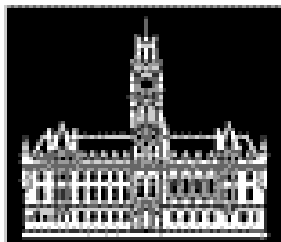


**BOROUGH OF BARROW-IN-FURNESS**



**BOROUGH OF  
BARROW IN  
FURNESS**

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DX No: 63917 BARROW-IN-FURNESS

# PLANNING ENFORCEMENT POLICY

## ADOPTED DECEMBER 2018

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# 1. OVERVIEW

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- 1.1 This Policy Statement (“the Policy”) follows a comprehensive review of the Planning Enforcement Policy previously adopted by the Authority in June 2007. It has been reviewed in order to assimilate a number of changes in legislation and in order to recognise a significant reduction in Council resources. It has been drafted by senior officers and endorsed by elected Members as a statement of the Council’s approach to planning enforcement.
- 1.2 The principles of good enforcement contained within the Policy will not by themselves serve to demonstrate that an enforcement service is offering “best value”. However, a service which sets out clear standards of performance in keeping with its available resources and which provides clear information in line with the principles will obviously be able to refer to such issues when assessing whether a local community feels that best value is being achieved in any particular service.
- 1.3 This Policy document seeks to clearly set out our objectives for planning enforcement and the standards of service the public can expect. It summarises the tools available to achieve our objectives and is intended to make our decision making process on planning enforcement transparent. It commits us to good enforcement policies and procedures, and may be supplemented by additional statements of enforcement policy.
- 1.4 Enforcement action is a discretionary power. The Council will seek to resolve breaches of planning control by negotiation and shall only consider the use of formal enforcement action where negotiation has failed.
- 1.5 The Council has one part time Planning Enforcement Officer within the Development Services Section employed to investigate complaints, liaise with case officers and report serious breaches to Members. Close liaison is maintained with Building Control to monitor most developments. Planning Officers are also involved when matters reach appeal stages or court proceedings. Legal proceedings are undertaken by the Councils’ Principal Legal Officer and retained solicitors.
- 1.6 The Council receives a wide range of complaints. The vast majority of these are dealt with in a relatively short period of time as there is either no breach of control or the matter can be resolved through negotiation without formal action.

## 2. INTRODUCTION

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2.1 A breach in planning control can occur in several ways. Whilst a breach of some planning controls is generally not a criminal matter, it **is** a criminal offence not to comply or ensure compliance with any notice appropriately served by the Authority in response to the following breaches;

- Operational development, (such as erecting a building or carrying out engineering works on land)  
Material changes of use of buildings or land without prior planning approval, or
- Where permission has been granted there has been a failure to adhere to the approved plans and documents,
- A failure to comply with conditions attached to the consent.

Other breaches of planning controls **are** criminal offences. These are;

- The unauthorised display of advertisements
- Unauthorised works to a tree that is subject to a Tree Preservation Order or is situated within a conservation area
- Unauthorised works to a Listed building
- Works contravening the Hedgerow Regulations 1997

2.2 In September 2000 the Council became a signatory to the Government's Enforcement Concordat under which it has adopted the Concordat's principles with regard to standards, openness, helpfulness, complaints about the service, proportionality and consistency. The text of the document is reproduced in Appendix C.

2.3 Local residents and businesses have a right to expect that harmful activities are dealt with effectively. The integrity and reputation of the Council's planning functions relies upon appropriate enforcement to ensure that development is undertaken in accordance with planning permission and that unauthorised activities do not go unchecked

2.4 The purpose of the policy is to identify an appropriate level of practice in the enforcement of planning control for the benefit of the residents and businesses of the Borough

