



# Local Enforcement Plan 2022



**Planning & Environmental Enforcement Team**

**January 2022**

## **Foreword**

This Local Enforcement Plan was approved by Rother District Council Cabinet on 31/01/2022.

Development can directly impact everyone, be that at home or the workplace. While most development is carried out in accordance with the necessary approvals and allowances and conditions, there are instances where it is not, such as a homeowner building an extension beyond the original planning permission.

This is where local councils have a role to play to ensure these rules are followed and take appropriate action when they are not. This document is Rother District Council's Local Planning Enforcement Plan (the Enforcement Plan), which sets out the powers available to it to ensure all developments comply with the Town and Country Planning Acts and other relevant legislation.

Rother District Council is the responsible Local Planning Authority (LPA) for the enforcement of planning control within the District. The planning system protects the environment and ensures that development takes place in accordance with national regulatory requirements and planning policy. It also ensures that development is planned and managed in order to achieve social, economic and environmental objectives.

The Council's planning enforcement team has wide ranging powers to be exercised in the public interest where a breach of planning control is under consideration. This responsibility is very important and is essential to ensure confidence in the planning system.

Further information about the Council's planning enforcement polices and how to report planning breaches is available online: <https://www.rother.gov.uk/planning-and-building-control/planning-enforcement-team>

## **Introduction**

1. Rother is an attractive and safe place to live. It benefits from a blend of some of the most beautiful countryside and coastline in South East England and contains the historic market towns of Battle and Rye, the Victorian/Edwardian seaside town (and administrative centre) of Bexhill and many picturesque villages.
2. The importance of the environment is evidenced by the extent of the district, some 82%, is designated as 'Area of Outstanding Natural Beauty' (AONB), while a further 7% of the district not in the AONB is either nationally or internationally designated for its nature conservation value. Rother also has a number of Conservation Areas and a significant number of listed buildings.
3. The Pevensey Levels straddling the south western boundary of the district is a 'Ramsar' site, designated for its international importance as a wetland habitat. In the south east, a 'Special Protection Area' (SPA) between Dungeness and Pett Level is of European importance for wild birds, while an area between Dungeness and Winchelsea Beach is designated as a 'Special Area of Conservation' (SAC), in recognition of its flora and fauna. In addition, there are significant areas between Dungeness and Pett Level, including parts of the East Guldeford Levels that are either 'Proposed Ramsar' and/or 'Proposed SPA' extensions.
4. Rother District Council has a commitment to protect and enhance the environment for the benefit of all residents and businesses in the area. The council can enforce this commitment by exercising its powers as a local planning authority and take action against breaches of planning control.
5. The council aims to operate its planning enforcement service in a fair, timely, consistent and open manner so that Rother can be protected and enhanced as a great place to live and work.

## **Service Aims**

### *Standards*

- To operate the planning enforcement service in accordance with the published service standards, which set out the level of service and performance the public and businesses can expect. We will regularly review these standards taking account of the views of stakeholders.

### *Openness*

- To provide information and advice in plain language on the policies and procedures of the service, and to communicate this mainly by electronic means whilst giving access for all. Confidentiality will be maintained for complainants.

### *Partnership*

- To work with the community on compliance with planning controls on the basis that prevention is better than cure, and to ensure that our efforts are coordinated with other enforcement agencies within and outside the council.

### *Helpfulness*

- To provide a courteous and efficient service with appropriate publicised contact points.

### *Feedback about the service*

- To operate the council's compliments, suggestions and complaints procedure in an accessible, effective and timely manner.

### *Proportionality*

- To exercise the planning enforcement powers of the council on an individual case by case basis of the expediency and public interest, before taking action. The council has a wide range of planning enforcement powers but must act in accordance with national policy and guidance.
- If the council considers that a breach of planning control has occurred, officers must then decide whether or not this is sufficiently harmful as to require action to be taken in the public interest, having regard to the facts of the case. At one end of the scale, if no or little harm is identified, the matter could be treated as a 'technical breach' with no further action to be taken, or a planning application might be invited to 'regularise' the situation. At the other end of the scale, where it is assessed that serious harm has occurred, a formal notice might be served and other formal steps considered.

