



# Development Management and Planning

# Local Enforcement Plan

**June 2024**

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## 1.0 Introduction

**1.1** Dacorum covers 81 square miles of West Hertfordshire, extending from the M25 on the outskirts of Watford, northwards to the Chiltern Hills. In addition to its principal town of Hemel Hempstead, the Borough contains the market towns of Berkhamsted and Tring, numerous villages all with their distinct characters, a large area of the Metropolitan Green Belt, and scenic parts of the Chilterns Area of Outstanding Natural Beauty.



**1.2** In 2015 Dacorum was home to approximately 149,700 people, making it the largest district in Hertfordshire. The Council’s vision is “Working in partnership to create a borough which enables the communities of Dacorum to thrive and prosper”. Planning is a key part of this growth agenda, seeking to deliver the homes, jobs and environment required by its residents of today and of the future.

**1.3** An effective planning enforcement service is vitally important in maintaining public confidence in the planning system by assisting in the delivery of the development that has been granted and in taking action against harmful development which has not been approved.

**1.4** As part of its commitment to the delivery of an efficient and effective planning enforcement regime, the Council has prepared this Local Enforcement Plan, in adherence with the National Planning Policy Framework (NPPF, December 2023).

## **2.0 Purpose of the Local Enforcement Plan**

**2.1** Paragraph 59 of the NPPF recommends that local planning authorities publish a local enforcement plan to demonstrate how it will “manage enforcement proactively, in a way that is appropriate to their area” and to show how:

- 1) the implementation of planning permissions will be monitored.
- 2) alleged cases of unauthorised development are investigated.
- 3) action will be taken when appropriate.

**2.2** As such, the purpose of this Local Enforcement Plan is as follows:

- To explain how we will investigate and tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area.
- To outline the Council’s planning enforcement priorities and timescales for action.
- To make all those concerned aware of our general approach to planning enforcement and what each of us can expect from the service.
- To outline the range of enforcement tools at our disposal.
- To explain the basis on which our planning enforcement decisions are made.
- To detail our approach to pro-active monitoring.

## **3.0 Core Planning Enforcement Principles**

**3.1** The Planning Enforcement service will undertake its functions in accordance with the Values that drive Dacorum Borough Council as a whole.

### **Take responsibility**

**3.2** Officers will take all matters raised to us seriously and will investigate alleged breaches of planning control in accordance with the procedures outlined in this Plan. However, it is necessary for Planning Enforcement to balance the demands on our services against the resources available to it. Consequently, it is important to note that the authority will not always take action when there is a breach of planning control.

**3.3** When conducting investigations we will take action that is proportionate to the harm being caused by the breach of planning control. It is a well-established principle that enforcement action should be remedial rather than punitive. As such there will be cases where no action is required, or where it is more appropriate to seek a voluntary resolution or to regularise a matter through requesting a retrospective planning application, providing that an appropriate resolution can be achieved in a timely manner.

**3.4** Conversely, where immediate and/or formal action is required, we will use the full range of powers and tools at our disposal. Where there is serious harm we will act swiftly and robustly to resolve it. Normally we will prosecute individuals or organisations who do not comply with any formal notice served on them, and when appropriate will take direct action, having regard to the degree of harm and impact on public amenity.

### **Be positive**

**3.5** When presented with a new planning enforcement query Officers will investigate with an open mind, seeking to establish the facts and evidence behind the case. Should a breach of planning control be confirmed, Officers will usually seek to resolve the matter through negotiation and will attempt to maintain an open dialogue with the parties concerned. The commencement of formal action will be seen as a last resort where informal action has not resulted in a satisfactory outcome, or where informal action would not be appropriate because of the level and/or immediacy of the harm being caused.

**3.6** Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. Whilst the question of 'expediency' will be assessed on a case-by-case basis, we will nevertheless seek to close very minor, trivial or technical breaches as soon as possible.

**3.7** Dacorum Borough Council is a signatory of the Hertfordshire Local Enterprise Partnership's "Better Business for All" charter, which establishes a framework for regulatory services to work with businesses to help them meet their statutory requirements and to prosper. When dealing with business, charities, or other organisations we will, in the first instance, look to provide advice on issues of compliance and planning regulations. We will

seek to minimise the impact of planning enforcement action on business by ensuring that any action taken is proportionate to the harm being caused.

### **Work with others to deliver a great service**

**3.8** Planning deals on a daily basis with a wide range of stakeholders, ranging from internal departments such as Environmental Health, Licensing and Housing to external bodies such as Hertfordshire County Council, the Environment Agency and The Health & Safety Executive. We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays. We will ensure that DBC Councillors are notified of significant cases in their Ward and are provided with a copy of any Notice served.

**3.9** It is also important to remember that planning enforcement can only deal with breaches of planning control. There will be matters such as the large-scale movement of waste, anti-social behaviour, noise, etc. where other internal departments and external bodies would have the legislative powers to take action. In such cases, we will explain why the matter raised has been referred to a body better placed to deal with it.

### **Be reliable**

**3.10** There is no doubt that planning enforcement can be a stressful time, both for those who are subject to an enforcement investigation and to those affected by unauthorised development. It is therefore important that we 'do what we say we will, when we say it will be done'. We will undertake first site visits in accordance with the Schedule of Priorities outlined in this Plan. When asked, we will provide honest and realistic timescales for completing a particular stage of a Planning Enforcement investigation.