## 3. OVERALL POLICY STATEMENT

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- 3.1 The Policy shall not bind the Council or fetter its discretion in particular matters. This means that each case is judged on its merits as to whether or not it is in the public interest to take formal action, (referred to as “expediency”). There will always remain discretion whether and how to proceed on the Council’s part, having regard to all the applicable circumstances of each case
- 3.2 The Council will endeavour to provide a fair and consistent enforcement service to protect the environment of the area, our heritage, the amenity of its citizens, and the needs of businesses, in line with its available resources.
- 3.3 In doing this the Council will seek to uphold the objectives and policies of the Development Plan<sup>1</sup>.
- 3.4 The Council is obliged to have regard to relevant and contemporary central government planning guidance, currently Planning Policy Guidance “Ensuring effective enforcement”, and the National Planning Policy Framework (NPPF) para 207. The NPPF states;
- “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.”***
- 3.5 The Authority shall also have regard to the European Convention on Human Rights such as Articles 1, 8, and 14 to take account of the potential impact upon health, housing and welfare needs of those affected by the action.
- 3.6 The Authority is also governed by the applicable statutory provisions contained within planning law and the way in which the law courts have interpreted these provisions in decided cases.
- 3.7 The Authority will ensure adherence to its Covert Surveillance Policy<sup>2</sup> as part of its Enforcement function.
- 3.8 In carrying out its planning enforcement role, the Council will share information, as appropriate, with other relevant regulatory bodies (see para 4.10 and Section 9) as officers see fit in order to reach a suitable conclusion to the investigation. The Council will do this in compliance with the General Data Protection Regulation and other relevant data protection laws.

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<sup>1</sup> The contemporary Development Plan for the Borough which may consist of several Saved or adopted documents.

<sup>2</sup> As may be reviewed by the Council, currently version 3.0 October 2016

## 4. GENERAL PRACTICES

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- 4.1 Cases will be prioritised according to the harm caused to amenities. Investigations will be carried out proportionately in relation to the breach in planning control identified, and wherever possible we will seek to negotiate to resolve issues. There will be times when formal enforcement action is necessary, for example where there is proven demonstrable harm and in the opinion of officers, no reasonable likelihood of reaching an amicable solution.
- 4.2 When investigating a complaint the person responsible for the alleged breach will be offered the chance to put things right, within a proffered timescale, and the consequences of non compliance will be explained to them.
- 4.3 When the Council officers consider that an unauthorised development is acceptable in general terms but it would be appropriate to control certain aspects of the development through the imposition of conditions or other agreements, the initial approach will be to seek regularisation via a retrospective application.
- 4.4 The Council will wherever possible avoid taking enforcement action against a trivial or technical breach which causes little or no harm to amenity.
- 4.5 Formal enforcement action will only be used where:-
- The development is unacceptable in principle and does not cease; or
  - the development is acceptable in principle only if it is subject to certain conditions but the owner/and or operator will not submit a planning application; and
  - the activity or development is clearly detrimental to the amenities of the locality, or to any other material consideration e.g. Development Plan Policy objectives;
- 4.6 Careful consideration will be given to all the options available or whether to initiate formal action as indicated by the following ways:-
- a. Request submission of an application if the development is considered likely to be recommended for approval but may require some refinement or the use of planning conditions.

- b. Negotiation with applicants/agents to resolve the breach, which may include service of a Requisition for Information (Section 330 Notice) – to seek information as to ownership of or persons having an interest in premises or land, in order to ensure that such persons are aware of the enforcement issue.
- c. Planning Contravention Notice (PCN) – to be served whenever the Planning Authority has determined that a breach of planning controls has occurred.
- d. Breach of Condition Notice (BCN) – to be served whenever the Planning Authority has determined that a condition attached to a planning consent has been breached.
- e. Enforcement Notice – to be served where the Planning Authority are satisfied that there has been a breach of planning control and it is expedient to issue a notice having regard to the provisions of the development plan and to any other material considerations.
- f. Stop Notice – to be served where the Planning Authority consider it expedient that any relevant activity should cease before the expiry of the compliance period with an Enforcement Notice. Normally takes effect after 3 days.
- g. Injunction – where the Planning Authority consider it expedient for any actual or apprehended breach of planning control to be restrained by an injunction, they may apply to the High Court or County Court for an injunction to restrain that breach.
- h. Wasteland Notice (Section 215 Notice) – served where it appears to the Planning Authority that the local amenity is adversely affected by the condition of land or buildings. 28 days are given before the notice takes effect. Non compliance may result in prosecution with the Authority's contractors carrying out the works and recharging the cost to the site owner ("works in default").
- i. A Community Protection Notice (CPN) under the Anti-social Behaviour, Crime & Policing Act 2014, can be served on an individual or body by the Authority in order to cease/reduce an activity or require them to carry out specific steps to protect local amenities.
- j. Legal action, under the Advertisement Regulations in the Magistrates Courts, to prosecute individuals responsible for unauthorised advertisements, where agreement to cease the display through voluntary action cannot be agreed.
- k. Completion Notice to be served where the Planning Authority are of the opinion that a development that has been commenced will not be completed within a reasonable time period.

