

PORTSMOUTH CITY COUNCIL
LOCAL PLANNING ENFORCEMENT PROTOCOL

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1.0 BACKGROUND AND OVERVIEW

- 1.1 Portsmouth City Council's planning department have an enforcement team dedicated to working with the public in order to provide an efficient, helpful and fair planning compliance service.
- 1.2 This document is designed to explain what we do, what guidelines we follow and how we operate in order to ensure that Portsmouth's heritage is protected and new developments follow both national guidelines and our own plans for the future.
- 1.3 Our goal is to work with the public to ensure that Portsmouth progresses in being an exciting city full of both architectural heritage and innovative new designs.
- 1.4 This policy statement on Portsmouth City Council's ("the Council") Planning Enforcement Service describes what the service does and how we deliver the service to the community. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.
- 1.5 This document sets out what the public can expect from Portsmouth City Council as the Local Planning Authority in discharging its function in respect of Planning Enforcement. In the first instance the objective of planning enforcement is generally not to punish those who break planning regulations, but to remedy any harm caused by unauthorised development. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.
- 1.6 Fair and effective Planning Enforcement is important to protect the integrity of the planning system and the quality of life for the people who live and work in the Portsmouth City Council Area.
- 1.7 Local Planning Authorities (LPAs) have a general discretion and must only take enforcement action when they regard it expedient to do so. Action must be commensurate with the legislation to which it relates (see Section 3). Accordingly, just because a breach of planning control has been identified the Local Planning Authority is under no obligation to serve an enforcement notice or take other formal enforcement action.
- 1.8 It is important to remember that planning permission may not be the only consent required from the City Council. For example, Building Regulations approval, alcohol licencing etc. may be required in addition to planning consent. This policy only covers matters relating to planning control. Property owners should satisfy themselves that all other necessary consents needed are in place to carry out the work or activity they are contemplating. Securing such consents can be a time-consuming process and persons are encouraged to engage with the relevant regulatory bodies at the earliest opportunity to avoid frustrating delays at a later date.
- 1.9 This document sets out:
 - The purpose of planning enforcement.
 - What is and what is not a breach of planning control.
 - How reports are received by the Council.
 - How cases are prioritised;
 - How cases are investigated.
 - Targets and timescales for the resolution of cases;

- The relevant legislation and powers available to the Council.
 - The mechanisms in place to provide performance information to managers and Councillors.
 - The mechanisms in place for customers to submit complaints or praise in respect of the service received.
- 1.9 The Council will operate within the provisions of the relevant legislation, case law and Central and Local Government Policy and guidance outlined in Section 3.
- 1.10 Each case will be dealt with on its merits and will be prioritised according to the harm identified and available resources. Details of how investigations are prioritised are shown at Appendix 'B'.
- 1.11 Harm will be assessed on the basis of material planning considerations. Private or civil matters such as damage to property, boundary disputes, trespass or the breach of a civil covenant are not within the Council's jurisdiction and will not be investigated. The exception to this would be where a complaint alleges non-planning matters involving Council land, in which case these private-law issues will be passed to the Council's Property Services team. Additionally, some issues may be regarded as anti-social behaviour rather than a breach of planning control. Where a mix of planning and non-planning issues are raised, Planning Enforcement will forward non-planning concerns to other appropriate Council departments.
- 1.12 Whenever possible cases will be resolved through negotiation and use of the planning system. Formal enforcement action will be considered if other attempts at resolution prove unsuccessful.
- 1.13 As far as possible investigations will be carried out in accordance with the service standards outlined at Appendix 'C'. The Council's Constitution through the Scheme of Delegation of Functions to Officers sets out the appropriate level of decision making available to enable officers to progress cases.
- 1.14 To ensure Officers possess the necessary skills to perform their duties Portsmouth City Council operates a personal development programme to review skills and training requirements for all its officers.
- 1.15 In all cases Officers will have regard to the Council's Equalities Policy to ensure investigations are carried out in a consistent and fair manner, free from any form of discrimination.
- 1.16 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of carrying out their official duties and will take appropriate action where necessary.