### *Consistency*

- To use the council's planning enforcement powers in a fair and consistent manner.

### *Effectiveness*

- To protect and enhance Rother District Council by active and responsible use of the full range of enforcement powers.

## The Legislative and Policy Context

6. Paragraph 59 of the National Planning Policy Framework (2021) states:

*“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.”*

7. The Government has published National Planning Practice Guidance (March 2014). This notes that Local Planning Authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.
8. The main planning policies relevant are those contained in the development plan; the Rother Core Strategy Local Plan (2011-2028) and the subsequent Development and Site Allocations Local Plan (2019). Those policies relating to public amenity; the High Weald AONB; Conservation Areas and Listed Buildings will be particularly relevant. National advice should also be taken into account and of particular relevance will be the National Planning Policy Framework and National Planning Practice Guidance.
9. The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. The Council has powers to investigate and take action to remedy breaches within the relevant legislation and regulations including the Town and Country Planning Act 1990 (as amended), the Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
10. The Localism Act 2011 inserted into the Town and Country Planning Act 1990 powers to restrict tactics that were seen as abuses of the planning system, such as twin tracking an appeal against an enforcement notice, limiting applications for retrospective approval where an Enforcement Notice has been issued, the power to apply to remove time limits for deliberately concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti.
11. The Council can consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice should it be in the public interest to do so.

### *Enforcement & Listed Buildings*

12. A separate legislative regime exists for enforcement matters relating to Listed

Buildings; carrying out unauthorised works to a listed building is a criminal offence and individuals can be prosecuted.

13. Section 38 of the Planning (Listed Buildings and Conservation Areas Act) 1990 enables the LPA to issue a listed building enforcement notice where unauthorised works have been carried out to a listed building and where they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest.
14. Under section 9 of the Planning (Listed Buildings and Conservation Areas Act) 1990, it is an offence to carry out works that require listed building consent without such a consent being obtained. Not all works require listed building consent, only demolition or works of alteration or extension that affect the character of the building as a building of special architectural or historic interest. It is also an offence to fail to adhere to a condition on a listed building consent.
15. The offence is committed by the person who carried out the works (including for example a builder) and by anyone who caused them to be carried out (e.g. someone instructing a builder). It is not a defence to say that the fact that the building was listed was not known.
16. It is a defence to proceedings to show that works to the building were urgently necessary in the interests of health and safety or for the preservation of the building; they were the minimum necessary and temporary works of repairs, support or shelter were not practicable; and, notice in writing justifying the works was given to the local authority as soon as reasonably practicable.

#### *Enforcement and the Natural Environment: Protected Trees & High Hedges*

17. Tree Preservation Orders (TPOs) are made by a local authority to protect important trees that significantly contribute to the amenity of an area. Consent from the local authority before carrying out any work to a tree protected by a TPO, including minor pruning is required. It is an offence to carry out work to a protected tree without permission, subject to some exemptions.
18. Under Part VIII of the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012, anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from the local planning authority is guilty of an offence and may be fined.
19. There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order. This duty also applies if a tree subject to a woodland TPO removed because it is dead or presents an immediate risk of serious harm. The local planning authority may also impose a condition requiring replacement planting when granting consent under an Order for the removal of trees. The authority can enforce tree replacement by serving a 'tree replacement notice'.
20. The authority's main consideration should be the [amenity value](#) of the tree. In addition, authorities [must](#) pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Separate from a TPO,

consent can also be required to undertake works to trees within a conservation area where they are not protected by a TPO.

