

Regeneration

# **Planning Enforcement Plan**



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## Appendix 1

DCLG Summary of available powers for dealing with illegal and unauthorised encampments

# 1. Introduction

**1.1** Central Bedfordshire is mainly rural in character but has villages and towns with many listed buildings and conservation areas. There are also many thriving businesses and there is pressure for residential development, so the Council has to take great care in balancing the need to protect the environment from the harmful effects of unauthorised uses and development while promoting growth.

**1.2** National guidance on planning enforcement is given in the National Planning Policy Framework and is also detailed in Circular 10/97 - Enforcing Planning Control, and in the accompanying Good Practice Guide for Local Authorities. Government policy guidance within the National Planning Policy Framework makes it clear that enforcement action is a discretionary power, and that Local Planning Authorities should act proportionately in responding to suspected breaches of planning control. Government guidance also advises that action should be taken by the Local Planning Authority only when it is expedient to do so, and that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits, and advises that planning permission may be granted retrospectively to regularise development already carried out.

**1.3** This document details the Council's planning enforcement policy within the framework of the general Central Bedfordshire Enforcement Policy. In taking enforcement action for breaches of planning control, the Council must have regard to the Governments Enforcement Concordat and the Regulatory Compliance Code. The Council must also act within the principles of the Human Rights Act 1998 and The Equality Act 2010 and ensure that unlawful discrimination is eliminated, and all action is taken in a fair and consistent manner.

**1.4** The Council's planning enforcement service operates within the Government guidance and tries to resolve problems through negotiation wherever possible, leaving confrontation and prosecution as a last resort. However, the Council will use the powers of formal enforcement action where all else fails and it is expedient to do so. Under the Town and Country Planning legislation there are time limits with regard to when enforcement action can be taken, which means that in some instances development and/or change of use of land is immune from enforcement action after either four or ten years.

**1.5** Although we aim to deal with and close the majority of enforcement cases within six months, some cases can take a considerable time to resolve, for example due to full investigation, negotiation or formal enforcement action. Also there is the right of appeal against an Enforcement Notice that would further delay matters, as action is held in abeyance pending the outcome of the appeal.

**1.6** The Council aims to raise the profile of planning enforcement, as an effective enforcement function is essential to a credible planning service. While it may not always be an offence to carry out development without planning permission, it cannot be assumed that planning permission will be granted for the development retrospectively, and any unauthorised development will be at risk of further action by the Council.

**1.7** Planning Enforcement is part of the Council's Development Management service to promote quality buildings and environments in accordance with Government policies and

the Council's development policies as detailed in the Development Strategy for Central Bedfordshire. The Council seeks to take a pro-active approach and to use enforcement powers as part of co-ordinating environmental improvements, for example to identify and take action in respect of the harm caused to the amenity of an area due to empty shops in town centres and unauthorised advertisements. This pro-active approach will be taken when resources allow.

**1.8** As a unitary single-tier Authority, the Council also fulfils the role of Minerals and Waste Planning Authority. Alleged breaches of planning control involving minerals or waste related development are investigated and, if necessary, enforced against by the Minerals and Waste Team.

## **What we aim to do**

**1.9** Central Bedfordshire Council aims to provide a high quality re-active and pro-active approach to planning enforcement within the resources available. The Council currently receives in excess of 700 complaints a year requiring re-active response. The Council aims to provide the principles of good enforcement as follows:

- To publish clear standards of service and performance through this enforcement plan.
- To investigate alleged breaches of planning control.
- To resolve investigations through negotiation and without formal action whenever possible, but formal action will be taken if it is expedient to do so.
- To take action as appropriate to resolve breaches of planning control in the public interest, having regard to all material planning considerations.
- To be consistent in our investigations and decisions and take the necessary action having regard to the policies of the Development Plan, national policies, and the particular circumstances of the site and surrounding area and the level of harm being caused by the breach of planning control.
- To provide information and advice at appropriate times to interested parties on planning enforcement cases and issues. We do however keep complainants details confidential.
- To provide an accurate, efficient, good quality service to members of the public, Councillors and others who require expertise on planning enforcement issues.
- To provide a pro-active approach to planning enforcement within resources available, including monitoring housing developments for compliance with pre-development conditions, and monitoring mineral sites for compliance with all conditions attached to planning permissions.

## 2 Breaches of planning control

### Planning Control

**2.1** A breach of planning control includes the following:

- Carrying out development without the required planning permission
- Failing to comply with any condition or limitation, subject to which planning permission has been granted
- Carrying out certain changes of use without planning permission
- Carrying out certain demolition work in a conservation area without consent
- Carrying out works to a listed building or protected tree without consent
- Displaying certain advertisements without consent
- Neglecting land or buildings to an extent which causes harm to local amenity.

**2.2** Certain breaches of planning control constitute criminal acts from the outset and can be subject to high penalties. Such breaches include: -

- Unauthorised work to a listed building
- Unauthorised advertisements
- Unauthorised demolition of certain unlisted buildings in a conservation area
- Unauthorised works to “protected” trees

**2.3** We receive over 700 queries a year relating to allegations of breaches of planning control. Many of these are found not to be a breach of control at all; others range from small-scale breaches to serious breaches causing impact on visual amenity, general amenity or on highway safety.

**2.4** There are certain issues that we cannot take into account when assessing an alleged breach because they are not planning matters. These include: -

- Loss of value to property
- Competition with other businesses
- Rights to a view and light
- Trespass or boundary disputes
- Breaches of a covenant

**2.5** These are likely to be private civil matters in which the Council has no legal right of intervention.

### Retrospective Planning Applications

**2.6** Section 70C of the Town and Country Planning Act 1990 enables the Council to decline to determine a planning application for the development of land where a pre-existing enforcement notice has been served in respect of that development. This power is discretionary and need not be exercised when the Council recognises an obvious benefit of controlling the planning process. The decision not to determine a planning application lodged in such circumstances will be taken on a case by case basis. The factors which will be taken into account are:

- Nature and extent of unauthorised development

- Nature and extent of land developed with special regard to the unauthorised development of green field land
- Likelihood of planning permission being granted
- Loss of ability to impose planning conditions

**2.7** If the Council decides not to determine a planning application because an Enforcement Notice has already been served, an appeal can still be submitted to the Planning Inspectorate against the Enforcement Notice within 28 days of the Notice being served. One of the grounds of appeal is that planning permission should be granted. If an appeal is submitted this holds further action in abeyance pending the outcome of the appeal.

