



Planning Enforcement Plan

Approved by Development Management Committee
Date: 23rd April 2015
Adopted by Cabinet
Date: 4th August 2015

1.0 Introduction

- 1.1 This Plan has been the subject of a public consultation carried out between 12th July 2013 and 23rd August 2013. The Plan was considered by the Development Management Committee and approved by Cabinet on 5th November 2013.
- 1.2 Paragraph 207 of the National Planning Policy Framework states that *“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement 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 it is appropriate to do so.”*.
- 1.3 Welwyn Hatfield Borough Council (“the Council”) consider that the planning enforcement role is crucial in ensuring that buildings and land uses accord to national and local planning policies and planning permissions; such policies and permissions having been adopted as a means to protect the borough’s, and its residents’, environment and amenity.
- 1.4 Listed buildings and protected trees are irreplaceable heritage assets and, as such, deserve to be protected. Accordingly the Council will treat unauthorised works to listed buildings or protected trees as a high priority. Such unauthorised works are a criminal offence.
- 1.5 The ability of the Council to undertake planning enforcement action is set out in primary legislation. The government has also produced a wide range of secondary legislation, policy, guidance and good practice notes that support that primary legislation and the Council are also guided by the considerable body of case law that has been handed down by the courts since 1948.

2.0 The Council’s Corporate Enforcement Policy

- 2.1 This policy provides operational guidance to authorised officers and information to Elected Members and the public with relation to breaches of planning control.
- 2.2 The corporate policy, which deals with general enforcement matters common to all service areas, is applicable to all Council employees working in enforcement roles and those from other service areas who support the delivery of these functions. It is also applicable to agency/contract staff working on behalf of the Council.
- 2.3 The purpose of the policy is to set out the steps Welwyn Hatfield Borough Council will use to secure compliance with the law while minimising the burden on individuals, businesses and the Council.

- 2.4 The corporate policy is based on the following guiding principles, which are set out below:
- **Proportionality:** to ensure that action taken relates directly to the actual or potential risk (for example to health, safety or the environment.)
 - **Accountability:** to a number of interested parties. This may include Welwyn Hatfield Council elected members, local and national businesses, members of the public and national regulatory bodies.
 - **Consistency:** to ensure that similar issues are dealt with in the same way, having regard to and making full use of guidance produced by Government and other national agencies.
 - **Transparency:** to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
 - **Objectivity and Equality:** to ensure that decisions are not influenced by a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status.
- 2.5 Welwyn Hatfield Borough Council has adopted the central and local government Concordat on Good Enforcement Practice and this policy explains the approach that will be adopted by officers when carrying out the Council's duties and responsibilities that fall within the scope of the concordat.
- 2.6 The range of enforcement matters dealt with by the Council is such that there may well be occasions when there is a need to work with other agencies to maximise effective enforcement. Where necessary, appropriate information sharing agreements will be put in place to share data in a timely and appropriate way having due regard to the requirements of the Data Protection Act.
- 2.7 The Council is committed to ensuring fair, timely and effective enforcement and access to services. The Council has a customer service charter which sets out general standards applicable to customer service. In relation to enforcement the following arrangements are in place as detailed below, within paragraphs 2.8 – 2.11.
- 2.8 All enforcement related documents will be produced in appropriate plain English language. However we may need to use specific legal or technical words or phrases where their meaning is important. The onus is on the recipient of any document to ensure they understand its meaning and any implications for them.
- 2.9 Where necessary, appropriate and possible, in order to support investigation and enforcement, visits may be made outside normal office hours.

