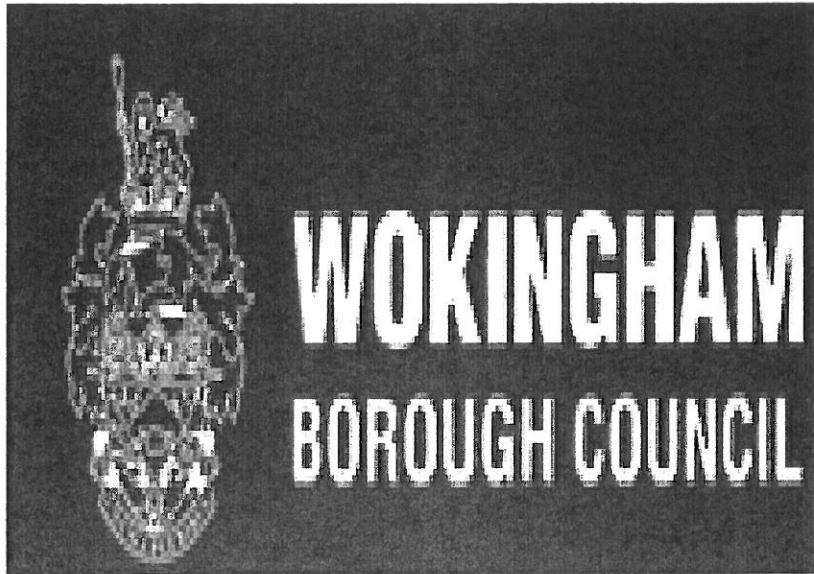


TITLE	Planning Enforcement Service Action Plan and Consultation on the Local Plan
FOR CONSIDERATION BY	Corporate Services Overview and Scrutiny Committee on 27 January 2015
WARD	None Specific
STRATEGIC DIRECTOR	Heather Thwaites, Director of Environment



Wokingham Borough Council
Local Planning Enforcement Plan

Produced in conjunction with:-



Foreword

The council is committed to protecting the quality of its existing environment through ensuring that new development is of the highest quality and that the things that make it one of the best places to live and work in the country are retained and enhanced. To meet this objective, the council recognises the importance of planning enforcement and compliance and is committed to providing an effective and efficient service.

The Local Planning Enforcement Plan sets out the principles and procedures that the council will adopt to regulate development and how it will communicate with residents, and town and parish councils. The focus in the first instance will be on negotiation to resolve breaches of planning control and to encourage local residents to talk to each other and developers to resolve issues. The council also recognises that the town and parish councils have a very important role to play.

While it is encouraged that issues are resolved informally where possible at the local level, the council recognises that this cannot always be achieved and will monitor development and investigate reported breaches. When the reported breaches give rise to planning harm, the council will look to enforce using all legal powers at its disposal including prosecutions via the courts at the same time looking to recover the cost incurred in pursuing such cases. To ensure that resources are used in the most effective way, requests for service will be prioritised to focus on breaches that result in the greatest planning harm and will undertake this in line with government policies and best practice.

The council is committed to ensuring the quality of development in the borough is of the highest quality and is authorised and the LPEP helps this becomes a reality

John Kaiser
Executive member
Planning and Highways
Wokingham Borough Council

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1. Introduction

The Borough Council is firmly committed to providing an efficient and effective planning enforcement service. The **purpose of this Local Planning Enforcement Plan** is to explain what the planning enforcement service comprises and how the Council will deliver the service to the Community. This guidance replaces the Wokingham Borough Council Planning Enforcement Policy 2007.

2. The purpose of planning enforcement

Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another. The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended). This legislation is supported by Government advice, which includes the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

3. The Local Planning Enforcement Plan comprises

- The Council's Planning Enforcement Policy
- The principles of planning enforcement
- What constitutes a breach of planning control and how to report a breach
- Priorities for investigation, case categories and target times
- How the council investigates possible breaches of planning control and possible outcomes
- The role of the customer, ward members and town and parish councils
- How the checking of compliance with permissions will be undertaken
- A simplified flowchart of complaint handling procedures
- Monitoring of development for compliance
- How the LPEP will be monitored and reviewed

4. The Council's Local Planning Enforcement Policy

The council recognises the importance of planning enforcement to maintain the quality of the existing environment in the borough and to ensure that new development is carried out to a high standard. The purpose of the local planning enforcement plan is to set out what can and what cannot be controlled through the planning legislation and the council's approach to undertaking planning compliance and enforcement. The council will:-