21. This does not apply for cutting down, topping or lopping or uprooting of a tree whose diameter does not exceed 75 millimetres; or the cutting down or uprooting of a tree, whose diameter does not exceed 100 millimetres, for the sole purpose of improving the growth of other trees (eg thinning as part of forestry operations). In either case, the diameter of the tree is to be measured over the bark of the tree at 1.5 metres above ground level.
22. Since 1 June 2005 the Council has powers under Part 8 of the Anti-Social Behaviour Act 2003 to adjudicate on disputes over high hedges. These matters are dealt with by Legal Services in association with the Tree Officer.
23. As set out in earlier paragraphs, much of the administrative area of Rother is protected landscape, and particular attention will be paid to alleged breaches of planning control within such areas

## Identifying and reporting unauthorised development

24. The type and frequency of enforcement issues are wide ranging in Rother District. They vary from very minor technical breaches of the regulations which are not in the public interest to pursue, through to substantial development such as the carrying out of unauthorised earthworks or the establishment of industrial uses which are having a seriously harmful effect on amenity.
25. To report an alleged breach of planning control, a complainant is required to complete the online form. The online form can be found at: <https://www.rother.gov.uk/planning-and-building-control/planning-enforcement-team/alleged-breaches-of-planning-control>
26. Information on reporting a High Hedges complaint can be found at [High Hedges – Rother District Council](#)
27. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters where there is a potential breach of other legislation will be referred onto relevant regulatory authorities, where it is not a civil matter between individuals or landowners.
28. Civil matters are private matters between the respective parties and can include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.
29. An assessment is then made as to the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.
30. Anonymous complaints about a third party will not be investigated. The identity of persons reporting suspected breaches will be treated as confidential by Councillors and officers of the Council. If a member of the public wishes to be anonymous then they must go through either their local Ward Councillor or Parish Council.
31. Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to, or support for, an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.
32. The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach.



## Enforcement priorities

33. Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority so it is essential to use Council resources to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused.
34. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach. Complaints will be prioritised on receipt based on what appears to be their significance on receipt and initial background checking in accordance with the enforcement priorities. Priority will be reassessed and kept under review through the lifetime of the investigation.
35. All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.
36. Enforcement cases may require repeat site visits, negotiation, and formal action before the breach is resolved. When these occur, Enforcement Officers will strive to keep original complainants informed of progress and indicate arrangements for this in the initial response letter.
37. After the first site visit and/or during the investigation process, the Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.
38. This delegated function to take action or not after the investigation stage is exercised by the Development Manager, the Development Management Team and where appropriate in association with the Council's Legal Services.
39. With regard to the procedure for dealing with complaints, these arise from a variety of sources, including members of the public; Councillors; Parish Councils and officers of the Council. Once a complaint is received an initial assessment will be made as to whether it is a breach and then the seriousness of the alleged breach. If it is decided not to investigate any further the person who brought the matter to the Council's attention will be informed.
40. With regard to the remainder of the complaints, an acknowledgement letter will be sent within **7 working days** of receipt and the initial assessment which may require a site visit will be undertaken within 2, 10 or 20 working days of receipt depending on the seriousness of the breach. After the initial assessment a decision will be made within 3 months of receipt as to whether or not planning permission is necessary for the development. More details of the prioritisation of cases and their attendant timescales can be found in **Appendix 1**.

41. If planning permission is required a decision will be taken as to whether to:
  - a. Take no further action and recommend case closure
  - b. invite a planning application (only if permission is likely to be granted),
  - c. advise them to take remedial action to achieve a satisfactory negotiated outcome with the interested parties within a practical timescale
  - d. take enforcement action in respect of those breaches that are unreasonably harming amenity or the environment, having regard to the development plan and any other material considerations.
42. This 'action stage' will follow up on the above matters after suitable timescales. These timescales are indicative and may vary considerably depending on the nature, complexity and severity of the planning breach, the negotiated outcome required or the details to be submitted for the submission of retrospective planning permission.
43. More detail of this is set out in a simple flowchart of the investigation process and likely timescales which is attached as **Appendix 2**.
44. To ensure the efficient use of resources, customers will be updated after the initial acknowledgement of their case at the assessment stage and at the stage of any further actions as well as at closure stage. Where matters go to an appeal to the Planning Inspectorate a letter of consultation will be sent as part of this separate process. It is important customers are aware that repeated requests for updates outside of these stages are unlikely to be responded to.
45. The wide range of enforcement powers or Planning Enforcement 'toolkit' available to Planning Enforcement Officers is set out in more detail in **Appendix 3**.
46. If enforcement action has been taken the Council has the power, under Section 70c of the Town and Country Planning Act 1990, to refuse to determine a retrospective application for planning permission for the breach. This power, introduced in April 2012, helps to prevent owners frustrating the enforcement process.
47. The Planning Enforcement Team can also consider whether a breach once established is 'intentional unauthorized development'. This is a material planning consideration should formal enforcement action be taken and a potentially aggravating factor should an offence be committed as a consequence.
48. The Planning & Environmental Enforcement Team will continue to develop cross cutting work with other Divisions. This should enable resources to be focused on matters that are having a serious effect on the environment and quality of the District.
49. In carrying out investigations regard will be had to the Human Rights Act 1988; Police and Criminal Evidence Act 1984; the Equality Act 2010; Criminal Procedures and Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000.