- 2.10 The Council will consider the impact their regulatory interventions may have on economic progress, including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation.
- 2.11 Officers will comply with the Human Rights Act and only depart from those requirements in exceptional circumstances. Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised, and necessary having regard to the circumstances of the individual case.
- 2.12 The Council recognises that there are a range of enforcement tools, sanctioning and penalty powers available for its use. These range from informal approaches through to formal action such as notices, prosecutions, and direct action. The range of enforcement options will vary relative to the severity of the breach of legislation. Some may potentially affect a persons liberty or ability to earn a living. The exact enforcement tools available will vary with the offence under consideration.
- 2.13 Decision takers usually choose which level to start at depending upon the offence, the seriousness of the situation and the level of intent of the offender. Authorised Officers of the Council will therefore seek compliance with legislation by one or a combination of methods set out below having carefully considered the relevant legislation, circumstances of the case, risks, tools available and the outcome intended.
- 2.14 This means that enforcement will normally move from level 1 through to level 3, although in serious cases (as judged on the particular circumstances of that case) it may be appropriate to commence at level 3.
- 2.15 In relation to planning, the Council has a number of planning enforcement “tools” available; examples include:
- notices to require the provision of information;
 - planning enforcement notices;
 - ‘wasteland’ notices;
 - listed building notices;
 - repairs notices;
 - urgent works notices;
 - stop and temporary stop notices;
 - discontinuance notices;
 - S106 planning obligations;
 - injunctions;
 - prosecution;

- direct action;
- planning enforcement orders.

2.16 Table 1: Range of enforcement measures used by Welwyn Hatfield Council

Enforcement level		Enforcement options
Level 1	Advice and guidance	To assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information leaflets and face-to-face discussion. Guidance could be achieved by web pages, telephone advice lines or alternative means which are suitable for the required audience.
Level 2	Informal	To be used to reinforce advice and guidance where minor breaches of planning control or the law may have been discovered but it was not thought appropriate to take formal action. This may include informal warnings. These warnings can be oral or written and can be the most appropriate course of action when minor contraventions are discovered. Where warnings are issued, follow-up visits will normally be made to ensure steps are being taken to rectify the problem. Warnings issued in respect of more significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance.
Level 3	Formal	Including the use of statutory (legal) notices, formal cautions, prosecution, injunctive relief or direct action.

2.17 Legislation provides Council Authorised Officers with a wide variety of investigatory powers to assist them in their work. Officers will at all times have regard to the guiding principles of the corporate enforcement policy when exercising their investigatory powers.

2.18 All work of the Council including investigations will be subject to prioritisation. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including the Police and Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA), Criminal Procedure and Investigation Act 1996, Human Rights Act 1998 and Protection of Freedoms Act 2012. Regard will also be

had to the requirements of associated Codes of Practice and Guidance. Investigations will be brought to a timely conclusion.

- 2.19 The Council will not generally act on anonymous complaints/requests for service and will require all people contacting the Council to provide basic minimum information to assist the investigation. Failure of an individual who requests service to co-operate with the investigation team may limit the ability of the authority to resolve a particular case, particularly if a person is unwilling to provide statements or other evidence, or attend Court, or a planning appeal, as a witness on behalf of the Council.
- 2.20 The Council cannot assist in the negotiation for compensation from third parties on behalf of an individual or organisation.
- 2.21 Authorised Officers have been provided with a Council Employee Identification Card, a warrant style card summarising the powers they are able to exercise and certified copies of their official authorisation documents (the so called “instrument of appointment”). These all contain a picture of the officer. Upon request, or where statute demands, officers will produce appropriate and necessary identification. The original copies of all such documents will be kept securely for use in legal proceedings and will therefore not be carried by officers.
- 2.22 The Council is aware of the Local Government Association “Cold Calling Protocol” and, where appropriate, officers will attempt to make an appointment before attending domestic premises, unless this would hinder or prejudice the progress of the investigation. Verification of an officer’s name and status may be obtained by telephoning the number on the identification card.
- 2.23 The “Cold Calling Protocol” makes it clear that the protocol is not appropriate when enforcement officers or other officials are exercising entry powers, undertaking criminal investigations, dealing with urgent health, safety or care issues.
- 2.24 It may be necessary to undertake surveillance to assist with an investigation. Any surveillance covered by the definitions contained in RIPA will be conducted in accordance with that Act as amended by the Protection of Freedoms Act 2012, appropriate guidance, corporate policy and Codes of Practice. Covert Surveillance will only be undertaken:
- if it is in the interests of preventing crime
 - if the use of covert surveillance is necessary and proportionate to the potential offence being investigated
 - if it has been authorised by a Council authorising officer and the authorisation has been brought into effect by a magistrate.

The Director (Governance), Head of Public Health and Protection and Principal Governance Officer are the Council’s appointed authorising officers for covert surveillance. Authorisations for surveillance where confidential

information (as defined in the RIPA codes of practice) may be obtained can only be granted by the Chief Executive. Further details are contained in the Council Corporate surveillance (RIPA) policies.

