



# **Middlesbrough Council Planning Enforcement Manual**

A guide for business, public and officers

**Version: 2**

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## 1. Introduction to Planning Enforcement

- 1.1 Middlesbrough Borough Council has a statutory function as a Local Planning Authority to undertake town planning functions within its administrative area. This includes considering and determining applications for development, change of use of property and land, advertisements, development within conservation areas and works to listed buildings and protected trees. The Local Planning Authority also have a responsibility to exercise the enforcement of planning regulations and Middlesbrough Council recognises the importance of this as part of the overall Planning Service.
- 1.2 Paragraph 207 of the National Planning Policy Framework (NPPF) is of particular relevance to planning enforcement and states that:
- ‘Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement pro-actively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so’.*
- 1.3 The National Planning Practice Guidance goes on to state that effective enforcement is important to:
- *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
  - *maintain the integrity of the decision-making process; and*
  - *help ensure that public acceptance of the decision-making process is maintained.*
- 1.4 Given the guidance of the NPPF and in order to provide a clear route and mechanism for the Planning Enforcement role of the Council, this document has been produced to act as a guide for businesses, developers and the general public as well as acting as a procedural guide for the Local Planning Authority in exercising its function. The guide details the different aspects of enforcing planning controls and defines anticipated timescales for dealing with such matters, and therefore, the level of service and performance the public can expect to receive. This manual replaces the ‘Middlesbrough Council Planning Enforcement Guide Final Report February 2008’.
- 1.5 In considering proposals where approval of the Local Planning Authority is required, there is need to consider the matter against the adopted statutory development plan, and any other relevant material planning considerations which includes guidance contained within the National Planning Policy Framework (NPPF) and other relevant documents as well as site specific matters.
- 1.6 Not all development requires permission as extensive ‘permitted development’ rights exist for certain types of development and changes of use and ‘deemed consent’ exists for some advertisements. Permitted development rights allow some

development works, changes of use and adverts to be undertaken without the need for formal planning approval. These rights can be complicated and subject to specific conditions, therefore individuals are always advised to contact the Local Planning Authority prior to undertaking any development, change of use or erection of adverts, to establish if permission is required.

- 1.7 Where permission has not been granted and was required, and the Local Planning Authority are aware of the breach, we will consider, against relevant material planning consideration, whether taking action to remedy the breach is justified. There is no justification for the Local Planning Authority to take action simply because there is no permission in place.
- 1.8 Some breaches of planning control can be relatively minor in their impact whereas others can be more significant and breaches such as unauthorised alterations to listed buildings or the felling of protected trees are summary offences which can be a criminal offence and which can lead to prosecution through the courts.
- 1.9 In addition to unauthorised development, breaches of planning control can also occur where development that has been granted permission is being undertaken either not in accordance with the approved details or without the discharge or agreement of certain details which were specifically required by conditions imposed on the permission.
- 1.10 Importantly, the majority of breaches of planning control are resolved by negotiation and through the submission of applications to regularise development rather than by formal action being taken. Formal action would only be taken where it is expedient to do so, and where it is in the public interest.
- 1.11 The Local Planning Authority is required (by section 188 of the T&CP Act 1990 and article 43 of the T&CP Development Management Procedure Order 2015) to hold and maintain a register of notices served by the authority in respect to:
  - Enforcement Notices;
  - Stop Notices;
  - Breach of Condition Notices; and
  - Planning Enforcement Orders.
- 1.12 The register must be updated as soon as practicable, and in any event within 14 days of the serving of a notice to which the entry will relate. The enforcement register will be available for inspection at the planning office, and is available to view via appointment.

## 2. Procedures of the Planning Enforcement Function

- 2.1 Considering alleged breaches of planning control and undertaking appropriate enforcement involves receiving information of the alleged breach, prioritising its importance, investigating it, and where necessary, taking action. During this process the Local Planning Authority will seek to keep interested parties informed of progress. These and other aspects of the process will be expected to be undertaken as follows:

### Submitting / receiving information alleging breaches of planning control

- 2.2 All alleged breaches of planning control should be submitted by either completing the standard complaint form which can be found on the Council's website:

[www.middlesbrough.gov.uk](http://www.middlesbrough.gov.uk)

or by email / in writing to the address given in Appendix 1 and should include the following information:

- A clear explanation of the alleged breach;
  - An address /location of the alleged breach;
  - Any dates, times or other information relevant to the alleged breach;
  - Details of the harm being caused; and
  - Contact details (email, phone number and address) of the person highlighting the alleged breach.
  - Name of the land owner or person carrying out the unauthorised works if known
- 2.3 In certain circumstances officers will act in response to a telephone call where it is expedient to do so to limit the impact of the alleged breach. In such circumstances the same level of information would be required as is detailed above.
- 2.4 Whether the Local Planning Authority investigate an alleged breach is always discretionary. In normal circumstances, once the alleged breach has been brought to the attention of the Local Planning Authority, the information will be logged and prioritised according to its significance, which will define the manner in which it is dealt with.

