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## **ENVIRONMENT AND COMMUNITIES OVERVIEW AND SCRUTINY PANEL**

**02 MARCH 2022**

### **SUPPLEMENTARY PAPERS**

**TO: ALL MEMBERS OF THE ENVIRONMENT AND COMMUNITIES OVERVIEW AND  
SCRUTINY PANEL**

The first meeting of this review was held in private and so an agenda, which contained the evidence pack for the entire review, was not published. Please see below for the contents of the evidence pack.

Kevin Gibbs  
Executive Director: Delivery

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**5. SCOPE OF THE REVIEW** **5 - 6**

Describes the background to and the scope of this Integrated Enforcement focused review.

**6. COMMUNITY SAFETY ACCREDITATION SCHEME (CSAS)**

The Community Safety Accreditation Scheme (CSAS) and Railway Safety Accreditation Scheme (RSAS) create a framework for public and private bodies to work in partnership with the police, providing an additional uniformed presence in communities and on the rail network to assist in reducing criminality and anti-social behaviour.

After successful company approval employees of that company must apply for accreditation with their local police force. To achieve accreditation an individual must be vetted and approved by the Chief Police Officer of the area they work in, and successfully complete the required training.

More information can be found here: <https://www.policecsas.com/>  
Case studies <https://www.policecsas.com/case-studies>

Applying <https://www.policecsas.com/apply-for-approval>  
Training <https://www.policecsas.com/training>  
FAQs <https://www.policecsas.com/faqs>

## 7. THAMES VALLEY POLICE - CSAS

The Community Safety Accreditation Scheme (CSAS) allows organisations and their employees working in community safety to be given targeted police powers by the Chief Constable. These powers can help them become more effective in their role and contribute to community safety and security, as well as combat crime and disorder, public nuisance and anti-social behaviour.

More details can be found through the link below:

<https://www.thamesvalley.police.uk/police-forces/thames-valley-police/areas/advice/community-safety-accreditation-scheme/>

## 8. PARKING IN BRACKNELL FOREST

For more information on parking enforcement in Bracknell Forest please click on the following link. Includes literature on the role of the Civil Enforcement Officers and the Police in parking enforcement.

<https://beta.bracknell-forest.gov.uk/roads-parking-and-transport/parking/parking-enforcement-and-fines>

## 9. ENFORCEMENT & PARKING MANAGEMENT STRATEGY FOR BRACKNELL FOREST COUNCIL 2019-2024 7 - 24

This Parking Strategy covers the period 2019 to 2024. The main focus of this strategy is to provide the Council's policy framework for managing parking across the Borough to 'provide parking where appropriate and control parking where necessary'.

## 10. BRACKNELL FOREST COUNCIL LOCAL ENFORCEMENT PLAN - PLANNING 25 - 56

This document sets out the approach Bracknell Forest Council adopts in relation to breaches of planning rules in Bracknell Forest. More information can be found on the website: <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-enforcement-and-breaches>

## 11. FLY-TIPPING IN BRACKNELL FOREST

The Public Protection Partnership (PPP) works with West Berkshire Council, Wokingham Borough Council and Bracknell Forest Council to enforce legislation relating to unlawful waste collection and illegal dumping of waste across our area.

For more information on the PPP:

<https://publicprotectionpartnership.org.uk/about-us/campaigns/fly-tipping/>

For information on fly tipping processes in Bracknell Forest see link below:

<https://www.bracknell-forest.gov.uk/street-cleaning/fly-tipping-or->

[dumped-rubbish](#)

12. **ENVIRONMENTAL HEALTH AND LICENSING - PUBLIC PROTECTION PARTNERSHIP**

57 - 58

The Public Protection Partnership (PPP) is a shared service delivering Environmental Health, Licensing and Trading Standards to over 450,000 people and 10,000 businesses on behalf of three authorities (Partners), Bracknell Forest Council, West Berkshire Council and Wokingham Borough Council.

Further information: <https://publicprotectionpartnership.org.uk/about-us>

13. **JOINT ENFORCEMENT TEAMS (JET) IN SURREY**

The Joint Enforcement Teams in Surrey see council officers working collectively with the police to combat local issues such as noise, anti-social behaviour and low-level crime. The teams have proven to provide a fast and effective response as well as providing a visible presence to deter offenders.