- 2.25 It may be necessary to conduct an interview with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the PACE Codes of Practice. Wherever possible, recorded interviews with persons will generally take place at the Council Offices. So called “interviews by letter may be undertaken”, but each case will be judged on its own merits.
- 2.26 The Council may share information with other statutory enforcement agencies, subject to the relevant legal provisions. Before information is shared with an external third party, unless the Council is specifically able to do so by statute, the consent of the person providing the information will be obtained.
- 2.27 The Council will comply with the Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR). Requests for access to information will be dealt with in a timely manner and with reference to appropriate guidance and any necessary legal advice. Requests will initially be passed to the Council’s Freedom of Information Officer for action. Documents will be held on file for the required retention periods and then will be disposed of appropriately.
- 2.28 Subject to the provisions of the FOI, the Data Protection Act 1998 and the EIR the Council can make no guarantees regarding confidentiality. Ongoing investigations may be subject to exemptions regarding disclosure but closed cases may be subject to partial or full disclosure.
- 2.29 All Authorised Officers and support officers are responsible for keeping accurate and appropriate notes relating to their investigations and enforcement activities. This includes computer logs and paper/written notes. The Council will provide appropriate notebooks and software for this purpose. In particular authorised officers should ensure that both actions and key decisions affecting the direction of the investigation are recorded.
- 2.30 Where physical evidence is collected as part of an investigation the officers involved in the case will ensure the evidence is stored and handled in an appropriate way whilst it is in the Council’s possession. This policy recognises that an investigation may be compromised by the inappropriate handling of evidence or the lack of evidential continuity as regards a particular piece of evidence. Once evidence is in the possession of the Council it will not generally be released to third parties (including the press) except for the purposes of laboratory or other technical examination .
- 2.31 Sometimes it may be necessary or helpful to make digital images or take photographs or video to assist an investigation. The authority will provide equipment for this purpose and procedures are in place to ensure the evidential continuity of any images made.

- 2.32 Sometimes it may be necessary or helpful to take measurements or recordings to assist with an investigation. The authority will provide appropriate equipment for such purposes and will ensure any equipment receives any necessary periodic calibration.
- 2.33 All Level 3 Planning Enforcement Decisions are made by either the Development Management Committee or by a senior member of staff with delegated powers under the Council's Constitution. Such decisions will be documented by an approved report and, in the case of a committee decision, by the official minutes.
- 2.34 Enforcement will normally move from level 1 through to level 3, although in serious cases it may be appropriate to commence at level 3.
- 2.35 The seriousness of a particular case will be judged against criteria such as the nature of the offence, the consequences, the level of risk or harm which could or has occurred and the level of intent of the offender.
- 2.36 The following guidance will be followed by officers, where formal enforcement options (level 3) are being considered. In some cases the enforcement action will be taken by the officer acting under delegated authority, in other cases the matter may be referred to a Council committee. Delegation arrangements are set out in the Council's Constitution.
- 2.37 Legislation provides for the service of statutory notices, which require a person, business or organisation to comply with specific requirements. In some circumstances the use of a notice is a power available to the authority and other times it is a statutory duty. Where the service of a notice is a power, that decision will usually be taken by the Development Management Committee or by an appropriate authorised officer. Except in exceptional or emergency situations, all notices will be peer reviewed, or reviewed by the Legal Service, prior to service. Prior to the service of the notice the case officer concerned must ensure that situation to which the notice relates has not been remedied.
- 2.38 Generally, the notice will explain:
- what is wrong;
 - what is required to put things right;
 - the timescale in which to put things right;
 - what will happen if the notice is not complied with.

In some circumstances where a formal notice has been served, there may be a right of appeal against the Council's decision. Aside from the general appeal procedures in respect of Human Rights issues, there are certain notices which allow a more specific and direct route of appeal through the local courts or other tribunal. In such cases, an explanation of the method of appeal will be provided at the time the notice is issued.