l. Temporary Stop Notice – where the Planning Authority consider it essential that unauthorised development is halted for 28 days to allow more information to be gathered and/or for its effects to be assessed. A Temporary Stop Notice has immediate effect and does not have to be served in conjunction with an Enforcement Notice.

m. Notice under Section 225/225A of the 1990 Act for the removal of an unauthorised advertisement.

n. The Council may also, where appropriate, utilise the Proceeds of Crime Act 2002 (POCA) to recover any financial benefit obtained for unauthorised and continued breaches of planning control where that activity is proven to be a criminal offence; for example by virtue of the nature of the breach (see para 1.3) or where an activity becomes criminal due to non compliance with a statutory notice.

- 4.7 Failure to comply with the terms of the aforesaid Statutory Notices may result in the Council taking further legal action through the Courts.
- 4.8 Notices will not be served merely because development is unauthorised, there must be a cogent planning objective in doing so.
- 4.9 The Council will keep complainants and interested parties aware of progress on enforcement matters or why enforcement action is not being taken.
- 4.10 It is clearly understood that the consequences in terms of penalty and appeal rights applicable to different notices vary widely. Implications of non-compliance will be made clearly known.
- 4.11 The Council in its role as Planning Authority may not investigate;
- neighbour disputes,
  - land ownership disputes,
  - boundary disputes,
  - commercial competition
  - restrictive covenants or private legal matters
  - work on party walls,
  - dangerous structures,
  - development on highways or footways including parking issues,
  - fly tipping or graffiti.
  - work practises on sites, unless subject to a planning condition
  - nuisance, such as noise or odours, unless subject to a planning condition

This is because other legislation covers these matters which fall within the responsibilities of other Council functions, civil laws, or outside bodies. The Planning Enforcement officer will, if considered to be appropriate, pass the complaint to the relevant governing body or Council department and make the complainant aware of this.

## 5. ENFORCEMENT PROCEDURES

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- 5.1 a. Complaints written or verbal will be acknowledged within 10 working days where contact details are provided. Electronic means are preferred for simplicity. Complaints can be made online at the Borough website, [www.barrowbc.gov.uk](http://www.barrowbc.gov.uk) through the Development Control section, or via email at [complaintplan@barrowbc.gov.uk](mailto:complaintplan@barrowbc.gov.uk). Alternatively by phone 01229 876543, in person at the Town Hall, or in writing to; Development Services Manager (Planning), Barrow Town Hall, Duke St, Barrow in Furness LA14 2LD.
- b. All complaints will be treated as confidential as far as possible by the Authority, and personal details will not be released unless required to be disclosed as part of court proceedings. Complainants may be required to attend court to give evidence in some circumstances. All data will be kept in accordance with current GDPR legislation.
- c. We accept that reporting a breach may place severe stress on an individual. Anonymous complaints will only be pursued where there is a tangible, clear or unacceptable breach of planning control involved, for which the Authority's officers are satisfied that an appropriate case to instigate formal action can be established.
- d. We will seek to keep complainants updated with progress of the case including any key decisions, actions, and likely timescales
- e. A full investigation of the current facts and planning history will be carried out. In the instance of a Level 1 (see section 7) case we will endeavour to visit the same working day. For other cases a visit to the site to establish whether a breach has occurred will take place within 10 working days. Site notes and photographs will be electronically stored on the department's enforcement records system.
- f. If for any reason, the officer is unable to ascertain all the necessary information upon which to make a decision, the Authority may serve a Planning Contravention Notice. This will require specific information to be supplied within 21 days of service. Failure to respond is an offence.
- g. If a breach is found, the owner/occupier of the property/land will be advised of the extent of this in writing. Where possible, attempts will be made to negotiate with owner/occupiers to resolve the breach of control prior to any action being taken. If officers consider it necessary, interviews under PACE may be used for gathering information.
- h. In the interests of expediency, all cases will be considered in line with current Council policy before any recommendation is made as to



whether or not enforcement action is necessary.