## **Building Control**

**2.8** Building control is dealt with separately to planning control and is not covered in this plan. Building control operates under its own Building Control Policy, and checks that when buildings are constructed and altered that the health, safety and welfare of people using them are ensured. Building Control also checks that dangerous structures are made safe and that demolitions are carried out in as safe a manner as possible. Checks can be made between the plans submitted for building control and the approved plans for planning permission to ensure that there are no major discrepancies between the proposals on the plans.

### 3 Reporting alleged breaches of planning control

**3.1** We rely on the public to help us identify breaches of planning control. We can receive reports of potential breaches in writing addressed to the Planning Enforcement Team or Minerals and Waste Team by letter or e-mail, or on-line by completing the enforcement complaints form. Alleged breaches involving minerals and waste will be logged and investigated by the appropriate officer within the Minerals and Waste Team. To make the service accessible to people, for example with low level of literacy, the Enforcement Team can also be contacted by telephone, and especially if the potential breach is urgent, for example relating to a listed building or protected tree.

**3.2** Complainants may occasionally make an initial contact with Ward, Parish or Town Councillors, to report an alleged breach of planning control before it is passed to the Planning Enforcement Team to investigate and action according to the severity of the complaint and breach of planning control.

**3.3** In order to investigate a potential breach we would like as much information as possible, including: -

- The name and address of the complainant
- The name and address of the alleged contravener
- The location of the site
- What has happened, the length of time it has been happening and an indication of whether it is still continuing
- An explanation of the harm that it is causing the complainant specifically, and the area generally

**3.4** It is our policy not to reveal any information that is likely to identify the complainant, in line with the Data Protection Act 1998. We may be asked to reveal information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Any decision we make to reveal any information would need to show that there is a public interest in doing so.

**3.5** The Planning Enforcement Team can be contacted at Priory House, Chicksands, Shefford SG17 5TQ, telephone 0300 300 8307 or 0300 300 8000.

**3.6** The Minerals and Waste Team can also be contacted at Priory House, Chicksands, Shefford SG17 5TQ, telephone 0300 300 8307 or 0300 300 8000.

## 4 Priorities for action

**4.1** Due to the serious nature of some of the complaints we receive and the length of time that it takes to investigate some alleged breaches of planning control with existing resources, it is essential that we prioritise cases in accordance with the severity of their environmental impact.

**4.2** We also actively undertake certain specific projects pro-actively, when resources allow, for example identifying run down properties in town centres and taking action to promote environmental improvements. Such projects are also prioritised in accordance with the severity of their environmental impact. Prioritisation for dealing with complaints re-actively and undertaking projects pro-actively is carried out as follows:

**1. High priority cases**

- Ongoing Court or Appeal proceedings against a breach of planning control
- Unauthorised development or works with the potential to cause serious irreparable harm, (for example unauthorised works to a Listed Building, demolition of buildings in a Conservation Area, works to a protected tree, deposit of waste on an environmentally sensitive site, and unauthorised development or use of land causing severe harm to the openness of the Green Belt), and where significant harm to amenity is likely to be reduced by immediate action, for example dealing with illegal and unauthorised encampments. (At Appendix 1 is a copy of the Department for Communities and local Government summary of available powers for dealing with illegal and unauthorised encampments).

**2. Medium priority cases**

- Ongoing breaches of an effective Enforcement or other formal Notice
- Other new complaints of serious harm to the amenities of a neighbourhood, for example unauthorised development in a Conservation Area or inert waste crushing / screening activity.

**3. Low priority cases**

- An ongoing investigation where little or no harm has been identified or where harm is easily reparable.
- All other new complaints, for example householder development involving an outbuilding or fence/wall, and certain breaches of planning conditions

### Timescales for Dealing with Complaints

**1. High priority cases** – A site visit will be made as soon as practicable, but at least within one working day of receipt of the complaint and if a serious breach of planning control is established action will be commenced immediately

**2. Medium priority cases** – A site visit will be made as soon as practicable, but at least within 5 working days and an initial assessment will be made within 10 working days

**3. Low priority cases** – A site visit will be made as soon as practicable, but at least within 10 working days



## **5 Investigating complaints and notifying interested parties**

**See Flowchart 1 on page 15 for planning enforcement process**

**5.1** We will acknowledge all complaints of a potential breach of planning control within three working days of receiving it. We will give the complainant the name and contact details of the enforcement officer who will be investigating the complaint, and the case reference number.

**5.2** Contact with the complainant, and the person who it is alleged has breached planning control will be in the appropriate format, in writing, by telephone or face to face.

**5.3** The Enforcement Officers investigate alleged breaches of planning control on a geographical basis. They have therefore gained knowledge of an area and history of a site. Where a case involves minerals and waste and also other enforcement issues, an officer will investigate with expert advice from other Council officers and external agencies.

**5.4** We will visit all sites within the timescales of priorities as detailed in Section 4. This is:

- Within one working day for high priority cases for example allegations of unauthorised works to a listed building
- Within 5 working days for medium priority cases for example allegations of unauthorised development causing serious harm to the amenities of a neighbourhood
- Within 10 working days for low priority cases for example allegations of an unauthorised outbuilding

**5.5** We are authorised under the Town and Country Planning Act to enter land, without a warrant, to ascertain whether a breach of planning control has occurred, or been resolved or whether a formal Notice has been complied with. However we are required to give 24 hours notice to the occupier in the case of access to a dwelling house.

