Enforcement Process)

3.4 Required information

In order to investigate an alleged breach, it is important that we have as much information about the development as possible. Breaches can be investigated quicker when sufficient information is provided up-front.

To ensure that relevant information is included in a complaint, this list highlights the key pieces of information that should be submitted to aid the investigation.

- Address of the site including the postcode; if the address is unclear or the site is particularly unusual, an annotated map of the site may be more appropriate;
- The enforcement enquiry; description of the building works or use;
- If necessary, approximate dimensions of the development;
- Any other information to assist the enquiry; a 30 day log of activities if it relates to a change of use complaint, photos of the development/proof of use;
- If possible, name and address of person/company involved in the use/development/poor maintenance;
- Approximate time when the use/development/poor maintenance commenced and if necessary, the stage of building works;
- The harm caused by the use/development/poor maintenance; this should be limited to planning matters (eg, loss of sunlight, overshadowing/loss of outlook, loss of privacy).

4.0 Enforcement powers

4.1 Site visits and rights of entry

In most cases, an officer will visit the site under investigation within 20 working days of receiving the enquiry, unless it relates to a Listed Building or TPO which will be visited within 1 working day. Due to the nature of planning enforcement work the majority of site visits will be made without prior arrangement. Planning enforcement officers will carry approved identification which will be produced for inspection on request.

The Council's planning enforcement officers have powers of entry which allow them to investigate the planning enforcement enquiry. It may also be necessary for the officer to bring third parties onto the land to assist or advise them in carrying out their duties. Where entry is refused a warrant to enter land may be obtained. Prosecution will also be considered where there is a deliberate obstruction of the officer carrying out their duties.

4.2 What is considered?

Whilst establishing whether enforcement action should be taken, a number of elements are considered, including but not limited to:

- Whether the complaint relates to a non-planning matter eg, land ownership, private interests, moral concerns;
- Whether the enquiry falls within the Council's planning boundaries eg, Peak District planning matters are dealt with in a different Council;
- Whether the alleged breach falls within the constraints and conditions of permitted development and is therefore lawful development;
- How long the development/change of use has been present.

After considering all of these factors, if it is considered that there has been a breach of planning control the Council will then establish whether it is expedient to act upon the breach (see point 2.4).

4.3 Formal action

Whilst the Council makes every attempt to encourage those responsible for a breach to resolve the issue voluntarily, negotiation is not always effective. If informal negotiations have been unsuccessful, and the Council feels that the planning breach has significant harmful effects, formal enforcement action will usually be taken. There are numerous ways in which formal action can be taken, and this depends on the type, seriousness and harmfulness of the breach. For more details of actions that can be taken can be found in Appendix 1.

4.4 Prosecution

Prosecution is an integral part of the enforcement process and if an enforcement notice has not been complied with within the specified time limits, or if work has been done to a listed building, a tree which is protected under a TPO or an unauthorised sign has been displayed the Council will pursue a prosecution where circumstances warrant such action. The Council will also seek to recover costs connected with the enforcement action.