2.0 PRINCIPLES OF GOOD ENFORCEMENT

- 2.1 The integrity of the planning service depends on the Council taking timely and effective enforcement action when appropriate and proportionate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unacceptable development is allowed to proceed, or to remain, without any apparent attempt by the Council to intervene. Even when development is considered to be acceptable, the Council has a role in explaining to the public why the development is considered to be appropriate and to encourage a planning application to be submitted so it can be fully assessed, public comments considered, and appropriate conditions attached, if necessary. In order to manage the expectations of complainants it is also important to stress that formal enforcement action is a discretionary power available to the Council, and enforcement action will only be taken when clear and significant harm has been identified, which the local planning authority considers to be able to sustain the service of an enforcement notice. Accordingly, it does not necessarily follow that just because a breach of planning control has been identified a planning enforcement notice will be served. Please see section 5.23 for more information on this process.
- 2.2 To this end clear standards setting out the level of service and performance the public can expect to receive should be published.
- 2.3 Information and advice, in plain language, on the rules applied will be provided. The Council will be open about its working policies.
- 2.4 Enforcement Officers will work actively to advise and assist with compliance to a reasonable degree. This may include advice to make a planning application to regularise development but cannot include prescriptive detail of an alternative scheme that might be acceptable to the Council. Staff will be identified by name and point of contact provided.
- 2.5 The Council will provide well publicised and timely complaints procedures that are easily accessible to the public and will include details of any appeal process and likely timescale.
- 2.6 Action taken will be proportionate to the harm identified, public interest and risks involved.
- 2.7 Enforcement will be carried out in a fair, equitable and consistent manner, and officers will attempt to resolve investigations through negotiation and without formal action whenever possible.
- 2.8 Government policy guidance makes it clear that enforcement action is a discretionary power to be exercised by the Local Authority only when it is expedient to do so, and any action should be proportionate in respect of the breach of control. Government guidance also advises that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits and advises that planning permission may be granted retrospectively to regularise development already carried out. While it may not always be an offence to carry out development without planning permission, it cannot be assumed that planning permission will be granted for the development retrospectively.

3.0 GOVERNMENT GUIDANCE AND LEGISLATION

3.1. The Council's Planning Enforcement function is undertaken in accordance with current and emerging Local and Central Government guidance, policy and legislation including:

- i. Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004) as amended.
- ii. Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended).
- iii. Planning (Listed Buildings and Conservation Areas) Act 1990
- iv. Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
- v. Human Rights Act 1998 and the European Convention on Human Rights, including but not limited to:
 - i. Article 1 of the First Protocol – protection of property
 - ii. Article 6 - the right to a fair trial
 - iii. Article 8 – right to respect for family life; and home
 - iv. Article 14 – protection from discrimination
- vi. Police and Criminal Evidence Act 1984; as amended.
- vii. Localism Act 2011.
- viii. Town and Country Planning (General Permitted Development) (England) Order 2015; as amended.
- ix. National Planning Policy Framework (including Planning Practice Guidance Paragraphs 001 Reference ID: 17b-001-20140306 to Paragraph 060 Reference ID: 17b-060-20140306).
- x. The levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. This came into effect April 2024.

3.12 The National Planning Policy Framework 2023 states (Paragraph 59):
 “Effective enforcement is important to maintain 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. They should consider publishing a local enforcement plan to manage enforcement proactively, 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 appropriate.”

4.0. SCOPE OF PLANNING ENFORCEMENT

- 4.1. Planning enforcement deals with development, which is defined by the Town and Country Planning Act 1990, s.55 as: ‘... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land’. For the purposes of the legislation building operations includes;
- Demolition of buildings;
 - Rebuilding;
 - Structural alterations of or additions to buildings;
 - Other operations normally undertaken by a person carrying on business as a builder;
 - Engineering operations.
- 4.2. Generally speaking, it is not a criminal offence to carry out development without first obtaining planning permission. The following are exceptions to this general rule as they carry an immediate criminal liability:
- Unauthorised works to a listed building.
 - Unauthorised advertisements.
 - Unauthorised demolition of an unlisted building, structure or wall in a Conservation Area.
 - Unauthorised works to protected tree.
 - Unauthorised works to trees in a Conservation Area.
 - Displaying an *advert without consent (*Adverts which require express consent from the LPA)
 - Works carried out in contravention of an enforcement notice.
- 4.3. Unauthorised development can often be regularised by the submission of a retrospective planning application and, where appropriate the responsible person may be invited to submit this, normally within four weeks of the request. A person retains the right to submit a planning application even if the enforcement team advise against doing so because it is considered that the development would be unlikely to receive support at an Officer level.
- 4.4 The Local Planning authority has an obligation to determine retrospective planning applications. Such retrospective applications are considered on their planning merits, in the same way as other applications, and are not more likely to be approved or refused because they are submitted after the event. However, if the breach of planning control was intentional it becomes a material consideration, but only if there is clear unambiguous evidence that any breach was undertaken intentionally. If an enforcement notice has been served against a development, then the LPA can decline to accept an application seeking to retain it.
- 4.5 Where an application is not submitted, enforcement action will not be taken if it is judged that the unauthorised development would have been granted unconditional planning permission or a technical breach of planning control has occurred and little or no harm is being caused. This is in line with Government guidance which specifically advises against the use of formal powers to regularise technical breaches or appropriate development.
- 4.6 Enforcement action cannot be taken where development, operational or change of use, falls within the criteria of Permitted Development as defined by the Town and

Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments.

4.7 The Planning Enforcement Team does not investigate the following:

- i. Non-planning related neighbour disputes, which would include overgrown householder gardens and associated problems such as vermin, drainage or Japanese knotweed. Such concerns should be addressed to the Council's Safe, Clean and Tidy Team, where they will be triaged and forwarded to the appropriate Council function to investigate, which in most case will not be Planning Enforcement.
- ii. Trespass, land boundary, ownership, access or covenant disputes.
- iii. Use, signage or development on highways, pavements or grass verges; unless in private ownership (these are generally the responsibility of the Highway Authority and those delegated to exercise powers under the relevant legislation).
- iv. Dangerous structures (in some cases affecting public safety these can be investigated by a Building Control Surveyor). When information relating to such cases is received the Enforcement Team will either direct the informant to the relevant agency or refer the case on their behalf.
- v. Loss of value to a property.
- vi. Competition with other businesses.
- vii. Trespass, boundary or other neighbour disputes.
- viii. Matters controlled by other legislation, for example Building Regulations

4.8 Some of the above are examples that are more likely to be private civil matters; the Council has no legal right of intervention in these matters.

4.9 An enforcement investigation will not be undertaken if, at the time of the initial case, it is apparent that the alleged breach has attained immunity due to the passage of time since the breach occurred.

4.10 Following the introduction of the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024, In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within 10 years for any other breach of planning control (essentially other changes of use).

4.11 However, the time limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:

- i. section 171B(4)(b) of the Town and Country Planning Act 1990, which provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported

action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit, but further enforcement action is subsequently required. This is known as the “second bite” provision.

- ii. where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.
 - iii. where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered (see *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council and Bonsall / Jackson v Secretary of State for Communities and Local Government*).
- 4.12 Therefore, in cases of deliberate concealment, a local planning authority may decide to serve an enforcement notice ‘out of time’ or apply for a planning enforcement order. It is for the local planning authority to decide which approach is appropriate in each case.
- 4.13 Where there is evidence that development has been deliberately concealed an investigation may still be carried out and action taken, although the Council will be required to apply to the Magistrates’ Court for their permission to take action in these circumstances.
- 4.12 When considered necessary the Planning Enforcement Team, in consultation with the Enforcement Team Manager and/or Assistant Director, will monitor the implementation of specific planning consents and associated conditions.

5.0 CASE INVESTIGATIONS AND OUTCOMES

- 5.1 Enforcement can be a lengthy and complex process. It is, therefore, not possible to predict the time required to resolve individual cases. This will vary from one case to another. However, the basic process that is followed remains the same in each case.
- 5.2 Please be aware that all investigations and information gathered are not available to the public due to their sensitive nature.

Investigation and Site Visit

- 5.3 The initial investigation will include research and analysis of the site and/or its planning history. Depending on the result of this, a site visit will be carried out in accordance with the process described within Appendix D.
- 5.4 A written record will be made of site visits carried out. This will include, when available, details of relevant persons present. Photographs taken on site will include a digital date and time stamp. A record of the visit, including photographs will then be entered into the Council's casework database. This database is not available for the public to view.
- 5.5 Where more information in respect of the use or ownership of a site is required a Planning Contravention Notice (PCN) or Request for Information (RFI) may be served.

What happens if someone complains about you?