- 2.39 It is anticipated that individuals, organisations or businesses who do not comply with a properly written and served statutory notice will be considered for prosecution in line with the Code for Crown Prosecutors.
- 2.40 Sometimes a further possible action after the service of a notice is the carrying out of “direct action”. Where appropriate, this will always be considered. The decision to carry out work in default will be governed by the urgency of the situation and the risk benefit which is to be achieved. Every effort will be made to ensure that work is carried out competently and that recharges are not unnecessarily high. Recharges may include costs to cover staff time expended after the service of a statutory notice. Outstanding debts will be recorded as a local land charge which attracts interest at the current High Court rate. If necessary it will be passed to the Council’s Legal Services for recovery.
- 2.41 It may be necessary for the Council to take steps to remove unauthorised campers from land either in the ownership of the Council or at the request of another land owner. The Council’s internal procedures shall be followed in this regard. Where a request is received from the owner of a third party land the Council will not always act on their behalf, but may request the landowner to take their own action to secure possession of the land.
- 2.42 As an alternative to the prosecution of summary offences where the person admits their guilt, a simple caution may be considered. Whether a caution is the appropriate remedy in every case will be considered against the relevant national guidance. Simple cautions will not usually be considered where the offender has a previous record of enforcement action at level 2 or 3 for the offence under consideration.
- 2.43 In some cases an injunction may provide a more appropriate remedy. The advice of the Council’s Legal Service will be taken in this regard.
- 2.44 Discretion will be used in deciding whether to initiate a prosecution. The Constitution sets out the delegated arrangements for initiating a prosecution. For planning enforcement matters authority must be granted by the Development Management Committee.
- 2.45 The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors. This includes two “tests” which the case must be subjected to – the evidential test and the public interest test. Proceedings will only be brought when to do so is considered to be in the public interest.
- 2.46 The first stage in deciding whether to prosecute is the consideration of the evidence (the so called “evidential test”). If a particular case does not pass this stage then a prosecution should not go ahead. Officers need to satisfy themselves and the Council’s legal advisor(s) that the evidence can be used in Court, that it is reliable and that there is a realistic prospect of a conviction. If the case satisfies the evidential test then it must proceed to the second stage to decide if a prosecution for the particular offence is in the public interest.

- 2.47 Public Interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the transgressor. Some factors may increase the need to prosecute but others may suggest that another course of action may be more appropriate.
- 2.48 Enforcement is undertaken on behalf of the public and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence and any views expressed by those directly affected will be sought and taken into account.
- 2.49 People should be able to rely on enforcement decisions taken by Officers. Normally, if a suspect or defendant is advised that there will not be a prosecution or that the enforcement action has been stopped the case will not start again. Occasionally, there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- Rare cases where a “new look” at the original decision shows that it was clearly wrong and should not be allowed to stand;
 - Cases which are stopped, so that more evidence can be collected and prepared, provided it is likely to become available in the fairly near future. In these cases, the defendant will be told that the enforcement action may well start again;
 - Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.
- 2.50 Where possible, an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow. Prosecutions will be brought without unnecessary delay.

3.0 What is a breach of planning control?

- 3.1 It is important to highlight the difference between matters that are breaches of planning control, those that are criminal offences and those that are civil matters and beyond the control of the Council.
- 3.2 It is also important to emphasise that a breach of planning control is not a criminal offence. A breach of planning control includes building or engineering works without planning permission, material changes of use of land or buildings without planning permission or the failure to comply with conditions imposed on a planning permission.
- 3.3 Conditions that are attached to planning permissions do not take effect in law until the ‘development’ has commenced. This ‘commencement’ is usually when the foundation trenches have been constructed. Accordingly planning conditions cannot be breached unless and until the planning permission has commenced.
- 3.4 There are, additionally, some building works and changes of use that do not require planning permission, including some householder and commercial

developments. This is because the government has granted 'deemed' planning permission for many developments, generally referred to as 'permitted development rights'. Advice on what may be permitted development is available on the government planning portal website located at <http://www.planningportal.gov.uk/permission/> . The council will not be able to take any action against such authorised developments.

