

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

**COMMUNITY SCRUTINY COMMITTEE – THURSDAY, 19
SEPTEMBER 2024**



Title of Report	LOCAL ENFORCEMENT PLAN	
Presented by	Dylan Jones Planning and Development Team Manager	
Background Papers	National Planning Policy Framework National Planning Policy Framework - GOV.UK (www.gov.uk) Existing Enforcement Policy 2021 https://www.nwleics.gov.uk/files/documents/enforcement_policy1/Enforcement%20Policy.pdf	Public Report: Yes
Financial Implications	There are no financial implications for the Council from the adoption of the Local Enforcement Plan	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	There are no legal implications for the Council from the adoption of the Local Enforcement Plan	
	Signed off by the Monitoring Officer: Yes/No	
Staffing and Corporate Implications	The Local Enforcement Plan sets priorities for the team and how they will deal with their casework efficiently. Corporately, the plan sets out the Council's priorities on planning enforcement so that members of the public, Councillors and external organisations are clear in terms of what the team can enforce against and what the priority cases for investigation are.	
	Signed off by the Head of Paid Service: Yes	
Purpose of Report	Paragraph 59 of the National Planning Policy Framework advises that all councils should consider publishing a local enforcement plan 'to manage enforcement proactively in a way that is appropriate to their area'. The Council has an existing Enforcement Plan which was approved in 2019. The purpose of this report is for the Community Scrutiny Committee to consider the contents of and make recommendations on the new Local Enforcement Plan prior to its submission to Cabinet for final approval.	

Recommendations	TO REVIEW AND COMMENT ON THE NEW LOCAL ENFORCEMENT PLAN PARTICULARLY ITS SIMPLIFIED METHOD OF PRIORITISING CASES, WHICH WILL BE REPORTED TO CABINET.
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1.0 BACKGROUND

1.1 The Community Scrutiny Committee received reports on the effectiveness of the Planning Enforcement service in September 2022 and in February 2024. At the February meeting the Committee was advised that work on a new Local Enforcement Plan would be commencing. This document has now been prepared and is before the Community Scrutiny Committee for review and comment prior to it being taken to the Council's Cabinet for approval and adoption later in 2024.

1.2 Paragraph 59 of the National Planning Policy Framework (NPPF) states the following in relation to Planning Enforcement:

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.

1.3 The government is clear that each Local Planning Authority should publish guidelines on how it will enforce planning legislation so that residents, businesses and local politicians understand the priorities and the likely timescales for the investigations and what can be controlled under the planning system.

1.4 The need for effective enforcement of the planning rules is important as it helps to:

- Tackle breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area.
- Help to protect the residents of the district from the impact of unauthorised and unacceptable development.
- Maintain the integrity of the decision making process.
- Support the Council to make robust decisions and to take formal enforcement action within the confines of the legal process

1.5 The Council adopted a Local Enforcement Plan (known as the Planning Enforcement Policy) in 2021 and it has been used to guide and prioritise workload in the Enforcement team. However, the team identified that the guidance in the document was cumbersome and complex to use, particularly the harm score element (where each type of case is allocated a score indicating a priority level for the investigation of the case) which makes it difficult and complex to effectively set priorities for the team's work. The document is also set out in a complex way and is not helpful as it does not adequately demystify the planning enforcement system for members of the public and local councillors as the NPPF suggests it should.

1.6 In response to the above, it was identified that a new, clearer and simplified policy was needed which would help the team to prioritise their workload and make it clear to the

residents and the local councillors in the district how the team operates and what the Council's priorities for the Planning Enforcement team are.

2.0 The main highlight of the new Local Enforcement Plan

- 2.1 The proposed Local Enforcement Plan has been simplified so that it is clearer and easier to follow and interpret. The document sets out the basis for the plan and its scope and a clear definition of what a breach in planning control is and then defines what high, medium and low priority cases are with the timescales for the Planning Enforcement team to investigate.
- 2.2 The new policy provides details of how to report a suspected breach of planning to the Council and also makes it clear to members of the public that their data will be kept confidentially in line with the General Data Protection Rules.
- 2.3 Part 4 of the report makes it clear what the Planning Enforcement Team cannot deal with as these matters are outside of the planning system and dealt with under other legislation or private law. The team has in the past received several requests to investigate non-planning matters which has taken officer time away from the investigation of planning issues and it was considered important to clarify this in the new plan. Subject to approval by Cabinet, it will be published online in a simple to use format. Officers can then refer members of the public to it or they can self-serve to see if the matter they are concerned about is a planning issue or dealt with elsewhere.
- 2.4 Part 5 of the report identifies how the team will investigate the cases they will receive, so the procedure is clear. Rights of entry into land is also clarified along with the procedure that needs to be followed if a right of entry is denied.
- 2.5 Part 6 of the report clarifies the expediency of taking enforcement action. Members of the public often complain that the Council has not enforced against a developer even though what they have done needs planning permission. This part of the plan clarifies the situation where it would not be expedient for the Council to take action.
- 2.6 Parts 7 of the plan details what formal enforcement action is and the tools available to the Council to do this. Part 8 deals with advertisements which are dealt with differently to planning matters and how the team will deal with unauthorised encampments and the monitoring of the mandatory Biodiversity Net Gain. This part also details how individuals can appeal against an enforcement notice or whether the individual will have to seek a judicial review as an appeal is not possible under the terms of the planning act.
- 2.7 Part 9 identifies how the new Enforcement Plan meets the terms of the Human Rights and how the Council's public sector duty under the Equalities Act 2010 is met.
- 2.8 Unlike in the adopted Planning Enforcement Policy, the new Local Enforcement Plan clarifies how officers intend to implement and monitor how the new plan is implemented. It recommends that bi-annual reports to the Planning Committee will be made available and the data will concentrate on how quickly the team responds to the breaches in planning control rather than how long it has taken to close a case or how many notices have been served over a period of time.