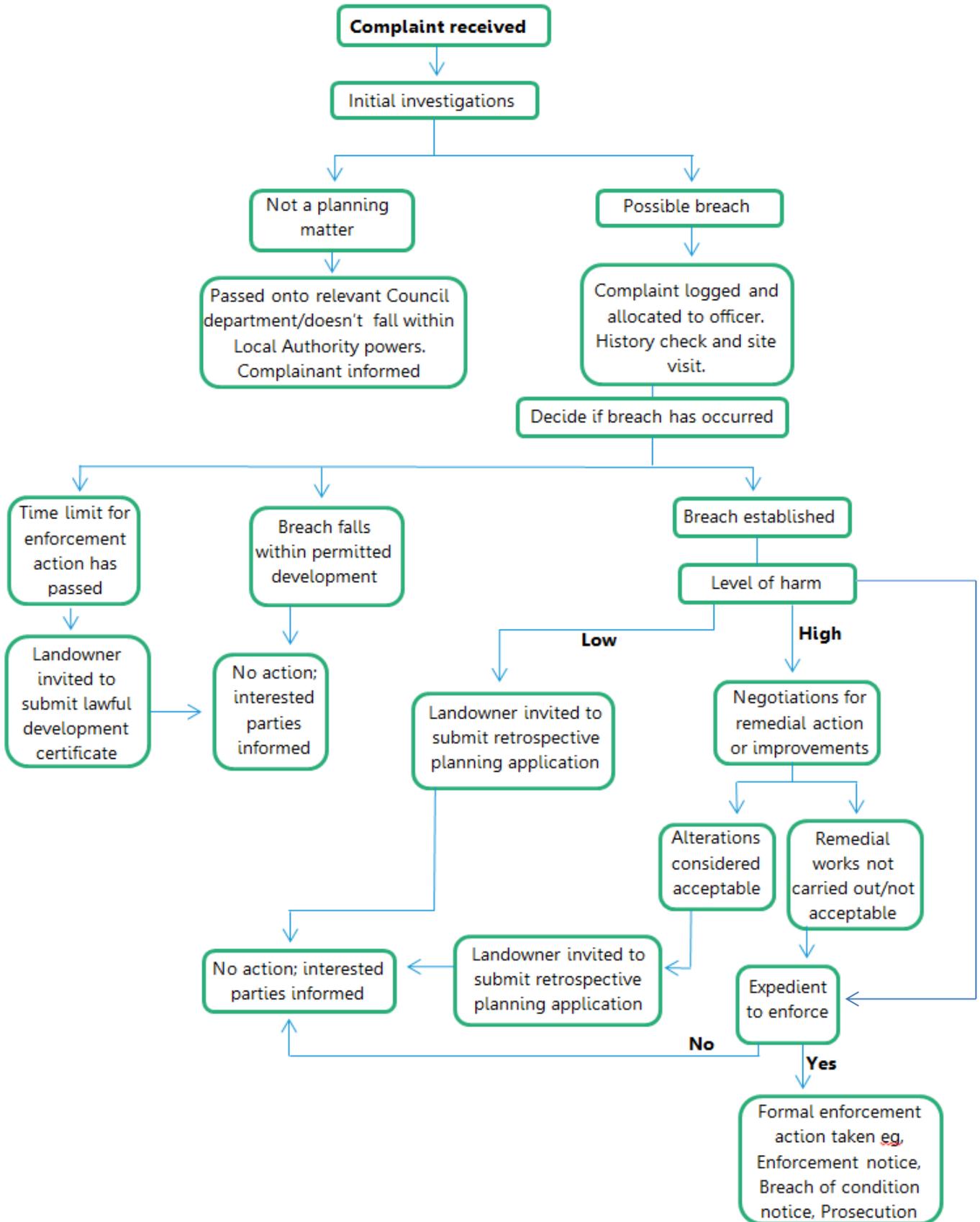
4.5 What happens if you're the subject of a complaint?

We understand that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. If you are contacted about an alleged breach of planning control, you will be informed what the allegation is, but not who made it.

If a breach is established, you will be clearly advised of the details of the breach and how to put it right. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. Do not delay in responding, it is in the interests of all parties if an identified breach can be addressed at an early stage.

If you are served with a formal notice you will be given the details of the breach, the reasons for the action, steps required to resolve the issue and a time period for compliance.

4.6 The enforcement process



5.0 Performance standards

5.1 Priorities

The Council receives a large number of reports of alleged breaches of planning control, and therefore cases need to be prioritised based on their harm. Resources are focused on the most serious breaches of planning control as these are likely to cause most harm to the public. Once complaints have been received, the level of harm will be assessed by an officer and the appropriate priority given below. This is not a complete list but an indication of the type of breach which may fall in each category.

Priority 1 – unauthorised development that causes serious or irreversible harm to the environment, for example:

- Demolition or unauthorised works damaging the historic fabric of a listed building
- Demolition of buildings of historic value within a Conservation area
- Unauthorised works to trees where an immediate response would stop any further damage
- Unauthorised development that represents a serious danger to members of the public

Priority 2 – unauthorised development that causes severe and continuous harm, for example:

- Severe nuisance eg, prolonged period of noise at unsociable hours
- Development where planning permission is unlikely to be granted without substantial modification

Priority 3 – unauthorised development where there is a risk of harm, for example:

- Development which could be resolved by limited modification
- Where development/uses could cause material long term harm
- Development/uses which are clearly contrary to policy
- Other unauthorised works to listed buildings

Priority 4 – other unauthorised development, for example:

- Advertisements, such as estate agent boards
- Walls and Fences
- Satellite dishes and minor works
- Untidy land issues

Priority 5 – other unauthorised development where enforcement action may not be taken unless exceptional harm can be shown, for example:

- Walls or Fences at the rear of properties that are less than 2.5 metres in height
- Unauthorised development/uses which would be likely to receive planning permission
- Minor variations from the approved plans

The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained.

5.2 Contacting the complainant and our performance standards

We recognise the importance of keeping individuals up to date with our progress. Some investigations can take longer than others due to lengthy and complex negotiations, statutory time periods in serving notices, appeals and prosecutions and in some cases there may be nothing new to report. We will endeavour to contact you at key stages throughout, but potential stages of notification will vary depending on the nature and outcome of the investigations.

However, we will aim to;

- Acknowledge enquiries within 5 working days, which will include the investigating officer's contact details
- Provide a detailed response to the complainant within 25 working days. However, if a detailed response cannot be given then an update will be provided which will include a date when the full response will be given.
- Provide a further update within 4-6 months

It is requested that complainants wait to be contacted by the enforcement team before enquiring about the progress of an enquiry. Due to large workloads, it is not possible for the enforcement team to keep responding to complainant requests for updates. Please be assured that you will be updated at key points throughout the investigation.