- Commit reasonable resources to ensure that planning enforcement control can be put into effect and maintained.
- Exercise all reasonable powers (granted under the provisions of the Town and Country Planning Act 1990, and all other subordinate and any subsequent legislation), to control unlawful development in appropriate circumstances when planning harm is being caused. We will take account of the policies in the adopted development plan and all other material considerations when deciding what approach will be taken to address breaches and whether or not to take formal enforcement action.
- Act proportionately to the scale of the alleged or actual breach and the level of planning harm that result from this. To be consistent in its actions - having a similar approach to similar circumstances to achieve similar outcomes.
- Be transparent in its actions - being open when dealing with business and the public. (Although some information, such as the name of the complainant, will remain confidential)
- Be helpful, courteous and efficient at all times.
- Perform against agreed standards – resources will be targeted to prioritise those cases where the greatest harm is being caused.

5. The Principles of Planning Enforcement

- The use of planning enforcement powers by the Council is discretionary and the carrying out of development without planning permission, although unauthorised, is not illegal. Some actions may become illegal only following non-compliance with a formal Enforcement Notice.
- All alleged breaches of planning control will be investigated by the council except anonymous complaint unless the harm resulting is significant
- The council will seek to resolve all breaches of planning control through informal negotiation in the first instance unless the breach is causing irrevocable harm requiring immediate ac-

tion. This occurs in only a very small number of cases (less than 1%). The focus is to achieve compliance without resorting to formal proceedings.

- Where appropriate, the council will give reasonable timescales for voluntary compliance through removal of the breach or through regularisation.
- Legislation does allow planning permission to be sought retrospectively and government guidance recommends that local planning authorities seek to regularise potentially acceptable unauthorised development through granting planning permission. Where there is a breach of planning control an application will be requested by the Council where it believes consent could be granted with conditions imposed to satisfactorily control the development. Despite this, the council has to accept all valid applications and determine these even if they have not been invited and formal action will not usually be taken when there is an undetermined valid planning application or appeal. When determining a planning application for non-authorised development, the non- authorised nature of the development will not influence the planning assessment in any way.
- Any action should be proportionate to the level of harm involved and should take into account relevant circumstances where it is expedient and necessary to do so, i.e. in the public interest. Councils need to consider whether it is expedient or in the public interest to undertake formal enforcement action to remedy breaches of planning control. Expediency will depend on the level of harm caused and the likelihood of achieving voluntary compliance.
- There are a suite of formal enforcement powers available to councils to address breaches of planning control and the council will apply the most appropriate power dependant on the circumstances of each particular case.
- This LPEP applies to the enforcement activities carried out under the legislation enforced by the (Planning) Enforcement Team. The Council also has other powers of enforcement in relation to other legislation such as highways, environmental health, listed buildings and trees but this plan does not apply to these powers (see below).

6. What is a Breach of Planning Control?

Breaches of planning control vary considerably and could involve such matters as the unauthorised erection of a building or extension to a building, a material change of use of land or building, or the display of unauthorised advertisements. Other breaches of planning control include the following:

Breach of planning control	Not a breach of planning control
<ul style="list-style-type: none"> • Unauthorised works to Listed Buildings • Unauthorised advertisements • Unauthorised works to trees subject of a tree preservation order (TPO) or in a Conservation Area • Unauthorised demolition within Conservation Areas • Breaches of conditions attached to planning permissions • Not building in accordance with the approved plans of planning permissions • Untidy land where it adversely affects the amenity of the area • Unauthorised engineering operations, such as raising of ground levels or earth bunds • Unauthorised stationing of a caravan or mobile home for use as an independent dwelling • Unauthorised material changes of use of land or buildings 	<ul style="list-style-type: none"> • Internal works to a non-listed building • Obstruction of a highway (Contact Thames Valley Police), public right of way (PROW) (Contact link xxxxx) or a private right of way • Parking of private and commercial vehicles on the highway or on grass verges (contact Thames Valley Police) • Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property • Running a business from home where the residential use remains the primary use • Land ownership or boundary disputes or trespass issues eg scaffolding erected on neighbouring property (these are private matters) • Covenants imposed on property deeds (these are private matters) • Any works that are deemed to be 'permitted development' under the <u>Town and Country Planning (General Permitted Development) Order 1995¹</u> as amended • Advertisements that are either excepted from deemed and express consent under the <u>Town and Country Planning (Control</u>