**5.6** Within 10 working days of receipt of a complaint we will make an initial assessment of the allegation of a breach of control. This may include: -

- That no breach of planning control has occurred
- That a further site visit or further investigation is required
- That a breach of planning control has occurred and negotiation with the owner/developer is required
- That urgent action should be taken in order to prevent further harm to the amenities of a neighbourhood

### **Ward Member Notification and Delegation**

**5.7** For all new complaints in their Ward, we will notify the relevant Councillors as soon as possible, and at the latest within 2 working days of receipt of complaint. This notification

will consist of the address and the alleged breach of planning control. In most cases no investigation will have taken place at this stage.

**5.8** Following investigation of the complaint we will notify the relevant Ward Councillors as soon as a breach has been established. This notification will include site details, the breach of planning control and a note of action taken to resolve the breach.

**5.9** For cases where we have taken formal action, for example serving an Enforcement Notice, we will provide a brief update to Councillors through a report on the Development Management Committee agenda and will include for each case the breach of planning control, when a Notice was served, when it has to be complied with, whether an appeal has been submitted, and further notes and action.

**5.10** Certain planning enforcement functions have been delegated to officers so that officers can make decisions on behalf of the Council without reference to Committee. However if formal enforcement action is proposed then this is subject to prior consultation with the Council's Managing Lawyer, and subject to the agreement of the Planning Enforcement Team Leader, and the Minerals & Waste Team Leader (where applicable) and notifying Ward Members.

**5.11** The time it takes to resolve each enforcement investigation will vary depending on: -

- The nature of the alleged breach
- The extent of investigations that need to be carried out
- The harm which is being caused
- The resources that are available

**5.12** Some cases can take a considerable time to resolve, for example due to full investigation, negotiation or formal enforcement action. However, we aim to resolve and close 80% of cases within 6 months of the receipt of the complaint.

**5.13** We will keep interested parties informed throughout the investigation of complaints at key stages either in writing or by phone call.

**5.14** We will inform Ward Members when an appeal against a formal Notice is submitted. An appeal holds any further action on non compliance with the Notice in abeyance. We will also inform Ward Members when a Notice is complied with, and if it has not been complied with, and what further action is proposed.

## **Non compliance with formal Notice**

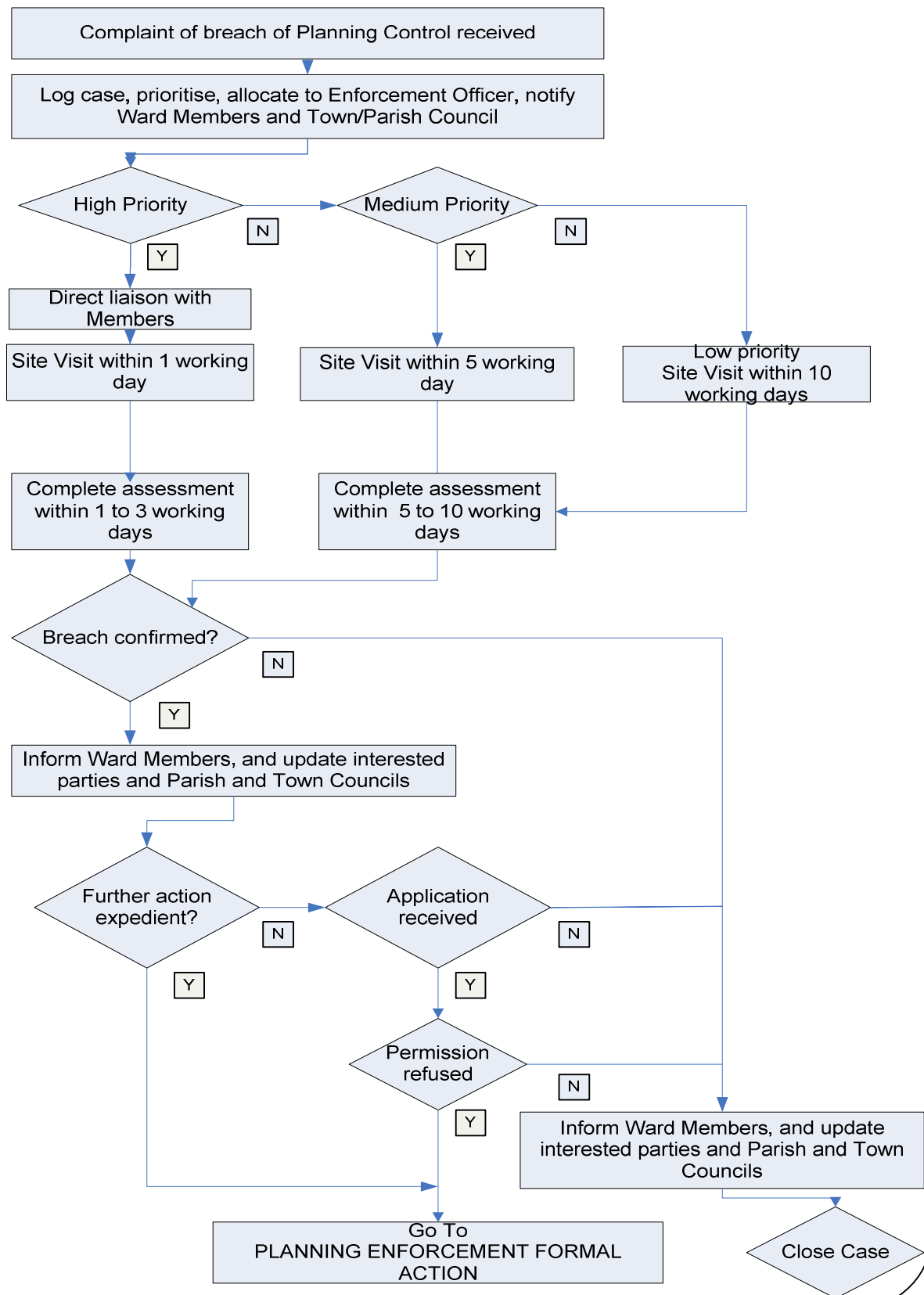
**5.15** Where a formal Notice has been served, for example an Enforcement Notice, we will check compliance with the Notice on the compliance due date. If the Notice has not been complied with a report will be prepared and submitted to the Council's Solicitor for consideration of commencing prosecution proceedings, and the persons responsible will be informed of this action. In such cases external circumstances will be taken into consideration that may affect compliance with a Notice, for example weather conditions or personal circumstances, so that action taken by the Council is proportionate, and is in the public interest, and complies with the Equalities Act and the Human Rights Act.