- 5.6 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, and so we do not just believe an enquiry but will always seek to work with you to understand the facts of the case.
- 5.7 A member within the Enforcement Team may visit the site or contact you in writing. Due to time constraints, site visits are undertaken without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive. Enforcement officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the Enforcement Officer. However, we are required to give 24 hours notice to insist on entry to a residential property but if you are happy to allow us access then we will usually take up that offer.
- 5.8 If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, the Planning Enforcement Service will advise you of the details of the breach and how it can be rectified.
- 5.9 In the event of a breach being established, your co-operation will be sought to correct the breach within a reasonable period of time. The period of time allowed will depend on the nature of the breach.

Identifying Breaches of Planning Control

- 5.10 A site visit may assist in the identification of the suspected breach of planning control and a decision on whether an actual breach has occurred will be made by the investigating officer. If necessary, the case officer will consult with a Conservation and Design Officer, planning officer or Tree Officer/Arboriculturist.
- 5.11 Where it has been decided that there has been no breach or development, the informant will be notified and no further action taken. A case will only be closed after authorisation from an appropriate senior Planning Officer/Manager in accordance with the Council's Scheme of Delegation.

Enforcement Case Reviews

- 5.12 Where a breach is identified, a decision will be made if action should be taken. Planning enforcement is a discretionary function and formal enforcement action will only be undertaken where it is expedient and proportionate to do so. In line with guidance contained in the National Planning Practice Guide it may sometimes be the case action is not taken even where planning permission is required, and no application submitted.
- 5.13 Where it is appropriate the subject of the investigation may be invited to regularise the breach through the submission of an application, whereby appropriate conditions may be applied. Applications for retrospective permission will not be invited where an initial assessment indicates that there is no reasonable prospect of permission being granted. The subject is still able to submit an application and the Development Management Team will consider its position should that occur.
- 5.14 Where specific guidance is required the investigating officer will consult with an appropriate senior Planning Officer/Manager, Conservation and Design Officer or Tree Officer/Arboriculturist or other officers within the Council or, where appropriate, outside bodies/agencies or with consultants employed by the Council. The outcome of the consultation will be entered in the subsequent report. The Conservation and Design Officer will produce a statement of harm in accordance with their policies and this will form part of the report.
- 5.15 The appropriateness of other action under different legislation such as the use of a Community Protection Notice may be considered and this will also be noted on the subsequent report, potentially with a recommendation that the planning enforcement investigation be closed but the report notified to the appropriate department to consider a Community Protection Notice.

Decision to Take Action

- 5.16 The decision on action will be made by the Enforcement Team Managers and/or any other senior officer of the Council in accordance with the Council's Scheme of Delegation in consultation with elected members where considered necessary or appropriate. Formal action will be recommended and approved, and any subsequent notice/prosecution will be subject to full legal consultation. A full expediency report will be made and signed by those consulted before the issue of a notice/start of prosecution proceedings.
- 5.17 In cases involving the unauthorised residential use of land or buildings, when formal action will result in the displacement of the occupants, the Ward Member and Portfolio Holder(s) will be consulted.

- 5.18 Where necessary the decision will be communicated, in writing, to the subject. Where appropriate the Ward Member/s will also be notified. The complainant will be notified separately.
- 5.19 When it is decided to take action, one of two options will apply:
- The subject is asked to remedy the breach within a certain timescale or;
 - The subject is required, by means of a formal notice, to remedy the breach.

Note: This may be an incremental process using all options sequentially. With the exception of a formal notice no option is restricted to a single consideration and it may be that steps are revisited as the investigation proceeds. This is notwithstanding a subject's right to apply for planning permission at any time during the investigation, which is likely to result in enforcement action being suspended until the application has been determined, unless an application directly relates to an enforcement notice that has already been served.

- 5.20 It is necessary to give the alleged offender a clear and appropriate timescale for undertaking the chosen option. Enforcement will keep an electronic record of these deadlines. Extensions to deadlines will only be granted where a clear indication exists that the subject is co-operating with the Council and apparent harm to third parties can be minimised. Reasons for granting the extension, together with the new deadline, will be recorded on the case file.
- 5.21 Negotiation is an essential part of the enforcement process. Government guidance is that breaches should be addressed through negotiation wherever possible. Applications seeking retrospective permission should be sought where it likely that planning permission would be granted, conditionally or unconditionally, or where an application provides the best forum for considering the planning merits of the case. Such applications will also often be the best means of obtaining the views of Ward Members, neighbours, statutory bodies and other interested parties. The invitation to submit a retrospective application does not imply that an application will be approved. It will be judged on its merits in the normal way and be subject to the usual determination process.