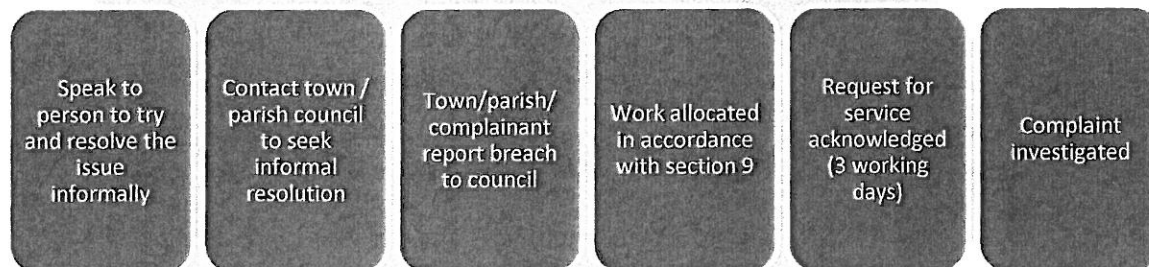
	<p><u>of Advertisements) (England) Regulations 2007² as amended</u></p> <ul style="list-style-type: none"> • Clearing of land of overgrowth, bushes or non protected trees (unless within a designated nature conservation area) • Dangerous structures or other health and safety issues (Building Control link xxxxx) • Damage caused to neighbouring property during construction work (this is a private matter) • The behaviour of builders
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7. Non planning enforcement issues

Planning enforcement sits within the wider regulatory service within the council and where a complaint refers to matters not within the remit of planning legislation but still capable of being pursued by the Council, the complaint will be considered by the relevant regulatory team. Enforcement action across the different regulatory regimes is coordinated and in some cases using alternative means and powers available to the Council (e.g. serving a Noise Abatement Notice) may well result in the speedier resolution of a complaint.

8. Reporting a breach

The diagram below sets out the process by which the council will deal with a reported breach of planning control.



The council strongly encourages that residents communicate with each other and developers to try and resolve a breach of planning control informally. They can also approach their ward members or town or parish council to help achieve an informal solution (town and parish council details at link xxxxxxxxxxxxxxxx). If the suspected breach cannot be resolved informally, they can be reported in confidence as set out below however anonymous RFSs will not normally be investigated:-

How to report a breach
<ul style="list-style-type: none"> • Via the Council’s interactive Request for Service form (available on the website link). • Through your local ward members (link), • By telephone (01189 746000) • In person at the Council Offices at Shute End.

Information required to report a breach
<ul style="list-style-type: none"> • An accurate description of the location or address for the particular site, ideally including the town or parish • A detailed description of the activities taking place that are cause for concern, including what harm the breach is causing and/or how it affects the complainant • Names, addresses and phone numbers (if known) of those persons responsible for the

alleged breach or the land owners

- The date and times of when the alleged breach took place including when it first started
- Any other information or evidence that may be able to assist, e.g. a planning application number; any previous problems / breaches
- Your name, address, phone number and e-mail address (Note :Anonymous complaints will not normally be investigated unless they relate to matters causing serious harm to public safety, or irreversible harm to the environment)

9. Priorities

The Council receives approximately 700 Requests for Service (RFS) every year. Because of the often lengthy and complex nature of planning investigations and staff resources, it is necessary to prioritise, as set out below.

Category	Type of development	Level of service
<i>Category 1 – High priority</i>	When irreversible and serious damage to the environment or public amenity would result. Examples include works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; serious traffic hazards; contamination and or pollution being created.	Receive immediate attention , where possible the same day; where this is not possible, within one working day. The planning enforcement team may be required to devote all of its time to the investigation of one category 1 complaint depending on its nature, but in normal circumstances will be able to address more than one complaint of this nature at any given time.

<p>Category 2 – <i>Medium priority</i></p>	<p>This covers less immediate yet still serious and harmful breaches and is likely to include breaches where building works have just commenced, where severe harm is being created and non-compliance with certain planning conditions (particularly pre-commencement conditions).</p>	<p>The complaint will normally be investigated within 10 working days of the complaint being received.</p>
<p>Category 3 – <i>Low priority</i></p>	<p>This category relates to breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities. Such breaches may include untidy sites, non-compliance with other planning conditions, erection of satellite dishes, the unauthorised display of advertisements and the erection of fences.</p>	<p>The complaint will normally be investigated within 28 working days of the complaint being received.</p>

Category 1 – High priority

Where a negotiated approach is unsuccessful in bringing a halt to development which has been identified as category 1, a further assessment will be made to identify the course of action which is proportionate to the nature of the breach.