## **No breach or not expedient to take further action**

**5.16** After undertaking an investigation we may decide not to take any further action. This might be because there is no breach of planning control or the works might be within the amount of development that can be carried out without planning permission. The exact details of what is 'permitted development' are set out by Central Government in the Town and Country Planning (General Permitted Development) Order 1995) and subsequent amendments.

We may decide not to pursue an enforcement investigation, even if there is a technical breach of planning control, because it is 'not expedient' to take action. This might be because the breach is minor and the harm it causes is not significant, and in our opinion formal action would not be in the public interest. In reaching such a decision we must balance the harm being caused against the likely success of any formal action. If there are other issues involved, for example noise nuisance we will refer the matter to the appropriate department to investigate. When deciding that it is not expedient to take planning enforcement action, a judgment will be made on the planning issues involved, the relevant government and local planning policies, the likelihood of planning permission being granted, and the likelihood of permission being granted on appeal. If it is decided that it is not expedient to take further action, then we will close the case file and notify everyone who has been involved in the investigation. We will also, without prejudice to the outcome, notify the owner that they can make a planning application to seek regularisation.

## Flow Chart 1 – Planning Enforcement Process



## 6 Enforcement action for breaches of planning control

See Flowcharts 2 and 3 on pages 18 and 19 for planning enforcement formal action

**6.1** After we have received and undertaken an investigation and established that there is a breach of planning control, we have a number of options available to assist in resolving the breach. Wherever possible we will try to resolve the breach through negotiation and compliance, but where this fails and it is considered expedient, we can take formal action straight away.

**6.2** If the unauthorised development is on Council owned land or highway land then any breach will be dealt with by the Council's assets or highways teams who will consider wider issues and action accordingly as owner of the land.

### Minor breaches

Not expedient to take formal action

**6.3** If the breach is deemed to be minor, and in planning terms has no significant impact on the neighbourhood, we may decide not to take any further action as it is considered that it is not expedient to do so. If the unauthorised development is such that it is in line with the relevant Development Plan policies, the Council will usually invite a "retrospective" application for planning permission. If it appears that the breach may be immune from enforcement action due to the passage of time, an application for a Lawful Development Certificate will be sought.

### Major breaches

Expedient to take formal action

**6.4** If planning permission is unlikely to be granted for the unauthorised development because of its detrimental impact on the neighbourhood then the Council will ask for the use to cease, or unauthorised development to be removed. The person(s) responsible for the unauthorised development will be made aware that formal action will be taken by the Council.

**6.5** Officers have delegated powers to issue formal notices if it is expedient to do so having regard to the development plan and other material considerations. The Council must be able to justify taking formal action, and be sure that the steps specified in the notice and the period for compliance with each step is reasonable, so that the Council can justify the action taken in the event that an appeal is lodged against the formal notice.

**6.6** When formal enforcement action is to be taken, we will seek to ensure that all people served with notices, including for example those with low literacy rates, or disabilities, understand what action is to be taken, and what is required by the notice.

**6.7** The following formal action may be taken:

## **Planning Contravention Notice**

**6.8** This is the main method for The Council to obtain information on a suspected unauthorised development. It will set out a list of questions about the site, the development and land ownership. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

## **Section 16 Local Government (Miscellaneous Provisions) Act 1976 and Section 330 Town and Country Planning Act 1990**

**6.9** These are primarily intended to establish information about the ownership and other interests in the land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

## **Breach of Condition Notice**

**6.10** In the first instance we would normally negotiate with the developer to try to secure compliance with conditions. If it is considered expedient to do so we will serve a Breach of Condition Notice on the developer or occupier of land when they do not comply with conditions imposed on a planning permission. There is no right of appeal to the Secretary of State against a Breach of Condition Notice. We will use this procedure in preference to the service of Enforcement Notices where appropriate. It is a criminal offence to fail to comply with a Breach of Condition Notice within the period for compliance specified.

## **Enforcement Notice**

**See Flowchart 3 on page 19 for planning enforcement formal action for Enforcement Notice.**

**See page 20 for Enforcement Notice case study**

**6.11** We will serve an Enforcement Notice on the developer, land owner or any one with an interest in the land when we are satisfied that there has been a breach of planning control and that it is appropriate to take formal action. Two Notices may be served to cover all breaches of control involving use of land and development and minerals and waste. The persons served with the Notice(s) must take the specified steps within a set time period. Failure to comply with an Enforcement Notice is a criminal offence, but there is a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient(s) lodge an appeal, we will tell all interested parties of the appeal and how they can make representations to the Planning Inspectorate. Once an Enforcement Notice has come into effect it is a criminal offence to fail to comply with it within the period specified.

## **Appeal against an Enforcement Notice**

**6.12** There is a right of appeal to the Secretary of State against an Enforcement Notice. If an appeal is submitted any further action is held in abeyance pending the outcome of the appeal. The Planning Inspector appointed by the Secretary of State may decide to uphold the appeal and quash the Enforcement Notice, grant planning permission for what is alleged in the Notice, dismiss the appeal, or dismiss the appeal but make revisions to the Enforcement Notice. If the appeal is dismissed, new periods of time to comply with the Notice will apply.