### Prioritisation of Cases

- 2.5 In order to prevent significant loss or harm as a result of breaches of planning controls, it is essential to prioritise cases. This will allow an efficient process of dealing with breaches whilst managing the wider responsibilities of the Local Planning Authority's functions. Breaches of planning control which involve loss of fabric to listed buildings, those which may have a significant impact on highway safety or similar, may need immediate action to prevent significant harm resulting. Other cases such as the erection of a fence where a much reduced impact is likely, can be afforded a lesser priority. As a guide, cases will be prioritised as follows:

#### Priority 1 (those of greatest significance)

- Unauthorised works to listed buildings and the unauthorised demolition of unlisted buildings and structures in conservation areas.
- Unauthorised works or felling of trees covered by a tree preservation order (TPO) or located in a conservation area or protected by a planning condition.

- Any unauthorised development including building operations or changes of use that cause immediate and serious harm, and, in respect of which, it is appropriate to take immediate action.

Priority 2 (those of moderate significance)

- Unauthorised development resulting in moderate nuisance or loss of amenity
- Unauthorised advertisements
- Unauthorised works to a non-listed building already substantially complete
- Unauthorised works where construction work is underway and planning permission has not been granted
- Non-compliance with or breach of planning conditions

Priority 3 (those of lesser significance)

- land adversely affecting the amenity of a neighbourhood
- minor breaches with no apparent or minimal impact on amenity
- other breaches not falling under priority 1 or 2 matters as listed above

2.6 Defining a case as a priority 2 or 3 category does not indicate any consideration as to whether it is sufficiently harmful in its impact as to warrant formal enforcement action but simply prioritises the need to respond and deal with the matter.

### Response Times & Target Timescales

2.7 Following notification of an alleged breach of planning control the Local Planning Authority will assign the case to an officer and will issue an acknowledgement within 5 working days which confirms receipt of the notification and the contact officer details. The response will always be by email where possible.

2.8 At the point of receiving notification of the alleged breach, an initial assessment will be undertaken by the Enforcement Officer to establish its priority level. In certain instances, this may need to be agreed by the Head of Planning or Development Control Manager.

2.9 The following timescales for undertaking Investigative and other work associated with the alleged breach will be as follows although the precise implications of each alleged breach may influence officers decision making on this matter;

Initial Site Visit:

- Priority 1 cases - within 2 working days;
- Priority 2 cases – within 5 working days; and
- Priority 3 cases – within 10 working days.

2.10 Where no breach of planning control has been found, the Local Planning Authority will aim to inform the person who initially notified the council as follows:

- Priority 1 cases – by the 10<sup>th</sup> day;
- Priority 2 cases – by the 15<sup>th</sup> day; and
- Priority 3 cases – by the 20<sup>th</sup> day.

- 2.11 The case shall be closed thereafter. If any additional or new information is received following a case being closed which requires further investigation then the case will be re-opened.
- 2.12 In instances where further investigation is required to determine if a breach has occurred, or it needs to be determined by officers if it is expedient to take enforcement action in respect of a breach, it is not reasonable to impose specific timescales given the varying circumstances that may affect investigations. In cases of all priority, the Local Planning Authority will update the person who notified the council of the breach as progression is made.

### Consideration Following Initial Visit / Assessment

- 2.13 Where further investigation or formal action is required, officers will undertake the necessary actions. As each case is different, it is not possible to give precise timescales for progression. There will often be a reliance on others external to the council to provide information or be forthcoming with actions to regularise the breach.
- 2.14 In some instances, breaches of planning control can take months to resolve and all enforcement cases will remain open until they have been reasonably dealt with. However, in order to prevent any undue delay and expedite matters efficiently without wasting valuable resources of officer time, lengthy negotiations will not be supported where they are not leading to any clear resolution. Although all negotiations will vary in nature and will largely be dependent on the nature of the breach, officers will generally follow the negotiation procedure defined below.

### Negotiation Procedure

- **Write to / discuss** extent of breach with the person in breach
  - **Agree a remedy** to the breach with the applicant including timescales for resolution
  - **Monitor remedy** for matters of all priorities in line with the time scales agreed for resolution.
- 2.15 In all cases of negotiation, there may be instances where it is appropriate for any works or use to cease immediately until the matter has been considered and a way forward agreed. Whilst the Local Planning Authority will endeavour to advise when this is an appropriate measure, it is important to note that whether the Local Planning Authority advise the need to cease works or not, the individual undertaking the works or allowing the works to be undertaken (if in breach of planning regulations) will be doing so at their own risk. It is also of relevance that if enforcement action is taken, it is done so against the land owner in the majority of cases although where leases or other such agreements exist this may differ. Where individuals fail to cease works upon request and therefore essentially fail to halt the breach until negotiations take place, the Local Planning Authority will consider whether it is expedient to issue an immediate Enforcement Notice.

### Failure of Negotiations to Remedy a Breach

- 2.16 In instances where there is a breach of planning control which has been assessed and requires resolution but there has been insufficient or no success to resolve the

matter through negotiation, there are several types of enforcement action available to the Local Planning Authority to use. Which type of action which will depend on the nature and impact of the breach. The different types of enforcement action and some key information regarding them is detailed at Appendix 4.

- 2.17 Where the Local Planning Authority take formal enforcement action, the person / business to which the enforcement relates to, can in some cases make an appeal to the Planning Inspectorate on certain grounds. The Planning Inspectorate are a separate body to the Local Planning Authority and as such have their own procedures and targets for dealing with such matters. Information relating to appealing against enforcement action can be found on the Planning Inspectorate web site. (See appendix 1 for contact details)

### Overarching Service Targets

- 2.18 As a performance indicator of the Local Planning Authority's enforcement function, achievement against the following targets will be reported in a biannual monitoring report provided by the Head of Planning:

- Make 80% of all initial investigations in to all planning enforcement cases in line with the targets in section 2.9
- Issue 80% of all letters to those informing the Local Planning Authority of the breach in line with the targets in section 2.10

- 2.19 Given the complex nature of individual planning enforcement matters and factors external to the council in bringing cases to resolution, it is not appropriate to place a target on final resolution timescales.