Resolution of complaints

- 5.22 A case will be considered resolved when:
- A decision is made that it is not expedient to pursue enforcement action. It is important to note that just because a breach of planning control has been identified it will not always follow that formal enforcement action will be taken. The Council must be satisfied that a breach is sufficiently harmful to sustain the service of an enforcement notice. Enforcement action is discretionary, and the Council does not have to take enforcement action even if a breach of planning control is identified. In deciding whether or not to take enforcement action the Council will balance the seriousness of a breach of planning control; the level of any harm that it causes; and the likely chances of success in pursuing enforcement action as well as balancing the impact on Human Rights of all parties concerned. Having weighed up these factors we will make a decision as to whether we will take action i.e. if it is expedient to take action.

- The matter is being regularised through the application process. Further investigation may be necessary on refusal of permission and development remains in breach.
- The breach of development control has ceased.
- Planning permission has been granted or is being considered.
- A formal notice is served and complied with. If such a notice is appealed, then when the appeal has been determined by the Planning Inspectorate.

6.0 COMMENTS AND REVIEW

- 6.1 The Council will strive to provide the highest possible quality of service delivered in a fair and consistent manner. Customer suggestions are, therefore, welcome as to how we can make improvements to the planning enforcement process. Alternatively, problems may arise from time to time and any difficulties concerning the enforcement service should be brought in the first instance to the attention of the Team Manager.
- 6.2 If still dissatisfied a further complaint can be submitted through the Council's formal complaints procedure and the Local Government Ombudsman. Details of both are available on the Council's website. Please be aware however, that such a complaint must relate to the way in which the complaint has been handled as opposed to the final decision reached.
- 6.3 In order to assist in the improvement of service delivery, a review of the following elements will be undertaken annually. Such reviews will enable this policy to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements.

7.0 AN EXPLANATION OF THE APPENDICES

- 7.1 Appendix A: Reporting a Suspected breach of Planning Control.
This sets out how individuals may contact Planning Enforcement and what information we require in order to progress a complaint.
- 7.2 Appendix B: Prioritising cases.
This sets out how a reported case will be triaged according to three categories which relate to the seriousness of the alleged breach of planning control. Categories are divided into A, B and C and the appendix gives an explanation and examples of what type of reported breach falls within which category.
- 7.3 Appendix C: Service standards.
This provides an explanation of how registered cases will be investigated and includes times frames relevant to each category, A, B and C for each stage of an investigation.
- 7.4 Appendix D: List of Powers.
This provides a list of available powers and a description of them.
- 7.5 Appendix E: Glossary.
This provides a brief description of some planning terms that are most relevant to planning enforcement investigations and outcomes.
- 7.6 Appendix F: Contact details.
This sets out the various means by which you can contact Planning Enforcement.

APPENDIX A

Reporting a Suspected Breach of Planning Control

1. All information received from a complainant is treated as strictly confidential. No person who is subject of any investigation will be informed of the source of the information. The subject of the investigation may make assumptions in respect of complainants and the Council cannot prevent this happening. Should enforcement action result in a planning appeal or court action where the identity of an informant will, out of necessity, be revealed (as a witness for example), the matter will be discussed with the informant prior to proceeding. Importantly, anonymous cases can be difficult to investigate and may be malicious and are not normally actioned. However, the nature of any allegation and the prospects of action being successful in the case of anonymous information received will be considered. The most serious breaches of planning control, such as unauthorised works to a Listed Building, a tree protected by a Tree Preservation Order, or a tree located in a Conservation Area can constitute a criminal offence, but it must be appreciated that where witnesses are unwilling to provide a statement or attend court the prospects of conviction may be low, and this can influence the Council's view on the expediency of taking action.
2. Where possible cases should be submitted via our online form which is tailored to ensure that all relevant information is collected. These forms can also be sent by email or are available for collection at the Council Offices. Otherwise, complaints should be in writing; by post or by e-mail.
3. To enable the Council to investigate the alleged breach as much information as possible should be submitted. This should include:
 - 3.1.1. Name, address, telephone number and email address (if available) of the complainant. Unless a complainant requests otherwise all correspondence, with the exception of formal notices, will be sent via email. To prevent malicious complaints and to help us provide an efficient service failure to provide full contact details may result in a complaint not being investigated.
 - 3.1.2. When the alleged breach occurred or commenced.
 - 3.1.3. Description of the works or activity (use of land).
 - 3.1.4. Duration and frequency of occurrences.
 - 3.1.5. The exact location and address of the problem including postcode if known.
 - 3.1.6. The name and address of the person(s) believed to be responsible for the alleged breach, if known.
 - 3.1.7. The harm suffered as a result of the alleged breach and by whom in line with material planning considerations as far as possible.