### **When is an investigation is complete?**

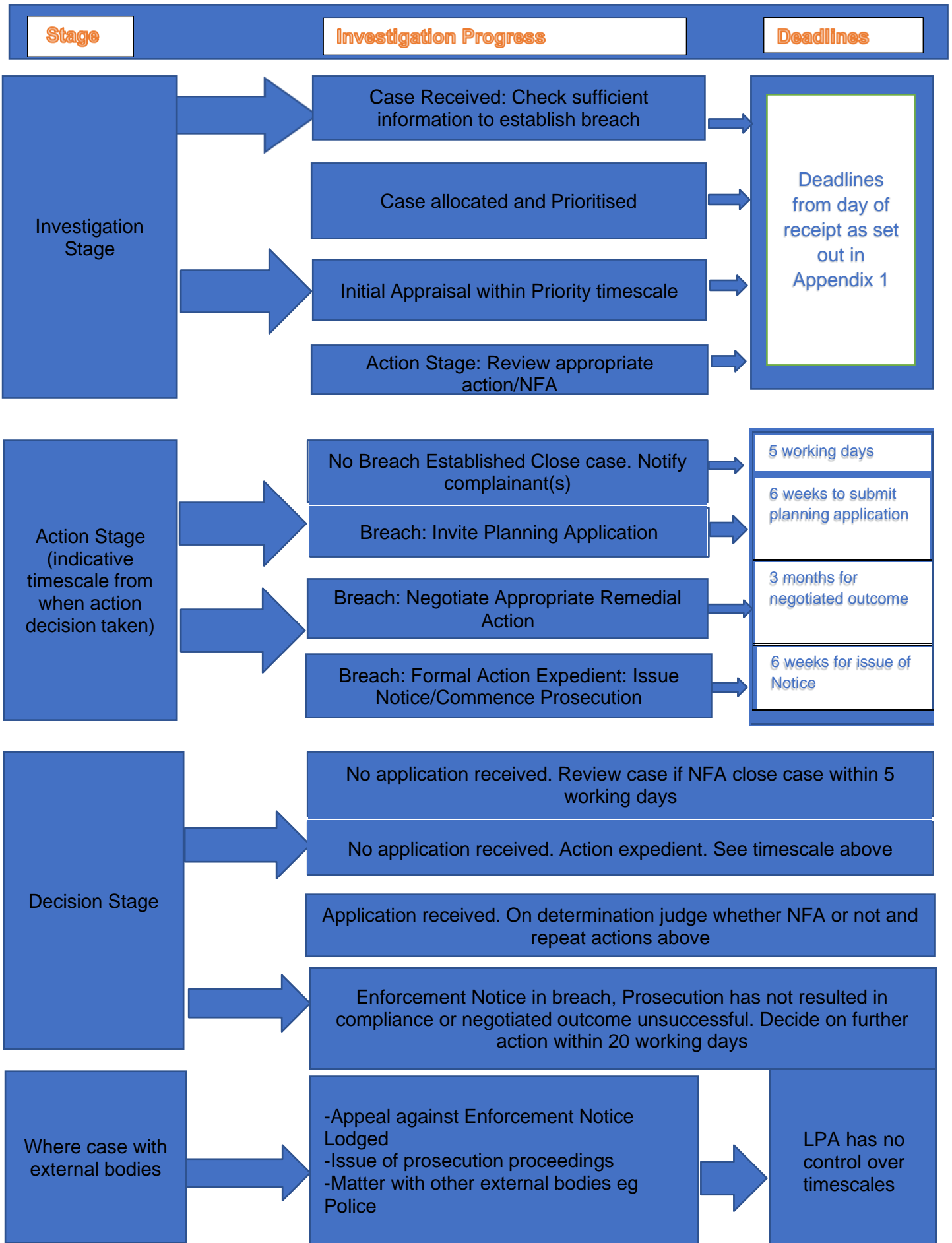
50. We would consider that an investigation is complete when one of the following points has been reached:
- the investigation identifies that no breach in planning control has occurred or that due to the passage of time that no action can be taken;
  - an alleged breach of planning has been identified but then resolved by negotiation;
  - a planning application or other form of application has been submitted and approved following the investigation;
  - a breach in planning control has been identified, including when an application has been requested but not submitted, and it is not considered expedient to take formal action; or
  - formal action has been taken through issuing a relevant enforcement notice
51. Prior to taking formal enforcement action or closing a case as not expedient, it is necessary to assess the harm resulting from any unauthorised development.
52. Further investigation may be necessary when formal enforcement action has been taken where for instance:
- a right of appeal has been exercised against a Notice and new information relevant to the case comes to light;
  - a Notice is issued and not complied with or another criminal offence under the Planning Acts has occurred, a decision is made involving the Council's legal advisors to assess whether it is in the public interest to take formal action; and/or
  - a compliance check needs to be undertaken in relation to an existing enforcement notice.