## **Planning Enforcement Order**

**6.13** The Localism Act has introduced the power for Local Planning Authorities to apply to the Magistrate's Court for a Planning Enforcement Order. We can apply for a Planning Enforcement Order if we discover a breach of planning control that has been concealed from the Council. If the Order is made by the Court we then have a further year in which to take formal action such as serving an Enforcement Notice. A Planning Enforcement Order is useful in situations where a use or development would become immune from enforcement action due to the passage of time (see paragraph 6.21), and where the Council can prove that the use or development has been deliberately concealed.

## **Section 215 Notice**

**6.14** We can serve these in relation to untidy land or buildings if it appears that the condition of the land or buildings has a detrimental impact on the amenity of an area. The use of Section 215 Notices is discretionary and the Enforcement Officer would decide if a Notice is appropriate in a particular case taking into account all the local circumstances and if it is in the public interest. The Notice requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. Recipient(s) have a right to appeal to a magistrates' court if they consider the serving of the notice is unjustified. Failure to comply with the notice is an offence.

The following criteria and issues will be taken into account when assessing buildings or land for S215 action:

- The condition of the building, structure or land
- The location and prominence of the building, structure or land
- The historic or architectural importance of the building, or the affect of untidy land on the setting of adjoining historic buildings
- The impact on the street scene and general amenity
- The impact on a Conservation Area, if the land or building is situated within or adjoining one

Where areas such as town centre's are pro-actively identified for action under S215, the buildings and land will be assessed and scored according to the above criteria, and prioritised for action. Buildings or land with the highest score will be actioned first. In the first instance the landowners and occupiers will be informed in writing of the action they are required to take. They will be given 21 days to comply, after which we will decide if it is expedient to serve a formal S215 Notice.

## **Temporary Stop Notice**

**6.15** We can serve these where we consider it is necessary to stop the unauthorised activity or development immediately to safeguard the amenity of the area and prevent further irreparable harm. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. A Temporary Stop Notice can only stop any further development or use of land, it cannot require unauthorised works to be removed and it cannot prohibit the use of a building as a dwelling. A Temporary Stop Notice may now be served to prohibit the unauthorised stationing of caravans used as main residences. Before serving a Temporary Stop Notice for caravans used as main residences the Council will need to demonstrate that such action is proportionate having regard to the principles of the Human Rights Act and the Equality Act. A Temporary Stop Notice has effect for up to 28 days while we would consider what further enforcement action is necessary. There is no right of appeal to the Secretary of State but a judicial review can challenge the validity and propriety of our decision. Compensation may be payable for financial loss if the development or use of land is held to be lawful by granting a lawful development certificate.

**6.16** At Appendix 1 is a copy of the Department for Communities and Local Government document “Dealing with illegal and unauthorised encampments”. This document summarises the various powers available to local Council’s and the Police, including Temporary Stop Notices as one of these powers.

## **Stop Notice**

**6.17** We can serve these with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not come into effect until three days after we have served it. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, there is no right of appeal and failure to comply with the notice is an offence.

## **Injunction**

**6.18** We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. We can seek an injunction whether or not other enforcement action(s) have been taken. However, the Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.



## Prosecution

**6.19** We can commence Court proceedings if a formal notice has not been complied with within the specified period. We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors: -

- The evidential test. We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.
- The public interest test. We will only bring a prosecution where this is in the public interest, and other methods of seeking compliance with a Notice have failed.

Court proceedings can take a considerable time, and further action may still be required to seek compliance with a Notice. A prosecution may be the Council's last resort, as the Council aims to resolve the breach of planning control and the harm this has caused to the neighbourhood, and not just to seek to punish those responsible for the breach of control.

## Direct Action

**6.20** We do have the power, in special circumstances and as a last resort, to ensure a formal notice is complied with by carrying out the required steps ourselves in default of the owner or occupier's action. We would consider direct action for example where a Section 215 (untidy land) Notice has not been complied with. We will seek to recover costs incurred from the owner. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry.

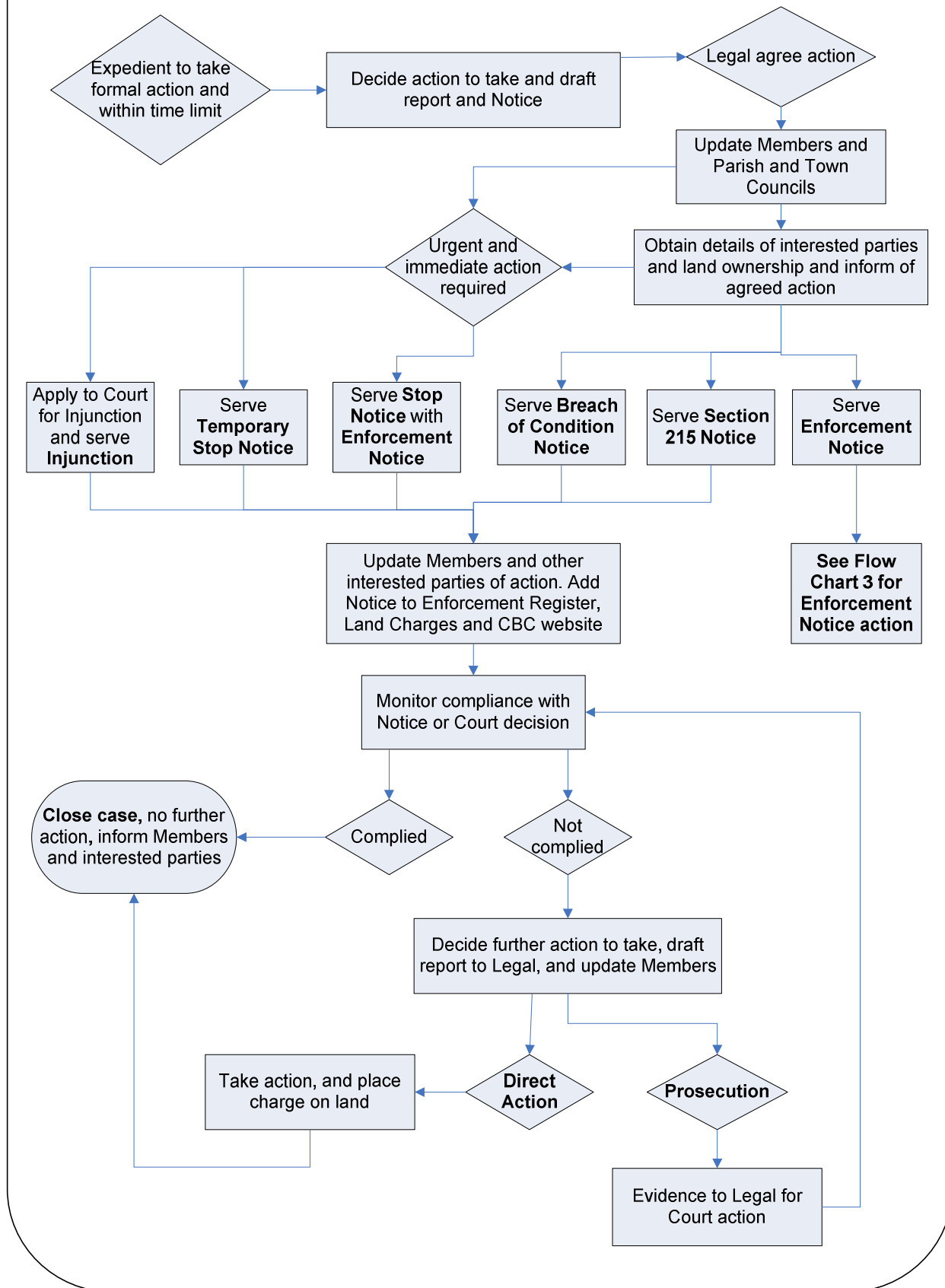
## Time Limits for taking Enforcement Action