### 3. Methods of Enforcement, Actions and Timescales

#### Investigation of Complaint

- 3.1 Officers will aim to ensure complaints are investigated promptly, within the set target for the priority category.
- 3.2 When carrying out an initial investigation, in particular the initial site visit, and in initial discussions with the landowner / developer, it is important for the case officer to recognise that people often carry out unauthorised development in ignorance of the requirements of the planning system, or on the basis of flawed advice. As a matter of principle, the case officer should not appear unduly officious or give the impression that the landowner will be faced with immediate legal action or aborted costs as a result of an investigation. A person who is found to be in the process of carrying out works in breach of planning controls, or who has already done so, should be politely, but clearly, advised of the position. They may in some cases, be advised to cease work until the matter is considered and resolved and that any further work carried out is done so entirely at their own risk.
- 3.3 Where appropriate, they should also be invited to submit a retrospective planning application to enable the matter to be impartially assessed, following due process.
- 3.4 It is best practice for all officer advice to a developer / landowner to be provided formally to avoid confusion and to provide a record for all parties., including details of:
- What works are in breach;
  - Options as to how to remedy the matter (i.e. submit a retrospective application / carry out works to undo the breach of control);
  - An invitation to contact officers to discuss the matter further
  - A clear summary of the matter.

#### Deciding What Course of Action should be taken

- 3.5 Following the initial investigation and site visit, the case officer will need to decide upon a course of action to be followed. There are essentially four different outcomes which can follow an initial investigation:
- No breach of control, case closed with no further action.
  - Breach of control potentially identified – Further monitoring required;
  - Breach of control identified – Officer assessment that breach is likely acceptable; and
  - Breach of control identified – Officer assessment that breach is likely unacceptable.
- 3.6 These outcomes, together with a procedure for each, are outlined below:

#### No Breach of Planning Control

- 3.7 In many cases the initial investigation will reveal that the matter does not constitute a breach of planning control due to the nature of the works / actions or due to the existence of 'permitted development rights' or similar. In such instances the case officer will contact both the landowner (if they have been made aware of the matter)

and the complainant, to explain that there is no ability or need for the Local Planning Authority to get involved in the matter further.

- 3.8 Notwithstanding there being no requirement or ability for planning action to be taken, if it is apparent that another Council team or external organisation needs to be informed of a situation as it may be a complaint relative to their legislation, then details of the complaint may be forwarded to them for consideration. The complainant should be made aware of this when providing the final response, and provided with details of how they can contact the relevant agency to keep abreast of their investigation.

#### Breach of Control Potentially Identified – Further Monitoring Required

- 3.9 In some cases it is not possible for the case officer to come to an immediate view as to whether or not a breach of planning control has occurred. This is most commonly the case in relation to complaints about material changes of use where the nature and characteristics of the use need to be observed over a period of time before a judgment can be made.
- 3.10 Where a period of monitoring is required, this should be communicated to the complainant together with the reasons for the need to do so. The complainant may be requested to assist the Council in their investigation by providing monitoring evidence.

#### Breach of Control Identified – Officer Assessment Breach is Likely Acceptable

- 3.11 In cases where the investigation reveals that the matter does comprise a breach of planning control, it may be considered that there has been a technical breach which causes no material harm and would be most likely to be considered acceptable on its planning merits without further control. In such instances, the case officer will write to the land owner / developer to request that a retrospective planning application be made as this course of action upholds the integrity of the planning system and allows the matter to be assessed in the public domain following due process.
- 3.12 Regrettably, there may be occasions when a developer / landowner will not be willing to submit a retrospective planning application. The Local Planning Authority recognise that it is not appropriate to initiate formal enforcement action merely to punish a lack of planning permission as undertaking such action has to be based on an assessment of material planning considerations. In such instances a reminder letter will be sent which will point out the potential pitfalls in not seeking planning permission, including potential difficulties when selling the land / property / development. This follow up letter advising of the need for planning permission would be sent 20 working days following the initial request for a retrospective application to be submitted.
- 3.13 In the event of a retrospective application not being submitted following a second reminder letter the case officer will prepare either a file note for very minor breach's or a delegated report for more significant matters. The delegated report should follow the following format:

- A brief history of the complaint and the investigative actions undertaken;

- Full details of the breach of control;
- An outline of the steps taken to request the submission of an application;
- An analysis of how the breach of control relates to relevant development plan policies and all material planning considerations; including issues of demonstrable harm; and
- A summary as to why, having regard to the above, it is not considered expedient to take enforcement action.

3.14 In the event of complaints made by a Town or Parish Council, MP or Councillors of Middlesbrough Council, the report should also be counter signed by the Development Control Manager or Head of Planning.

3.15 Where it is deemed not expedient to take formal enforcement action, the case officer will write to the interested parties (complainant, land owner and developer) confirming this and providing reasoning for the decision.

