

Policy for the operation of the Planning Enforcement Service

Approved by Executive

13th December 2005



Contents

1. Introduction.
 2. Purpose of the Flintshire Policy for Planning Enforcement.
 3. What Planning Enforcement Does/Does Not Do.
 4. Dealing with Departed Breaches of Planning Control.
 5. Proactive Enforcement.
 6. Enforcement Register/Publicity/Performance Monitoring.
- Appendix 1 Prioritisation of Cases.
- Appendix 2 Taking Action.

1. Introduction

1.1 In order for the British Planning system to work effectively and for the community to have confidence in it, it is necessary that breaches of planning control are properly enforced. It is the Council's Policy to pursue effective and appropriate planning enforcement action to remedy the undesirable effects of unauthorised development and activities, and to deter those who would otherwise seek to undermine the operation of the British planning system.

1.2 In Flintshire the most up to date planning policies are contained in the Flintshire County Council Unitary Development (Deposit Draft) and in the main these are implemented through the development control process. The Council expects applications for planning permission to be submitted where this is required by legislation and to comply with the policies and provisions of the plan and any relevant supplementary planning guidance. The Council furthermore expects development that is granted planning permission to be carried out in accordance with any conditions imposed. It is the Council's policy to be as proactive as possible in monitoring compliance with those conditions.

1.3 Policy IMP2 (Compliance and Enforcement) of the Flintshire UDP (Deposit Draft) states:-

"The Council will seek to monitor planning compliance and use its enforcement powers to control unauthorised development and use of land and buildings, to ensure that development is carried out in accordance with planning legislation".

This Unitary Development Plan Policy and the procedural operation of the enforcement service is fully in line with Planning Policy Wales (March 2002), Planning Guidance (Wales) Technical Advice Note 9 – Enforcement of Planning Control (October 1997) and Welsh Office Circular 24/97 Enforcing Planning Control – Legislation Provisions and Procedural Requirements: December 1997.

Furthermore the Council fully endorses the Planning Officers Society – Wales, Model Planning Enforcement Standards for Wales, and this Flintshire Enforcement Policy builds on the standards and operational requirements of that document.

2. Purpose of the Flintshire Policy for Planning Enforcement

2.1 There is a considerable extent of legislative requirements regarding the operation of planning enforcement and the extent of available powers. Nevertheless there is a need for customers of the service, whether they be people reporting suspected breaches of control, those causing the breach or the community itself, to understand the means by which breaches of planning control are investigated by the Council, the range of powers and penalties that may be used and the standards of service which the Council aims to achieve.

2.2 This Policy therefore sets out what planning enforcement does and does not do, how reported breaches are dealt with, the criteria used for assessing priorities and how both reactive and proactive action may be taken. Furthermore this Policy sets out how we aim to deal with our customers, the measures the Council will use to protect its staff employed to carry out Council policy and the way the achievements of the enforcement service will be monitored and reported.

3. What Planning Enforcement Does/Does Not Do

3.1 The Council policy for planning enforcement is not to punish persons for doing unauthorised work but, in the interests of the general public, to remedy the undesirable effects of a breach occurring in the first place. Whilst there is a considerable range of enforcement powers available to the Council, formal enforcement action will normally be used as a last resort, unless it is absolutely necessary from the outset. Whilst the enforcement of planning law is a statutory function of the Council, the decision to pursue such action is discretionary. The judgement and decision to exercise such formal powers are based on a wide range of complex variables and the power to take Enforcement Action has been delegated by the Council to the Chief Planning Services Officer.

- 3.2 The decisive issue for the Council must be whether the breach of control unacceptably affects quality of life to a material extent. It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control that causes no harm to the wider amenity.
- 3.3 Understandably people may have genuine concerns and anxiety about activities that they believe affect them. However, planning enforcement can only be considered against matters that are breaches of planning control. Many issues that are of concern to residents are matters outside of planning control and accordingly concerns about these issues should be reported to the appropriate organisation or section of the Council.
- 3.4 The Planning Division will therefore investigate, in appropriate circumstances, all alleged breaches of planning control which include:-
- Building works and uses of land carried out without planning permission.
 - Building works and uses of land being carried out not in accordance with planning permission.
 - Unauthorised advertisements (not within the highway) on land and buildings.
 - Flyposting.
 - Untidy land which adversely affects the amenity of a neighbourhood.
 - Unauthorised alterations to listed buildings.
 - Unauthorised works to buildings and trees within conservation areas.
 - Unauthorised works to a tree subject to a Tree Preservation Order.
 - Unauthorised mineral extraction and disposal of waste on land outside the highway.
- 3.5 The Planning Division does not investigate the following matters. Concerns regarding these should be directed to the appropriate body (as named in brackets).
- Activities and advertisements on the highway (Highway Department).
 - Noise disturbance, pollution and hygiene problems (Environmental Health Pollution Control or Environment Agency).
 - Dangerous buildings (Environmental Health/Building Control).
 - Disputes concerning ownership of land, including ownership of boundary fences etc. (Civil Matters).
 - Issues concerning housing owned by the Council (Community & Housing).
 - Public buildings and land owned by the Council (Community & Housing).
 - Disturbance resulting from anti social behaviour (Police).