3 Conclusion

3.1 The aim of the new Enforcement Plan is to provide clear guidance to the Planning Enforcement team on how they should work and the way they prioritise the cases they receive to enable them to work in the most effective manner. The document also aims to demystify the planning enforcement process for members of the public and local councillors in line with the requirements of paragraph 59 of the NPPF). As this document is new and differs significantly to the adopted document, it is brought to the Community Scrutiny Committee for comment and possible amendment prior to its formal approval by Cabinet on 22 October.

Policies and other considerations, as appropriate	
Council Priorities:	Insert relevant Council Priorities: <ul style="list-style-type: none"> - Planning and regeneration - Communities and housing - A well-run council
Policy Considerations:	Review of adopted Planning Enforcement Policy intended to not only facilitate an improved service and simplified prioritisation system, but to also take account of updated national legislation and guidance as contained in paragraph 59 of the National planning Policy Framework document.
Safeguarding:	None identified
Equalities/Diversity:	An Equalities Impact Assessment has been prepared and the Local Enforcement Plan has been written so that the potential impacts that were identified have been addressed and mitigated against in the plan.
Customer Impact:	The changes being implemented will improve the service offered by clarifying what the Planning Enforcement Team can investigate and how the team members will do it and reduce the potential for unjustified complaints. Clarity is also given as to how individuals can make complaints and how the team will treat their personal data to simplify the process.
Economic and Social Impact:	Effective enforcement of the planning rules will have an economic benefit to the Council as the pursuit of retrospective planning applications (especially as fees have increased) leads to increased fee income. Also, successful prosecutions resulting in appropriate fines generate economic benefits as well as deterring future breaches. Improved perception of the service and integrity of the planning system more widely brings social benefits.
Environment, Climate Change and	Improvements to service effectiveness will lead to

zero carbon:	environmental and climate change benefits as breaches of planning control involving these considerations will be better remedied.
Consultation/Community Engagement:	Not required.
Risks:	None identified
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North West Leicestershire District Council

Local Enforcement Plan (Planning)

Xxx 2024

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Appendix A – Explanation of transitional period for enforcement action time limits following the provisions of the Levelling-up and Regeneration Act 2023

1. Introduction

1.1 What is a Local Enforcement Plan?

A Local Enforcement Plan is a document that sets out how the Council will deal with suspected breaches of planning control, including enquiries received alleging a suspected breach of planning control and when a breach of planning control has been confirmed.

1.2 Why is a Local Enforcement Plan important?

The National Planning Policy Framework (NPPF), which is the overarching national planning policy document for England, sets out at paragraph 59 that:

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.

It is important to set out a clear, transparent and effective process to how the Council deals with suspected breaches of planning control. It should be:

- appropriate for North West Leicestershire
- allow for engagement in the process
- manage expectations
- explain priorities
- explain the basis for decisions given that the planning enforcement is based on expediency and discretionary powers
- explain what the Council can and cannot deal with, and signpost when the Council cannot deal with the issue
- provide greater certainty and accountability, and;
- set out how the Council will monitor effectiveness of the service.

1.3 What is a breach of planning control?

A breach of planning control may include:

- Building something that requires planning permission without obtaining planning permission;
- Changing the use of land or a building where it would require planning permission without obtaining planning permission;
- Obtaining planning permission for development but then not complying with conditions that have been imposed, planning obligations contained in S106 legal agreements, or not adhering to the approved details/plans;

- Demolishing certain buildings in a Conservation Area without obtaining planning permission;
- Undertaking certain engineering operations which change the levels of the land or create new landforms without obtaining planning permission;
- Undertaking unauthorised works to protected trees (trees protected by Tree Preservation Order (TPO) or trees within a Conservation Area (with certain exclusions));
- Undertaking unauthorised removal of important hedgerows; and,
- Undertaking unauthorised works to listed buildings.

The above may be dealt with utilising powers under the Town and County Planning Act 1990, or other relevant legislation.

1.4 What is the scope of this Local Enforcement Plan?

The remaining sections of this Local Enforcement Plan set out how the Council prioritises suspected breaches of planning control and what is monitored, how suspected breaches of planning control can be reported, matters planning enforcement cannot deal with, how the Council investigates, why it might not take action, what formal action may be taken, other matters, consideration of Human Rights and the Public Sector Equality Duty, how the plan will be implemented and how the effectiveness of the Planning Enforcement team will be monitored.

2. Priorities

2.1 Why is effective enforcement important in the planning system?

It is important to have a robust and effective enforcement service within the planning system ultimately to maintain public confidence and the integrity of the planning regime.

Planning is about place-making, bringing together the environmental, economic and social principles of sustainability to create places that work, in both form and function in their context, as well as contributing to wider strategic objectives. Without effective controls, poorly designed or executed development left unchallenged can detract from the achievement of good place-making and the contribution good planning can have on environmental, economic and social improvement. It can also have detrimental impacts locally such as being visually unacceptable, incompatible with surrounding uses, unsafe, or resulting in unacceptable amenity impacts.

In order to tackle harmful unauthorised development, it is important that an efficient and effective system is in place to investigate suspected breaches of planning control and take reasonable and proportionate action where a breach is identified.