Category 2 – Medium priority

Retrospective applications will be sought where there is considered to be a reasonable prospect that planning permission could be granted, subject to necessary conditions and or legal agreements. Where it is considered that an application could not be supported it may be necessary to resort to formal action if it is considered expedient to do so.

Category 3 – Low priority

Resolution of this category of breach is likely to be sought by negotiation and/or the submission of a retrospective planning application to secure a development which is acceptable in planning terms. In cases which cause no significant harm, the Council may decide not to pursue any action even when a breach of planning control has occurred. In these cases, the Council will undertake an expediency assessment (report) and will be available to interested parties on request.

10. Investigating a Breach of Planning Control

A summary of the procedure adopted for the handling of enforcement complaints is shown in the flow chart included as Appendix 1. Compliance following enforcement action can take considerable periods of time. Reasonable time periods must be given for compliance and if this is challenged, then the council is subject to timescales imposed by the Planning Inspectorate (in the case of appeals), or by the courts. As a result sometimes there is limited progress with which to update a complainant and interested parties about. In these cases the Council welcomes interested parties contacting the responsible officer to check timescales and action. However the council will:-

- Acknowledge in writing the receipt of all Requests for Service (RFS) within 3 working days.
- Provide the complainant with an update of the progress on a case under investigation within 28 working days of an acknowledgement or, as there are developments to report.
- For ongoing cases, provide an update every month thereafter until the case is resolved.

11. The Possible Outcomes of The Council's Planning Investigation

In over 50% of cases investigated, there is no breach of planning control and no action can be taken. In those cases where there is a breach, in accordance with government guidance the council will seek to secure a negotiated solution, unless there is substantive irreversible harm that necessitates immediate action. While adequate timescales for compliance following a negotiated solution must

be given, the Council will not allow negotiations to result in delay to formal enforcement action if this is necessary.

Outcome of investigation	Proportion of cases	Action
No breach established eg. no development has taken place, the development is permitted development or is not within the control of planning legislation,	Represents approximately 50% of the 700 RFSs submitted per year	The ward member will be notified with 48 hours notice and the case will be closed and no further action will be taken. The complainant will be notified of this closure and reasons for this
Breach identified but it is not expedient to pursue. e.g. if a technical breach has taken place, for example a house extension that is only marginally larger than permitted development limits, then it is not normally expedient to pursue enforcement action.	Represents approximately 3 % of the 700 RFSs submitted per year	A retrospective application will be requested to regularise the breach or an expediency report will be prepared and the ward member given 48 hours notification. The case will then be closed and no further action taken
Development is lawful i.e. The development or use has been in existence for a period of time that makes it exempt from enforcement activity	Represents approximately 5 % of the 700 RFSs submitted per year	The ward member will be notified with 48 hours notice and the case will be closed and no further action will be taken. A certificate of lawful development may be invited
Attempt to negotiate a resolution. In line with government guidance, the first priority is to try to resolve a breach of planning control through negotiation.	Approximately 40% of breaches are resolved through a negotiated solution through the submission of a planning permission or removal of the breach.	An retrospective application will be requested and appropriate timescales will be given for :- <ul style="list-style-type: none"> ● Removal of breach ● Alterations to the development to make it acceptable
The development is harmful and not acceptable and amendments cannot be achieved that will result in removing the harm	Approximately 1-3% of all cases	Formal action will take place. This is a lengthy process and the last resort if a negotiated solution and voluntary compliance cannot be achieved. Adequate timescales for compliance with a formal action must be provided.

12. Types of Formal Enforcement Action

If negotiation does not secure compliance with what the Council considers acceptable then it has the discretionary power to take formal action against any breach. The nature of the breach will dictate what route the Council chooses to pursue. The formal tools available include:

Type of enforcement action	Purpose
Planning Contravention Notice	Requires persons to divulge information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action
Breach of Condition Notice	To secure compliance with conditions specified within a planning permission
Enforcement Notice	To require steps required to remedy the situation
Stop Notice / Temporary Stop Notice	To require the unauthorised activities to cease
Section 215 Notice	To secure the proper maintenance of land and buildings
Injunctions	To prevent unauthorised development and only used in a very limited number of specific circumstances
Prosecution	To secure compliance with any formal enforcement notice. Failure to comply with a notice is a criminal offence

13. Consequences of Planning Enforcement

There are a number of consequences for a person who has undertaken a breach of planning control if the development has an unacceptable harmful impact and these include:-

- Failure to comply with a notice is a criminal offence and prosecution may result in the person getting a criminal record.
- The owner or persons responsible will be required to remove a building work and/or cease an activity and remove from the site and everything associated with the activity at their own expense.