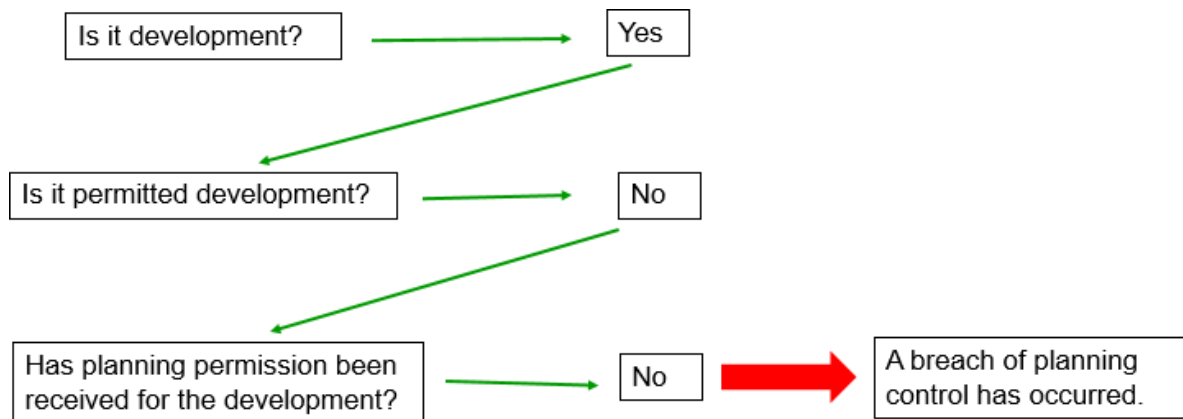
**3.11** In the interest of transparency, we will seek to provide an online register of Planning Enforcement Notices, to be read in conjunction with the Quarterly Planning Enforcement Report, which presents to the Development Management Committee a full list of current formal enforcement action and the latest situation.

**3.12** We will carry out our duties in a fair, equitable and consistent manner. We will consider each case brought to our attention on an individual basis and it must be noted that Officers will be expected to exercise judgement in reaching a conclusion. However, we will take a consistent approach to enforcement action in relation to cases of a similar nature and circumstance. This will be achieved through internal sign-off and delegated authority processes.

## 4.0 What is a breach of planning control?

**4.1** A breach of planning control is where a person carries out development (as defined by s.55(1) of the Town and Country Planning Act (TCPA) 1990) to land or buildings without the required planning permission, i.e. it is not permitted development, or fails to comply with a condition or limitation of a granted planning permission.

**4.2** This is, in effect, a three-stage process, requiring an answer to the following three questions:



**4.3** The majority of planning enforcement investigations therefore involve one of the following alleged breaches:

- Building works or engineering operations carried out without planning permission.
- Unauthorised change of use of land or buildings.
- Development which has not been carried out in accordance with an approved planning permission.
- Failure to comply with a condition or legal obligation attached to a planning permission.
- Any contravention of the limitations on, or conditions belonging to, permitted development rights, set out in the Town and Country (General Permitted Development) Order 2015 (GPDO) (as amended).

**4.4** It is important to note that it is **not** a criminal offence to carry out development of land without first obtaining the necessary planning permission.

**4.5** Although not strictly a breach of planning control as described above, other matters which are dealt with by the Planning Enforcement Team include:

- Works carried out to a listed building, which affect the historic character or setting, without the benefit of listed building consent.
- Removal of, or works carried out on, protected trees and hedgerows without consent being granted or proper notification given.
- Display of advertisements without the required consent.
- Failure to comply with the requirements of an Enforcement Notice, which has taken effect, within the timescales stated on the Notice.

**4.6** The matters listed above **are** criminal offences, for which the Council could commence prosecution proceedings.



## 5.0 What is not a breach of planning control?

5.1 There are several matters that the Planning Enforcement Team are unable to investigate because they are dealt with by other external bodies or internal departments. Some examples of this are as follows (together with the relevant organisation):

- The parking of vehicles on the highway (Hertfordshire County Council).
- Dangerous structures (Building Control).
- Disputes between neighbours relating to land ownership or the siting of boundaries (civil matter).
- Unsafe construction practices (Health & Safety Executive).
- High hedges (Dacorum Borough Council, Environmental Health).
- Bonfires (Dacorum Borough Council, Environmental Health).

5.2 There are also matters which, during the course of a planning investigation, it becomes established that no breach has occurred. This is usually for one of the following three reasons:

- 1) *The matter we have been asked to investigate is not development.* This could include internal refurbishments of buildings which are not listed, or trivial external alterations (for example the installation of a cat flap on a rear door or the installation of a TV aerial), or domestic structures that can be easily removed (such as play equipment in a garden).
- 2) *The matter we have been asked to investigate is permitted development.* The GPDO details the works (in terms of both construction and changes of use of buildings and land) which do not require planning permission. These are wide-ranging rights, including works to residential properties, commercial facilities, telecommunication installations, etc.
- 3) *The matter we have been asked to investigate already has planning permission.* For example, the enforcement investigation establishes that the height of a building is as per the approved drawings, or that the trees planted match those approved in a condition attached to a planning permission.

5.3 In addition to the above, it is important to note that The Planning and Compensation Act 1991 (part of the TCPA) introduced rolling time limits within which the Council can take planning enforcement action against historic breaches of planning control. The Levelling up and Regeneration Act 2023 (LURA) introduced a new provision that came into force on the 25<sup>th</sup> April 2024 which removes the 4 year rule. This means any breaches including building works and the change of use of a building, or part of a building, to use as a single dwellinghouse substantially completed after 25<sup>th</sup> April 2024 is only immune after 10 years from the date of substantial completion.

5.4 Immunity previously consisted of the '*four-year rule*' (in respect of building works and the change of use of a building, or part of a building, to use as a single dwellinghouse) or the '*ten-year rule*' (in respect of all other changes of use and breaches of conditions). These time limits do not apply where the Council considers that the unauthorised development has been deliberately concealed (see Planning Enforcement Order in Appendix A).