Due to the high volume of enquiries received and to ensure that resource can be directed to the enquiries that have the potential to result in the most harm in planning terms, suspected breaches of planning control are categorised into high, medium or low priority. This determines how quickly a suspected breach of planning control is responded to.

2.2 High priority

High priority cases are those which are considered most harmful in planning terms and could lead to irreparable harm. Some of these matters, if founded, could also constitute a criminal offence for which the Council may prosecute. These include:

- Current unauthorised works to a listed building;
- Current unauthorised works to protected trees (trees protected by a Tree Preservation Order (TPO) or by being within a Conservation Area);
- Current removal of an important hedgerow;
- Current demolition of a building within a Conservation Area; and,
- Unauthorised works relating to hazardous substances.

The Council will aim to commence investigations on high priority cases within one working day, and where possible, on the same day as the enquiry is received.

2.3 Medium priority

Medium priority cases are those where there is still potential for significant harm in planning terms, but it is unlikely that there is irreparable harm, or the immediacy required compared to high priority cases. These include:

- Anything listed in the high priority category that is not current or it is clear that there is no immediate risk;
- Unauthorised works in the setting of a listed building;
- Development that contravenes local planning policy, and development that significantly impacts on amenity or public safety;
- Unauthorised works within a Conservation Area; and,
- Deviations from planning permissions in terms of not according with approved plans/details or breaching conditions imposed.

The Council will aim to commence investigations on medium priority cases within 14 days of the enquiry being received.

2.4 Low priority

Low priority cases as those which are likely to present a low level of harm in planning terms and make up a large proportion of the enquiries received. These include:

- Domestic developments;
- Small business operating from domestic properties;
- Unauthorised advertisement, and;
- Other minor development.

The Council will aim to commence investigations on low priority cases within 28 days of the enquiry being received.

2.5 Proactive and/or reactive?

The majority of the Council's work is based on enquiries being received alleging a breach of planning control. This is because the resource available does not allow for comprehensive monitoring of all planning permissions or patrolling the district in search of potential unauthorised development, although officers do try to work with developers where they can.

Planning permissions that are subject to S106 agreements are, however, monitored in conjunction with the Planning Policy team, as these legal agreements will require either a monetary value to be provided by a certain time required to fund a project necessary to make the development acceptable or provide affordable housing or other infrastructure by a certain time. These times, often referred to as 'trigger points' can vary for different elements of the agreements.

3. Reporting a Suspected Breach of Planning Control

3.1 How to report a suspected breach of planning control

If you wish to report a development that you suspect might be in breach of planning control, you can do so in a number of ways:

- Online – You can use the online form that can be accessed from this webpage:
https://www.nwleics.gov.uk/pages/development_control_enforcement
- Email – You can email your enquiry to
development.control@nwleicestershire.gov.uk
- Post – You can post your enquiry to Development Control, North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW

You should include the precise location of the development and any other details that might help with the investigation, such as when the development took place or where it relates to a change of use, how long the use has been occurring. If relevant there might be other background details you are aware of, or you might want to tell us how the matter is impacting on you. You will receive an acknowledgement to confirm your enquiry has been received.

3.2 How your personal data will be used

The Council understands that people may not feel comfortable reporting a potential breach of planning control if the source of the enquiry is disclosed. As such, the Council does not reveal the origins of an enquiry other than with departments of the Council who may need to be involved in the investigation, unless required to do so by law. If it would benefit the investigation for external organisations to have your contact details; for example, the matter fell under the remit of the local highway authority at Leicestershire County Council and they could liaise directly with you, the

Council would either ask you to raise the matter directly with them or obtain your consent to share your contact details.

If the Council receives a Freedom of Information (FOI) Request asking about the origins of an enquiry, it might need to provide limited details about the nature of the enquiry, but exemptions will be applied to either withhold identifying information or sufficiently redact it so that it does not lead back to the enquirer.

3.3 Anonymous enquiries

The Council will usually not investigate anonymous enquiries, unless there has likely been a criminal offence committed or substantial harm caused in planning terms. This is because the matter may need to be discussed with the enquirer as part of the investigation to understand what impact the development is having in them.

4. What Types of Enquiries Planning Enforcement Can't Deal With

4.1 The following list sets out common enquiries we receive that we are unable to deal with:

Approved development or works – The matter being reported might already have the necessary permission(s). For example, planning permission or listed building consent could have already been granted, or the development may have 'deemed consent' by virtue of it accords with permitted development rights. These are national development rights that mean a planning application to the local planning authority is not required if the development accords with these provisions and any conditions or restrictions they specify (unless these rights have been removed by a condition of a planning permission or an Article 4 Direction, which can remove certain permitted development rights from a specific site or larger area). Planning applications and permissions can be viewed on the Council's website:

https://www.nwleics.gov.uk/pages/view_planning_applications, and helpful guides on whether permission is required for a variety of domestic developments can be found on the Planning Portal website at the Common Projects pages:

<https://www.planningportal.co.uk/permission/common-projects> and Interactive Guidance tools: <https://www.planningportal.co.uk/permission/interactive-guidance>

Boundary disputes – The Council is unable to determine the exact position of boundaries. A dispute over land ownership is a civil matter between the parties involved and you may wish to contact the Land Registry to see whether they can help or seek independent advice.

Breaches of deeds or covenants – Deeds and covenants are separate from planning control and we therefore cannot enforce a breach of these. They are legal agreements and you may wish to seek independent legal advice should you wish to pursue a breach of a deed or covenant.