## Appendix 1: Prioritisation of Enforcement Cases

Priority	Description of alleged breach	Initial Assessment deadline from receipt	Decision deadline from receipt
1 High	<ul style="list-style-type: none"> <li>• Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a Conservation Area or to the open countryside</li> <li>• Unauthorised works to a Listed Building</li> <li>• Serious harm to the amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area</li> <li>• Serious unauthorised ground works in the High Weald AONB, Ramsar' sites, 'Special Protection Area' (SPA) and 'Special Area of Conservation' (SAC)</li> </ul>	2 Working Days	3 months
2 Medium	<ul style="list-style-type: none"> <li>• Breach which results in serious demonstrable harm to the amenity of the Neighbourhood</li> <li>• Unauthorised development in a designated area eg AONB. Conservation Area</li> <li>• Source of significant public complaint</li> </ul>	10 Working Days	3 months
3 Low	<ul style="list-style-type: none"> <li>• Non-Compliance with planning conditions Unauthorised development which is not the source of significant public complaint</li> <li>• Erection of Advertisements</li> <li>• Untidy Land</li> </ul>	20 Working days	3 months
4 No action	<ul style="list-style-type: none"> <li>• Non planning matters</li> <li>• Anonymous service requests</li> <li>• Service request where investigation by another department, agency or organisation is more appropriate</li> </ul>	7 Working days	7 Working days

- **Case priority may change throughout the lifetime of the investigation**
- **Decision deadline on whether to close, to negotiate an outcome, to invite a planning application or take enforcement action without first inviting a planning application**

## Appendix 2: Timescales and Procedure of an Enforcement Investigation



## **Appendix 3: The Planning Enforcement Toolkit**

1. The main options to tackle possible breaches of planning control are:

### **No formal action**

2. Early engagement is important, and the landowner may take immediate action when advised of the issue. Where a breach of planning control is on council owned land, or on land where a covenant controls the issue, such breaches are most effectively addressed through estate management or landlord control.

3. The Planning Policy Guidance (PPG) paragraph 011 states that local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority considers that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

4. An outstanding breach of control may affect the sale and marketing of a property and nothing in this plan should be taken as condoning a clear and willful breach. However, the balance of public interest varies from case to case.

### **Invite Retrospective planning application**

5. The PPG advises that where the LPA considers that an application is the appropriate way forward to regularise the situation, the owner and occupier should be invited to apply under Section 73A of the Town and Country Planning Act 1990 without delay. It cannot be assumed that permission will be granted – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. The PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

### **Planning Contravention Notice**

6. This can often be the first formal step in resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may advise of a date, time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the authority. An opportunity to make such representations must be made. This is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information referring to these rights.