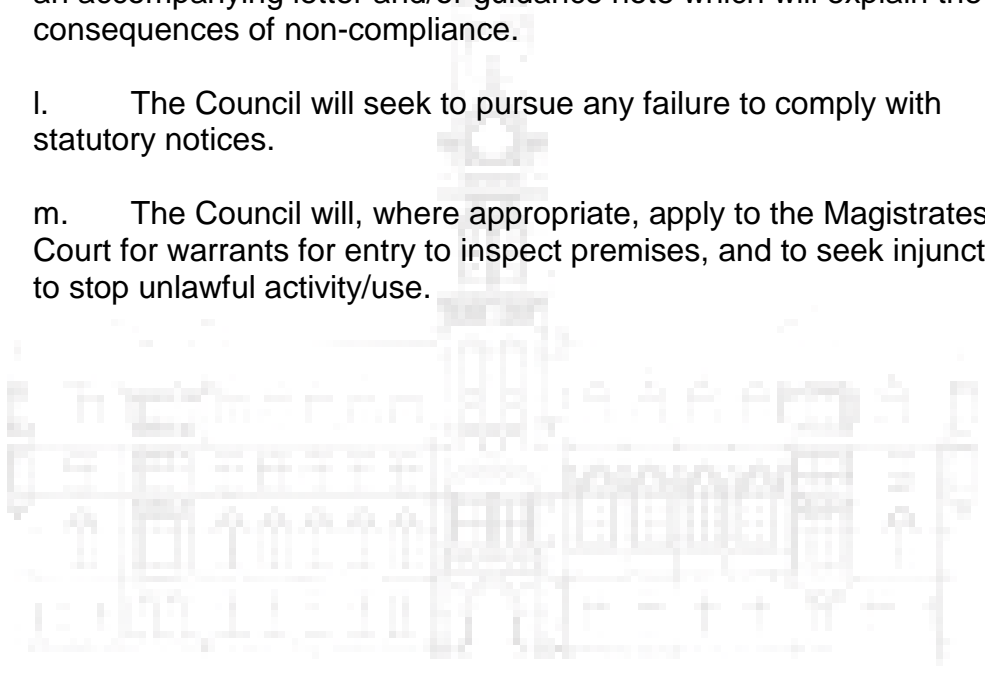
i. Where the Enforcement Officer, in consultation with the Development Services Manager, identifies that a breach of planning control has occurred an Expediency Report will be prepared. This report will determine the course of action associated with the breach. A copy of the Expediency Report forms Appendix A.

j. All complainants and land/property owners will be informed in writing of the Council's proposed course of action at the earliest opportunity following the Council's decision on appropriate action.

k. Where formal action is necessary, statutory notices will be served with reasonable or appropriate timescales for compliance, together with an accompanying letter and/or guidance note which will explain the consequences of non-compliance.

l. The Council will seek to pursue any failure to comply with statutory notices.

m. The Council will, where appropriate, apply to the Magistrates Court for warrants for entry to inspect premises, and to seek injunctions to stop unlawful activity/use.



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## 6. CASE PRIORITY ASSESSMENT

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6.1 Enforcement action can be a long and involved process requiring a lot of staff time. Consequently it is necessary to prioritise cases to ensure that vigorous action is taken against the most damaging breaches of control and less urgent matters are dealt with as resources become available. The Council will investigate matters on the following priority basis:

### 6.2 Level 1 (High)

These are cases where irreversible and serious damage to the environment or public amenity would result, some are actual criminal offences. Examples are;

- Unauthorised alterations or works relating to the demolition of listed buildings.
- Unauthorised works to trees covered by Tree Preservation Orders or in Conservation Areas.
- Works to buildings in Conservation Areas, which would cause demonstrable damage or loss of character.
- Unauthorised works which may have a significant impact upon a Designated area such as a SSSI.
- Unauthorised development which causes demonstrable harm or loss of amenity in the locality.
- Breaches of planning conditions which result in demonstrable harm or loss of amenities.
- Breaches of planning control or conditions which cause demonstrable harm to the amenities of neighbouring properties, or which have an unacceptable environmental impact or have a clear conflict with the Local Plan.

### 6.3 Level 2 (Medium)

- Unauthorised advertisements in conservation areas;
- Unauthorised advertisements affecting highway safety;
- Unsightly and run down buildings or sites that cause a significant loss of amenity to the local area and which justify the serving of a Wasteland Notice under Section 215 of the Planning Act 1990.