Over the course of the pilots in Reigate & Banstead, and Spelthorne, the teams have been involved in dealing with a wide range of issues.

**Reigate and Banstead Joint Enforcement Team**

Council officers with enforcement powers including the Joint Enforcement Team, Community Safety Team, Environmental Health Officers, Civil Enforcement Officers (Traffic Wardens) and Planning Enforcement Officers work in partnership with Police Officers from the Reigate & Banstead Neighbourhood Team to provide a quicker, more robust response to those causing persistent nuisance, making Reigate and Banstead an even better place to live, work and visit.

Together, they use shared legal powers and different approaches to enforcement to more effectively deal with problems and improve the public's sense of safety.

For more info: <https://www.surrey-pcc.gov.uk/projects/joint-enforcement-team/>  
[https://www.reigate-banstead.gov.uk/info/20093/community\\_safety/404/reigate\\_and\\_banstead\\_joint\\_enforcement\\_team](https://www.reigate-banstead.gov.uk/info/20093/community_safety/404/reigate_and_banstead_joint_enforcement_team)

14. **BRITISH PARKING ASSOCIATION STATISTICS**

For information and statistics on council ticket appeals and parking accounts provided the British Parking Association see link below:

<https://www.britishparking-media.co.uk/facts-and-statistics/local-authority>

15. **DOG FOULING**

The Dogs (Fouling of Land) Act 1996 makes it an offence for any person in control of a dog not to remove dog faeces after fouling on

designated public areas. A fixed penalty notice can be issued to offenders and they can be fined up to £1,000 by the magistrates' courts if this is not paid.

Action can only be taken if the offence is seen and someone is prepared to act as a witness.

Further information: <https://www.bracknell-forest.gov.uk/street-cleaning/dog-fouling>

**Integrated Enforcement Review  
Environment and Communities Overview & Scrutiny Panel**

**Reason for review**

Panel members are aware of longstanding enforcement issues as well as the financial constraints currently on local government. This review will explore alternative service delivery models for enforcement which can consistently and effectively address these issues but also be flexible enough to respond to emerging concerns.

**Objectives/scope**

The review will look to:

- Identify roles within Bracknell Forest Council which have enforcement responsibilities and understand what enforcement powers are available, and which are used in Bracknell Forest.
- Explore if there are any opportunities to integrate enforcement roles and responsibilities.
- Gaining an understanding of the Community Safety Accreditation Scheme (CSAS).
- Assess the benefits and implications of further integrated enforcement with a view to ensuring proportionality, consistency, transparency and accountability.

The review Panel will do this by:

- Carrying out a mapping exercise to establish which officers in the Council currently have enforcement responsibilities, for example car park enforcement, licensing, environmental health, community safety, Planning Enforcement etc.
- Carrying out desk top analysis of the Council's enforcement policies and available accreditation schemes,
- Interviewing good practice within other local authorities,
- Interviewing representatives from various departments within the Council, the Parish and Town Councils and Thames Valley Police,

At the conclusion of this work the Panel will produce a report highlighting its findings and propose recommendations to the Executive about whether it would be beneficial to integrate enforcement functions further in Bracknell Forest.

**Delivery methods:** Mapping exercise; desk top analysis, interviews, evidence gathering sessions

**Council theme:** Value for money Communities

**Council team:** Kevin Gibbs, Executive Director: Delivery  
Andrew Hunter, Executive Director: Place, Planning and Regeneration

**Review due:** June 2022

**Proposed by:** Cllr John Porter, Chair Environment and Communities

**Equalities Impact Assessment**

During this review the Panel will assess the data to ensure no group of residents are disproportionately affected by its recommendations.

**Financial and legal implications**

There are potentially legal and financial implications of any recommendations arising from this review which will be fully addressed in the review report.

**Climate Change implications**

Potentially opportunities to centralise and/or diversify enforcement activities with comparable functions could lead to a reduction in duplication or overlaying of activities. This reduction could decrease the number of journeys to sites of interest which would have a positive impact on climate change and should be considered as part of this review.



**ENFORCEMENT & PARKING  
MANAGEMENT STRATEGY FOR  
BRACKNELL FOREST COUNCIL  
2019 - 2024**

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## 1. Executive Summary

Our vision is to provide a reliable, efficient and cost-effective car parking management service.