APPENDIX B

Prioritising Cases

The Council receives a large number of reports of alleged breaches of planning control each year. Some cannot be resolved quickly especially if formal action results. Council resources are finite and it is therefore necessary to manage the case work by prioritisation. Prioritisation will be based on the following and will fall into one of the following lettered categories:

A. Serious breaches causing irreparable harm

These cases will include;

- Unauthorised works to a listed building or scheduled ancient monument (if within the Council's jurisdiction).
- Unauthorised works to a tree which is subject of a Tree Preservation Order or is situated within a Conservation Area.
- Any case where the time limit for taking enforcement action expires in the near future.
- Any unauthorised development, advert or breach of condition which is causing irreparable public harm or danger; including pollution or environmental harm.

B. Breaches causing significant harm

These cases will include;

- Unauthorised development which would adversely affect the character/appearance of a conservation area or the setting of a listed building or locally listed building.
- Cases that result in a significant harmful impact to amenity, e.g. business activity in a residential area at night preventing a number of neighbours from sleeping.
- Unauthorised signage/advertisements that significantly affect public safety.
- Unauthorised change of use to the significant detriment of neighbouring amenities.

C. Breaches of Planning Control that do not cause significant harm

These cases will include;

- Operational development not built in accordance with approved plans or in accordance with conditions set out in the General Permitted Development Order.
- Unauthorised telecommunications equipment/satellite dishes/equipment on residential premises.
- Any breach of development control which is not causing significant noise, vibration, or odour. A development may cause significant visual harm under category C; for example, a dormer clad in non-matching materials.
- Any technical or minor breach of development control.
- Unauthorised fences, walls or gates (unless public safety is compromised or attached to, or adversely affecting the setting of, a listed building or conservation area).

Other considerations when deciding on the priority of a case include;

- The overall, probable, public benefit of formal action.
- Time limits for enforcement action to be taken.
- Previous case history.
- Likelihood of the alleged breach being repeated.

APPENDIX C

Service Standards

1. Though Planning Enforcement action is discretionary; the investigation of complaints received containing proper information is a statutory duty and must be investigated. No national performance targets are set but, subject to workloads and available resources, the Enforcement Team will aim to meet the following targets. Performance will be monitored on a regular basis. Cases will be initially categorised based on the information received by the complainant, and it will be for the Enforcement Team to decide which category a complaint may fall in. It may well be necessary to re-categorise during the course of an investigation. Usually a site visit will be undertaken but there will be circumstances when it is not considered necessary

Category A

Acknowledgement

95% of cases acknowledged within 5 working days.

Site visit (if considered necessary)

65% within 1 working day, 95% within 2 working days.

Assessment

95% within 5 working days

Note: Any investigations, and or actions relating to any class of designated or undesignated heritage asset will be brought to the attention of the Conservation and Design Officer for their consideration and input.

Category B

Acknowledgement

95% of complaint acknowledged within 5 working days.

Site visit (if considered necessary)

65% within 5 working days, 95% within 10 working days

Assessment

65% of within 5 working days, 95% within 10 working days

Category C

Acknowledgement

95% of complaints acknowledged within 10 working days.

Site visit (if considered necessary)

65% within 20 working days, 95% within 25 working days

Assessment

65% within 20 working days, 95% within 25 working days

Case Resolution (all categories)

75 % of cases within 9 Months

2. Cases will be registered, prioritised and allocated at the time of their appropriate acknowledgement by the Enforcement Team (in cases where the information provided by the complainant lacks the detail necessary for the Council to effectively

investigate the alleged breach the Council will liaise with the complainant, as soon as is practicable, to obtain the necessary additional information).