Damage to property – The Council is unable to intervene with any damage to your property, whether it be from implementing a planning permission or not, as damage to property is a civil matter between the parties involved. You may wish to seek independent legal advice if damage has been caused or you are concerned that it will be caused, by the actions of someone else.

Dangerous structures – Dangerous structures are the responsibility of the landowner, however, the Council's Building Control team may be able to help:
https://www.nwleics.gov.uk/contacts/building_control

Empty properties – Unless the state of the property is having a significant detrimental impact on visual amenity, the Council cannot deal with empty properties. You can report them to the Environmental Protection Team where the Empty Properties Officer will look at ways to keep properties in use and prevent long-term vacancy: https://www.nwleics.gov.uk/contacts/environmental_protection

Fly-tipping – This is dealt with by the Council's Environmental Protection team:
https://www.nwleics.gov.uk/contacts/environmental_protection

Health and safety or security of development sites – It is the responsibility of developers to ensure their sites are safe and secure. The Health and Safety Executive (HSE) may be able to assist with concerns over safe working practices:
<https://www.hse.gov.uk/contact/index.htm>

Highway obstructions / dangerous or illegal parking – The Council cannot deal with inconsiderate, dangerous or illegal parking. Depending on the nature of the issue parking issues are dealt with by the Council's Civil Enforcement team: https://www.nwleics.gov.uk/pages/on_street_parking, local highway authority at Leicestershire County Council: <https://www.leicestershire.gov.uk/roads-and-travel>, or the Police.

Internal works to non-listed buildings – Internal works may require consent from Building Control but not from the local planning authority unless they relate to a listed building.

Loss of property value and / or loss of view from development – These factors cannot be taken into account when considering whether a development is acceptable in planning terms, whether during a planning application or otherwise.

Minerals and waste site – Enquiries relating to minerals and waste sites, such as: quarries, refuse and recycling sites, landfill sites and scrapyards are dealt with by Leicestershire County Council, as the Minerals and Waste planning authority:
<https://www.leicestershire.gov.uk/environment-and-planning/planning/planning-permission/report-a-planning-breach>

Mud and dust – Unless specifically controlled by a condition of a planning permission, mud or debris on the highway, or dust from works, whether related to the implementation of a planning permission or not, is not dealt with by Planning Enforcement. Mud or debris on the highway is dealt with by Leicestershire County Council as the local highway authority under the Highways Act. Dust is dealt with by

the Council's Environmental Protection team:

https://www.nwleics.gov.uk/contacts/environmental_protection

Nuisance (noise, disturbance, working hours, light, odour) – Unless specifically controlled by a condition of a planning permission, nuisance; whether related to the implementation of a planning permission or not, is dealt with by the Council's Environmental Protection team:

https://www.nwleics.gov.uk/contacts/environmental_protection. Even if there is a related planning condition, it may still be referred to another department if that department has more effective powers to deal with the concerns. For example, Environmental Protection has powers to serve an Abatement Notice in relation to Statutory Nuisance under the Environmental Protection Act and Leicestershire County Council as the local highway authority has the powers to tackle mud and debris on the road under the Highways Act. These specific powers may often be able to secure results more quickly and effectively than through planning legislation. Its more quickly and effectively than through planning legislation.

Obstruction to public rights of way – Concerns relating to designated public rights of way should be directed to the public rights of way team at Leicestershire County Council: <https://resources.leicestershire.gov.uk/roads-and-travel/parishes-and-communities/public-rights-of-way>

Party Wall Act – The Council cannot deal with disputes relating to the Party Wall Act and you may wish to seek you own independent legal advice.

Trees – Unless protected by Tree Preservation Order (TPO), a condition of planning permission or by virtue of being within a Conservation Area and meeting the criteria for protection, works to, the planting of, or removal of, trees is not a planning matter as trees are not development.

Trespass – The Council cannot deal with matters relating to trespassing. You may wish to seek independent legal advice or report the matter to the Police.

Vermin – Vermin is dealt with by the Council's Environmental Protection team:

https://www.nwleics.gov.uk/contacts/environmental_protection

5. How We Investigate

5.1 It is not possible to provide a full prescription of exactly how all cases are dealt with due to their individual nature, but the following flow diagram details the general steps of the investigation process:

Enquiry received	
Acknowledge enquirer	
Triage enquiry to establish whether it appears to relate to a breach of planning control and if so, allocate a priority and assign to a case officer. Otherwise, close the case and where relevant, signpost to alternative departments	
Send initial letter out to the subject property seeking discussion/site visit	
Visit the site (unless clearly not necessary) to observe the evidence/discuss with the developer	
If the development is likely to be acceptable or can be made acceptable with conditions. Invite a retrospective planning application to 'regularise' the situation. If the development is not considered to be acceptable. Seek to remedy informally (either undoing what has been done or a lesser step or alternative works that results in an acceptable situation.	
If retrospective planning permission is granted, or informal negotiation is complied with, the case can be closed, and correspondence sent to the subject of the case and the enquirer explaining the outcome. If no planning application is received, consider whether it is expedient to take formal enforcement action. If a planning application is received and subsequently refused, it will likely be expedient to take enforcement action as it has been deemed unacceptable in planning terms (unless other considerations outweigh that planning decision). If the decision to refuse planning permission is appealed by the applicant, the Council will need to consider whether enforcement action needs to be taken before the outcome of the appeal.	
If it is not considered expedient to pursue further, the case can be closed, and correspondence sent to the subject of the case and the enquirer explaining the outcome.	
If it is considered expedient to pursue enforcement action, either to resolve the breach of planning control or remedy the harm caused, commence the appropriate formal enforcement action and close the case upon satisfactory compliance unless an appeal is upheld. Send correspondence to the subject of the case and the enquirer explaining the outcome.	