## **6.0 How to Report a Breach of Planning Control**

**6.1** If you need to report an alleged breach of planning control, our preferred approach is that this is completed using the web-form on the planning enforcement pages of the Council's web site:

<http://www.dacorum.gov.uk/home/planning-development/planning-enforcement>

**6.2** The completion of the web-form enables Officers to receive the relevant information clearly, and therefore will allow a speedier and more efficient commencement of the planning enforcement investigation.

Address: The Forum, Marlowes, Hemel Hempstead, HP1 1DN

**6.3** We will normally not respond to anonymous calls or letters and therefore we will ask that all enforcement service requests are made using the online E-Form if you do not have access to the internet please call our customer services team to generate a E form with you over the phone. Producing this E form helps in monitoring the number and type of cases received and may be useful later on, if formal action is pursued. During an enforcement investigation, the identity of a complainant is kept confidential, so you may write to the Council with confidence. Please note that repetitive or vexatious reports will not be investigated.

## 7.0 The Planning Enforcement Investigation

7.1 How we will undertake a Planning Enforcement investigation will be determined firstly by the priority of the case, and secondly by the scale and severity of the harm being caused.

7.2 Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably as does the time taken for their resolution. It is for this reason that it is not possible to give a standard time for conclusion of enforcement cases.

### Our Priorities

7.3 The Council must ensure that the limited resources at its disposal are used in the most efficient way in relation to planning enforcement.

7.4 When a breach of planning control is received, a senior officer in the enforcement team will allocate the job to a member of the team and will assign it a priority level. Broadly, our priorities can be summarised as:

1. **High priority** - Significant harm - for example, active works involving unauthorised development which is causing immediate or irreparable harm, such as unauthorised works to a Listed Building or the felling of a protected tree, or to the environment, especially sensitive sites such as SSSIs, AONBs, and Wildlife Sites. **These cases will be visited within 1 working day of receipt of the report.**
2. **Medium priority** - Some harm - for example, unauthorised development which causes some harm to the locality in terms of loss of amenity or unauthorised uses of existing buildings. **These cases will be visited within 10 working days of receipt of the report.**
3. **Low priority** - Little to no harm - for example minor breaches such as fences or outbuildings marginally in excess of approved tolerances, adverts or breaches of condition having no significant impact on the amenities of local residents. **These cases will be visited within 15 working days of receipt of the report.**

7.5 Priority levels are used so that the team are able to manage their workload and to ensure the most harmful developments are addressed when they occur. Some cases may require changes to their prioritisation level throughout the course of the investigation and as such, cases of all priority levels are given attention within the prescribed time period, to ensure the case is progressed positively.

7.6 For Priority 2 and 3 cases it may not always be necessary for the Case Officer to visit the site, for example, if a photograph of the offending advertisement was provided with the complaint.

### Information and evidence gathering

7.6 On the day that either a complaint or information is received about a possible breach of planning control it will be passed to a member of the planning enforcement team. An officer

will review the information and decide whether or not it is a planning matter. If it is not an issue covered by planning legislation then it may be possible to pass it to another department of the Council or external agency for attention.

**7.7** If it is established that the matter is planning related, then an enforcement file will be created, with the case given a unique reference number. The Planning Enforcement Officer allocated the case (the “Case Officer”) will make all reasonable efforts to undertake a full initial assessment of the matter. For example, in addition to the first site visit, they may:

- Research the planning history of the land/building in question.
- Seek further information from the complainant / witnesses.
- Contact other Council departments and external agencies who may have knowledge about the site in question.
- Seek to clarify certain points by researching appeal decisions and case law or by obtaining legal advice. This is particularly necessary when an assessment is needed to establish whether permitted development rights come into play or in establishing immunity against planning enforcement action.

**7.8** The Case Officer can also seek further information from the alleged offender. This could range from informal discussions on site to the serving of Notices, whereby the recipient is legally obliged to answer the series of questions contained within them, such as a Planning Contravention Notice or a Section 330 Notice (see Appendix A).

**7.9** Where Officers can find no evidence of a planning breach the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

**7.10** Even where a planning breach is established, it is important to highlight that it is not an offence to carry out works without planning permission (with certain exceptions for Listed Buildings and protected trees). Therefore, just because something does not have planning permission it does not necessarily mean that we will take action to stop it.

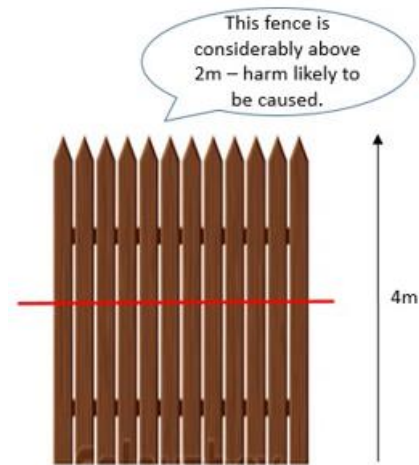
**7.11** If a planning breach is established then the Enforcement team has three principal courses of action. This will be assessed on a case-by-case basis and it must be noted that enforcement action is discretionary. Dacorum Borough Council should act in a proportionate way, depending on the scale of the breach and the resultant harm(s).

**7.12** For example, a typical rear garden fence can be erected up to 2 metres high without the need for planning permission. Anything erected above this height would represent a breach of planning control; however, the enforcement action taken would depend on how much above this height the fence has been erected. (Please note that the fencing example below is purely illustrative and the heights quoted are not determinative in the action to be chosen).