4. Dealing with Reported Breaches of Planning Control

4.1 Receipt of Reported Alleged Breach

- 4.1.1 It is Council policy to expect all reported breaches of planning control to be in writing giving details of their name and address as well as the issue of concern and how it is affecting their and the wider communities amenity.
- 4.1.2 The Council encourages the use of a standard report form to assist members of the public and Council members to provide a basic level of information on alleged

breaches of planning control to enable an assessment of the issue to be made by officers.

- 4.1.3 Anonymous reports are discouraged by the Council and in all cases efforts will be made to seek information relating to the name and address of the person reporting the breach. In cases where anonymous reports are received, a report record will be made but the decision to investigate or progress the issue may well be influenced by the absence of appropriate information.
- 4.1.4 It is the policy of the Council that all reported breaches of Planning Control are confidential and personal details are considered exempt and will not be disclosed under the Freedom of Information Act at this stage. In the event of formal enforcement action being taken and the Council having to rely on evidence submitted, disclosure of personal detail may be made but in such cases agreement of the reporter will be sought prior to its use.
- 4.1.5 On receipt of a reported breach of planning control a data base record will be created and the case given a unique reference number. The investigation process may not commence however until such time as a written details of the alleged breach of planning control has been received to enable the following information to be recorded:
- The reporters name, address and telephone number.
 - The date of receipt of the written report of alleged breach.
 - The subject property/site/address.
 - Details of the persons/organisation carrying out the alleged breach (if known).
 - Details of the alleged breach.
 - The environmental harm being caused by the alleged breach to:
 - The reporter and
 - The wider community.
 - Any other relevant information.
- 4.1.6 The Council expects that the same principles for progressing alleged breaches will be followed by Members, other sections and departments of the Council, other Government or statutory agencies and Town and Community Councils. Relevant details submitted via electronic mail to (planningenforcement@flintshire.gov.uk) will be viewed as an appropriate written report.

4.2 Acknowledgement of Alleged Breach of Planning Control

- 4.2.1 The Council aims to acknowledge receipt of a written report of an alleged breach of planning control within 5 working days. The acknowledgement letter will provide the unique reference number, which should always be quoted in any contact, as well as the name of the investigating officer assigned to initially investigate the case.
- 4.2.2 An alleged breach reported by telephone will not be acknowledged, however reports of alleged breaches of planning control made in person at the Council offices via the use of the standard reporting form will be acknowledged.
- 4.2.3 Acknowledgement letters will detail the priority rating assigned to the case (as set out in Appendix 1) which will be assessed having regard to the information and details made available to the Council. In the event of the enforcement assessment of the case justifying a higher or lower priority rating the person reporting the alleged breach will be notified.

4.2.4 In instances where the reported alleged breach is assigned as a Priority 1 case the Council will aim to carry out an initial site visit within 2 working days. In Priority 2 cases the aim will be to carry out an initial site visit within 5 working days and in Priority 3 cases an initial visit within 15 working days is the aim of the Council, however the ability to progress Priority 3 cases will be dependant on the volume of higher priority cases under investigation.

4.3 Keeping the Person Reporting the Breach and Local Members Informed

4.3.1 Following acknowledgement and investigation the person reporting the alleged breach of planning control will be kept informed of progress. The Council will aim to provide a written update of progress at 6 weekly intervals following acknowledgement. However it may well be that the investigating officer will be in more frequent contact as the case progresses or that the case may have been resolved within that time.

4.3.2 Where a local Member has expressed in writing interest in an alleged breach of Planning Control either themselves or on behalf of other parties. The Council will aim to keep him/her informed of progress within a compatible time scale to that set out in 4.3.1.