5.2 Rights of Entry

Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes (sections 196A, 196B and 196C of the Town and Country Planning Act 1990). This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.

The Act specifies the purposes for which entry to land may be authorised (section 196A (1), namely:

- to ascertain whether there is or has been any breach of planning control on the land or any other land;
- to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- to determine how any such power should be exercised; and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

The phrase "or any other land" means that if necessary neighbouring land can be entered, whether or not it is in the same ownership, or is being occupied by the person whose land is being investigated.

The provisions of the Act (section 196A) state there must be reasonable grounds for entering the land for the purpose in question. This is interpreted to mean that entering the land is the logical means of obtaining the information required by the local planning authority.

Entry to a building used as a dwelling house cannot be demanded as of right unless 24 hours advanced notice of intended entry to the occupier has been given.

It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry (section 196C (2)).

Where there are reasonable grounds for entering land for enforcement purposes, and entry is refused or is reasonably likely to be refused, or there is a need for urgency, then it is possible for a Justice of the Peace to issue a warrant to allow entry (section 196B(1)).

6. Why the Council might not take action

6.1 Reasons for not taking action

Where a breach of planning control is found, it does not necessarily mean that the Council will take enforcement action. Formal enforcement action is a last resort and there are a number of reasons why the Council may conclude to take no action:

Expediency - National guidance states that action should not be taken solely to regularise a situation that is acceptable in planning terms. This means that if planning permission would likely be granted for the development should an application be received, and therefore the development is not resulting in unacceptable harm, the Council should not pursue enforcement action. In these instances, retrospective planning applications would usually be invited to provide the opportunity for the developer to get the correct permissions for the development (regularise the situation). If they choose not to apply, the Council will consider whether it is expedient to take any further action. This essentially means weighing up all of the planning and any other considerations and deciding if any harm arising from the development is such that it needs to be stopped. If there is no significant harm, or other resulting benefits that outweigh any harm, it is likely that it will not be considered expedient to pursue further and the case will be closed. This does not authorise the development or give it permission but is purely a decision that the Council is not pursuing the matter further.

It has permission – The development may already have the necessary planning permissions and therefore is already authorised in Planning terms. See the ‘Approved development or works’ paragraph at section 4.1 for more details and links to further information.

It is not development – Planning controls development. Development is defined in the Town and Country planning Act 1990 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.*” The list at section 4 provides an overview of matters outside of our control.

Immune from action – If breaches of planning control occurred a long time ago (something built or an unauthorised use that has taken place continuously without a break) and no formal enforcement action has been taken against them, they become immune from enforcement action and therefore become lawful. There are, however, exceptions to this:

Where there has been deliberate concealment of a breach of planning control, the Council can seek to take enforcement action even after the relevant time limit has expired.

Within four years of previous enforcement action (or purported action) in respect of the same breach, the local planning authority can take further enforcement action if that earlier action proved to be defective even after the relevant time limit has expired. This is known as the ‘second bite’ provision and includes situations where

an Enforcement Warning Notice has been issued within the relevant time limit but further enforcement action is subsequently required.

Legislation has recently changed providing that it is now 10 years for all types of breaches before the development will become immune (other than the above exemptions). There is, however, a transitional period meaning that some operational development or changes of use to a single dwellinghouse may still be immune after four years in the immediate period following the legislation change if the breach commenced before the legislation came into force. More information on this can be found at Appendix A.

7. Formal enforcement action

7.1 When and what formal action might the Council take?

Planning enforcement action is discretionary and as set out above, it is a last resort when there is unacceptable harm and informal attempts to achieve an acceptable outcome have failed. There may be some extreme cases where the harm needs to be stopped urgently and enforcement action may need to be taken promptly and without informal negotiation, however these instances are rare.

The Council has a wide array of formal powers to tackle breaches of planning control and related matters and will consider which powers are the most appropriate and effective for the specific matter. Its powers include:

Planning Contravention Notice (PCN) – This is a notice that can be served on a person when it appears that a breach of planning control has occurred to ask specific questions relating to who is involved in the land and what activities have been taking place. It is an offence to provide false or misleading information, or to not provide the required information within the specified time, which is usually 21 days. There are also other more limited fact-finding notices that can be served to obtain particulars of persons interested in land, provided by section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and section 330 of the Town and Country Planning Act 1990.

Enforcement Notice – This is a notice requiring specified actions within a specified time, when the local planning authority is satisfied that a breach of planning control has occurred and it is expedient to issue the notice, taking into account the provisions of the development plan and any other material considerations. An Enforcement Notice is served on everybody with an interest in the land. The local planning authority can also ‘under-enforce’, meaning that the requirements in the notice are less than those needed to remedy the whole breach, and anything ‘missed’ then benefits from deemed planning permission. This may be used where some elements are acceptable in planning terms. Persons served with the notice can appeal to the Secretary of State (via the Planning Inspectorate) but shall be guilty of an offence if they do not comply with the notice in the specified time where there is no

outstanding appeal. Where a prosecution for non-compliance is successful, the local planning authority can also apply for a Confiscation Order under the Proceeds of Crime Act 2002 to recover the financial benefit obtained through unauthorised development. The local planning authority may also enter land and carry out the works required by the notice themselves where there is non-compliance and recover the costs of undertaking the work from the owner of the land. It is an offence to wilfully obstruct this action.