1. **Do nothing** – It is very important to emphasise that just because a breach of planning control has occurred that does not mean any harm is caused and therefore that any further enforcement action is warranted.

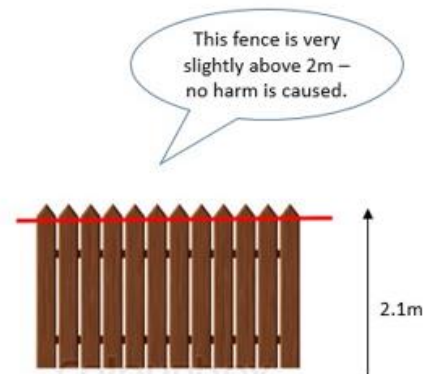
When the breach is trivial or where there is no doubt that planning permission would have been granted for the development concerned it would not be expedient to pursue this matter.

Similarly, if the development is the result of a technical breach (for example, it would not have been a breach if the development had proceeded in a different order) then it is likely that taking no further action would not be in the public interest



2. **Informal action** – In many cases breaches of control can be rectified through negotiation rather than by more formal action and such an approach will be taken when this is seen to be the most reasonable way of dealing with a breach. This can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy.

For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it.

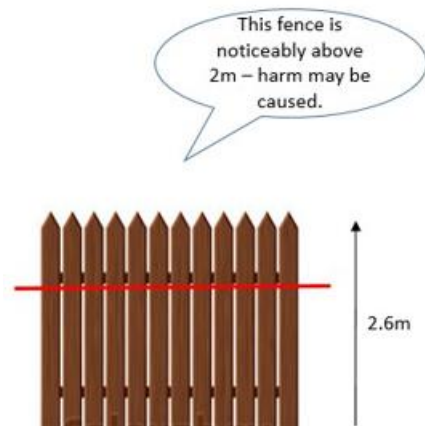


Alternatively, a planning application could be invited to allow an opportunity to secure retrospective planning permission for the development. Such an application should be treated in the usual way, and not be considered more or less favourably simply because it relates to development that has already been carried out.

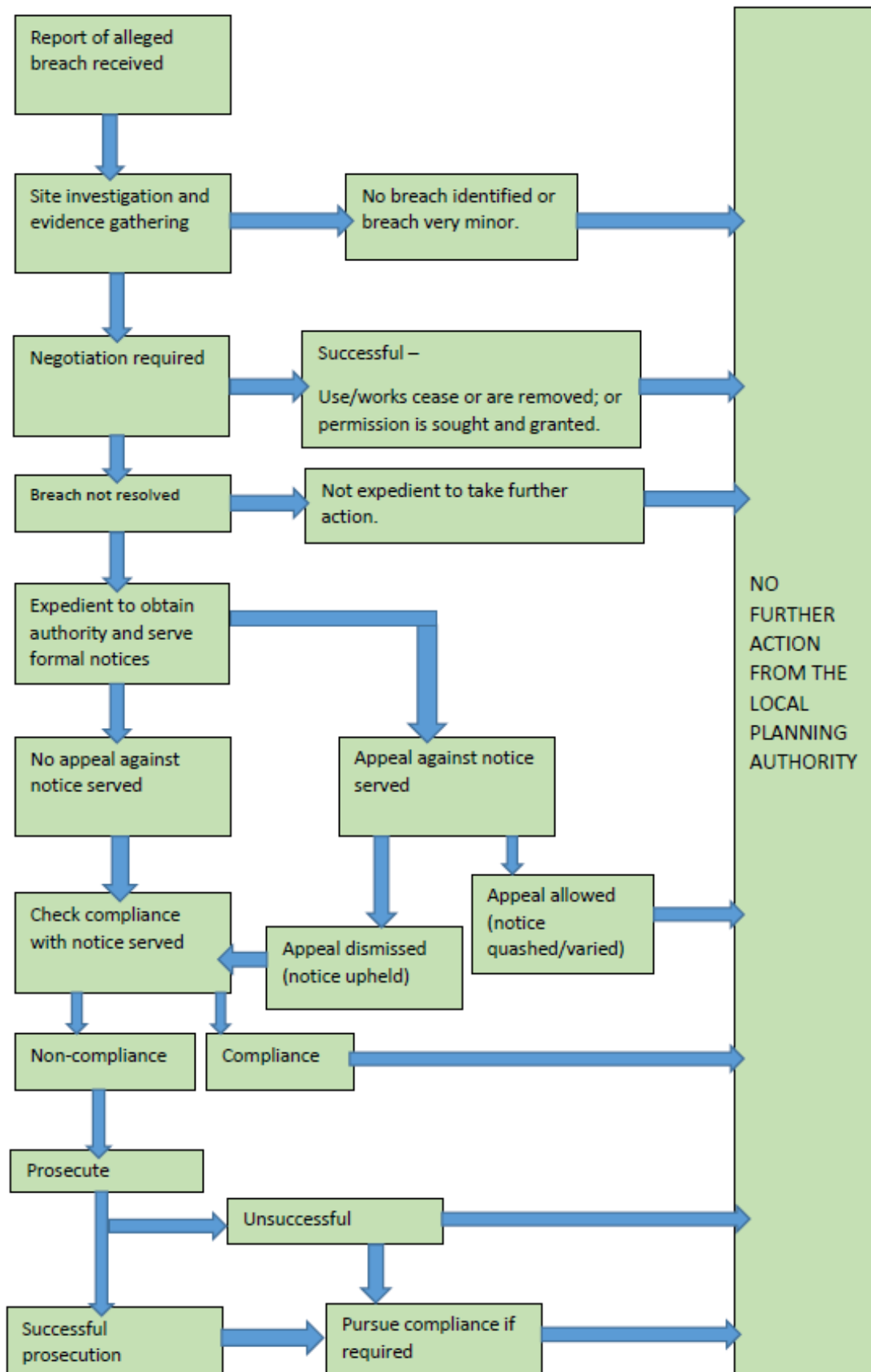
3. **Formal action** – The Enforcement team have a range of powers at its disposal should it consider that formal action is necessary, either due to informal action proving inconclusive or where such harm is caused that prompt formal action is required.