- The Council may take direct action to undertake the appropriate works and recover the costs from the responsible person.
- Where a crime has been committed the Council will consider whether to make an application under the Proceeds of Crime Act.

14. Timescales

Seeking to resolve enforcement cases can be a lengthy and complex process. For example, someone may decide to appeal against an enforcement notice, which will significantly extend the times for resolving a case. In the event of both a negotiated solution and formal action, a reasonable time period for compliance must be given. Following formal action, legal action to secure compliance is sometimes necessary and the timescales for this are set out by the courts and can be very long. As a result, it is not possible to give a standard time for dealing with enforcement cases but enforcement officers will work to the targets identified above in section 9 above.

15. Human Rights Issues

The Council is committed to treating all recipients of enforcement action fairly, keeping them informed of action being planned, or taken, at each stage, and informing them of any rights of appeal. In particular, regard will be had to the Human Rights Act 1998³. However when decisions are taken relating to enforcement action the public interest must be taken into account. Decisions will, therefore, be taken by balancing private rights, the public interest and, as appropriate, the resources required to take action. The Council will also comply with its public sector equality duty as set out in the Equality Act 2010.

The European Convention on Human Rights (ECHR) was brought into English law via the Human Rights Act 1998 (HRA) with effect from October 2000. The HRA introduced an obligation on the Council to act consistently with the ECHR. There are 3 Convention Rights likely to be most relevant to planning decisions:

- Article 1 of the First Protocol - Protection of Property
- Article 6 - Right to a Fair Trial
- Article 8 - Right to respect for Private and Family Life

It is important to note that these types of right are not unlimited. Although in accordance with the concept of 'proportionality' any interference with these rights must be sanctioned by law, (e.g. The Town and Country Planning Act 1990) and must go no further than necessary. Essentially, private interests must be balanced against the wider public interest and against competing private interests. Such a balancing exercise is essential in the decision-making processes when considering enforcement action.

16. Monitoring Development

The Council recognises the importance of pro-actively monitoring development that occurs within the Borough. However, the Council issues approximately 3000 planning permissions every year and these range from small-scale residential extensions to major housing and commercial developments. As such it is impossible for the council to monitor all permissions and relies on the local knowledge of local people, ward members and the town and parish council to be its eyes and ears and to follow the process outlined above.

The Council will focus its resources for compliance checking on those cases identified at application stage as being particularly controversial/sensitive in planning terms. Of course, what is “sensitive” will always be a matter of judgement; however, for the purpose of identifying permissions to be monitored the Council will take into account the following factors with each case being considered on its merits (e.g. in some instances a factor may be more important than others):

- location in relation to a Conservation Area and/or Listed Building and/or Designated Heritage Assets, which includes Historic Parks and Scheduled Monuments
- significant number of objections at application stage
- scale of development
- condition(s) requiring defined relationship to adjoining properties

Whilst the Council’s enforcement officers, with the assistance of planning staff, undertake monitoring of ongoing development, it is very important that those who obtain and implement a planning permission take full responsibility for compliance with that planning permission.

A valid commencement of a planning permission can only take place if the following steps have been undertaken:

1. *Firstly*, fully discharge all pre-commencement conditions of the permission, i.e. those conditions which start with “No development shall take place until ...”
2. *Then*, commence building work on the ground which is in accordance with the approved plans, before the expiry date of the permission.

An explanatory note will be sent to all applicants when approval is given for major development applications reminding them of their responsibility to comply with the conditions on the planning consent. If development proceeds without complying with the above steps then it must be noted that

this may render the whole development unauthorised which has serious implications and could result in enforcement action being taken.

It is also very important if anyone undertaking development wishes to make any amendments to an approved scheme that they contact the Case Officer for the original application to discuss these and obtain the necessary further approval prior to carrying out the work. Some amendments will require the submission of a further application for planning permission, and if this is the case, this further application will be assessed in accordance with normal planning policy and procedure.

The Council will prepare reports for the information of the Planning Committee on a quarterly basis clearly setting out what enforcement action has been taken.