Planning Enforcement Order – The local planning authority can apply to the Magistrates' Court for a Planning Enforcement Order where a breach of planning control has been deliberately concealed and the time limits for taking enforcement action have expired. If an order is granted, enforcement action can then be taken.

Temporary Stop Notice – This is a notice that can be used to deal with urgent matters where there is a requirement for activities to cease, reduce or minimise immediately. They apply for a maximum of 56 days and it is an offence to not comply. To prevent the breach resuming after the 56 days (or shorter period can be specified), an Enforcement Notice and possibly a Stop Notice are usually prepared and issued / served. A Temporary Stop Notice should only require what is essential to safeguard amenity or public safety; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Secretary of State but the validity of the notice and appropriateness of the decision to issue it can be challenged by application to the High Court for judicial review. Compensation may be payable in limited circumstances.

Stop Notice – A Stop Notice can prohibit some or all activities similar to a Temporary Stop Notice, although it can only be served at the time or after the service of an Enforcement Notice. They are, therefore, usually used where activities need to stop before the deadline for compliance specified in an Enforcement Notice. The effective date of the Stop Notice must normally be no less than three days unless special reasons exist, and no more than 28 days after service. Other considerations are similar to a Temporary Stop Notice, in that it should only require what is essential to safeguard amenity or public safety; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Secretary of State but the validity of the notice and appropriateness of the decision to issue it can be challenged by application to the High Court for judicial review. Compensation may be payable in limited circumstances.

Breach of Condition Notice – A Breach of Condition Notice can be used when a condition imposed on a planning permission (or condition of permitted development rights) isn't complied with. The notice will require compliance within a certain time. It is an offence to not comply with the notice and there is no right of appeal to the Secretary of State, but the validity of the notice and appropriateness of the decision to issue it can be challenged by application to the High Court for judicial review.

Injunction – The local planning authority can apply to the High Court or County Court for an injunction to restrain an actual or apprehended breach of planning control. Proceedings for an injunction are the most serious enforcement action the local planning authority can take as failing to comply can result in the person being

committed to prison for contempt of court. This action is, therefore, used in the most serious cases.

Listed Building Enforcement Notice – This notice is similar to an Enforcement Notice, however, there are no time limits for issuing a Listed Building Enforcement Notice. Unauthorised works to listed buildings is also a criminal offence and the Council may prosecute for the offence committed.

Prosecution – Unauthorised works to listed buildings, relevant demolition in a Conservation Area, unauthorised works to protected trees, removal of important hedgerows, unauthorised works involving hazardous substances, displaying an advertisement in contravention of the relevant advertisement regulations and non-compliance with many of the notices listed here constitute a criminal offence for which the Council may prosecute. It can do this, either alone or in addition to other enforcement action, which may include undertaking works in default to remedy the breach of planning control or harm to amenity.

Section 215 Notices – Section 215 of the Town and Country Planning Act 1990 allows councils to issue notices requiring the improvement to the state of land or buildings where they are having a detrimental effect on local amenity. Powers under section 219 also allow for the Council to undertake the works and recover the costs from the landowner. Untidy land is dealt with by the Environmental Protection team at North West Leicestershire District Council.

Community Protection Notices – These provisions are not specifically planning legislation but are powers provided by the Anti-Social Behaviour, Crime and Policing Act 2014. Following a warning which must be served first, a notice can be issued where the conduct of an individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable. The notice can require the recipient to stop doing specified things, do specified things or take reasonable steps to achieve specified results. The recipient can appeal to the Magistrates' Court under specified grounds, but otherwise it is an offence to not comply with the requirements of the notice. The Council may undertake remedial works where the land is open to the air, issue a fixed penalty notice, or the Court may issue a Remedial Order.

High Hedges Complaint – These provisions are not specifically Planning legislation but are powers provided by the Anti-Social Behaviour Act 2003. Where a hedgerow comprising two or more evergreen or semi-evergreen trees is significantly impacting on amenity (in terms of being a barrier to light) and demonstrable attempts to resolve this with the hedge owner have failed, a high hedges complaint can be submitted to the Council as a last resort. The Council will objectively assess, using standardised methodology, whether a Remedial Notice should be issued requiring a reduction to the height of the hedge, or part of it, and to maintain the hedge at that height, to result in an acceptable situation. Failure to comply with the notice is an offence and the Council may prosecute and / or undertake the works in default. This process cannot be used where the concerns relate to other issues, such as concerns over danger/safety of the trees comprising the hedge, damage caused by tree roots or blocking gutters, etc. High Hedge Complaints are dealt with by the Environmental Protection team at North West Leicestershire.

Tree Replacement Notice - A landowner has a duty to replace a tree which is removed in contravention of a tree protection order (TPO). Where the duty is not complied with, local authorities have powers, under section 207 of the Town and Country Planning Act 1990, to issue tree replacement notices (TRNs). These powers are also exercised where a tree is removed in a conservation area in contravention of section 211 of the Act (i.e. without giving the council six weeks' notice) and in circumstances when a condition to plant a replacement tree, on a consent to fell a tree under a TPO, is not complied with. The notice can be appealed to the Secretary of State (via the Planning Inspectorate) but otherwise failure to comply with the notice is an offence for which the Council may prosecute.

Hedgerow Retention Notice / Replacement Notice – The Council may issue a Hedgerow Retention Notice if it receives an application to remove a protected hedgerow that it considers must be retained, or a Hedgerow Replacement Notice requiring the replacement of protected hedgerow that has already been removed. Unauthorised removal of a protected hedgerow is a criminal offence. The Planning Service would issue a Hedgerow Retention Notice, but the Planning Enforcement team would likely lead on a Replacement Notice as this is when the works have already been carried out without permission.