**6.21** Under Town and Country Planning legislation there are time limits with regard to when enforcement action can be taken, but please see paragraph 6.12 for concealed uses and development. Development involving the erection of a building or structure or the change of use of a building to a dwelling is immune from enforcement action after four years from the breach of planning control. All other changes of use of land or buildings and breaches of conditions are immune from enforcement action after ten years from the breach of planning control (where continuous). There are no time restrictions to the issue of Section 215 (untidy land) Notices or action against unauthorised works to a listed building.

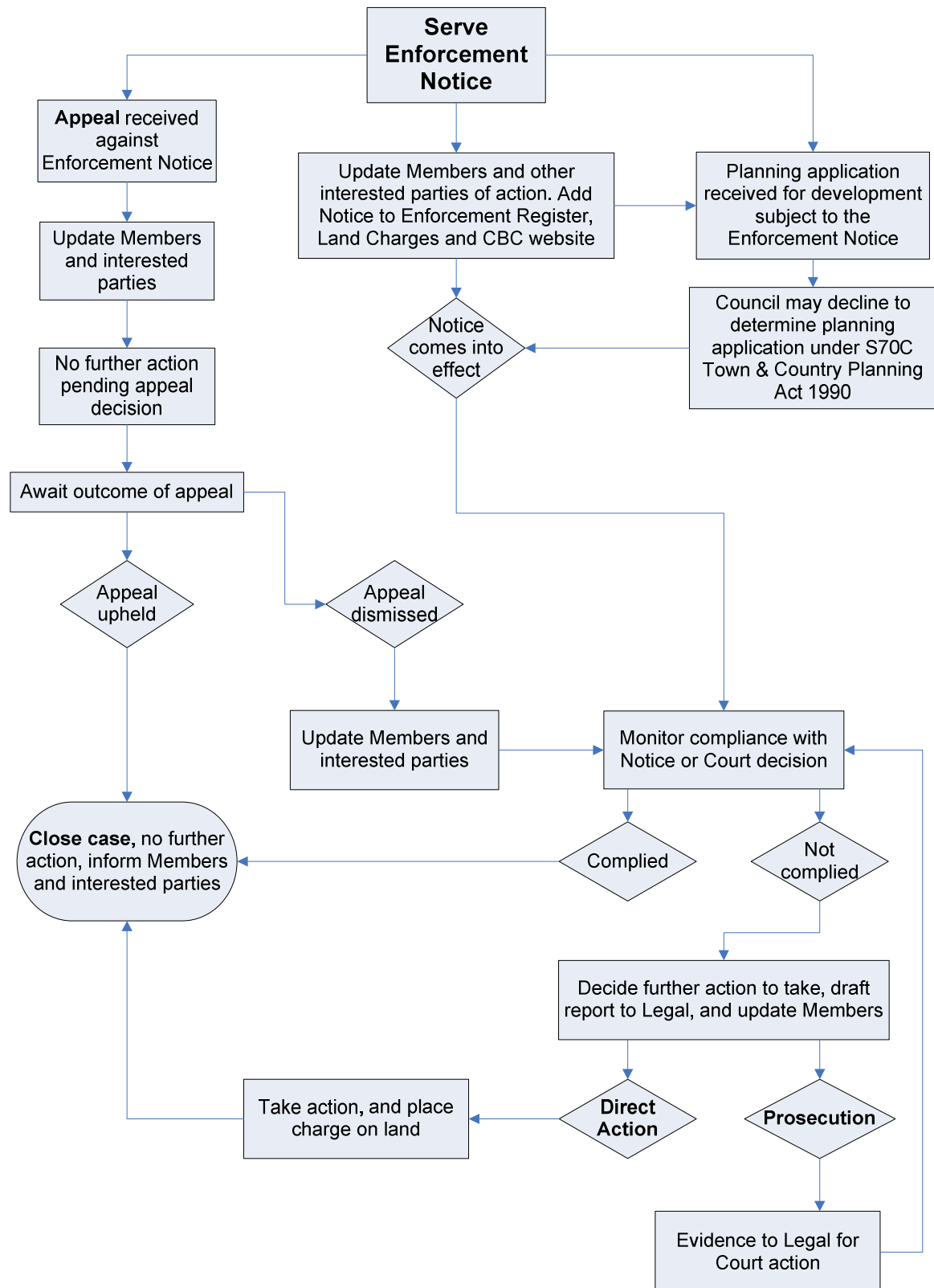
## Planning Enforcement Register

**6.22** When enforcement action has been taken, (for example serving an Enforcement Notice), the details are entered into the Planning Enforcement Register which is available for public inspection on the Councils website at <http://www.centralbedfordshire.gov.uk/>

**Flow Chart 2 –  
Planning Enforcement Formal Action**



**Flow Chart 3 –  
Planning Enforcement Formal Action for Enforcement Notice**



## Enforcement Notice Case Study

### March 2012

Complaint from a neighbour received by the Planning Enforcement Team that a large building has recently been constructed in the rear garden of a neighbouring dwelling house, and that the building is being used as a gym by members of the public. The neighbour complains of increased noise and disturbance from traffic and people using the gym.