#### 6.4 Level 3 (Low)

- Flyposting/other advertisements not covered in Level 2.
- Technical breaches of planning control where there is not serious detriment to amenity.
- Minor works involving boundary walls, fences, sheds and satellite dishes, except those affecting conservation areas or listed buildings.
- Temporary breaches of control which can be resolved without recourse to formal action.

#### 6.5 Level 4

- Development found on investigation to comply with the definition of Permitted Development or for some other reason(s) not to require consent.
- Minor issues which, if in the professional judgement of the Development Services Manager (Planning), warrants no further action, shall be delegated to him to close the case.

6.6 Action will always be commensurate to the nature of the breach. Where unauthorised development could be rectified by the use of suitable conditions a retrospective application will be requested and a time scale set for submission.

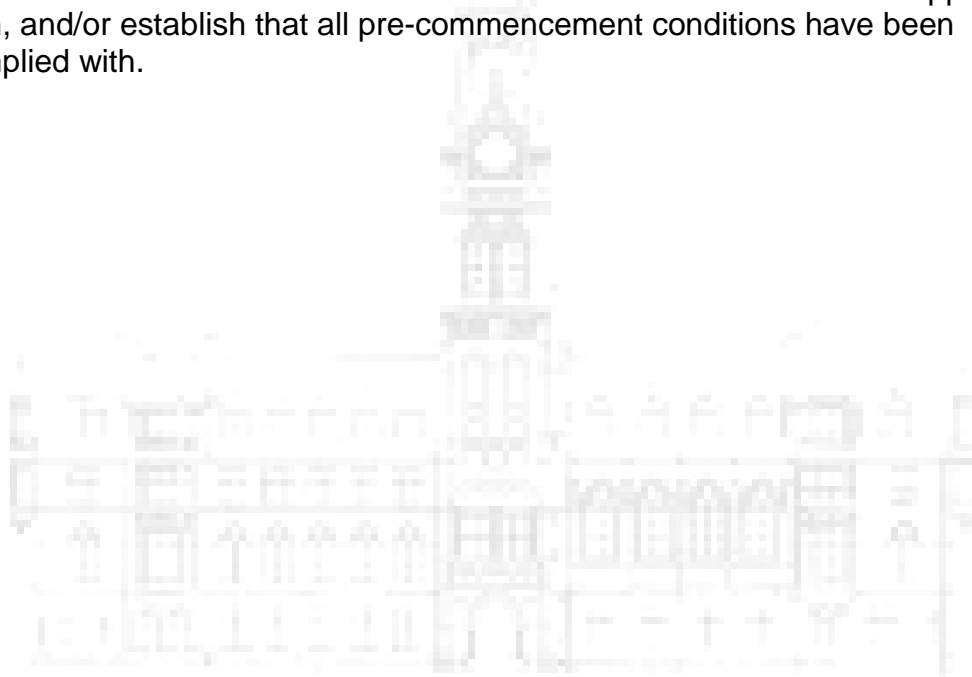
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## 7. MONITORING

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7.1 The Enforcement Officer receives weekly information from the Building Control Section on commencements and completions. These allow the relevant planning permissions to be checked to see if there are any conditions that need to be monitored for compliance.

7.2 Where notification of a start on a new housing development or a major commercial development is received from Building Control, the Enforcement Officer will, at his discretion, arrange to visit the site and carry out measurements to ascertain whether or not the work conforms to the approved plan, and/or establish that all pre-commencement conditions have been complied with.



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## 8. CASE MANAGEMENT

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8.1 Regular meetings will be held between the Enforcement Officer, the Development Services Manager, and where appropriate, the Assistant Director of Regeneration and Built Environment.

8.2 Quarterly reports on enforcement activity shall be submitted to the Planning Committee. The reports shall discuss current trends and issues and, cover the work of the Enforcement Section over the period in question and contain the following statistics:

- a. Cases outstanding at the start of the period
- b. Cases received during the period
- c. Cases closed during the period
- d. Cases outstanding at the end of the period
- e. Requisitions for Information
- f. Enforcement Notices Issued
- g. High Hedge Applications
- h. Sources of Complaint (%)
- i. Reasons for Closure (%)