Bracknell Forest lies 28 miles west of London, at the heart of the Thames valley within Berkshire. Bracknell has good access links with a number of multi-national companies located here. The population is 119,500 (mid 2016 estimates, based on the 2011 census). The population is relatively young with 14% aged 65 or older. There is a demand for increased housing. There are currently just under 49k properties with another 4.5k expected by March 2024. National statistics state that Bracknell is one of the least deprived areas of the country, with property prices and levels of car ownership significantly higher than the national average and traffic is forecast to grow between 11% – 43% by 2050.

Bracknell Forest Council is responsible for parking enforcement on its streets and in its car parks using the civil parking enforcement powers provided by the Traffic Management Act 2004. It is also responsible for the operation and management of the Council owned car parks and both these functions are undertaken by contractors working on behalf of the Council.

This Parking Strategy covers the period 2019 to 2024 and accompanies the Bracknell Forest Council Parking Standards Supplementary Planning Document March 2016 (within the Place, Planning & Regeneration Directorate). The strategy covers a 5 year period to include the remainder of the current parking management contract (ends June 2020) and the first stage of the new contract tender (4yrs plus 2+2yrs).

The main focus of this strategy is to provide the Council's policy framework for managing parking across the Borough to 'provide parking where appropriate and control parking where necessary'.

The objectives of this strategy are:

- Enforce parking regulations fairly and efficiently.
- Encourage off street parking rather than on street.
- Encourage the best use of the parking space available and introduce parking controls where necessary.

The responsibility for parking regulations and controls is split across the Transport Engineering team in the Place, Planning & Regeneration Directorate and the Parking Management Team and Contract Services team in the Delivery Directorate.

The Transport Engineering team have the responsibility for:

- assessing and considering the need for additional on street restrictions;
- determining which restriction would be most appropriate;
- implementing the restriction via a Traffic Regulation Order;
- Implementation and consultation regarding the Residents Parking Scheme.

The Parking Management Team, Contract Services team have the responsibility for:

- enforcing the relevant restrictions within the Traffic Regulation Order.

The Transport Strategy & Implementation team have the responsibility for the Sustainable Modes Strategy 2018 – 2026.

<https://www.bracknell-forest.gov.uk/sites/default/files/documents/sustainable-modes-strategy.pdf>

Whilst the responsibility for implementation and enforcement of restrictions is split across Directorates the teams do work together in partnership to resolve concerns that are highlighted. We also undertake regular engagement with the local Policing teams to address issues such as antisocial behaviour and inconsiderate parking around schools. Moving forward there is the potential to engage with other partners such as Silva Homes and the Public Protection Partnership to address private parking, antisocial and nuisance parking issues. Section 59 of the Police and Reform Act 2002 allow police officers the powers to seize and remove a vehicle where it is being driven inconsiderately or causing alarm, distress or annoyance to members of the public.

Best practice opportunities are also sought via local parking networking groups and affiliations.

As part of the Executive review of this strategy was debated as part of the Overview & Scrutiny process in June 2019.

## 2. Contract responsibilities and costs

Car parking management and enforcement (via penalty charge notices) is outsourced and delivered by the Councils approved car parking contractor. In addition to on street and residents parking scheme enforcement the contractor has responsibility for the day to management, operation and enforcement of our multi storey and surface car park. This includes procurement and installation of equipment, front line equipment maintenance, routine inspections, cash collection and handling, monitoring of CCTV and supporting special events. The contractor also has responsibility for the back-office administration which assists the enforcement function as well as day to say issues such as customer queries and the issue of season tickets and permits. The contractor will manage the penalty charge notice processing function with the exception of second line challenges and tribunals.

The current contract was awarded on the 1st July 2010. The contract was extended on 30<sup>th</sup> June 2015 for two periods of one year until 30<sup>th</sup> June 2017 and then with the introduction of the residents parking scheme and Avenue car park for a further three years until the 30th June 2020.

The estimated annual cost of the contract is £955,000. The net profit associated with the parking function has dramatically increased since the opening of the Avenue car park in September 2017.