5.3 Monitoring of sites

The Council relies on public complaints, enquiries from Councillors and Parish councils, and the monitoring of sites to establish breaches of planning control. The Council informally monitors sites through site visits, and the planning enforcement team also relies on planning officers and other Council departments to raise potential breaches.

Appendix 1

Formal enforcement action toolkit

| Options available to tackle possible breaches of Planning control | Brief explanation |
|---|---|
| No formal action | This is appropriate for when there is no breach of planning control or when the impact of the breach is not considered expedient to take formal enforcement action. |
| Allow time to remedy | Time may be given to remedy the breach where there is not significant harm and is not serious enough to warrant immediate action and therefore opportunity may be given to resolve the breach. |
| Retrospective planning application | A retrospective planning application allows for an application to be submitted after the development has been carried out. In some cases a retrospective planning application can be requested, when it is considered as an appropriate way forward to regularise the situation. A retrospective application is dealt with in the same way as any other planning application. |
| Planning Contravention Notice (PCN) | A PCN is a discretionary procedure, and is a way for the Council to find out more information about an alleged planning breach to establish what, if any enforcement action should be taken. It usually involves a series of questions about operations being carried out, or about how the breach may be satisfactorily remedied. Failure to complete, or to provide false or misleading information is a criminal offence. |
| Section 330 Notice | Similar to a PCN, this notice is a way for the Council to find out more information about the occupier's interest in the land. |
| Planning Enforcement Order | A magistrates' court may only make this order. It can be made where a person has deliberately concealed an unauthorised development and enables the Council to take action withstanding the usual time limits that may have expired. This order is used to extend the amount of time the Council can take formal action, the 'enforcement year'. This gives the Council time to decide the most appropriate course of action. |

| | |
|------------------------------------|---|
| Enforcement Notice | This is the most common type of notice and instructs the recipient to carry out steps to remedy the breach. The notice will specify what the alleged breach is, and prescriptive steps, with specific timescales, that must be taken to remedy it. Failure to comply with the requirements of an Enforcement notice within the time period given is a criminal offence. |
| Listed Building Enforcement Notice | This notice is similar to an enforcement notice, and will specify the unauthorised works to the relevant listed building. It can be served on its own, where listed building consent was required but not planning permission, and can also be served in conjunction with a Planning Enforcement notice. |
| Breach of Condition Notice (BCN) | A BCN may be served where there has been a breach of condition that is attached to an extant planning permission. It requires the recipient to comply with the specified planning conditions. Failure to comply with a BCN within the time period given is a criminal offence. |
| Stop Notice | A stop notice can only be served with an Enforcement notice and they aim to prohibit any or all of the activities which comprise the alleged breach. They are used when the Council feels that it is expedient that any relevant activity should cease before the deadline for compliance in the related notice. |
| Temporary Stop Notice | Temporary stop notices can prohibit a range of activities relating to a planning breach, if it is expedient to do so. Unlike a stop notice, a temporary stop notice can be issued immediately without having to wait for an enforcement notice to be issued. They expire after 28 days from issue. |
| Advertisements | The display of advertisements that do not meet the criteria set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 are illegal unless they have been granted express consent. |
| Discontinuance Notice | This notice can require that the display of a particular advertisement which has deemed consent is discontinued. This action may be taken if the Council feels that the advertisement causes substantial harm to the amenity of the locality or danger to members of the public. |
| Section 225 Notice | This notice enables the Council to require the removal of any placard or poster displayed illegally. The notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of unauthorised advertisements in a specified time limit. |

| | |
|----------------------------------|--|
| Section 215 (Untidy Land) Notice | This notice is served when land requires to be cleaned up because its condition adversely affects the amenity of the area. It can also require the demolition of derelict buildings. The notice sets out the steps needed to be taken and time limits in which they must be carried out. |
| Direct action | The Council has the option to take direct action to remedy a planning breach if an Enforcement notice or a section 215 notice has not been complied with. The Council may carry out works required in the notice and seek to recover those costs from the landowner. |
| Injunction | An injunction can be obtained if the Council need to restrain a breach of planning control, and it is considered expedient for any actual or apprehended breach of planning control to be restrained. This is done by applying to the High Court or Country Court. An injunction is a last resort attempt, and will only be applied for if ordinary enforcement powers have been, or will be unlikely to stop unauthorised activities. |
| Enforced sale | An enforced sale is used when direct action has been taken and the Council is owed money for carrying out the work. If a charge has been placed on the property the Council has the ability to sell the property in order to recover its costs. This is a last resort and would only be used when other repayment methods have been exhausted. |
| Proceeds of crime (POCA) | This is used when the defendant has benefitted financially from a breach of planning control and enforcement action has been taken. It allows the Council to bring an action to recover the money they have gained as a result of disregarding enforcement action. |
| Prosecution | The Council will consider commencing a prosecution in the Courts when there has been a failure to comply with any of the above notices and will recover costs. |

More information can be found at:

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