Where formal action is justified, any relevant evidence will be gathered and a report seeking formal action will be put to the Principal Planning Enforcement Officer.

If the recommendation is accepted, a formal notice will be served. The range of Notices available to the Planning Enforcement team are described in Appendix A



7.13 The following flowchart demonstrates the full planning enforcement process:



**7.14** Where it appears justified, any relevant evidence will be gathered and a report seeking authorisation to take formal action will be put to the Principal Planning Enforcement Officer (Assistant Team Leader – Planning Enforcement) or the Team Leader Planning Specialist Services. If the recommendation is accepted, a formal notice will be served.

**7.15** Decisions on whether to commence prosecution proceedings will be made by senior officers, in conjunction with legal advice, and in accordance with the Scheme of Delegation in the Council’s Constitution. Prosecution proceedings can follow the planning breaches outlined in paragraph 4.5 above. In certain cases it may be easier and more appropriate to take Direct Action (see Appendix A) to achieve a resolution. Where prosecution and/or direct action is appropriate we will give these cases priority, subject to departmental resources.

**7.17** Details of current live cases where formal Notices have been served and/or prosecution and injunctive proceedings undertaken are published on a quarterly basis as part of the Agenda for the relevant Development Management Committee.



## **8.0 What to Expect from Dacorum Borough Council**

**8.1** We will provide clear and concise information and advice to both the alleged offender and the reporter of the alleged breach, in order that the most expedient resolution can be found and so that both parties fully understand the process.

### **If you are the Alleged Offender:**

**8.2** Our Planning Enforcement Officers' principal aims are firstly to verify the existence of any breaches which have been reported. Secondly, to determine whether it is expedient to take any formal action or negotiate. Before determining what action is to be taken in respect of an enforcement enquiry, you will be given the opportunity to explain your position and to put forward any mitigating circumstances.

**8.3** Officers will always give clear advice, intended to be helpful, on what is needed to remedy a breach of control, and the various options available. We can offer advice on site, over the phone and via email. Advice will be limited and will usually be **a)** advice on whether planning permission would be likely (if a retrospective application was an option) or **b)** advice on how to remedy the breach of planning control.

**8.4** The majority of breaches are not serious. Nor are all breaches deliberate; some may occur simply through ignorance, mistake, misunderstanding or miscommunication. Some may be rectified by obtaining retrospective planning permission. Others may require relatively modest adjustments to structures to bring them within the scope of consent. As such, in many cases breaches of control can be rectified through negotiation, rather than by more formal action, and such an approach will be taken when this is seen to be the most reasonable and time-effective way of dealing with a breach.

**8.5** In some cases it may be considered more expedient to seek the submission of a retrospective application. This has the positive benefits of:

- i. regularising the development should the alleged offender wish to sell the property in the future;
- ii. providing an opportunity for all those with an interest in the development to comment as part of the planning application consultation period, and
- iii. avoiding delays with appeals against Notices, where permission may ultimately be given by the Planning Inspectorate (Secretary of State).

**8.6** Where a retrospective application is invited, you will normally be given 28 days for the submission of the application although a longer period may be accepted if the application requires more complex plans or technical reports to be prepared / undertaken. Similarly, a longer period may be agreed if appropriate pre-application discussions are entered into. This form of advice is provided by a Planning Officer and attracts a charge, dependant on the scale of development. Further information on this can be found on the planning pages of the Council's web site.

**8.7** On expiration of the agreed period for the full planning application submission, if no valid

application is received, a decision will be made on the expediency of taking formal action (see flow chart in 7.13).

**8.8** In the event a formal notice is served, the associated paperwork will advise on the right of appeal (if there is one) and ways to contact the Local Authority.

**8.9** Unless a serious matter, legal action is seen as a last resort. The majority of cases are typically resolved by the person or company responsible for the breach, cooperating with us following the advice given, and rectifying the matter. However, once it has been decided to pursue legal action, we will seek to prioritise such cases.

**8.10** Although they may be investigating a complaint, Officers do not do so on behalf of the complainant. They are completely impartial in the matter, not 'taking sides' but instead determining the facts and acting accordingly on behalf of the Council and in the interest of public amenity. Final assessment will always be based on whether it is expedient to take enforcement action.

### **If You Have Reported an Alleged Breach of Planning Control:**

**8.11** As the reporter of an alleged breach of planning control, you can expect that the Council will, at all times, keep your information safe and confidential. Personal details will not be shared with the alleged offender, unless the case progresses to an appeal or to court. In these circumstances, you will be contacted before any information is shared, to obtain your written approval.

**8.12** In some circumstances, other internal teams may become involved, such as Environmental Health, Council Tax. In the event your information is shared with these internal teams, your information and confidentiality remains secure.

**8.13** Upon the creation of a planning enforcement case you will receive an acknowledgement. This will provide you with the case reference number, the case officer's details, and the priority level assigned to the case.

**8.14** Due to resource availability, it is not always possible to keep individual reporters updated at each stage of the investigation. However, we will endeavour to update you to let you know when a retrospective planning application or an appeal against an Enforcement Notice has been received (to ensure that you have the opportunity to comment). We will also generally provide an update when a case is closed. However, in some circumstances where the resolution is readily apparent, such as the removal of an advertisement, no final update will be given.