4.3.3 In the event of enforcement investigations moving to a formal stage of the Enforcement process Local Members will be kept updated of progress at key stages of the process.

4.4 Case Progression

4.4.1 It is the policy of the Council to ensure that all alleged breach of control investigations are conducted in a methodical and robust way. Depending on the nature of the reported alleged breach the investigation may be relatively straightforward or could be complex involving extensive research or monitoring over a length of time. Whilst the way each case under investigation is progressed may well vary, the general approach will be in accordance with internal office procedures based on the advice and recommendation of the POSW Model Planning Enforcement Standards for Wales and which have had regard to national advice contained within Planning Guidance (Wales) and Technical Advice Note (Wales) 9 – Enforcement of Planning Control.

4.4.2 Investigation officers will carry out site visits, as necessary, to establish whether a breach of planning control has occurred and to ascertain the nature of any remedial action that may be appropriate to remedy any breach. In undertaking such site visits officers will identify themselves as well as the reason for the visit. In this regard officers are authorised by the Council to undertake site inspections for enforcement purposes and will carry and show identification which details powers of entry and authorisation to undertake site visits. Officers may take with them such other persons necessary to assist them in their investigation and will, where appropriate, take measurements and photographs for the purposes of evidence. Officers, wherever possible, will make contemporaneous notes at the time of the visit and will attempt to identify the occupier and/or owner of the site/building in question.

4.4.3 In undertaking site visits officers will, if they suspect that an offence has been committed, have regard to the provisions of Section 66 and 67 (9) of the Police and Criminal Evidence Act 1984 in relation to cautioning suspected offenders.

4.4.4 The range of powers available for use in planning enforcement investigations are set out in (Appendix 2) of this Policy. The Council's policy is to undertake such investigation fully in line with legislation and the powers available. Prevention of Council officers undertaking investigation can constitute an offence. Officers, where appropriate, may involve the Police in carrying out investigations and the Council will instigate prosecution proceedings against individuals where necessary.

- 4.4.5 If it is clear that a breach of planning control has taken place the owner/occupier of the site and the person responsible for the breach (if different) will be informed immediately (if possible) of the planning implications and the risk of carrying out development without planning permission. The interested parties will be advised to stop work until the matter is resolved and that any further activity/development carried out would be entirely at their own risk and could be subject to possible enforcement action. Officers will take full notes of the any discussions and advice given during the site visit and subsequently will confirm this in writing as soon as practical following the visit.
- 4.4.6 In carrying out an investigation and where a breach of planning control has occurred officers will seek to establish robust information and evidence in order to ascertain the options for appropriate further action which are likely to be one of the following scenarios, which are further detailed in TAN9.
- Whether an unconditional planning permission is likely to be granted in respect of the breach-in such cases the recommended course of action would likely to be to invite the submission of an application for planning permission.
 - Whether the development could be made acceptable by imposing conditions, again in such cases the recommended course of action would be likely to be to seek an application to be submitted to enable the local planning authority to consider the imposition of any necessary conditions.
 - Whether relocation is required as the development would only be acceptable on an alternative site. Negotiation on the possible relocation and the provision of sufficient time to enable such relocation to be progressed may then take place.
 - Whether the development is unacceptable and relocation is not feasible, in such cases action may be unavoidable, although sufficient time may be provided to enable the recipient(s) of the notice to relocate.
 - Whether the unauthorised development warrants immediate action in which case action is likely to be progressed promptly to avoid serious harm to amenity or interests of acknowledged importance.
- 4.4.7 In certain cases, the Council will give consideration to direct action to resolve the breach.
- 4.4.8 It is the Policy of the Council that in cases where formal action is taken the Council will seek to recover its costs for work undertaken because of the time consuming complex nature of the work. Such costs, if granted, would be in addition to any financial penalties incurred.
- 4.4.9 The Council will not instigate formal Enforcement action until such time as full consultation has taken place with the Council's legal officers.

5. Proactive Enforcement

- 5.1 As well as dealing with reported alleged breaches of planning control an increasingly important element of enforcement work involves being proactive, by monitoring new development to ensure breaches of control do not occur.
- 5.2 Cases that emerge from such monitoring will be prioritised in accordance with the Council policy on priority Appendix 1. Cases will be recorded on the enforcement system database.
- 5.3 Considerable negotiation often take place during the consideration of a planning application and specific planning conditions are imposed for valid and justified reasons. The Council expects developers to fully comply with any imposed requirements. Very little flexibility exists where developers fail to comply with some types of planning condition and failure to

fully comply with them in effect may make any planning permission issued unimplementable. In such cases unless development activity ceases on the site until such time as a regularising planning application has been determined, the Council will consider the use of formal enforcement action.