Where a Planning Contravention Notice has been served this will be recorded on the Local Land Charges register. A failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice'. Convictions currently carry a maximum fine not exceeding £1,000.

## **Section 330 of the Town and Country Planning Act 1990**

7. This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. As with PCNs above, it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Convictions currently carry a maximum fine not exceeding £1,000.

### **Rights of Entry**

8. The Town and Country Planning Act specifies the purposes for which entry to land including buildings may be authorised, namely to ascertain or determine:

- whether there is or has been any breach of planning control;
- whether any of the LPA's powers should be exercised;
- how such power should be exercised;
- whether there has been compliance with any requirement arising from earlier enforcement action.

9. A record should be made of the inspection with appropriate photographs. Entry to a dwelling house cannot be demanded as a right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates' Court for a warrant to allow entry. The PPG refers to these rights. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

### **Breach of Condition Notice**

10. This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition but may be served in addition to an enforcement notice, perhaps as an alternative to a Stop Notice. It can only be challenged by judicial review. Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with any conditions and any specified steps will be in breach of the notice and guilty of an offence. The PPG refers to these rights.

### **Enforcement Notice**

11. The notice may be served up to four years after substantial completion of building operations or ten years after a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know exactly what, in the LPA's view, constitutes the breach of planning control and what steps the LPA requires to be taken to remedy the breach.

12. An enforcement notice may "under enforce", by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect; however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. The PPG refers to these rights.

## **Planning Enforcement Order**

13. Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a Planning Enforcement Order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10-year periods for immunity will not apply in cases of a concealed breach. An application for a PEO must be made within 6 months of the LPA becoming sufficiently aware of the breach to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. The PPG refers to these rights.

## **Stop Notice**

14. This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal for a matter not related to the planning merits, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. The PPG refers to these rights.

## **Temporary Stop Notice**

15. These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the environment in the surrounding area. Like with a Stop Notice above, there are limited grounds for compensation where a Notice is found to be defective. The PPG refers to these rights.

## **Listed Building Enforcement Notice**

16. The PPG notes that the Listed Building Enforcement provisions are in Sections 38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the enforcement provisions relating to the demolition of an unlisted building in a conservation area ("relevant demolition") are in the Act. A Listed Building Enforcement notice can be served against unauthorised works that damage the character and/or fabric of a listed building. There is no time limit in which such an enforcement notice can be served.

17. There are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;

- carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;



- carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990.

18. Listed Building Consent and planning permission for relevant demolition are not granted retrospectively. A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

## **Injunction**

19. This may be done in the most serious cases, generally where irreparable harm is being done or is apprehended, or where other actions have been or would be ineffective. Section 187B of the Town and Country Planning Act applies where the LPA considers it expedient to restrain actual or apprehended breaches of planning control. Section 44A of the Planning (Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. The Magistrates' Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify, to the best of their ability, the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- photographic evidence of the persons concerned;
- affidavit evidence by the LPA officers;
- reference to chattels (e.g. registered vehicles) known to belong to, or be used by, that person;
- other relevant evidence (such as a name by which the person is commonly known).

20. There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

## **Unauthorised Advertisements**

21. It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety.

22. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

23. In addition, the Council can serve a Removal Notice under S225 of the Act. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner. There is a right of appeal to the Magistrates Court on the following grounds:

- that the display structure concerned is not used for the display of advertisements in contravention of regulations under section 220;
- that there has been some (material) informality, defect or error in, or in connection with, the notice;
- that the period between the date of the notice and the time specified in the notice is not reasonably sufficient for the removal of the display structure;
- that the notice should have been served on another person.

24. If the notice is not complied with, the LPA is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying out works under an enforcement notice. The Council may also prosecute for non-compliance.

### **Direct Action or “Default” Action**

25. This may be used in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

26. Direct action is seen as a potentially draconian power and normally a course of last resort as the Council’s decision may be challenged by Judicial Review. There may be threats and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the case of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to recover.

### **Section 215 Notices**

27. From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health, but they can be an eyesore, which means it is detrimental to the local amenity.

28. Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up.

29. The power is exercisable if it appears that ‘the amenity of a part of (the LPA’s) area, or adjoining area, is adversely affected by the condition of land in their area’ (Section 215(1)). The notice ‘shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period’.

30. There is a right to appeal to the Magistrates’ Court on any of the following grounds that:

- the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the LPA who served the notice, or of any adjoining area;
- the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III (the requirement to have planning permission);
- the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the LPA who served the notice, or of any adjoining area;
- the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed.

31. If the notice is not complied with, the LPA is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying out works under an enforcement notice. The Council may also prosecute for non-compliance.

## **Other Enforcement Powers:**

### **High Hedge Enforcement**

32. Under the terms of the Act, Councils can only consider a complaint if it satisfies the following criteria:

- it must relate to a high hedge as defined in the Act;
- the hedge must be on land that is owned by someone other than the complainant;
- it must be affecting a domestic property;
- the complaint must be made on the grounds that the height of the hedge is adversely affecting the reasonable enjoyment of the domestic property in question; and
- it must be brought by the owner or occupier of that property.

33 If a complaint has been properly made and we decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti-Social Behaviour Act 2003 and is known as a remedial notice. This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although we cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners. While there is a default power for the Council to carry out works to a High Hedge, enforcement by prosecution and Court order is considered better practice.

33. There are also powers in Section 219 of the Town and Country Planning Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier.

**NB: Action under the High Hedges Procedure, is undertaken by the Council's Legal Services**

### **Tree Protection Enforcement: Good Planning**

34. Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

### **Tree Protection**

35. Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage. Trees may be protected by legislation enshrined in the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012, by being subject to a Tree Preservation Order (TPO) or being situated within a Conservation Area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission. In certain circumstances trees may be protected by conditions attached to a planning permission.

## **Compliance**

36. Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This is to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as British Standard (BS) 3998 'Tree Work: Recommendations', and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the tree itself and of the protected tree stock of the borough. Compliance should be the starting point of any enforcement policy.

## **Specific Tree Protection**

37. Where trees are protected by a TPO, the LPAs consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

39. Where trees are protected by inclusion in a conservation area six weeks' notice must normally be served on the LPA of any proposal to carry out works on the tree. During the six-week period, the Authority is required to consider the need to make a Tree Preservation Order to prevent the works being carried out. If the LPA takes no action within six weeks the works may go ahead as notified.

40. Planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the LPA to vary or remove a condition (such as to allow the removal of a tree). If planning conditions are not complied with, the LPA is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

41. Offences under a) and b) above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

a) Firstly, anyone who cuts down, uproots or willfully destroys a tree, or who lops, tops or willfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates' Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be "destroyed" for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

b) Secondly, anyone who carries out works to trees that are not likely to destroy it, are liable, if convicted in the Magistrates' Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

42. Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that the:

- defendant has carried out, caused, or permitted works on the tree;
- tree was protected;
- tree works were carried out without the Authority's consent;
- works were not exempt works.

43. If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, which exemption applies.

44. Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

45. When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council's Arboriculture Officer will also make a site visit.

46. Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

47. If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, they will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to. In some cases, it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the P.A.C.E and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

48. The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 2018, implementing the GDPR and the Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case, they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

49. Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

### **Possible actions by Local Planning Authority**

50. The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- initiate a prosecution (which may be for destroying the tree or for lesser works to it);
- administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence;
- require the planting of a replacement tree for each tree destroyed, under section 206 of

the Town and Country Planning Act 1990 or serving a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;

- informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs. Decisions as to what action to take will be taken in the public interest; ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually. Prosecutions will be considered against the tests of evidential value and public interest; these will be dealt with by the Council's legal advisors. Cautions may be used in accordance with guidance from the legal section.

## **Replanting**

51. In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a Tree Replacement Notice (TRN) may be considered. Any replacement tree is subject to the same protection as the original tree that was lost.