**8.15** Further information on the case can also be obtained by contacting the case officer or by emailing: [planning.enforcement@dacorum.gov.uk](mailto:planning.enforcement@dacorum.gov.uk).

### **Performance Monitoring**

**8.16** The Planning Enforcement team will keep monthly records of the following information:

- How many planning enforcement cases have been received.
- How many planning enforcement cases have been closed.

**8.17** The Planning Enforcement team will keep and report to the Council and Development Management Committee quarterly records of the following information:

- The % of Priority 1 site visits completed within 1 working day (target is 100%).
- The % of Priority 2 site visits completed within 10 working days (target is 100%).
- The % of Priority 3 site visits completed within 15 working days (target is 100%).
- How many Planning Enforcement Notices (all types) have been served.
- A progress update on all cases where formal enforcement action has been taken.
- A progress update on the 2024 Priority Project.

**8.18** These reports can be obtained by putting a request in writing to [planning.enforcement@dacorum.gov.uk](mailto:planning.enforcement@dacorum.gov.uk)

## **9.0 Biodiversity Net Gain**

**9.1** Biodiversity net gain (BNG) is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity, compared to what was there before development. In England, BNG is mandatory from 12 February 2024 for Major applications and from 02 April 2024 for Minor applications under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment act 2021). Developers must deliver a BNG of 10%. This means a development will result in more or enhanced natural habitat than there was before development.

**9.2** The Council has a role in enforcing BNG, further information on this will be provided in a Biodiversity Net Gain Enforcement and Monitoring Statement to be published.

## **10.0 Priorities and Projects**

**10.1** As described above the Planning Enforcement team will respond to reports of breaches of planning control when these are brought to the attention of the team. However, it is considered that there are some breaches that require a pro-active stance to attempt to secure the best possible outcomes for all stakeholders.

**10.2** Such 'hot topics' are likely to change over time, as some matters come into focus and others have their importance reduced. The overall resources of the Planning Enforcement team will also need to be taken into consideration. Consequently, this section of the Local Enforcement Plan will be subject to an annual review.

### **2024 Projects are as follows**

#### **a) Focus on Major application condition monitoring**

**10.3** In light of new enforcement cases where planning obligations or conditions of major applications had not been complied with and have a detrimental outcome as a result. The Council has opted to focus on the conditions and obligations of our major applications granted in the years 2023 and 2024.

**10.4** At the date of publication MFA decisions pending for applications received in 2023 and 2024 sits at 16 and those granted for 2023 and 2024 sit at 3. To review compliance of the Granted applications the Planning Enforcement team will review the approved application sites and if work is under way a full assessment of the outstanding conditions and obligations will be made. A Major Application Monitoring sheet will be completed. Contact will be made with those that have outstanding conditions not yet submitted. This will not include conditions that are not yet required to be submitted. Example being if it is an occupancy condition and they are at finished floor level there is still time for the developer to submit the condition and it be discharged prior to occupancy.

**10.5** This will be monitored with a new table that will be inserted in the quarterly Development Management Committee Enforcement update. This table will provide figures of the total granted MFA's for the years 2023 and 2024, the number of MFA's where development has started, the number of Major Application Monitoring sheets completed by the team. Further updates on individual cases will be provided where necessary.

#### **b) Developer Compliance with the Habitats Regulations Assessment**

**10.6** The Chilterns Beechwoods Special Area of Conservation (SAC) is an extensive site covering nearly 1,300 hectares and is made up of several components within Dacorum, Buckinghamshire, South Oxfordshire, and Windsor and Maidenhead. It is the only SAC in Dacorum and is protected for its beech forests, semi-natural dry grasslands and scrub, and its population of stag beetles. To protect this Special Area of Conservation the Habitats Regulations Assessment has been established. This assessment focuses on whether the

growth proposed within the plan or project will harm the integrity of the Chiltern Beechwoods SAC.

**10.7** Following the Habitats Regulations Assessment an agreement is to be signed between the Council and Developer and this is to be complied with. Planning Enforcement's involvement will come into effect once:

- Both the Planning Officer and our Legal Services have requested compliance with agreement and the developer has failed to comply with the requirements.
- The development has commenced

**10.8** Once passed the stages above, it is now ready to be allocated to our Planning Enforcement team who will seek compliance and use the necessary formal enforcement powers as required. This will be monitored with a new table in the quarterly update giving figures of those cases passed to enforcement and the action. Due to the complicated nature of some of these cases individual results may also be presented.

## **11.0 Review of the Local Enforcement Plan**

**11.1** This document will be reviewed periodically to take into account changes to legislation, planning policy / planning guidance and internal processes to ensure that it remains up to date and a useful source of information about the Council's planning enforcement service.

**11.2** In particular, the 'Priorities and Projects' section will be updated on an annual basis to detail the most current focus within the service.

# Appendix A: Planning Enforcement Tools

Planning Enforcement has a range of tools and powers at its disposal, which can be split into the following three headings:

## Investigation into the reported breach of planning

### 1. Planning contravention notice

Where it appears that a breach of planning control may have occurred but the Council wishes to find out more information before deciding what, if any, enforcement action to take, the Council may serve a Planning Contravention Notice (PCN). A PCN can be served on the owner or occupier of the land, anyone who has an interest in the land, or anyone who is using the land for any purpose. The PCN requires the recipient to provide written information about ownership and the activities taking place on the land or within any buildings on the land. The PCN may invite the recipient to meet with Officers to discuss the matter in person. It is an offence to fail to respond to a PCN within 21 days or make false or misleading statements in reply. There is no right of appeal against a PCN.

A PCN cannot be used where Officers consider that an offence may have been committed, such as works to a Listed Building or to a TPO tree.