- 5.4 It is the Policy of the Council to monitor, in particular, sites which are particularly sensitive, where development proposals have been contentious and subject to considerable negotiation and where developers/agents are known to fail to comply with conditions. In such cases the Council will consider enforcement action from the outset including the use of Stop Notices and Injunctions as appropriate.

6. Enforcement Register/Publicity/Performance Monitoring

- 6.1 Under Section 188 of the Town and Country Planning Act 1990 the Local Planning Authority is required to keep a public register of enforcement and stop notices. The register will contain the relevant information as stated by legislation and will be updated in accordance with statutory timescale. The Register will be available for public inspection during normal office hours at planning reception in the County Hall complex.

- 6.2 The Council will use the local and wider press to publicise successful enforcement appeals, prosecutions and outcomes. This approach is taken to demonstrate that the Council will not tolerate unauthorised work and that the undertaking of work without the appropriate planning permission or compliance with planning conditions is not a short cut or a means of saving time but could well lead to time delays and financial penalties.

- 6.3 To ensure that the enforcement service is delivered in a timely, efficient and cost effective manner, performance will be monitored on a regular basis with clear reporting mechanisms in place.

- Arrangements will be developed to ensure that all outstanding cases are regularly reviewed. This will allow discussion to take place in relation to difficult cases and assist in bringing long standing cases to resolution.
- The number and outcome of appeals will be developed to ensure that all outstanding cases are regularly reviewed. This will allow discussion to take place in relation to difficult cases and assist in bringing long standing cases to resolution.
- The more complex cases and appeals will be reviewed at regular intervals at Divisional Management level.
- Where targets have been identified for dealing with reported breaches of planning control there will be quarterly reporting on performance against targets.
- Performance will be reported to Council members in an Annual Report and shall include performance against targets as well as:
 - The number and type of notice served in a given period.
 - The number and outcome of appeals in a given period
 - The number and outcome of prosecutions in a given period.
 - The number of alleged breaches of planning control reported in a given period.
 - The number of cases resolved within 12 weeks in a given period. (target for year end 2006 is 65%).

For the purposes of the last point the Council will use the standards recommended by POSW Model standard for Planning Enforcement in Wales and resolved shall be defined as:

- No breach found.
- Investigation reveals that it is not expedient to take action.
- The breach ceases.
- A retrospective application (or similar) is submitted.
- The relevant notice has been served.

6.4 This policy will be reviewed annually in the light of monitoring of performance against the objections and targets set out in the Policy and the policies may therefore be subsequent to change.

APPENDIX I

Prioritisation of Cases

To ensure the efficient and consistent progress of cases, the Council has adopted the following criteria for assessing case priority, which is in line with POSW Model Planning Enforcement Standards for Wales, and will be prioritised for action depending on the severity of the potential breach.

Priority 1 (High)

- Allegations of unauthorised work to Listed Buildings.
- Allegations of unauthorised work to Scheduled Ancient Monuments.
- Allegations of work to trees subject to a Tree Preservation Order or trees in Conservation Areas.
- Allegations of work to the fabric of buildings in Conservation Areas.
- Allegations of work relating to sites within statutory designations (Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty, Heritage Coasts) which appear to have the potential to be significantly detrimental to the area.
- Allegations of work on sites where protected species (flora or/and fauna) are known to be present.
- Allegations relating to large scale engineering operations (including tipping).
- Allegations which indicate an immediate threat to public safety, to include issues relating to highway safety.
- Allegations of unlawful advertisements off the highway which suggest an immediate threat to highway safety.

In instances of Priority 1 cases, an initial site visit should be undertaken within 2 working days of the receipt of the reported alleged breach of planning control in writing.

Priority 2 (Medium)

- Allegations relating to a use of a building which is reported as adversely impacting on residential amenity by reason of noise and disturbance.
- Allegations of new building work beyond the classifications given in Priority 1.
- Allegations that are numerous in number suggesting widespread impact on amenity.
- Allegations relating to commencement of development in non-compliance with planning conditions.
- Allegations relating to the non-compliance of conditions on previously developed sites.
- Allegations of unlawful advertisements off the highway which suggest a detrimental impact on visual amenity.