- 3.5 The criminal offences which fall under the remit of the planning enforcement section include unauthorised works to a listed building; unauthorised works to a tree protected by a Tree Preservation Order; the display of any advertisement without consent; unauthorised works to a tree within a conservation area and certain forms of unauthorised demolition within a conservation area.
- 3.6 It is important to note that listed building consent is required for any works to a listed building, whether internal or external, and not just works to those items specifically mentioned in the building's listing. Unauthorised works are, as indicated above, a serious criminal offence.
- 3.7 In a similar way to 'permitted development rights' for buildings, certain advertisements are allowed to be displayed without the need for advertisement consent from the Council. The Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (as amended) (the Advertisement Regulations) which grant 'deemed consent' for different classes of advertisements are quite complex, even for professionals. However advice on what advertisements may be permitted is available on the government planning portal website located at <https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers> . If anyone is unsure as to what is permitted they should contact the planning department.
- 3.8 Any matter reported to the Planning Enforcement Team that is not within their remit will be reported, where possible, to the relevant statutory body. For example, dangerous structures (Building Control), bonfires (Environmental Health) and works to highways (Hertfordshire Highways) are commonplace issues. The Enforcement Officers will work with other regulatory services and agencies to resolve any multi-agency issues.
- 3.9 There are matters which are frequently reported to planning enforcement officers that are civil matters and in such cases the informant will be directed to the Citizens Advice Bureau or to their own legal advisor. These matters include boundary disputes and the enforcement of covenants attached to house deeds. In common with the Land Registry, the Council cannot determine boundaries on sites, the only competent bodies to determine boundaries being the county courts or High Court.

4.0 National Legislation & Guidance

- 4.1 In considering planning enforcement action the Council will take into account all primary and secondary legislation as well as national planning policy and guidance, including:-

[Town and Country Planning Act 1990 \(as amended\);](#)
[Planning \(Listed Buildings & Conservation Areas\) Act 1991;](#)
[Planning & Compensation Act 1991;](#)
[Planning & Compulsory Purchase Act 2004;](#)
[Police and Criminal Evidence Act 1984](#) ('P.A.C.E.');

[Criminal Procedure and Investigations Act 1996](#) ('C.P.I.A.');

[Regulation of Investigatory Powers Act 2000](#) ('R.I.P.A.');

[Protection of Freedoms Act 2012;](#)
[Human Rights Act 1998;](#)
[Localism Act 2011;](#)
[Caravan Sites and Control of Development Act 1960;](#)
[Caravan Sites Act 1968;](#)
 Town and Country Planning (General Permitted Development) Order*;
 Town and Country Planning (Control of Advertisements) Regulations*;
 The Town and Country Planning (Use Classes) Orders*;
[The National Planning Policy Framework;](#)
[The National Planning Practice Guidance;](#)
[The Local Plan;](#)
[The Enforcement Concordat;](#)
 The Cold Calling Protocol**;
[The Regulators' Code.](#)

* Given the large number of amendment orders it is not possible to provide links to these documents.

** This document is not available online.

4.2 National policy and guidance indicates an approach to planning enforcement which the Council will follow. The main points are summarised below:

- Except for certain works (for example to Listed Buildings and Protected Trees) it is not a criminal offence to carry out development without planning permission and planning enforcement is a discretionary activity;
- Reports of alleged breaches will be recorded on the Council's database and investigated fully;
- Enforcement action will be proportionate to any breach and will only be taken only where it is expedient (in the public interest) to do so;
- Action will not be taken against minor breaches of planning control that cause no harm, in planning terms, to amenity in the locality.
- If it is considered by officers that planning permission is likely to be granted for any works or uses then no enforcement action will be taken with regard to any technical breach;

- Where the transgressor is co-operative, negotiated alternatives to formal action will be fully explored before enforcement action is considered;
- In the most serious cases, negotiations to persuade the owner/occupier to voluntarily remedy the breach cannot be allowed to delay formal enforcement action;
- The Council will be prepared to explain its decisions.