17. Customer Role

The Council welcomes the involvement of its residents and businesses in the preparation of this Local Planning Enforcement Plan. The Council will:

- Undertake public consultation prior to the adoption of the LPEP
- Provide periodic advice to the complainant as to the progression of the matter not less than every month
- Undertake an annual monitoring assessment of the operation of the LPEP
- Undertake periodic reviews of/ and amendment as appropriate to the LPEP
- Enable effective engagement of the Parish and Town Councils

It is accepted good practice that neighbours should talk to each other to attempt to resolve any issue between them.

For major developments, the Council will set up a page on its website with a contact number of the developer and residents are advised to contact developers directly to try and resolve any issue throughout construction period. If matters cannot be resolved it is recommended that neighbours/residents should contact their ward member/ Town or Parish Council to see if they can help resolve the issue or advise on appropriate action.

18. Ward Members

Elected ward members are representatives of local residents on the council and are available to help resolve issues about all council matters including planning enforcement. If local people have concerns about any possible breach of planning control they can contact their ward members to discuss this with them and they will coordinate with officers to address these concerns. A list of ward members can be found at xxxxx

Ward members are kept informed about requests for service by the enforcement team when they are received. In the event that a case likely to be closed for one of the reasons outlined in section 11 above, the ward members are notified of this via email and given 48 hours (2 working days) to contact the relevant officer to discuss the case before the closure.

19. Parish and Town Councils' involvement

The Council recognises that parish and town council members have an important role to play. Town and parish councils have a great deal of local knowledge and awareness of what is happening in their areas and the council encourages that they act as its eyes and ears on the ground. Town and parish councils can inform the planning enforcement and compliance process. The Council encourages town and parish councils to engage with officers over planning enforcement issues and could play a helpful role in alerting officers that development has commenced on site. They can also help to monitor development and alleged breaches of planning control. This way the town and parish council can take an active role in the investigation process.

Often the town and parish councils can also help to resolve breaches informally through negotiating on behalf of residents. The Council also encourages them to bring breaches of planning control to its attention. Parish and Town Councils also receive notification of all new Requests for Service within their area and information when a request for service is closed. They are therefore able to update local residents about planning enforcement and compliance issues. It is intended that town and parish involvement should operate on an entirely voluntary basis but even if they do not want to be directly involved in an enforcement case, they are a source of valuable advice about the process and how to report a breach of planning control.

20. Monitoring the Council's own performance

The Council is keen to demonstrate that it is operating this LPEP in a fair, equitable and transparent manner; that it adheres to its responsibilities; and that its performance is openly monitored and reviewed when appropriate.

The Council will:

- Submit quarterly monitoring reports to the Planning Committee clearly setting out what enforcement action has been carried out in the preceding period;
- Cross-reference to the standard documents used by the Council in the Enforcement Service with other authorities to ensure they remain up to date and applicable.
- Prepare an annual enforcement monitoring report, submitting it for consideration by the Planning Committee; and that it be used to feed into the monitoring and review of Development Management (as appropriate) and planning policy (as appropriate).
- Describe what we will do to improve our performance if it falls below the established levels and targets.

The performance targets the Council will monitor are attached in Appendix 2

21. Conclusions

- Formal enforcement action is discretionary and the relevant planning circumstances of each case must be considered.
- In line with government policy and guidance, the council will focus on resolving most breaches throughout negotiation without resorting to formal action.
- Where development could be acceptable, the council will encourage the submission of an application to regularise the breach. The unauthorised nature of the breach will not influence the planning assessment of a retrospective application in anyway.
- If a negotiated solution cannot be reached , in deciding whether to pursue enforcement action the council is required to consider whether it is "expedient" to do so and that the action is "proportionate" to the breach.
- Enforcement action will be taken when there is an unacceptable effect on the built and natural environment and public amenity that cannot be resolved through information negotiation or regularisation
- When the breach of planning control is causing serious harm or nuisance to public amenity formal action will not be delayed by protracted negotiation.

- The formal enforcement process is lengthy and open to challenge.
- In exercising the council's discretionary enforcement powers the Council aims to be reasonable, equitable and proportionate.
- The council will provide feedback to complaints and town and parish councils about cases they have reported on a monthly basis until they are resolved.
- The council will undertake to monitor and review its enforcement service and to update policies and processes where appropriate.

The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended). This legislation is supported by Government advice, which National Planning Practice Guidance (NPPG)

Appendix 1 – Simplified Request for Service (Enforcement Complaint) Handling Process