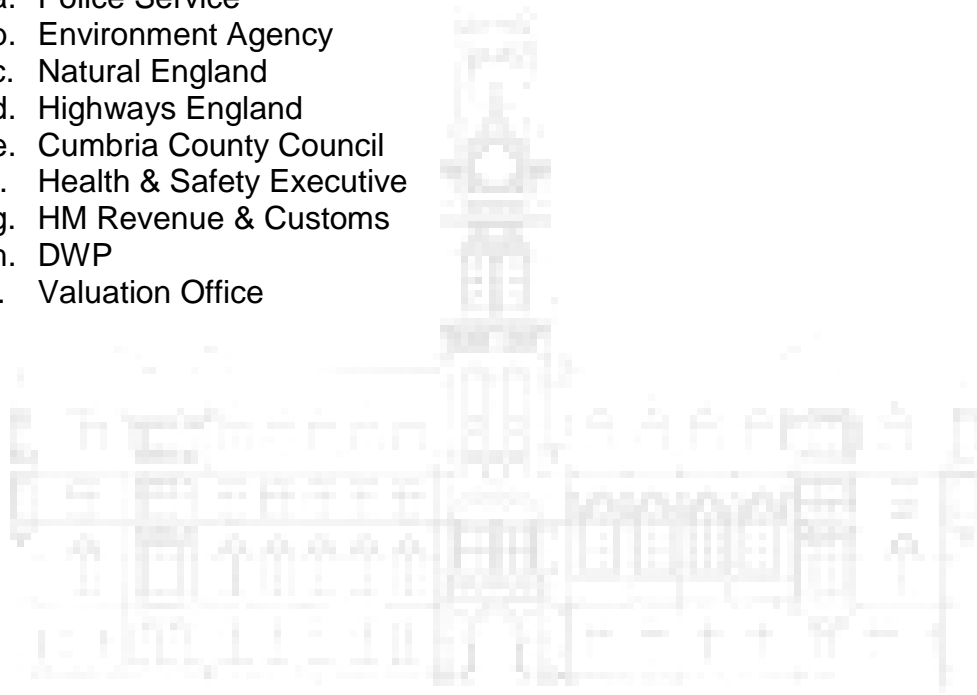
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## 9. OUR PARTNERS

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9.1 In addition to involving colleagues in other departments (such as Building Control, Borough Estates, Finance, Council Tax, and Environmental Health) and in order to maximise our efforts and resources, the Council will seek to work with other regulatory bodies to share intelligence where it is lawful to do so. Joint operations will be undertaken where issues are identified that cross regulatory boundaries. Examples of potential partners are;

- a. Police Service
- b. Environment Agency
- c. Natural England
- d. Highways England
- e. Cumbria County Council
- f. Health & Safety Executive
- g. HM Revenue & Customs
- h. DWP
- i. Valuation Office



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# 10. APPENDICES

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## APPENDIX A

### Expediency Report

**A report leading to a decision as to whether or not any formal enforcement action should be taken.**

**Council Officer;**

Name.....

Position.....

**Enforcement reference no:**

**Location:**

**Description:**

**Context:**

**Background:**

**Breach:**

**Relevant time limit for enforcement action (4 years/10 years/unlimited):**

**Relevant development plan policies:**

**Material planning considerations including the views of any interested parties:**

**Assessment:**

**Officer's Recommendation:**

On the basis of the above I recommend that;

*(insert comments)*

Name.....

Title.....

Date.....

**Development Services Manager**

*(insert comments)*



Development Services Manager .....

Date.....

### **Guidance Notes for Officer**

1. Use this report format to set out the nature of a breach and how it should be dealt with. By using it we will ensure that our decisions accord with our policy.
2. In the breach of control section use prevision and if your assessment includes proposed action specify this in detail.
3. Some options for recommendations,
  - The voluntary solution be agreed
  - A report is prepared for the Planning Committee seeking authority for enforcement action.
  - Under delegated powers no formal action is taken because it is not in the public interest, due to...
4. Always consider advisory letters to interested parties enclosing a copy of the report when appropriate.

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## **APPENDIX B**

### **PLANNING COMMITTEE AND PLANNING PANEL ENFORCEMENT REPORT FORMAT**

Site Details

Background

Remedial steps to be taken

Reasons why it is considered expedient to take action

Human Rights Act

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## **APPENDIX C**

### **PRINCIPLES OF GOOD ENFORCEMENT**

#### **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

#### **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice / information from us. Applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly. We will ensure that wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

#### **Complaints about Services**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In case where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

#### **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

### **Procedures**

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure those legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

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