5.0 Reporting alleged breaches of planning control

- 5.1 The Council receives reports about alleged breaches of planning control from a wide variety of sources including members of the public, Councillors, other departments within the Council and external agencies.
- 5.2 Complaints should be made in writing, or if made verbally, followed up in a written form so that the nature of the complaint is clear and the harm that it is causing is understood. Concerns regarding suspected breaches can be made in writing to the Council offices; by filling in an electronic form on the Council's website at www.welhat.gov.uk/enforcement_form or by e-mail to enforcement@welhat.gov.uk. Anonymous and apparently vexatious complaints will not normally be investigated.
- 5.3 The complainant needs to accurately identify the location of the alleged breach; the nature of that breach, including details on how long it has been occurring; their details (name and address) and their contact details (preferably email address and telephone number) as well as any other relevant information that will assist the Council in their investigation. Other than in exceptional circumstances we will not investigate anonymous complaints, or complaints where the complainant cannot be contacted.
- 5.4 The details of the complaint will be entered onto the Council's computer system, allocated a case reference number and assigned to an enforcement officer. In the interest of efficiency, multiple reports regarding the same concern will be grouped together under one case number.
- 5.5 We aim to acknowledge all complaints and update informants with the details of the case number and details of the allocated case officer within 5 working days of their complaint being received.
- 5.6 All complainants' personal details will be treated as confidential during the investigation, although sometimes the nature of the complaint can make it apparent to the transgressor who the complainant is. However officers' will not confirm or deny any assumptions the transgressor has with regard to the identity of the complainant. It must be noted that whilst the council do not disclose the personal details of informants under the terms of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Information Commissioner and the courts have the power to require the release of that information.

- 5.7 It is important to note that the Council will not tolerate vexatious complaints, particularly those that appear to be based upon a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status. In such circumstances the Council will fully cooperate with the police and any other statutory body investigating such allegations.
- 5.8 It is important to state that it is often only the complainant who in a position to provide evidence of an ongoing breach of planning control, listed building control or an offence. Under these circumstances the Council will be unable to take any formal action unless the complainant is ultimately prepared to give evidence in court. This cannot be done anonymously.
- 5.9 Officers will not usually visit the complainant's property as to do so is likely to lead to their identity becoming apparent to the transgressor. This is particularly so in the case where the two parties are neighbours. Should an investigating officer need to view any works from the informant's property, they will not do so without the prior agreement of the informant.
- 5.10 Each new case will be allocated a priority, as shown below, and then assigned to a case officer to investigate. All cases will be investigated at the first available opportunity and, additionally, we aim to have commenced investigations within the time scale shown below.

Priority	Complaint type	Investigation commencement timescale
A	Unauthorised works to listed buildings; trees covered by a Tree Preservation Order or trees within a designated conservation area.	As soon as possible and in any case within 2 working days
B	Significant development conflicting with policy, where that is apparent from the complaint; ongoing building works or material changes of use with a serious impact on amenity. Unauthorised advertisements adjacent to the highway that may distract road users.	As soon as possible and in any case within 5 working days
C	Operational development; changes of use or breaches of planning conditions with a less serious impact on amenity; untidy land and cases where breach may be close to becoming immune from action.	As soon as possible and in any case within 15 working days
D	All other unauthorised advertisements.	As soon as possible and in any case within 20 working days

- 5.11 The timescale for completing an investigation varies depending on the complexity of the case, workloads of officers and the need to regularise the alleged breach of planning control. We will try to notify the complainant at significant points in the investigation. However the statutory process we have to follow means that, quite often, extended periods of time will pass without any apparent progress. For example where the Council has to allow time for a planning application to be prepared and submitted, and then determined, a period of four months may be typical. Serious cases that result in the service of formal notices, a resultant appeal and possible challenges through the courts can, and do, take many years to resolve.
- 5.12 It is important to emphasise that statutory notices can only be issued in relation to confirmed breaches of planning and listed building control. It is not possible to issue any enforcement notices for anticipated breaches of planning or listed building control.

6.0 Investigating alleged breaches of planning control

- 6.1 The investigation methods used will vary depending on the nature of the case and the information available to the case officer but they will include some or all of the following steps:
- Researching the planning history of the site and any planning constraints that apply; for example, the Green Belt or property within a Conservation Area;
 - Conducting a site visit to gather information on the alleged breach;
 - Discussions with the owner/occupier of the site;
 - Initial letters to the owner/occupier and/or their agent;
 - Collection of evidence;
 - The use of statutory powers to require the provision of information such as the details of anyone with an interest in the land; the details of anyone using the land and the detailed breakdown of the use of land and buildings.
- 6.2 As the investigation progresses the Council will be able to establish whether there is a breach of planning control and, if there is, whether any further action is appropriate. If there is no breach, or the breach is of a trivial or technical nature, the Council will not take any further action and the complainant will be notified of the outcome.
- 6.3 Where a breach of planning control is ongoing, such as building works continuing, officers may recommend to transgressors, or their agents, that works cease until the matter is finally resolved. In these cases officers will point out that any further works must remain at the owners risk as those works may be required to be removed at a later stage.
- 6.4 Enforcement officers have wide ranging powers of entry to land and buildings if they suspect a breach of planning control or unauthorised works to a listed building. Officers can enter land and buildings, taking with them any other persons as may be necessary (e.g. locksmiths, contractors, police officers)