3. If necessary, the site will be inspected in accordance with the priority of the case and, where practicable, no later than 25 working days from the date of registration.
 4. Wherever possible, the complainant will be contacted as soon as is practicable following the assessment of the case.
 5. Further contact with the parties involved will be maintained according to the demands of the case. Regular updates will not be provided, except on arrangement with the case officer, but interested parties should be advised of any significant developments in the investigation
 6. A case will be considered resolved when:
 - A decision is made that it is not expedient to pursue enforcement action.
 - The matter is being regularised through the application process. Further investigation may be necessary on refusal of permission and development remains in breach.
- 6.3. The breach of development control has ceased.
- 6.4. Planning permission has been granted or is being considered.
- 6.5. A formal notice is served.

APPENDIX D

The following list shows the main powers available to investigate cases and deal with breaches of planning control. In all cases the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost-effective remedy. Any enforcement action should always be commensurate with the breach of control to which it relates and be in the public interest.

1. **Planning Contravention Notice (PCN) – Section 171C; Town & Country Planning Act 1990** Often the first formal step in resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches. The intention of the Council in issuing a PCN is also to send a clear warning that further formal action is being considered. Failure to provide the information required by a PCN can result in a fine of up to £1,000 while providing false information can result in a fine of up to £5,000.
2. **Request for Information (RFI) - Section 330 Town & Country Planning Act 1990.** Also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It is also used in cases involving unauthorised works to a listed building where there is no associated breach of planning control. The penalties attached to an RFI are similar to those for the PCN.
3. **Enforcement Notice (EN) – Section 172 Town & Country Planning Act 1990.** The most common notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action. An Enforcement Notice will specify the breach, the steps that must be taken to remedy the breach, and a specified time period for compliance. The recipient(s) of such a notice have a right of appeal to the Secretary of State. An appeal suspends the effect of the notice until it is determined. Failure to comply with an Enforcement Notice can result in an unlimited fine.
4. **Breach of Condition Notice (BCN) – Section 187A Town & Country Planning Act 1990.** Used as an alternative to an Enforcement Notice but only in circumstances where there has been a failure to comply with conditions attached to a planning permission. The BCN must specify details of the breach and the steps required to secure compliance. A minimum period of 28 days must be given for compliance. There is no right of appeal to the Secretary of State. Failure to comply with a BCN can result in a fine.
5. **Stop Notice – Section 183 Town & Country Planning Act 1990.** Must be accompanied by an Enforcement Notice and served at the same time when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or are causing irreversible harm to the environment. It can be used to ensure that an activity does not continue when an appeal is lodged against the Enforcement Notice. Failure to comply with a Stop Notice can result in an unlimited fine.
6. **Temporary Stop Notice (TSN) – Section 171E Town & Country Planning Act 1990.** Can be served without an Enforcement Notice but is only valid for 56 days and cannot be reissued at the end of that period. Is only used when a breach demands immediate action, and the Council requires time to complete its investigation. Failure to comply with a Temporary Stop Notice can result in an unlimited fine.