### 2. Section 330 notice

Where it is important to obtain clarification about ownership and the people occupying a property, a Notice can be served, under Section 330 of the TCPA, on the apparent owner or occupier. This will require them to confirm details of those persons who have a legal interest in the property. There is no right of appeal against a Section 330 Notice and failure to respond may be an offence.

### 3. Rights of entry

In addition to the investigative powers outlined above, authorized Officers also have the power to enter land, specifically for planning enforcement purposes. This right is limited to what is regarded as necessary to ensure effective enforcement in the particular circumstances, for example to ascertain whether a breach of planning control has occurred or whether a breach has been resolved. A notice period of 24 hours is required before entry to a dwelling house can be legally required. Prior notice is not required for access to domestic outbuildings or garden land, industrial, commercial or farmland, etc.

Any person who willfully obstructs an Enforcement Officer exercising his/her right of entry shall be guilty of an offence and liable on summary conviction to a fine of £1,000. Where entry is refused or obstructed, or where entry is urgent, it is also possible to apply to a magistrate for a warrant to allow entry.



## **The serving of a formal Notice with steps and timescales for compliance**

### **1. Enforcement notice**

An Enforcement Notice is the most common form of notice used to deal with unauthorised development. It specifies the alleged breach and sets out prescriptive steps, with specific timescales, for remedying the breach. A notice can be served in respect of:

- Operational development
- Material change of use of the land
- Breach of condition attached to an extant planning permission

An Enforcement Notice cannot come into effect until at least 28 days after it is served. During this period the recipient of the Enforcement Notice has a right of appeal to the Planning Inspectorate. If an appeal is not lodged within this period then the Enforcement Notice, and its associated requirements and timescales, takes effect. If a valid appeal is made the requirements of the Enforcement Notice are suspended until the appeal has been determined or it is withdrawn. If the appeal is dismissed (i.e. fails) and the Enforcement Notice is upheld, the time period for compliance will run from the date of the Inspector's decision.

Failure to comply with the requirements of an Enforcement Notice is a criminal offence which is liable, on summary conviction, to a fine not exceeding £20,000 per offence, or on conviction on indictment to an unlimited fine.

### **2. Enforcement warning notice**

An Enforcement Warning Notice formalises the process for a local planning authority to invite a retrospective planning application. This notice provides an opportunity for the individual or organisation to regularise the unauthorised development/material change of use or non-compliance with planning permission.

### **3. Listed building enforcement notice**

A Listed Building Enforcement Notice may be issued when unauthorised works are carried out to listed buildings. It can be served in conjunction with an Enforcement Notice where the unauthorised works would also have required planning permission. As with an Enforcement Notice the transgressor has a right of appeal to the Secretary of State, with the appeal having to be made before the notice takes effect.

Works to a listed building without the appropriate consents is a criminal offence. A local planning authority has also been given express power to apply to the court for an injunction where it considers it necessary or expedient to restrain any actual or apprehended breach of planning control. The power is available whether or not the authority has exercised or is proposing to exercise any of its powers to serve an Enforcement Notice.

### **4. Stop notice**

A Stop Notice is used as a means of stopping development that is likely to result in irreparable harm to the environment or where ongoing activities are causing a major adverse impact on the amenity of adjoining landowners. A Stop Notice can only be served with an Enforcement Notice and may be

served to ensure that an activity does not continue if an appeal is lodged against an Enforcement Notice. A Stop Notice, and can relate to any, or all, of the uses or activities specified in the Enforcement Notice. A Stop Notice cannot be used against works to a listed building.

There is no right of appeal against a Stop Notice. However, the validity of a Notice or the decision to issue the notice can be challenged in the courts by an application for judicial review. It is an offence to contravene a Stop Notice and is punishable by a maximum fine on summary conviction of £20,000 and, on conviction on indictment, to an unlimited fine.

### **5. Temporary stop notice**

Where the Council considers that a breach of planning control should stop immediately, it can serve a Temporary Stop Notice (TSN). Such a notice expires 56 days after it has been served and during this period the Council must decide whether it is appropriate to serve an Enforcement Notice (and, if required, a Stop Notice). It is not possible to serve a further TSN for the same breach of planning control. Non-compliance with this notice is an offence and can result in prosecution.

### **6. Listed Building temporary stop notice**

Similar to a temporary stop notice for breaches of planning control under section 171E of the Town and Country Planning Act 1990. Section 44AA of Planning (Listed building and conservation areas) Act 1990 enables the Council to prohibit works to a Listed Building for 56 days. This would come into use where no prior consent has been granted for works or the works being carried out are contrary to the conditions of the consent granted. Non-compliance with this notice is an offence and liable to summary conviction, or on conviction on indictment, to a fine. In determining the amount of a fine to be imposed on a person convicted under this section, the Court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

### **7. Breach of condition notice**

A Breach of Condition Notice (BCN) may be served where there has been a breach of a condition that is attached to an extant planning permission. The Council can issue a BCN to ensure full or part compliance with the planning conditions. A BCN would state the breach and the steps required to remedy the breach, and would allow a minimum of 28 days in which to comply with its requirements. There are no rights of appeal against a BCN. Failure to comply with a BCN may be an offence prosecutable in the Magistrates' Court and is subject to a current maximum fine of £2,500.

There are advantages and disadvantages to serving a BCN over an Enforcement Notice. However, where there is concern about the validity of a condition, the local planning authority is best advised to issue an enforcement notice that cites a breach of condition, therefore allowing the transgressor a right of appeal. This would prevent the need for a Judicial Review.