In instances of Priority 2 cases, an initial site visit should be undertaken within 5 working days of the receipt of the reported breach in writing.

Priority 3 (Low)

- Allegations that include reference to boundary disputes/issues*.
- Allegations that include reference to disputes relating to land ownership*.
- Allegations relating to minor building and engineering operations.
- Allegations relating to changes of use of buildings that do not impact on residential amenity.
- Allegations relating to development of a minor or insignificant visual impact.

*Note: Allegations which solely relate to land ownership and boundary disputes are matters not ordinarily subject to planning legislation and relate to civil matters to be progressed by the affected parties.

In instances of Priority 3 cases, an initial site visit should be undertaken within 15 working days of the receipt of the reported breach in writing. Progress of Priority 3 cases may well be affected by Higher Priority Workloads.

As cases are progressed and following the undertaking of initial research and site visits (see below) the priority assigned to particular cases may require amendment. In such cases the local planning authority will record such changes and advise the reporter of the breach accordingly.

In addition to the above lists all cases where formal enforcement action has commenced or appeals have been lodged will be treated as High Priority casework.

APPENDIX II

1. Taking Action

1.1 Introduction

1.1.1 Progressing formal enforcement action is a discretionary power. Any action taken should be commensurate with the breach of control and should only be progressed when it is expedient, having regard to all material planning considerations. In this regard it is not an offence to carry out development without first obtaining planning permission.

1.2 Nevertheless it is an offence to:

- Alter the character of a listed building without listed building consent,
- To display advertisements without advertisement consent,
- To carry out works to protected trees without the consent of the Council,
- To remove hedgerows without complying with the Hedgerow Regulations 1997,
- To undertake demolition in a Conservation Area without first obtaining approval.

1.3 Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out. Enforcement action should not be taken simply to remedy the absence of planning permission where development carried out is acceptable on its planning merits.

2. Planning Enforcement Powers

The following mechanisms are available to Local Planning Authorities to obtain information in respect of a breach of planning control as well as information relating to land interests.

2.1 The Planning Contravention Notice (PCN)

2.1.1 The serving of a PCN is an optional procedure that may be used to obtain information about allegedly unauthorised development. It does not constitute taking enforcement action in itself. However, a PCN may only be served when it appears that a breach of planning control may have occurred. The PCN may require the recipient to provide information about the use of the land and any operations or activities taking place. In particular it may require the recipient:

- To state whether the land is being used for any purpose specified in the notice, or whether any operations or activities specified are being or have been carried out.
- To state when any use, operation or activity began.
- To give the name and address of any person known to have used the land for the specified purpose or carried out any operation or activity.
- To provide details of any relevant planning permissions or reasons why planning permission is not required.
- To state the nature of his/her interest in the land and the name and address of any other person known to have an interest in the land.

It is an offence to fail to comply with the requirements of a PCN or to make false or misleading statements. It is the policy of the Council to prosecute in such cases.

2.2 Land Registry Search

Such a search will, in the majority of cases (subject to the land being registered) reveal all parties with an interest in a site as well as the nature of that interest. Likewise if the breach involves a business, a company search may well reveal information on company directors and officials, who may, in person, be subject of subsequent enforcement action.

2.3 Requisitions for Information

In addition to Planning Contravention Notices, a Requisition for Information under Section 330 of the Town and Country Planning Act 1990 can be served to seek further information on land ownership.

2.4 Section 16 Notice

Alternatively a Section 16 Notice under the Local Government Miscellaneous Provisions Act 1972 can also be used to ascertain land ownership details.

2.5 In terms of taking action, the following information as regards to the form of Notices is relevant. The Town and Country Planning Act 1990 (as amended) defines taking enforcement action as either the issue of an enforcement notice or the service of a breach of condition notice.

2.5.1 The Enforcement Notice

An Enforcement Notice will:-

- State the nature of the alleged breach as either development without planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.
- Identify the land to which the notice relates.
- Clearly state the matters that appear to constitute a breach of planning control.
- State the reasons for issuing the notice, including any relevant policy of the development plan.
- Specify the calendar date on which the notice will take effect (not less than 28 days after service to allow for an appeal).
- Specify the steps that the local planning authority will require to be taken or the activities that are required to cease in order to remedy the breach or any injury to amenity it has caused.
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the impact of the breach (where appropriate different periods may be given for each step).