without the need to give prior notice, with the exception of dwellinghouses where they are required to give 24 hours notice. Such notice will usually be given in writing. It is a criminal offence to obstruct an officer exercising their right of entry.

7.0 Expediency of taking Formal Enforcement Action

- 7.1 Government policy is clear that it is inappropriate for the local planning authority to take enforcement action against breaches of planning control which are technical in nature or where there is little harm in planning terms. Additionally case law¹ requires that the decision to take enforcement action should not be taken by the Council to protect or further a private interest in another piece of land.
- 7.2 Paragraph 3-11 of the DETR Enforcement Good Practice Guide states that *“the question of ‘expediency’ is a discretionary matter on which the LPA [local planning authority] must themselves decide in the particular circumstances of each case.”*.
- 7.3 Given the finite resources available to the planning enforcement section, it is important to prioritise cases to ensure that there is sufficient officer time to enable serious cases to be adequately progressed. However it is also necessary to adequately explain to complainants, and others, why a decision not to take action has been taken in a particular case. The word ‘expedient’ is a technical term used within planning legislation and it is often not easily understood in the context of a specific case.
- 7.4 It is important that officers do not spend longer than necessary investigating complaints where, in the final analysis, it is not expedient to take formal action. The unnecessary investigation of such matters reduces the amount of officer time available to investigate the more serious cases.
- 7.5 Accordingly, where there is, or is likely to be, a breach of control, officers will assess the expediency of taking formal action following their first site visit.
- 7.6 The decision to continue an investigation at that stage will not prejudice the ability of officers to re-assess the matter at a later stage should further investigation and evidence indicate that to be the correct course of action.

8.0 Formal Enforcement Action

- 8.1 When a breach of planning control has occurred, the next stage is to determine whether it is in the public interest to take formal enforcement action. If it is not then no further action will be taken and the file will be closed.
- 8.2 When an officer considers that a breach of planning control may be acceptable or lawful, a planning application or an application for a certificate of lawful use or development may be invited. Such applications provide the

¹ Perry v Stanborough (Developments) Ltd and Wimborne DC and Dorset CC [1978] JPL 36.

Council with sufficient details to fully consider and determine the matter, leading to the formal decision of the local planning authority.

- 8.3 If the 'breach' is acceptable in planning terms an application will be invited but if it is not forthcoming, no further action will be taken as local planning authorities cannot use enforcement powers merely to regularise development which is acceptable in planning terms. However the owner or occupier of the land may be told that without a specific planning permission they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and have no evidence of any permission having been granted for any development comprising an important part of the valuation.
- 8.4 The Council will consider the use of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) where that is sufficient to make a breach of planning control acceptable. The costs of any such proposed agreement will be borne by the transgressor.
- 8.5 The Council will allow up to two months for the submission of retrospective applications, although this may be varied in exceptional cases. Although applications may be invited retrospectively, this does not imply that planning permission will be granted; any application invited will be judged on its own merits, just as with any other application submitted, and it may, therefore, be refused if contrary to policy.
- 8.6 Applications will not be invited where it is clear that planning permission would be refused but the Council cannot prevent such applications from being submitted and must deal with them as with any other application.
- 8.7 In many cases, particularly those involving householder developments, there may be opportunities to resolve the matter by negotiation without the need for either planning permission or formal notices. Examples of this include reducing the height of an outbuilding or extension so that it complies with the requirements of 'permitted development' (works not requiring the submission of a planning application to the Council); altering or removing signs so that formal advertisement consent is not required and relocating development to a more suitable location. Such negotiated compliance is the approach the Council will adopt wherever possible. Officers will set time limits for such remedial action depending on the type and scale of the breach.
- 8.8 Should negotiation fail to persuade the owner or occupier of the site to remedy the harmful effects of the breach voluntarily, further negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.
- 8.9 Where there are different types of action that may be taken with regard to a breach of planning or listed building control the Council will consider what the most appropriate form of action to take is.