Year	Expenditure	Income
2015/16	887,790	850,224
2016/17	917,766	865,863
2017/18	1,404,660	2,409,468
2018/19	2,045,337	3,092,712

<b>2018/19 Expenditure overview</b>	
Salary, national insurance, superannuation	105,000
Planned & reactive maintenance, service contracts	100,000
Electricity	207,000
Business rates	447,000

<b>2018/19 Expenditure overview</b>	
Rent	378,000
Water, fire precautions	7,000
Contract cleaning	23,000
Equipment, materials	27,000
Bought in services, subscriptions	10,000
Banking charges, irrecoverable debts written off	28,000
Contracted services - general	684,000
Contracted services – residents parking	60,000

<b>2018-19 Income overview</b>	
Fines & penalties	52,000
Car parking income	2,975,000
Staff car parking contributions	48,000
Residents parking scheme permits & scratch card sales	17,000

The income target for 18/19 was £3,450,070. The income achieved was £3,092,700. There was an underachievement of £350,000. In addition to this the following overspends on expenditure were incurred due to electricity costs £96,000, land rents payable £288,000.

The electricity cost pressures will continue going forward but land rent pressures have been dealt with in 19/20.

There are also planned preventative maintenance costs associated with the corporate property team.

The income budget for 19/20 is £3,265,160, this reflects the budget pressures that were included as part of the 19/20 budget cycle paper.

### **3. Approach to enforcement and management**

Bracknell Forest Council is responsible for parking enforcement on its streets and in its car parks using the civil parking enforcement powers provided by the Traffic Management Act 2004.

Enforcement is an important part of delivering the strategy. The Council needs to ensure sufficient deterrent to encourage motorists to comply with the regulations which govern the use of the Council's car parks and on street parking. Enforcement is most effective when people understand why it is undertaken and support the general principles. Our approach needs to be consistent, firm and fair.

Using parking measures can also support with the continued economic growth around the town centre and increasing dwell times, manage traffic and secure enough revenue to cover the cost of car parking. With regards to enforcement the Traffic Management Act 2004 specifically details that the primary purpose of penalty charge notices is to encourage 100% compliance with parking restrictions and as such raising revenue is not an objective of parking enforcement, therefore targets are not set in respect of numbers of PCNs issued or revenue collected.

### **4. Cost versus quality**

The current provision within the existing contract structure at a local level incorporates 17 staff. Within the contract team there are management staff, administration staff, civil enforcement officers, parking attendants and cleaners. The existing staff ratio is largely based on the number of deployable enforcement hours and on-site presence. The existing structure allows for administration staff employed until 5pm Mon to Fri, 7 day a week enforcement up to 8pm and a physical onsite presence to cover car parks until 11pm. From 11pm to 7am any queries are managed via the contractors out of hours control centre.

There is no doubt that contract efficiencies and could be made via a combination of reducing staffing numbers and/or redefinition of staffing roles and responsibilities whereby existing roles are combined, this also provides a great resilience for redeployment of staff. The traditional approach has been to ensure a physical presence of staff, but modern technological capabilities and infrastructure allow for a reduction in manpower with the move to central control and automation as is the industry norm. There is however a balance to be struck as a move such as this is likely to have a perceived reduction in customer service. This is perhaps at odds with the Lexicon approach whereby the positive customer experience is central to their ethos. As with any contract there will need to be robust monitoring to ensure trained and competent staff who exhibit customer care to the highest standard.

## **5. Current town centre parking provision**

The current level of parking provision around the town centre is sufficient to meet known and anticipated demands both during week days, at weekends and during peak shopping periods such as Christmas.

There are currently 3350 parking spaces in the town centre provided by Bracknell Forest Council with additional spaces provided by Princess Square (534), the Peel centre (850), Waitrose (240 spaces) and at the train station (244). This makes a total of over 5,200 spaces serving the town centre. The Council controls the majority of public off street parking in the town centre and as such we are in a strong position to influence parking behaviour.

## **6. Fees and charges**

Town centre fees and charges (High Street, Braccan Walk, The Avenue, Weather Way, Easthampstead House) are reviewed annually each September in line with the anniversary of the opening of the Lexicon. Charges are reviewed in order to maintain a hierarchy of charges to appeal to a range of visitors. Season ticket prices and fees and charges for Albert Road, Wick Hill, Behind the Banks, Time Square, Coral Reef and the Look Out are reviewed annually in line with the Council's budget process for implementation in April.