### **8. Section 215 notice**

Where the Local Planning Authority is concerned about the condition of land or buildings, and where that condition is considered to be adversely affecting amenity, the Council is able to issue a notice under Section 215 of the Town and Country Planning Act 1990. This is sometimes known as an 'untidy land' notice. Such a notice would set out steps for improving the condition of the land or buildings and specify a timeframe for compliance. It should be noted that the land in question should be visible from public vantage points.

There is a right of appeal against a S.215 Notice, but this is made to the Magistrates' Court. Failure to comply with a S.215 Notice may be an offence subject to a current maximum fine of £1,000.

## **9. Discontinuance notice**

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007. A Discontinuance Notice may only be served if the Council is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public.

The Act also enables the Council to take discontinuance action against any advertisement, which normally has the benefit of deemed consent. There is a right of appeal against a Discontinuance Notice. Rather than issuing a notice the Council may, in certain circumstances (e.g. against a repeat offender), go straight to prosecution.

## **The taking of legal action through the Courts, or alternatives to Court action**

### **1. Prosecution**

The Council recognises the importance of the criminal process in dealing with planning offences, such as non-compliance with Notices, and works to Listed Buildings and TPO trees without the required consent. We will use discretion before making such a decision because other approaches to enforcement may equally or more effectively resolve the matter. However, where circumstances warrant the Council will pursue prosecution.

We will consider prosecution when one or more of the following applies:

- It is appropriate in the circumstances to draw attention to the need for compliance with the law;
- There is a risk to public health and safety as a consequence of the breach;
- The offence was as a result of a deliberate act or following recklessness or neglect;
- The approach of the offender warrants it- for example repeated breaches, persistent poor standards;
- The breach is considered to seriously affect public amenity

The decision to prosecute will also take account of the evidential and public interest tests set down in the Code for Crown Prosecutors. These include the age and evidence of the state of health of the alleged offender, and the likelihood of re-offending; any remedial action taken by the alleged offender.

### **2. Injunctive action**

Where the local planning authority deems it expedient to restrain any actual or apprehended breach of planning control it may apply to the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its power to enforce planning control. The taking of such action is not to be taken lightly, but is critical where ordinary enforcement powers are unlikely to stop unauthorized activities.

Failure to comply with the terms of an injunction is in contempt of court. The court has power to imprison anyone found to be in contempt, or to administer an unlimited fine.

### **3. Planning Enforcement Order**

The Localism Act 2011 introduced the power for LPAs to apply to the Magistrates' Court for a Planning Enforcement Order (PEO). Such an order would be sought where there has been a deliberate attempt to conceal a breach of planning control. Where a PEO is granted, the Council will have one year and 22 days to serve an Enforcement Notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The four and 10-year periods of immunity (see 5.3) will not apply in cases of a concealed breach.

An application for a PEO must be made within six months of the Council becoming aware of the breach. A Magistrates' Court may only make a PEO if it is satisfied, on the balance of probabilities, that the breach has been deliberately concealed.

### **4. Simple caution**

The LPA will consider Simple Cautions (sometimes known as Formal Cautions) as an alternative to prosecution. Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the Court process
- To deter repeat offences

Before a Caution is administered we will ensure there is evidence of the offender's guilt sufficient to sustain a prosecution, the offender admits the offence, and the offender understands the nature of the Simple Caution and agrees to be cautioned for the offence. Simple Cautions are administered in accordance with Home Office guidelines.

### **5. Direct action**

Where an owner or occupier of land has failed to comply with the requirements of a planning enforcement notice within the prescribed timescales LPA has the power to enter land and take the steps required by the planning enforcement notice. This is known as Direct Action (or Default Action) i.e the LPA ensures compliance with a Notice by undertaking the required works itself and to recover their expenses in doing so from the landowner.

Direct action has the benefit of removing the breach altogether and it is a very public statement of intent by the local authority, which can assist in achieving higher levels of voluntary compliance in other cases.

The decision to take Direct Action, other than for very minor breaches, will usually be made at the Development Management Committee. The following factors will be taken into account on a case-by-case basis:

- The level of harm caused by the breach of planning control and its impact on surrounding occupiers and communities
- The personal circumstances of any person likely to be affected by taking Direct Action.
- An assessment of the overall cost in taking Direct Action and the prospects of recovering costs incurred.
- Any risks to the health and safety of Council employees, contractors, occupiers and surrounding residents that may be affected by taking Direct Action.

### **6. Proceeds of Crime Act 2002**

It is now legally accepted that a Confiscation Order under The Proceeds of Crime Act 2002 (POCA) can

be applied for when someone fails to comply with the terms of an enforcement notice, a criminal offence, and financially benefits from their unlawful activity.

The confiscation proceedings flow from a successful conviction of the defendant in either the Magistrates' or Crown Court for failure to comply with the provisions of an extant enforcement notice. Confiscation is considered appropriate where the defendant has obtained a benefit from criminal conduct and has the means to pay a confiscation order. Where a defendant is convicted of an offence at the Crown Court, the court will consider whether a defendant has benefitted from that conduct, the amount of the benefit, and the available amount that is recoverable.

A number of local authorities have been very successful in securing large confiscation orders for planning offences.

## **Appendix B: Commonly Used Planning Enforcement Acronyms**

**AONB:** Area of Outstanding Natural Beauty (e.g. The Chilterns)

**BCN:** Breach of Condition Notice

**EN:** Enforcement Notice

**GPDO:** General Permitted Development Order

**LBEN:** Listed Building Enforcement Notice

**LPA:** Local Planning Authority (e.g. Dacorum Borough Council)

**MGB:** Metropolitan Green Belt

**NAPE:** National Association of Planning Enforcement Officers

**NPPF:** National Planning Policy Framework