Enforcement case opened, all details of complaint recorded but kept confidential. Assessment of site history and planning history shows that there are no previous planning permissions for the building or its use.

Site visited, owner/occupier interviewed, and measurements taken of building. Initial assessment of case reveals that the building is permitted development not requiring planning permission providing it is used for residential purposes for the dwelling house. The use of the building is assessed as being for leisure purposes as a gym for use by members of the public who pay. This is not considered as low key working from home incidental to the residential use of the dwelling house because of the impact the gym has on neighbouring properties. This use requires planning permission, permission has not been granted, therefore there is a breach of planning control. It is considered that planning permission is unlikely to be granted due to the impact on neighbours.

### April 2012

Breach of planning control is confirmed as a change of use of the outbuilding to use as a gym without planning permission. It is decided that it is expedient to take formal enforcement action because of the impact of the use that is contrary to Council and Government Policies and is unlikely to gain planning permission. Interested parties are notified, including Ward Members and Parish Council. Owner/occupier informed that formal enforcement action is to be taken if the use does not cease within a short timescale.

### May 2012

Further site visit reveals that the gym use continues. A Land Registry Search or a Requisition of Information is carried out to find out the land ownership position because the Enforcement Notice must be served on all persons with an interest in the land.

Action report and Enforcement Notice is drafted and agreed with Council's Solicitor.

### June 2012

Enforcement Notice is served on all persons with an interest in the land. The Notice has to have a period of time (not less than 28 days) before it takes effect, as the owner/occupier has the right to appeal against the Notice within the 28 days before it comes into effect. The Notice comes into effect in July 2012 and requires the use to cease within 2 months, (September 2012).

### July 2012

A planning application is received by the Council to retain the use of the building as a gym for use by members of the public. The Council declines to determine this application as it is for the same use that the Council requires to cease in the Enforcement Notice.

An appeal against the Enforcement Notice is submitted to the Planning Inspectorate within 28 days of the Notice being served, and before the Notice comes into effect.

The Planning Inspectorate accepts the appeal and decides that the appeal will be determined by a public Hearing. The appeal process now holds further enforcement action in abeyance pending the outcome of the Hearing and the Planning Inspector's decision.

The Enforcement Notice has been appealed on several grounds, including that planning permission should be granted, that a change of use has not taken place because the gym is incidental to the residential use of the dwelling house, and that the 2 months time for compliance with the Enforcement Notice is too short.

All interested parties, Ward Members and neighbours are notified of the appeal and how they can submit their comments to the Planning Inspectorate.

### **September 2012**

All appeal statements and further comments are prepared and submitted to the Planning Inspectorate who set an appeal Hearing date for December 2012. All interested parties including Ward members are notified.

### **December 2012**

The appeal Hearing takes place and the Inspectors decision is awaited.

### **March 2013**

Appeal decision received. The appeal is dismissed, planning permission is refused, and the Enforcement Notice is upheld, but the time for compliance is extended to 6 months from the date of the appeal decision to allow the owner time to relocate the business to alternative premises. The compliance date is September 2013.

### **September 2013**

Site visit takes place to check compliance with the Enforcement Notice. The business use has ceased and the outbuilding is now used for purposes incidental to the residential use of the dwelling.

The planning enforcement case is closed, the breach of planning control is resolved, and all interested parties are informed.

## 7 Monitoring Conditions and Planning Obligations

### Conditions on Planning Permissions

**7.1** Planning permission is granted subject to certain conditions. Some of these may require that details or action be taken before any development takes place. These are pre development conditions. Others may require action at a later stage during development or when development is complete. It is important that these conditions are complied with and discharged at the appropriate time in order that the permitted development proceeds in accordance with the approved plans and details.

**7.2** Conditions on planning permissions for mineral workings are monitored pro-actively by the Council's Minerals and Waste Team. When resources allow, the Council's Enforcement Team will pro-actively monitor pre development conditions on residential developments. The Council will also monitor conditions on residential developments relating to matters of strategic community benefit, such as the provision of play spaces. Other conditions will be monitored re-actively, that is when we receive complaints that a condition may have been breached. The Council will monitor compliance with conditions as follows:

#### 1. Pre development conditions

**7.3** These conditions require details or action before any work commences on the development. These conditions are highlighted in bold on the decision notice. Failure to comply with pre development conditions before development commences may invalidate the planning permission and/or lead to enforcement action.

Recent case law has sought to distinguish between conditions requiring no work to take place until certain actions have taken place or details submitted, and conditions which require details to be submitted before development commences. The former are true pre-development conditions. Case law will continue to influence our interpretation of pre-development conditions.

Some developments require building regulation approval as well as planning permission. From building control records we can check when certain developments have started, where the Council is carrying out the Building Control Service. Where an Approved Inspector is used for the Building Control Service we would check on site for works commencing. We will check that all pre development conditions on the corresponding planning permission have been discharged and complied with. If there are outstanding pre development conditions then we will action as follows: -

- If the outstanding details can be approved without invalidating the whole planning permission, then we will require that these be submitted within a certain time. The

developer will be informed that any further work would be at risk until these details are approved. If no details are submitted then we may serve a formal notice, usually a Breach of Condition Notice, to ensure compliance.