#### Breach of Control Identified – Officer Assessment Breach is Likely Unacceptable

3.16 In cases where the investigation reveals there has been a breach of planning control which raises significant planning issues and would be likely to be unacceptable on planning merits, the case officer will seek to negotiate with the owner or occupier of the site to voluntarily remedy the harmful effects of the breach. This approach may include considering an application for a more appropriate form of development.

3.17 Notwithstanding the above, the developer will be advised of their right to submit a retrospective application and have it determined in line with normal processes.

3.18 During such negotiations it may be appropriate to issue a Planning Contravention Notice (PCN), or Requisition Notice (s330), to establish certain facts. It may also be appropriate to commission a Land Registry Search (LRS) at this stage. The service of a PCN and carrying out a LRS at this stage will ensure discussions are taking place with all appropriate parties and will allow enforcement action to be taken swifter if this subsequently proves to be required.

3.19 The developer should be advised that negotiations will not be allowed to go on indefinitely. A negotiated solution must ensure appropriate steps are taken inside a defined timescale. The timescale applied will vary depending upon the nature and degree of harm caused by the breach.

3.20 Only in circumstances of clear and serious harm will it be appropriate for the case office to seek the service of an Enforcement Notice before allowing the landowner / developer the opportunity to submit a retrospective planning application in an attempt to regularise the matter, following due process.

3.21 Where negotiations fail and a significantly harmful breach remains, the Local Planning Authority will not allow negotiations to delay necessary enforcement action. In particularly serious cases this may include the service of a Temporary Stop Notice, Stop Notice and / or Injunction where deemed necessary.

## Taking Enforcement Action

- 3.22 When taking enforcement action it is important to ensure that action is always commensurate with the breach to which it relates. The Local Planning Authority will therefore avoid 'over enforcement' that would go beyond what is required to remedy any particular breach in control.
- 3.23 The decision to take enforcement action or commence prosecutions will ordinarily be taken under delegated powers, following the preparation of a report outlining:
- A brief history of the complaint and the investigative actions undertaken
  - Full details of the breach of control
  - An analysis of why it is considered appropriate to recommend enforcement action having regard to the relevant development plan policies and to all material planning considerations including the detailing of demonstrable harm.
  - An analysis of why it is considered expedient to commence enforcement action, having regard to the provisions of the Human Rights Act and to any other representations that the person(s) responsible may have put forward in support of the unauthorised development.
  - An analysis of any potential financial risk to the authority which the enforcement action may generate.
  - Details of the steps required to be taken and the timescale for compliance.
- 3.24 Time periods required for compliance will be relative to the complexity and scale of works required within the notice and the magnitude of harm resulting from the breach.
- 3.25 The requirements of the notice shall be drafted in plain English and shall provide clear and unequivocal instruction as to the steps the recipient of a notice will be required to do to comply with its requirements.
- 3.26 When serving notices, the Local Planning Authority will always comply with the appropriate legislation and Government best practice by ensuring the notice is presented with a covering letter which provides the name of the contact officer dealing with the matter as well as telephone and e mail contacts. Such letters will also include details of how to appeal against the notice and how to seek professional assistance.

## Special circumstances and enforcement

- 3.27 The Local Planning Authority is committed to providing services for its residents in a positive manner, undertaking its planning function in a fair and open way whilst fostering business and facilitating investment and employment opportunities within the Town. In undertaking its planning enforcement function, the Local Planning Authority recognises there are certain circumstances which may apply to both businesses and householders which need to be considered as part of an overall balance of matters.

## Businesses

- 3.28 An owner or operator of a business, may have carried out development without the knowledge that planning permission was required and the cost of responding to any legal action may prejudice the financial wellbeing of such a business. The Local Planning Authority will consider this when determining whether to pursue enforcement action and when defining the timescales and course of action to be applied. The Local Planning Authority will not however, put aside necessary enforcement action.
- 3.29 The Local Planning Authority will aim to explore with the developer whether the business can be allowed to operate with a view to granting a mutually acceptable conditional planning permission enabling the owner to continue the business operation without harm to issues of planning policy or local amenity.
- 3.30 Should a business need to be relocated due to a use being unacceptable the Local Planning Authority will aim to agree a timetable for relocation which will minimise disruption to the business and wherever possible, avoid any permanent loss of employment as a result of relocation. The Local Planning Authority, as part of Middlesbrough Council, will consult with other Council departments, including the Economic Development Team to provide appropriate advice and assistance in terms of potential alternative premises, relocation grants etc. Economic Development Officers should be involved at an early stage in all dealings with a business when it becomes apparent to the case officer that formal enforcement action may be required. In instances where a mutually satisfactory compromise cannot be reached then the Local Planning Authority will attempt to make its intentions clear, at the outset, to the owner. Formal enforcement action shall never come as an unexpected action to a business.

## Householders

- 3.31 The Local Planning Authority recognises that householders may have undertaken unauthorised development due to a lack of knowledge of the planning system or based on flawed advice from a builder / contractor.
- 3.32 If planning permission is required for the unauthorised works, the Local Planning Authority will take particular care in assessing the development in accordance with legislation and all relevant material planning considerations and will involve discussions with the householder. Adequate time will be given to householders to rectify the breach. Except in the cases of the most severe breaches of control, which give rise to serious harm, the Local Planning Authority will always invite (without prejudice to a decision), the submission of a retrospective planning application for householder development in order to allow the matter to be assessed impartially and following due process.
- 3.33 In considering whether to take enforcement action, the Local Planning Authority shall have full regard to what extent of development is allowed under the terms of any 'permitted development' allowances and would not normally consider it expedient to take enforcement action in order to remedy what might be professionally considered to be only a slight variation in excess of what would have been permitted by virtue of the current permitted development rights provisions.