Enforcement Warning Notice – This notice formalises the process of inviting a retrospective planning application when an unauthorised development has a reasonable prospect of being acceptable in planning terms. The notice will set out the matters that appear to be in breach of planning control, and that unless an application is made by a specified date, further enforcement action may be taken. This notice does not have any specific requirements and cannot force a planning application to be submitted. It does, however, constitute enforcement action meaning that it can provide a longer time for the Council to take further enforcement action depending on when it is served in relation to when the breach took place.

8. Other Matters

8.1 Advertisements, flags and fly-posting

The display of advertisements is subject to a separate consent process within the planning system. This is principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Advertisements are controlled with reference to their effect on amenity and public safety only. Where advertisement consent is required, planning permission is not required in addition.

For planning purposes, 'advertisement' is defined in section 336(1) of the Town and Country Planning Act 1990 (as amended) as:

“any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any

hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements.”

There are three categories of advertisement consent:

- Those permitted without requiring either deemed or express consent from the local planning authority;
- Those which have deemed consent;
- Those which require the express consent of the local planning authority.

Express consent is only required to fly certain flags. Many flags (such as national flags) are contained in Schedule 1 to the Regulations and can, therefore, be flown without the need for express consent. Other flags have deemed consent under Schedule 3 to the Regulations. The government's plain English guide to flying flags provides more information on those flags which can be displayed without obtaining express consent: <https://www.gov.uk/government/publications/flying-flags-a-plain-english-guide>

'A-boards' on highways (including footways) where vehicular traffic is prohibited will require express advertisement consent. They will also require consent from Leicestershire County Council under section 115E of the Highways Act 1980 for permission to place items such as 'A-boards' in highways (including footways) where vehicular traffic is prohibited.

All advertisements, whether they require consent or not, are subject to the standard conditions in Schedule 2 to the Regulations. These are:

1. no advertisement is to be displayed without the permission of the owner of the site on which they are displayed (this includes the highway authority, if the sign is to be placed on highway land);
2. no advertisement is to be displayed which would obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport;
3. any advertisement must be maintained in a condition that does not impair the visual amenity of the site;
4. any advertisement hoarding or structure is to be kept in a condition which does not endanger the public; and
5. if an advertisement is required to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.

It is illegal to display any advertisement (even if it has deemed consent) without first obtaining the permission of the owner of the site, or any other person who is entitled to give their permission.

Anyone who displays an advertisement in contravention of the Regulations commits an offence. For example, by displaying an advert without the necessary consent or

without complying with the conditions attached to that consent. It is then immediately open to the local planning authority to bring a prosecution in the Magistrates' Court for an offence under section 224 of the Town and Country Planning Act 1990.

Where a local planning authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the Proceeds of Crime Act 2002, to recover the financial benefit obtained through unauthorised development.

Local planning authorities also have powers to remove any advertisement (and any structure used for its display) which in their view is displayed in contravention of the Regulations. They also have powers to impose more strict conditions, including restricting deemed consent in a specified area, being able to serve a discontinuance notice for advertisements with deemed consent, and defining an Area of Special Control.

There are several provisions under which unauthorised advertisements can be controlled by local planning authorities. The principal mechanisms are in section 224 and section 225 of the Town and Country Planning Act 1990 (as amended). Local planning authorities have specific powers to deal with:

- illegal hoardings;
- fly-posting;
- graffiti; and
- unauthorised advertisements alongside highways.

Unauthorised advertisements alongside highways and attached to highways structures or trees are directed to the local highway authority at Leicestershire County Council to resolve under their powers set out in the Highways Act 1980.

Flyposting is dealt with by the Environmental protection team at North West Leicestershire.

Other unauthorised advertisements are dealt with by planning enforcement. More information on the process can be found here:

<https://www.gov.uk/guidance/advertisements#enforcement-against-specific-unauthorised-advertisements>

8.2 Unauthorised Encampments

An absence of authorised sites does not allow for unauthorised encampments or prevent the Council from taking enforcement action against them. The same process of investigation as any other suspected breach of planning control applies, but officers will usually liaise with the County Gypsy and Traveller Liaison Officer, the Police, and other services such as Environmental Protection and the Council's Equalities Officer where relevant. When dealing with unauthorised encampments, there is a balance between the need to resolve any breaches of planning control with the Human Rights Act and ensuring compliance with the Public Sector Equality Duty.

Often, unauthorised encampments are not dealt with by planning enforcement, either because they are on Council or Highway land, and therefore usually dealt with by the Multi-Agency Traveller Unit (MATU) hosted by Leicestershire County Council, or it involves trespass onto private land and therefore is the responsibility of the landowner to remove/resolve. It is usually only when encampments commence on private land and the residential use is being authorised by the landowner, that planning enforcement has more involvement in the matter.

8.3 Biodiversity Net Gain (BNG)

There is now a national mandatory requirement for development to provide a minimum of 10% net gain in biodiversity compared to the situation on site before the development takes place. Biodiversity Net Gain must be provided for 30 years and can be provided within the development site or off-site, secured by condition or legal agreement. There is a requirement for developers or 'responsible bodies' who the developer may have entered into contract with, to provide comprehensive plans of how the net gain will be achieved and report on progress. Non-compliance with or breaches of approved schemes will constitute a breach of planning control and ensue investigation and where necessary, enforcement action to secure an acceptable outcome.