- If it is considered that pre development conditions cannot be discharged retrospectively, then the planning permission will be invalid and we may require all further works to cease on site until a new planning application is received, granted and pre development conditions discharged. A Temporary Stop Notice may also be served to ensure that no further work takes place, if it is considered expedient to do so.

## **2. Conditions to be discharged during development**

**7.4** Compliance with conditions will be monitored as development progresses either by the case officer or the monitoring officer to ensure that work progresses in accordance with approved plans and details. For example approval of materials and landscaping schemes.

Mineral extraction and landfill development can take place over an extended period, perhaps in excess of 20 years. In such cases it will still be necessary to monitor compliance with conditions throughout the course of the development.

## **3. Conditions following completion**

**7.5** Once the development is complete, monitoring of conditions would usually be as a result of a complaint received, for example that hours of operation are not in accordance with the hours permitted by a condition to the planning permission. This would be investigated as an alleged breach of planning control and may lead to either a Breach of Condition Notice or Enforcement Notice being served.

**7.6** When a breach of condition has been established an enforcement case will be opened and investigated which could lead to a Breach of Condition Notice or other formal notice being served.

**7.7** Current resources do not enable the planning enforcement team to monitor compliance with every condition on all planning permissions. If a decision is required as to whether a development is lawful, and has been built in accordance with a planning permission, an owner or occupier can apply for a Certificate of Lawful Development, which if granted would prove lawfulness.

## **Planning Obligations**

**7.8** Planning obligations are Planning Agreements or Unilateral Undertakings that relate to a development and aim to make the development acceptable.

**7.9** Planning Agreements, also known as Section 106 Agreements, are agreements made between the Local Planning Authority and a developer. Unilateral undertakings are made by the developer. Both aim to make proposed development acceptable and accord with planning policies. Such obligations may restrict development or use of land, may require certain operations to be carried out, or may require payments to be made to the Authority.

**7.10** The Council monitors the planning obligations to ensure that operations are carried out and payments made within the required timescales.

**7.11** Planning obligations run with the land so if the terms of an obligation are not complied with any enforcement action may be taken against persons acquiring an interest in the land. Should there be a breach of a formal obligation there are three methods of enforcement open to the Council:

- We can apply to the Court for an Injunction. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.
- We can enter the land to complete works and will seek to recover costs where certain operations or works have not been carried out, but must give at least 21 days notice of our intention.
- We may place a charge on the land in order to assist the Council in proceedings to recover costs incurred.



## **8 Enforcement Action for Advertisements, Listed Buildings and Protected Trees**

### **Advertisements**

**8.1** The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007. Advertisements are divided into three main groups: -

- Those advertisements that have express consent are excluded from local planning authority control.
- Those that have 'deemed consent' so that the planning authority's consent is not required provided the advertisement meets certain criteria.
- Those for which the local planning authority's express consent is always needed.

**8.2** The rules are complicated and seek to control amongst other things the height, size, and illumination of advertisements. It is an offence to display an advertisement without the consent required and it is open to the Council to take a prosecution in the Magistrates Court for an offence under the Advertisement Regulations. An advertisement that has been displayed for more than ten years is immune from action.

**8.3** The planning enforcement team will pro-actively target unauthorised roadside advertising, where we will seek to remove unauthorised advertisements adjoining the major roads within Central Bedfordshire and which are causing harm to the amenity or public safety of the area.

**8.4** The Council may invite the person responsible for the unauthorised advertisement to apply for consent if consent is likely to be granted. An application to display an advertisement is decided in the interests of amenity and public safety. The continued display of an advertisement without consent, or after consent has been refused, may well result in prosecution. On conviction a fine may be imposed by the Court with an additional daily fine on conviction of a continuing offence.

**8.5** The Council can remove or obliterate any placard or poster displayed illegally. We are required to give at least two days notice in writing, or other appropriate format, to anyone we can identify as being responsible for displaying unauthorised placards or posters that it is our intention to do this. The Council can also remove advertisement display structures providing it has first served a Removal Notice.

**8.6** We refer cases of unauthorised advertisements displayed on pavements or road verges to our Highways Section to take enforcement action to remove the advertisements.

### **Listed Buildings**

**8.7** The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of

buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation.

**8.8** It is an offence under the legislation to carry out unauthorised works to a listed building which could affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment. There is no time limit upon the Council to pursue Listed Building Enforcement Action.

**8.9** A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to the Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to a substantial fine on summary conviction.

## **Protected Trees**

**8.10** Under the Town and Country Planning legislation the local planning authority has the right to make provision for the preservation of trees in their area by making Tree Preservation Orders. Any unauthorised works to such protected trees is an offence, which is liable, on summary conviction, to a substantial fine under the legislation.

**8.11** Certain trees in Conservation Areas are also afforded a degree of protection under the planning legislation. Unauthorised work to and/or removal of such trees constitutes an offence. However the Council will exercise discretion in deciding whether or not it is appropriate to pursue prosecution.

**8.12** In addition to the criminal penalties for unauthorised works to protected trees, the landowner is also under a duty to replace a protected tree that has been removed. If this is not complied with the Council may serve a Tree Replacement Notice requiring a new tree to be planted or the Council may do the work and recover costs from the landowner.

## **9 Conclusion**

**9.1** It is the Council's policy to provide a reliable, efficient and good quality corporate planning enforcement service, maximising the use of the resources available. The Planning Enforcement Team will respond to complaints received, investigate, and take appropriate action having regard to material planning considerations. When resources allow, the planning enforcement team will also take a pro-active approach and use enforcement powers to seek environmental improvements.

**9.2** The Planning Enforcement Team can be contacted at Priory House, Chicksands, Shefford SG17 5TQ, telephone 0300 300 8307 or 0300 300 8000.

**9.3** The Minerals and Waste Team can also be contacted at Priory House, Chicksands, Shefford SG17 5TQ, telephone 0300 300 8307 or 0300 300 8000.