## The Initiating of Prosecution Proceedings

- 3.34 Following the serving of an Enforcement Notice, in the event of the requirements of a notice not being undertaken with within the prescribed period, the Local Planning Authority will ordinarily look to take the appropriate action to ensure compliance with its terms. This is likely to include prosecution proceedings through the court system and / or direct action taken by the Local Planning Authority to resolve the matter.
- 3.35 The Local Planning Authority will need to consider the public interest of taking such action which will normally be undertaken seeking advice from colleagues in the Council's Legal Service Team. Officers will need to be mindful of any mitigating factors presented by a person responsible for a failure to comply with the terms of a Notice. A similar approach will be undertaken to breaches of planning control which comprise offences such as those relating to advertisements, works to Listed Buildings, Conservation Area breaches and works to protected trees. In all cases a professional judgment will be made by the Local Planning Authority as to whether it is expedient to instruct the Council's Legal Services to progress a prosecution.

## 4. Appeals and Court Proceedings

- 4.1 Should an Enforcement Notice be served, the person on whom it has been served normally has the right of appeal to the Secretary of State. This is lodged with the Planning Inspectorate rather than the Local Planning Authority and must be lodged within a prescribed time period. There is no ability to appeal against some enforcement action including Breach of Condition Notices.
- 4.2 Should an appeal be made against an Enforcement Notice, any action required by the notice may be placed on hold until the appeal has been determined. This matter will be considered against the nature of the impacts of the breach.
- 4.3 Interested parties will be made aware of any appeals and confirmation of appeal decisions. For dismissed appeals the Local Planning Authority will continue to seek resolution to the relevant breach of planning as highlighted within the Enforcement Notice and may seek to re-define the timescales for compliance. In the event that the timescales for regularisation / compliance are not met then it may be necessary for the Local Planning Authority to initiate prosecution proceedings through the courts. Should it be necessary to prosecute then the matter will normally be referred to the Councils Legal Services team within 10 days of the timescales for compliance having passed (as amended by any appeal).

## Appendix 1 - Contact Details

### **Local Planning Authority & Planning Enforcement Officer**

(Address to submit information relating to alleged breaches of planning control)

Postal Address: P.O. Box 504, Middlesbrough, TS1 9FY

Email Address: [developmentcontrol@middlesbrough.gov.uk](mailto:developmentcontrol@middlesbrough.gov.uk)

Telephone: 01642 729377

### **Planning Inspectorate:**

Dealing with appeals against formal enforcement action (in certain cases)

Web address: <https://www.gov.uk/government/organisations/planning-inspectorate>

Email Address: <mailto:enquiries@pins.gsi.gov.uk>

Telephone: 0303 444 5000

### **Planning Aid:**

Provider of free confidential independent planning advice.

Tel: 0330 123 9244

Email: [advice@planningaid.rtpi.org.uk](mailto:advice@planningaid.rtpi.org.uk)



## Appendix 2 – Rights of Entry

Planning and Enforcement Officers of the Council have the power to enter land for the purposes of the investigation of alleged breaches of control. This right can only be exercised where there are reasonable grounds to enter land to determine whether a breach of planning control has or is taking place.

In the case of a residential property and to prevent undue disturbance, 24 hours' notice has to be given prior to officers entering a property unless the occupier agrees to an inspection.

It is an offence to wilfully obstruct an officer seeking to lawfully enter land and, if necessary, the Council can apply for a Warrant to enter the land or premises. The wilful obstruction of officers seeking to discharge their duties is an offence which may lead to prosecution and a fine.

Council officers carry identity cards bearing their name, post title and photograph and details of the legislation which gives them the powers to enter land for the purposes of investigating planning enforcement complaints. Officers are required to display this ID card at all times and to produce it on request to confirm their identity.

In undertaking all planning enforcement duties, due regard will be paid to the Human Rights Act, the Regulation of Investigating Powers Act (RIPA) and the Police and Criminal Evidence Act (PACE).

## Appendix 3 – Advice and Complaints about Planning and the Enforcement Service

Officers of the Local Planning Authority, which is part of the overall Middlesbrough Council function, provide free advice on planning and planning enforcement related matters during the Council's normal office hours. Whilst the advice is informal, and no officer has the power to bind the Local Planning Authority to a particular course of action, officers have an in depth knowledge of the procedures involved in planning and planning enforcement matters including relevant policies and are committed to providing quality of information to interested parties.

Should anyone be dissatisfied with the service they receive from the Councils Planning Enforcement function, to a degree where they wish to complain, then complaints should be made initially to the case officer dealing with the matter. Should the complainant still feel aggrieved however, then they should contact the Planning Development Control Manager in writing via the contact options highlighted at appendix. 1.