8.4 Appeals

While certain types of enforcement action can only be challenged by Judicial Review: where a judge will review the lawfulness of the decision or action made by the Council, some actions such as Enforcement Notices can be appealed to the Secretary of State. In this instance, the Planning Inspectorate will appoint an Inspector to determine whether the appeal should succeed or be dismissed. The appeal may be dealt with by written representations: whereby the appellant and Council submit their statements for the Inspector to consider before reaching their decision, informal hearing: where the Inspector leads an in-person meeting following receipt of each party's statement of case, or a public inquiry: which is used for the most serious or complex breaches of planning control where evidence may be tested by cross-examination on oath.

The timescale for the appeal process is dictated by the Planning Inspectorate and it may be a considerable time before the appeal is decided. The requirements of an Enforcement Notice are held in abeyance until the outcome of the appeal, so the Council may need to consider serving a Stop Notice in the meantime if an ongoing unauthorised development must be stopped urgently.

If the Council has invited a retrospective planning application and that application is subsequently refused, the applicant can also appeal that decision. Appeals are another reason that some cases can be open for long periods of time and the Council will need to consider whether any enforcement action should be taken at the point of a retrospective planning application being refused before awaiting the submission of an appeal.

9. Human Rights and Public Sector Equality Duty

9.1 Human Rights

The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol (Right to peaceful enjoyment of property), Article 8 (Right to respect for private and family life) and Article 14 (Prohibition of discrimination), are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control. Individual rights will of course be balanced against those rights of public interest in any decision making.

In some instances, there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a Stop Notice or Temporary Stop Notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of a period allowed for compliance with an Enforcement Notice.

9.2 Public Sector Equality Duty

Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty. This places a duty on public authorities, in exercising their functions, to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For planning enforcement, this means that officers, where they are aware, will have regard to the potential impact on any person with a protected characteristic or group of persons that share a protected characteristic that are either likely to be affected by the proposed action or likely to be affected by a breach of planning control.

Officers will also endeavour to make all communications as clear as possible by avoiding planning jargon or sufficiently explaining it to ensure it is understood, providing written communications in larger text or another language if requested, make any reasonable adjustments that have been requested and where necessary, by visiting people at their home to discuss any breach of planning control that directly affects their living conditions or any action that will have a material effect on their quality of life. Officers can be contacted by responding directly to any received

correspondence or through the Council's Customer Service Team if you would like to discuss any of the above provisions. All methods of contacting the Customer Services Team can be found here: <https://www.nwleics.gov.uk/pages/contacts>.

10. Implementation and Monitoring

10.1 Implementation

This plan sets out how the Planning Enforcement team will respond to suspected breaches of planning control so that the process is as clear as possible. It will, therefore, be implemented by all officers in the Planning Enforcement team, overseen by the Planning and Development Enforcement Team Leader, Planning and Development Team Manager and Head of Planning and Infrastructure, and its effectiveness will be monitored as below.

10.2 Monitoring

To ensure that the Plan remains up-to-date and provides a robust basis for an effective and efficient planning enforcement service, performance of the service will be reported to Planning Committee bi-annually, and the Plan itself will be reviewed every three years, unless there is a significant change in legislation that necessitates an earlier review.

In terms of monitoring the performance of the Planning Enforcement service, the key aim of the service is to secure successful outcomes to breaches of planning control, and that is not easy to quantify given that reportable numbers only go some way to demonstrating success. For example, a case may be open for a year or more while officers work informally with somebody who is complying with their requests to carry out works to remedy the situation. At the end of that process, the Council may have secured an outcome that results in a good situation in planning terms. This has avoided the need to serve a formal notice that takes significant officer time and therefore resources are reduced for other cases. The notice may then be appealed which takes more resource to draft statements and perhaps arrange and attend a Hearing or Inquiry. The appeal takes the situation out of the Council's control in terms of timescales and outcome, meaning that it could take a further year or more and the result could be that the appeal is allowed. The number of notices served and the amount of time it takes to close a case is therefore not always a good indicator of performance. It could even be considered that a high number of notices served indicates a failing service, as it may be as a result of officers being unable to effectively respond and intervene at an early stage, or an inability to negotiate good outcomes otherwise.

A more suitable measure of performance is, therefore, how quickly the Council responds to enquiries alleging a suspected breach of planning control. A fast response can often 'nip it in the bud', either by making someone realise they are breaching planning control, stopping ongoing works before more irreparable harm is done, and getting the ball rolling for any subsequent action required (inviting a retrospective planning application or negotiating other works). The ability to respond to enquiries in accordance with the priorities set out in this Plan is, therefore,

considered a good indicator of whether the right amount of resource is being directed to the right things. This, coupled with a regular review of total open cases and the number of historic or stagnated cases, and the number of any founded complaints received about the service, to be reported to Planning Committee bi-annually, is considered to be as far as data can show an appropriate measure of a responsive, effective and efficient planning enforcement service.

Appendix A – Explanation of transitional period for enforcement action time limits following the provisions of the Levelling-up and Regeneration Act 2023

The time limits for taking enforcement action have changed through the provisions of the Levelling-up and Regeneration Act 2023, which came into force on 25 April 2024. The time limits are set out in [section 171B of the Town and Country Planning Act 1990](#) (see also [The Planning Act 2008 \(Commencement No. 8\)](#) and [Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024](#) for transitional arrangements).

The new legislation means that the date breaches of planning control may become immune from enforcement action depends on whether the breach commenced before or after 25 April 2024.

In most cases (apart from the exemptions listed in the ‘Immune from action’ section at 6.1), 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 four years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within four years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024; or,
- within 10 years for any other breach of planning control (essentially other changes of use).