The purpose of these requirements will be to:-

- Remedy the breach by making the development comply with the terms (including any conditions or limitations) of any planning permission granted in respect of the land (whether that permission has been granted by the Council following a planning application, or by the General Permitted Development Order under “permitted development rights”); or
- Remedy the breach by discontinuing any unauthorised use of the land, or by restoring the land to its condition before the breach took place; or
- Remedy any injury to amenity that has been caused by the breach.

2.5.2 In appropriate circumstances the local planning authority may choose to specify steps to alleviate injury to amenity. For example, it may require the alteration of an

unauthorised building by the removal of windows to prevent overlooking, or it may require the offending part of a mixed use to cease. In such circumstances, once compliance with the notice has been achieved, the remaining building or use(s) will be deemed to have planning permission (concept of under enforcement).

2.5.3 The steps required by an enforcement notice should not exceed what is necessary to remedy any breach of control or injury to amenity in order to minimise the risk of a successful appeal. Similarly, the period for compliance with the notice will be reasonable having regard to the circumstances of the case.

2.5.4 The Notice should be served on:

- The owner of the land to which the notice relates,
- Any occupier (in addition to the owner) of the land or buildings, and
- Any other person having an interest in the land that is materially affected by the notice (e.g., mortgagees).

2.6 Section 174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal to the Welsh Assembly Government against an enforcement notice. An appeal must be made before the notice takes effect (normally 28 days after issue). It may be made by the owner, occupier, or any other person with a legal interest in the land, whether or not a copy of the notice was served on them. An enforcement appeal will be concerned with the validity of the notice and/or the planning merits of the case. The grounds of appeal are (in logical order):

- Ground (e): that copies of the notice were not properly served
- Ground (b): that as a matter of fact the alleged development has not taken place
- Ground (c): that the development (if it has taken place) does not constitute a breach of planning control
- Ground (d): that the time limit for taking enforcement action had passed
- Ground (a): that planning permission ought to be granted (or the condition or limitation discharged)
- Ground (f): that the steps required by the notice exceed what is necessary to remedy any injury to amenity
- Ground (g): that the period for compliance is too short

Grounds (e), (b), (c) and (d) are often referred to as the “legal grounds” of appeal. A successful appeal under any of these grounds is likely to result in the notice being quashed. The onus is upon the appellant to prove his case on the balance of probability. However there is also an onus on the local planning authority to consider these issues in detail prior to serving of a notice.

Grounds (f) and (g) are not concerned with the planning merits of the case or legal issues. Therefore, even if the appeal is successful on these grounds it is likely that the notice will be varied to make the steps less onerous, or to give a longer period for compliance.

An appeal against an enforcement notice may be determined by one of three methods: an inquiry, hearing or written representations. Unlike a planning appeal, costs can be awarded whichever method is used if either the local planning authority or the appellant is found to have acted unreasonably.

2.7 The Stop Notice

2.7.1 Where a breach of planning control is causing serious harm to the amenity of an area, or an appeal against an enforcement notice appears to have been made simply to delay it taking effect, the service of a Stop Notice may be appropriate. A Stop Notice can only be served in conjunction with an enforcement notice and

where that notice has not already taken effect. Such a Notice is designed to prohibit the carrying out on the site of any activity that is within the scope of the breach of planning control. A Stop Notice cannot be issued in respect of the use of a building as a dwelling house.

- 2.7.2 Normally a Stop Notice will take effect 3 days after service, although in cases where the activity to be prohibited is causing irremediable damage it may take effect immediately provided reasons are given at the time of service. It will remain in force until the period for compliance with the corresponding enforcement notice has expired, or the notice is withdrawn. There is no appeal against a stop notice.
- 2.7.3 Stop Notices should be served on any person who appears to have an interest in the land to which the notice relates, or appears to be engaged in any activity prohibited by the notice. The related enforcement notice will always be annexed to the Stop Notice. Likewise the Stop Notice should always be displayed on the site in question.