## **Other Enforcement Powers regarding the condition of Listed Buildings**

52. The owners of listed buildings are under no legal obligation to maintain their property in a good state of repair; even though it is in their interests to do so. When negotiation fails, local authorities have a range of statutory enforcement powers at their disposal including section 215 Notices, Urgent Works Notices, Repairs Notices and other statutory enforcement tools and powers under the various Housing, Planning and Building Acts, to secure the future of historic buildings. At their lightest level they involve no more than the serving of formal warnings of action, but in the last resort they can lead to enforced repairs or compulsory purchase.

53. Deciding which of the available powers to employ and in what combination will always depend on individual circumstances and the professional judgment of the local planning authority. In this regard, officers will follow the guidance and protocols set out in the Historic England Guidance [Stopping the Rot - A Guide to Enforcement Action to Save Historic Buildings \(historicengland.org.uk\)](http://historicengland.org.uk)

## **Repairs Notices**

54. Section 48 of the Listed Buildings Act 1990 enables local authorities to serve a Repairs Notice on the owner of a listed building, specifying those works it considers reasonably necessary for the "proper preservation of the building" and explaining the effect of sections 47 to 50 of the Listed Buildings Act 1990.

55. A Repairs Notice should be considered when a building is neglected and the need for permanent repair accumulates to the point where there is potential for serious harm.

56. Some of the key points to consider are:

- If, after a period of a minimum of two months, it appears that reasonable steps are not being taken the authority can begin compulsory purchase proceedings under section 47. „
- A Repairs Notice does not commit the authority to proceed to compulsory purchase action and the authority can withdraw the

Repairs Notice at any time.

- If the Notice is withdrawn, the authority must give Notice to the owner of the withdrawal.
- A Compulsory Purchase Order requires the Secretary of State's confirmation.

57. Section 47 of the Listed Buildings Act 1990 provides that an appropriate authority or the Secretary of State may compulsorily acquire a listed building in need of repair if it appears that reasonable steps are not being taken for its proper preservation.

58. Section 47 is a reserve power which is only to be used to ensure the long-term preservation of a listed building. Under section 47, there is a two-stage process: (i) service of a Repairs Notice; and (ii) service of a Notice of compulsory acquisition on every owner, lessee and occupier if, after the expiry of two months it appears to the appropriate authority that reasonable steps are not being taken for properly preserving the building. The compulsory purchase of a building under section 47 may not be commenced unless at least two months previously the authority has served a Repairs Notice on the owner.

### **Urgent Works Notices**

59. While there is no statutory obligation upon the owner of a listed building to keep their property in a good state of repair, (although it is usually in their interest to do so), local authorities can take action under Section 54 of the Planning (Listed Buildings & Conservation Areas Act)1990 to secure the repair of a listed building when concerned about its continued conservation, by serving an 'Urgent Works Notice'.

60. An urgent works notice is a direct way of securing repairs urgently necessary for the preservation of a building. An urgent works notice may be served where works are urgently necessary for the preservation of a listed building. An urgent works notice should generally be restricted to urgent repairs to keep a building wind and weather-proof and safe from collapse, or action to prevent vandalism or theft. The steps taken should be consistent with achieving this objective.

61. Prior to serving such a notice, the council will notify the owner that it is considering serving an urgent works notice, to give the opportunity to undertake the necessary works within a specified timescale. If the owner declines to do so or is otherwise unresponsive, then the law allows the local authority to execute any works which appear to them to be urgently necessary for the preservation of any listed building within the district.

62. The owner must be given a minimum of seven days written notice of the local authority's intention to carry out the works and the notice must describe the proposed works. If the building is occupied the works may be carried out only to those parts not in use.

63. The cost of carrying out the works may be recovered by the local authority from the owner. Such cost may include the continuing expense of providing temporary support or shelter of the building.

## Links and Further Information

Further information on the Council enforcement function can be viewed on the following link: <http://www.rother.gov.uk/article/10192/Alleged-Breaches-of-Planning-Control>

Copy of the online Complaint Form:

<http://www.rother.gov.uk/article/10192/Alleged-Breaches-of-Planning-Control?formid=409335#form>

Guidance on Enforcement for Listed Buildings can be found on the Historic England website at: [Stopping the Rot | Historic England](#)

Guidance on works to protected trees can be found at: [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#)