Should the above procedures fail to resolve the complaint then the complainant will be invited to pursue the grievance through the Councils corporate complaints procedure which can be viewed by following the link below:

[www.middlesbrough.gov.uk/open-data-foi-and-have-your-say/have-your-say/feedback-and-complaints](http://www.middlesbrough.gov.uk/open-data-foi-and-have-your-say/have-your-say/feedback-and-complaints)

## Appendix 4 – A guide to enforcement tools and their usage

### Planning contravention notice

#### What does a planning contravention notice do?

A planning contravention notice may be issued under section 171C of the Town and Country Planning Act 1990 and can be used to do the following:

- *allow the Local Planning Authority to obtain any information they want for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and;*
- *can be used to invite its recipient to respond constructively to the Local Planning Authority about how any suspected breach of planning control may be satisfactorily remedied.*

#### When can a planning contravention notice be used?

A planning contravention notice may only be served when it appears to the Local Planning Authority that a breach of planning control may have occurred and they want to find out more information before deciding what if any enforcement action to take. It should not be used to undertake an investigative trawl just to satisfy the Local Planning Authority about what activities are taking place on a parcel of land.

This is a discretionary procedure – the Local Planning Authority need not serve a planning contravention notice if it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

A planning contravention notice is not available for use where there are suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

There is no requirement to enter a planning contravention notice in the Local Planning Authority's register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

#### What are the consequences of failing to respond to a notice?

A failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice (section 171D of the Town and Country Planning Act 1990).

### Enforcement notice

#### What does an enforcement notice do?

An enforcement notice should enable every person who receives a copy to know:

- *exactly what, in the local planning authority's view, constitutes the breach of planning control; and*
- *what steps the Local Planning Authority require to be taken, or what activities are required to cease to remedy the breach*
- *Within what timescales any remedies need to be undertaken / affected.*

The Local Planning Authority must enclose with the enforcement notice information about how to make an appeal. This information is contained in the [information sheet](#) provided by the Planning Inspectorate which Local Planning Authorities should use.

#### Is it possible to take enforcement action against only some parts of a breach of planning consent?

A Local Planning Authority may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”. Where an enforcement notice identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements, and all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use ([section 173\(11\) of the Town and Country Planning Act 1990](#)).

#### Is there a right of appeal against an enforcement notice?

Yes, there is a right of appeal against an enforcement notice.

#### What happens if an enforcement notice is not complied with?

It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed.

A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment to an unlimited fine. In determining the amount of any fine, the Court is to have regard to any financial benefit which has been accrued or appears likely to accrue in consequence of the offence ([section 179 of the Town and Country Planning Act 1990](#)). Therefore, prosecuting authorities should always be ready to give any available details about the proceeds resulting, or likely to result, from the offence, so that the Court may take them into account.

Where a Local Planning Authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the [Proceeds of Crime Act 2002](#), to recover the financial benefit obtained through unauthorised development.

In relation to lower priority matters (2 and 3) and in the event of there being an ongoing appeal against an Enforcement Notice the Local Planning Authority would be minded not to pursue either prosecution or the terms of the Notice until the appeal had been heard. In cases where safety or significant harm is being eroded as a result of the breach, the Local Planning Authority are unlikely to postpone action.

#### How will the works be done if the landowner is unwilling to do them even after prosecution?

Notwithstanding prosecution, the Local Planning Authority has default powers to enter enforcement notice land and carry out the requirements of the notice themselves ([section 178 of the Town and Country Planning Act 1990](#)) and it is an offence to wilfully obstruct anyone who is exercising such powers on the Local Planning Authority’s behalf. These default powers should be used when other methods have failed to persuade the owner or occupier of land to carry out, to the Local Planning Authority’s satisfaction, any steps required by an enforcement notice. In the instance that such powers are used, the Local Planning Authority can recover from the land owner or other relevant person, any expenses reasonably incurred by them in undertaking this work ([regulation 14 Town and Country Planning General Regulations 1992](#)).

A Local Planning Authority can prosecute for a failure to comply with a notice as well as using default powers.

In normal (but not all) circumstances, development becomes immune from enforcement if no action is taken:

- *Within 4 years of substantial completion for a breach of planning control consisting of operational development;*
- *Within 4 years for an unauthorised change of use to a single dwelling house;*
- *Within 10 years for any other breach of planning control (essentially other changes of use).*

## Planning enforcement order

### What does a planning enforcement order do?

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (section 171B of the Town and Country Planning Act 1990) have expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

### What are the requirements for obtaining a planning enforcement order?

A Local Planning Authority must have sufficient evidence of the apparent breach of planning control to justify applying for a planning enforcement order (sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990).

The application may be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the Local Planning Authority's knowledge. The appropriate officer must sign a certificate on behalf of the authority which states the date on which that evidence came to the Local Planning Authority's knowledge, and the certificate will be conclusive of that fact.

The application must be made to a magistrates' court and a copy must be served on the owner and occupier of the land, and on anyone else with an interest in the land which, in the Local Planning Authority's opinion, would be materially affected by the taking of enforcement action in respect of the breach. The applicant, any person who has been served with the application, and any other person the court thinks has an interest in the land that would be materially affected by the enforcement action have a right to appear before, and be heard by, the court hearing the application.

### What evidence is needed to obtain a planning enforcement order?

A magistrates' court may only make a planning enforcement order if it is satisfied on the balance of probabilities that the apparent breach of planning control (or any of the matters constituting that breach) has (to any extent) been deliberately concealed and that it is just to make the order having regard to all the circumstances.

Planning enforcement orders can only be made where the developer has deliberately concealed the unauthorised development. In these circumstances, evidence that the developer has taken positive steps to conceal the unauthorised development will be required rather than merely refraining from informing the Local Planning Authority about it.

It is expected that planning enforcement orders will be focused on the worst cases of concealment.