The town centre fees and charges offer a range of tariffs to appeal to the shopper which have been benchmarked and set comparatively against other local shopping destinations. Longer term parking options are available in Albert Road and Wick Hill to appeal to those that are employed in the town centre and want to park inexpensively for up to 10 hours. These two car parks also offer a competitiveness priced season ticket price when compared with parking in the High Street or Braccan Walk.

The same charges apply for Sundays and Bank Holidays and to attract visitors to the evening economy a £1.50 evening charge is applied from 6pm to 6am on all town centre car parks. This charge is in addition to costs already incurred.

The Council charges for replacement season tickets and permits but the charge is levied to cover the administration costs only.

## **7. Commercialisation opportunities**

Where appropriate the Council will consider commercialisation opportunities for providing other services and temporary uses within its car parks. Consideration will be given to the appropriateness of the service provided and/or the use as well as the implications for the use of the car park and the town centre generally. Such commercialisation opportunities could include advertising on tickets, promotion or marketing initiatives and car wash facilities.

## **8. Parking at new developments**

The Council has a Parking Standards Supplementary Planning Document dated March 2016 which provides guidance on parking issues relating to new and existing development. This process is managed by the Place, Planning and Regeneration Department.

[www.bracknell-forest.gov.uk/parkingstandardsspd](http://www.bracknell-forest.gov.uk/parkingstandardsspd)

### **8.1 Current car parking provision**

The Council aspires to offer good quality car parks which are supported by regular investment in maintenance and kept clean and safe in order to achieve the Park Mark award. This ensures that they have been assessed to ensure that there are properly managed and maintained. It is a national standard for UK car parks that have low crime levels and measures in place to ensure the safety of people and vehicles. The car parks should offer a range of payment options, they should be clearly signed, accessible for disabled visitors and easy to use for both road users and pedestrians.

The Council's current parking provision can be seen in Annex 1 and a map of the Council's public car parks is attached as Annex 2. There are 3 multi storey car parks within the town centre, The High Street, Braccan Walk and the Avenue. These car parks are 'pay on foot' using Scheidt & Bachmann Automated Number Plate Recognition technology. Braccan Walk and the Avenue are predominantly used for shoppers whilst the High Street car park is used by season ticket holders and Bracknell Forest Council staff parking.

The car parking equipment and infrastructure was implemented at the end of 2017 and has a remaining shelf life of approximately 8yrs. This technology is the same as in Princess Square (owned and managed by the Lexicon). Currently the 3 Council owned car parks are managed independently via individual systems although a new master system is being introduced which will allow for easier oversight and management including usage and dwell time information.

High Street and Braccan Walk are owned and managed by the Council and the Avenue is managed via a 40-year lease from Bracknell Regeneration Partnership which commenced in September 2017 with the opening of the Lexicon. In addition to the three multi storey car parks managed by the Council there are also a number of surface pay and display car parks around the town centre. These include Weather Way, Albert Road, Wick Hill and Behind the Banks (the area behind the high street). Pay and display machines (Parkeon/Flowbird) are also located in Easthampstead

House and Time Square although these are currently closed to the public. There is permit parking provision for tenants in the Market Street service area.

The Look Out and Coral Reef sites are currently operated via the same pay and display equipment although there is opportunity to review the existing infrastructure to coordinate with options for the proposed Horseshoe country park.

The borough also has 20 free surface car parks which operate on either a no limit wait time or 2 hours with return prohibited within 2 hours between the hours of 8am to 6pm Monday to Saturdays inclusive. These are show in annex 1.

All town centre car parks are available 24hrs a day 7 days a week. Current off-street parking provision allows for disabled and motorcycle parking bays. The charging regime is set so that there are no concessions for either blue badge holders or electric vehicles using the charging points.

The Council provides disabled parking spaces in all of its car parks for blue badge holders and supports the shop mobility unit adjacent to the High street car park by having dedicated bays and a validating machine for carers or taxi drivers that may exceed the 15m minute grace period when assisting clients or customers. Blue badge holders are also entitled to park in on street disabled bays around the Borough and may park on single or double yellow lines for up to three hours if it is safe to do so but not within 15 metres of a junction or where there are restrictions on loading or unloading.