7. **Injunction – Section 187B Town & Country Planning Act 1990.** In exceptional cases where there is a necessary and serious need to restrain an actual or pre-empted breach of planning control, the Council can apply to the Court for an injunction. An injunction can be sought whether or not other enforcement action(s) has been taken. Due to the high costs involved an injunction is only used as a last resort when other action is unlikely to succeed, or where there is a clear, compelling and exceptional need to intervene before the breach actually takes place.
8. **Section 215 Notice – Town & Country Planning Act 1990.** This section of the Act empowers the Council to issue a notice on the owner or occupier of land if it appears that the visual amenity of the area is adversely affected by its condition. Such a notice may deal with buildings as well as land and would specify the steps required to remedy the existing condition and time scale for compliance. The recipient of a Section 215 Notice can appeal against it in the Magistrate's Court. Failure to comply with a Section 215 Notice can result in a fine of up to £1,000. It should be noted that it is the decision of the Council whether a case meets the threshold for the service of a Section 215 Notice, and the Council must be consistent when considering the service of a Section 215 Notice in respect of other sites throughout the city. It should also be noted that any complaints of this nature should be addressed to the Council's Safe, Clean and Tidy Team, where they will be triaged and forwarded to the appropriate Council function to investigate, which in most case will not be Planning Enforcement.
9. **Default Powers and Direct Action – Sections 178(1) and 219 Town & Country Planning Act 1990.** The Council may enter land and carry out required works to secure compliance when an Enforcement Notice is in effect but has not been complied with. There is no requirement to give notice to either the owner or occupier of the land, although it is good practice to do so. In some circumstances the Council can enter land to carry out remedial works and recover costs incurred from the landowner.
10. **Listed Buildings – Section 7 Planning (Listed Buildings & Conservation Areas) Act 1990.** It is an offence to demolish a listed building, or to carry out works/alterations, which affect its character, without the Council's prior consent. A Listed Building Enforcement Notice may be issued or prosecution action instigated (or both) depending on the circumstances of the case. It is also an offence to demolish some unlisted buildings in Conservation Areas without prior consent.
11. **Trees (Conservation Areas/Preservation Orders) – Sections 210 and 211 Town & Country Planning Act 1990.** It is an offence to cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area. Consent from the Council also has to be obtained for any remedial works to a protected tree such as lopping or pruning. If any of these are carried out, the Council can consider either prosecution action or the serving of a replanting enforcement notice.
12. **Advertisements – Section 224 Town & Country Planning (Control of Advertisements) (England) Regs 2007.** It is an offence to display an advertisement in contravention of the above. When deciding on action the Council will consider factors such as amenity or public safety.
13. **Planning Enforcement Order (PEO) – Section 124 Localism Act 2011 (inserting Sections 171BA-171BC to the Town & Country Planning Act 1990).** Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order. Once granted the LPA can serve an enforcement notice. The 4 year and 10-year periods for immunity will

not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach and having sufficient information to justify enforcement action being taken.

14. **Completion Notice – Section 94 Town & Country Planning Act 1990.** in some circumstances the LPA can issue a notice for approval by the Secretary of State requiring unfinished, lawful, development to be completed within a specified period of not less than twelve months. Failure to do so can affect the validity of the planning permission, although development already carried out before the end of the specified period will continue have valid planning permission.
15. **Enforcement Warning Notice - Section 171B of the Town and Country Planning Act 1990.** When considered appropriate the LPA can issue an Enforcement Warning Notice. The notice is, in effect, merely a warning that, in the absence of an application, further enforcement action will be considered. An enforcement warning notice formalises the process for a local planning authority to invite a retrospective planning application. Under section 172ZA of the Town and Country Planning Act 1990, where a local planning authority considers that unauthorised development has a reasonable prospect of being acceptable in planning terms, it can issue an enforcement warning notice. The notice will set out the matters that appear to be a breach of planning control and state that, unless an application is made by a specified date, further enforcement action may be taken.

APPENDIX E

Glossary

1. Amenity

1.1. This is not defined in legislation but in planning terms is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as: the types of land uses; the quality of the buildings; juxtaposition of buildings; the provision of open land or trees; and the inter-relationship between all the different elements in the environment.

1.2. Residential amenity may take into consideration privacy - whether there is overlooking over and above that which already exists, any overbearing impact, or overshadowing or loss of light. There is no right in planning law to a particular view and the Council cannot take into consideration loss of monetary value of a property. Nor can we take into consideration matters which may be controlled under other legislation, for example light pollution from security lighting.

2. Expediency

2.1. Enforcement action is discretionary, and the Council does not have to take enforcement action even if a breach of planning control is identified. In deciding whether or not to take enforcement action the Council will balance the seriousness of a breach of planning control; the level of any harm that it causes; and the likely chances of success in pursuing enforcement action as well as balancing the impact on the Human Rights of all parties concerned. Having weighed up these factors we will make a decision as to whether we will take action i.e. if it is expedient to take action.

APPENDIX F

Contact Details

The Planning Enforcement Team can be contacted in the following ways: By Letter to:
Planning Enforcement Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2AY

By e-mail to planningenforcement@portsmouthcc.gov.uk

By telephone (via Customer Services): TBC: If making a complaint over the telephone you will be asked to formally submit your complaint in writing.

In person at: Portsmouth City Council's main offices at the above address. Please be advised that we cannot guarantee that an enforcement officer will be available to see you. The quickest way to ensure an investigation commences is to send an email.