- 8.10 Those who receive formal enforcement notices enjoy a right of appeal, in most cases, against that notice and the Council must always be able to demonstrate both to the Planning Inspectorate and the courts that it has acted both reasonably and in accordance with the development plan.
- 8.11 In the most serious cases the Council is committed to take firm and speedy action to remedy breaches of control and will consider the use of stop notices and seeking injunctive relief from the courts. Such significant steps will only take place where it is proportionate to the harm caused by the breach.

9.0 Immunity Time Limits

- 9.1 Breaches of planning control become immune from enforcement action, and lawful, if they have been in existence for a given length of time. The relevant time limits are:
- 4 years for operational development (physical development of the land such as buildings, extensions and fences);
 - 4 years for changes of use of an existing building to a single dwellinghouse; and
 - 10 years for any other breaches of planning control. These are mainly material changes of use of land and breaches of planning conditions.
- 9.2 However, Section 124 of the Localism Act 2011 has introduced a new power for local planning authorities which overrides the above time limits in certain circumstances. If the apparent breach of planning control, has (to any extent) been deliberately concealed by any person or persons the Council may apply to the local Magistrates for a planning enforcement order. Such an order gives the Council a further year (known as a 'the enforcement year') to issue and serve a planning enforcement notice irrespective of the time limits referred to above.
- 9.3 Furthermore case law² states that dishonest conduct by an individual may mean that they could not rely on the time limits contained in the time limits contained in Section 171B of the Town and Country Planning Act 1990.

10.0 Freedom of Information and Environmental Information Regulations

- 10.1 The personal details of planning enforcement complainants and the files relating to each case are confidential. This situation has not been altered by publication of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. However, depending upon individual circumstances, the Council or the Information Commissioner may decide that access to a file is appropriate.

11.0 Matters that the Planning Enforcement Section Cannot Deal With

² Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council [2011] UKSC 15

11.1 Planning enforcement officers cannot investigate matters which fall outside their statutory remit. These excluded matters include the following:

- Civil issues, including boundary disputes or the enforcement of covenants. Customers should obtain advice from a solicitor or the Citizens Advice Bureau with regard to such issues;
- The use of, or development on, adopted highways, pavements or highway grass verges or the siting of advertisements on them. These matters are dealt with by The Highways Department of Hertfordshire County Council;
- Small scale business activities carried out from home;
- Dangerous structures. The Building Control Section of the Council deal with these;
- Any internal works to buildings which are not listed buildings;
- The lopping or removal of trees or hedges which are not located in a Conservation Area or covered by a Tree Preservation Order;
- The painting of the exterior of an unlisted house - whatever the colour.

11.2 If a complaint is submitted to us in error, we will try to refer it to the correct place and/or tell the complainant of which authority or agency is best-placed to deal with their complaint. It is often better for the complaint to contact outside agencies personally as other agencies may have particular requirements for additional information which we are unaware of.

12.0 Monitoring and Review

12.1 This plan will be periodically reviewed and will be updated in response to new legislation, guidance or other relevant information.

12.2 Changes required to section 2 of the Plan due to alterations to the Corporate Enforcement Policy will be made without further reference, as any alterations to the Corporate Enforcement Policy will already have undergone that process. Otherwise the reviewed plan will be approved by the relevant committee and cabinet and, if significant changes are required to the plan, then it will undergo a further consultation process.

13.0 Complaints

Complaints or observations regarding the content or application of this planning enforcement plan should be made in writing to the Development Management Service Manager at the address below;

Welwyn Hatfield Council
Council Offices
The Campus
Welwyn Garden City
Hertfordshire
AL8 6AE

Email: planning@welhat.gov.uk

Or the Chief Executive, at the address given above.

Alternatively, complaints may be made direct on the Council's website at
www.welhat.gov.uk

The Local Government Ombudsman is able to deal with complaints of potential maladministration.