#### What is the effect of a planning enforcement order?

The effect of a planning enforcement order is that the Local Planning Authority will be able to take enforcement action against the apparent breach of planning control or any of the matters constituting the apparent breach during the “enforcement year”.

This means that once the “enforcement year” has begun, the Local Planning Authority can at any time during that year, take enforcement action in respect of the apparent breach of planning control or any of the matters constituting that breach.

The “enforcement year” does not begin until the end of 22 days starting with the day on which the court’s decision to make the order is given, or when any appeal against the order has been finally dismissed.

A Local Planning Authority may make an application even if the normal time limit for enforcement action has not expired. This is to allow for the possibility that evidence may come to light very close to the end of the normal time limits for taking enforcement action, when there may be insufficient time to draft and issue an enforcement notice, or where there may be doubt as to when the time limits actually expire. For example, where the date of substantial completion is not certain.

The Local Planning Authority is not prevented from taking enforcement action once the enforcement year has ended provided that the normal time limits for enforcement action have not expired (section 171BA of the Town and Country Planning Act 1990).

## Stop notice

#### What does a stop notice do?

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice (section 183 of the Town and Country Planning Act 1990).

A stop notice cannot be served independently of an enforcement notice.

#### How quickly can a stop notice take effect?

The Local Planning Authority must specify in the stop notice when it is to take effect. The effective date must normally be no less than 3 days (or later than 28 days) after the date when the notice is served. (Section 184(3) of the Town and Country Planning Act 1990).

When there are special reasons for specifying an earlier date a stop notice may take effect before 3 days, in which case, a statement of reasons must be served with it. For example, it may be considered essential to protect an Area of Outstanding Natural Beauty, Green Belt or Conservation Area, from operational development (such as buildings, roadways or other hard surfaces) which if it continued, would be especially harmful.

### Are there any restrictions on what a stop notice can prohibit?

There are restrictions on what a stop notice can prohibit. These are set out in section 183 of the Town and Country Planning Act 1990. One important restriction is that a stop notice may not prohibit the use of any building as a dwelling house, although it may be used to prohibit the use of land as a site for a caravan occupied by a person as his or her own main residence.

### Could the Local Planning Authority be liable for compensation as a result of serving a stop notice?

Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations (section 186 of the Town and Country Planning Act 1990).

### How does a Local Planning Authority decide whether to serve a stop notice?

The power to serve a stop notice is discretionary. Before serving such a notice a Local Planning Authority must be satisfied that it is expedient that any relevant activity should cease before the expiry of the period for compliance specified in an enforcement notice.

The relevant Local Planning Authority should ensure that an assessment of the likely consequences of serving the notice is available to the Committee or officer who will authorise service of it. The assessment should examine among other things the foreseeable cost and benefits likely to result from the stop notice.

The Local Planning Authority should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a stop notice, the Local Planning Authority's representative should discuss, whenever practicable, with the person carrying on the activity, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

### What about human rights?

The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a stop notice, the Local Planning Authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

### What are the penalties for contravention of a stop notice?

A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence (section 187(1) of the Town and Country Planning Act 1990). A person guilty of this offence is liable on summary conviction to a fine not exceeding £20,000, and on conviction on indictment, to an unlimited fine. In determining the amount of fine imposed the court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

### How can a stop notice be challenged?

There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the propriety of the Local Planning Authority's decision to issue a notice, may be challenged by application to the High Court for judicial review.

### Temporary stop notice

#### Why are temporary stop notices important?

Temporary stop notices are a powerful enforcement tool that allows Local Planning Authorities to act very quickly to address some breaches of planning control, such as unauthorised activities, where it is expedient to do so. Temporary stop notice may prohibit a range of activities, including those that take place on the land intermittently or seasonally.

#### What does a temporary stop notice do?

A temporary stop notice (section 171E of the Town and Country Planning Act 1990) requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

#### How is this different to a stop notice?

A temporary stop notice does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate.

#### Are there any restrictions on what a temporary stop notice can prohibit?

There are restrictions on what a temporary stop notice can prohibit (section 171F of the Town and Country Planning Act 1990):

- *a temporary stop notice can require an activity to cease, or reduce or minimise the level of activity. Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances which require positive action to be taken in response to it. The "immediate" cessation of activities should allow for the shutting down and making safe of an activity;*
- *a temporary stop notice may not prohibit the use of a building as a dwelling house.*

#### How long can a temporary stop notice last?

A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served. It is not possible to issue a further temporary stop notice unless the Local Planning Authority has first taken some other enforcement action against the breach of planning control (Section 171F(5) of the Town and Country Planning Act 1990).

#### How does a local planning authority decide whether to serve a temporary stop notice?

Before issuing a temporary stop notice, the Local Planning Authority must be satisfied that there has been a breach of planning control and that "*it is expedient that the activity which amounts to the breach is stopped immediately*" (Section 171E(1)(b) of the Town and Country Planning Act 1990). The Local Planning Authority must give reasons for issuing the temporary stop notice on the face of the notice (Section 171E(3) of the Town and Country Planning Act 1990).



The effect of issuing a temporary stop notice will be to halt the breach of planning control, or the specified activity immediately. This can have immediate serious consequences on a business. Local Planning Authorities should therefore ensure that a quick but adequate assessment of the likely consequences of issuing a temporary stop notice is available to the officer who will authorise issue of the notice.