2.8 Breach of Condition Notice

- 2.8.1 The Breach of Condition Notice (BCN) is an alternative to an enforcement notice for remedying a breach of planning control arising from failure to comply with any condition or limitation subject to which planning permission has been granted. There is no right of appeal.
- 2.8.2 A BCN will not be appropriate in all cases where a condition (or conditions) has not been complied with. The notice is served on the “person responsible” for the breach and is not a legal charge on the land. Consequently only that person can be prosecuted for an offence, and it is a defence to show that all reasonable measures to comply with the conditions specified in the notice were taken. It is for the Court to decide what are “reasonable measures” in any particular case. Furthermore, there is no “default” power for the Council to enter the land and carry out works.
- 2.8.3 As with an enforcement notice, the BCN will specify the steps that must be taken, or the activities that must cease, in order to secure compliance with the condition(s). Thus the BCN may be mandatory (requiring something to be done) or prohibitory (requiring something to stop). However, it can only seek to secure full compliance with the condition(s). A BCN will also specify a period for compliance, which will not be less than 28 days.

2.9 Injunctions

- 2.9.1 Legal powers are available for local planning authorities to apply to the High Court or County Court for an injunction. The scope of an injunction is very wide and it may be sought at any stage in the planning enforcement process, either as the preferred remedy or in addition to some other formal action (for example, to secure compliance with an enforcement notice where prosecution has been unsuccessful). Normally the “test” will be that nothing short of an injunction would be effective.
- 2.9.2 An injunction is directed at a person and is not a charge on the land. It may seek to restrain an actual or anticipated breach of planning control. It can be mandatory (requiring something to be done) or prohibitory (requiring something to stop). Injunctions are classified by the period of time for which the order remains in force. If an immediate remedy is considered necessary the Council may seek an interlocutory injunction as a matter of urgency before the Court has had the opportunity to hear all the evidence. A substantive or final injunction is one granted by the Court following a full trial.

2.9.3 The decision whether to grant an injunction is always in the absolute discretion of the Court. In any application for an injunction the Court will need to be satisfied that:-

- The authority has taken account of all relevant considerations.
- There is clear evidence that a breach of planning control has already occurred, or is likely to occur on land in the County.
- An injunction is an appropriate measure to take in the circumstances of the case.
- Where an injunction is sought against an “unknown person”, the authority has taken all reasonable steps to identify that person within the time available.

2.10 Section 215 Notices

2.10.1 If it appears to a local planning authority that the condition of land adversely affects the amenities of an area, a Section 215 Notice (Town and Country Planning Act 1990) can be served. Such a Notice will state reasons as to why the condition of the land impacts on the amenity of the area and will also specify the steps required to remedy the situation. The only right of appeal is directly to the Magistrates Court. Failure to comply with the notice will result in prosecution in the Magistrates Court.

2.11 Listed Buildings and Conservation Areas

2.11.1 There are additional controls that apply to Listed Buildings and Conservation Areas. It is an offence to undertake works to a listed building that affects its character without first obtaining Listed Building Consent. In such cases a Listed Building Enforcement Notice may be served or the local planning authority can pursue a prosecution in the Magistrates Court.

2.11.2 It is also an offence to undertake works of demolition to buildings within Conservation Areas without first obtaining the required permission.

2.11.3 In addition, Building Preservation Notices, Urgent Works notices and Repairs Notices can be issued in respect of cases where the condition of listed buildings gives cause for concern.

2.12 Trees and Hedgerows

2.12.1 Permission from the local planning authority should be obtained before undertaking any works to trees that are subject to a Tree Preservation Order or are sited within Conservation Areas. Local planning authorities can instigate proceedings for prosecution in unlawful felling, lopping or topping of trees that are the subject of a Tree Preservation Order or within a Conservation Area. Authorities can also serve Tree Replacement Notices where trees are removed without consent or exemption.

2.12.2 In the same way it is an offence to undertake work of removal of hedgerows in circumstances where permission is first required under the terms of the Hedgerow Regulations 1997. Local planning authorities can instigate proceedings for prosecution in respect of unlawful removal of hedgerows. Authorities can also serve Hedgerow Replacement Notices where trees are removed without consent or exemption.

2.13 Advertisements

2.13.1 Under the terms of the Town and Country Planning (Control of Advertisements) Regulations 1992, the following approaches are available (in appropriate circumstances):

- The ability to serve **Discontinuance Notices** where substantial injury to the amenity of a locality or a danger to members of the public occurs as a result of the unlawful display of advertisements.

- **Prosecute for the display of unlawful advertisements.**
- **Prosecute persistent fly posting.** Authorities can monitor Fly Posting and obtain evidence via photographs, copies of the posters concerned and location plans for possible prosecutions in Court.
- **Section 225 of the Town and Country Planning Act 1990** can be used to obliterate/remove any placard or poster displayed illegally.