It should not be necessary to carry out a detailed cost/benefit assessment, but the assessment should examine the foreseeable costs to the company, operator, or landowner, against whose activities the stop notice is directed and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice.

The Local Planning Authority should ensure that a temporary stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. Before deciding to serve a temporary stop notice, Local Planning Authority's representative may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

#### What about human rights?

The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a temporary stop notice, the Local Planning Authority must be satisfied that there has been a breach of planning control and "it is expedient that the activity which amounts to the breach is stopped immediately" (section 171E(1)(b) of the Town and Country Planning Act 1990). T

#### What are the penalties for contravention of a temporary stop notice?

It is an offence to contravene a temporary stop notice, and a Local Planning Authority should always consider prosecution as soon they have evidence of an offence (section 171G of the Town and Country Planning Act 1990).

A person guilty of an offence is liable on summary conviction, to a fine not exceeding £20,000; and on conviction on indictment, to an unlimited fine.

#### How can a temporary stop notice be challenged?

Any person affected by a temporary stop notice will be able to make representations to the local planning authority to challenge the temporary stop notice. The Local Planning Authority should include the name, address and telephone number of their nominated officer in the temporary stop notice.

There is no right of appeal to the Secretary of State against the prohibitions in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the Local Planning Authority's decision to issue a temporary stop notice, may be challenged by application to the High Court for judicial review.

#### Is compensation payable?

Only in certain circumstances is compensation payable. A person who at the time the temporary stop notice is served has an interest in the land to which the notice relates may be

entitled to compensation by the Local Planning Authority for any loss or damage directly attributable to the prohibition effected by the temporary stop notice. The scope for compensation is set out in section 171H of the Town and Country Planning Act 1990). It should be noted compensation is only payable if one or more of the following applies:

- *the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with;*
- *it is permitted development (including under a local or neighbourhood development order);*
- *the local planning authority issue a lawful development certificate confirming that the development was lawful;*
- *the Local Planning Authority withdraws the temporary stop notice for some reason, other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.*

#### Can a temporary stop notice be used on land not owned by those living on it?

Yes. It may be appropriate in some circumstances for the Local Planning Authority to issue a temporary stop notice where the breach of planning control has occurred on land owned by a third party, including the local authority or another public authority.

#### Breach of condition notice

##### What does a breach of condition notice do?

A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the Local Planning Authority in the notice (section 187A of the Town and Country Planning Act 1990).

Any recipient of a breach of condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

##### When can a breach of condition notice be used?

A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition – but it may also be served in addition to an enforcement notice, perhaps as an alternative to a stop notice, where the Local Planning Authority consider it expedient to stop the breach quickly and before any appeal against the enforcement notice is determined.

##### What happens if a breach of condition notice is not fully complied with?

Following the end of the period for compliance, a “person responsible” who has not ensured full compliance with the conditions and any specified steps, will be in breach of the notice and guilty of an offence section 187A(8) and (9) of the Town and Country Planning Act 1990. Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice.

##### How can a breach of condition notice be challenged?

There is no right of appeal to the Secretary of State against a breach of condition notice. The validity of a breach of condition notice, and the propriety of the Local Planning Authority’s

decision to serve a breach of condition notice, may be challenged by application to the High Court for judicial review.

## Injunction

### How does a local authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?

A Local Planning Authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control (section 187B of the Town and Country Planning Act 1990).

In deciding whether it is necessary or expedient to seek an injunction Local Planning Authorities may find it helpful to consider whether:

- *they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;*
  - *there is clear evidence that a breach of planning control has already occurred, or is likely to occur;*
  - *injunctive relief is a proportionate remedy in the circumstances of the particular case;*
  - *in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply;*
  - *a Local Planning Authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control.*
- However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the Local Planning Authority to explain its reasons on this issue.*

### Seeking an injunction against an unknown person.

The Court may grant an injunction against a person whose identity is unknown (section 187B(3) of the Town and Country Planning Act 1990). Nevertheless local planning authorities will need to identify, to the best of their ability, the person against who the injunction is sought. The following may be used in support of the authority's submission to the Court:

- *photographic evidence of the persons concerned;*
- *affidavit evidence sworn by Local Planning Authority officers;*
- *reference to chattels on the land, known to belong to, or be used by, that person (eg a registered motor vehicle); or*
- *other relevant evidence (such as a name by which the person is commonly known even though it is not his or her proper name).*

When applying to the Court, the Local Planning Authority will have to provide affidavit evidence of their inability to ascertain the identity of the person, within the time reasonably available, and the steps taken in attempting to do so.

## Appendix 5: Glossary

### **Designated Officers are the following;**

Head of Planning,

Planning Manager (Development Control),

Principal Planning Officers (Development Control).

## Appendix 6: Template Enforcement Guide Form

<b>Enforcement Monitoring Form</b>		Priority: 1 2 3
Site Address:		
Alleged Beach:		
Site Owner:		
Site contact details (if not owner)		
Date informed of alleged breach		
Authorising Officer Initials		

### **Response targets and actual response dates**

	Date recv'd	Initial Site Visit	Breach Y/N (complaint founded)	Response to person notifying of breach	No further action letter
Target Date					
Achieved date					

Reasons for not meeting any of the above targets:

### **Target periods (working days)**

Priority	Initial Site Visit	Response to person notifying of breach	No further action letter if no breach
1	2	5	10
2	5	5	15
3	10	5	20