## **8.2 Information technology and encouraging change**

Bracknell town centre has a variable messaging system located at key points around the Ring road and this provides information to motorists about parking availability in the four multi storey car parks. The VMS data counters record all entries and exits to estimate occupancy. They therefore indicate the number of vehicles actually parked. Currently the Avenue car park will reach capacity at weekends or during busy periods such as the run up to Christmas. On balance however across all the car parks there is significant spare capacity. VMS data can be used to direct and control parking (at busy time and for large events) and reduce congestion at key times.

The Council currently offers cashless parking in all its surface and multi storey car parks and by further improving the offer we could increase efficiencies which in turn would increase revenue. The main efficiency would come with a potential reduction in civil enforcement officer staffing if for example the parking infrastructure at the leisure sites changed from pay and display to ANPR.

New and existing technologies can enhance the user experience, in making parking easier and providing different ways to pay. Digital technology can be used to better inform motorists of the choices available to them and parking availability information can currently be accessed via the Lexicon app. The app is in development and will also be used to allow customers to pay for their parking tariff in the future. Similarly the 'pay by phone' option will be integrated into the new contract as the existing hand-held devices used by the contractor do not allow for an automatic download.

The Council is also considering the development of an online portal system which will have the potential to considerably reduce back office administration and allow for an improved offer relative to season tickets and contract parking. The intention is this web-based system will enable the user to make an application for either a single

season ticket on an individual basis or for a number of season tickets on behalf of a company. The system will provide holistic management of the whole process from application through to invoicing. There is the potential that this system could also allow for a complete cashless parking solution whereby a bank card is registered and debited each time a registered vehicle leaves the car park.

### **8.3 Climate change agenda**

Where possible we will look to support the climate change agenda both in terms of supporting sustainable measures such as electric vehicle charging points and reduction in waste.

The use of electric vehicles is expected to increase and as such the Council has recently increased its provision for electrical charging points. There are now 14 charging points in High Street, 4 in the Avenue and 4 in Braccan Walk car park. The charge points are 7kw chargers on the POLAR network and charging is free (although there is a small charge for users not currently registered with the POLAR network). Opportunities will be sought to use technology to potentially reduce the need for paper tickets, as an example it may be possible to use barrier less ANPR at our leisure sites.

## **9. Management of on street parking**

Motorists want to park conveniently close to their homes and destinations but on the other hand they do not want delayed journeys or obstructions caused by parked vehicles. As the number of vehicles on the roads increases the management of parking also becomes increasingly important and concerns tend to relate to a combination of lack of available on street parking and inconsiderate parking. Increasing the amount of on street parking space is rarely possible and ways are needed to make the best use of the limited space which provides parking for those that need it most.

### **9.1 Parking outside schools**

School run parking is an issue close to many schools across the Borough where problems are generated by pupils being dropping off and picked up. In many instances schools do all they can to encourage parents to park lawfully and considerately but it does continue to be an issue. There is a limited amount that can be achieved by the introduction of parking restrictions as there are exemptions to most restrictions that allow stopping for a short time to drop off or pick up passengers. In addition due to school drop off and pick up times it is a concentrated problem for a relatively short time period. Any restrictions designed to tackle parking issues near schools should only be installed if there is certainty that the desired outcome will be met. We will look to review and implement learning from other authorities where applicable.

The Police and Civil Enforcement Officers do provide patrols outside schools on a rota basis as problems are often caused not so much by illegally parked vehicles but by those which are causing obstructions. Enforcement tends to have a short-lived effect as with current resources it is not possible to provide a daily presence therefore promotion of sustainable travel is a more long term approach.

### **9.2 Verge and footway parking**

Vehicles parking on footways can also be an issue as they cause damage and can cause obstruction. Under current legislation certain offences have remained with the Police and only they can take action if a vehicle is causing an obstruction or parking dangerously. Therefore, if a vehicle is parking on a pavement, verge or cycle lane where there are no yellow lines and is seen to be causing an obstruction this is a criminal offence and can only be dealt with by the Police. The Council can issue penalty charge notices for obstruction against dropped kerbs and driveways and can also issue an inconsiderate parking notice to vehicles. Silva homes parking areas are enforced independently via their own enforcement agents and the Council has no jurisdiction in these areas.

### 9.3 Residents parking scheme

In 2014 the Council introduced a trial Residents Parking Scheme to alleviate parking congestion within the various zones around the redeveloped town centre. The trial ran successfully for two years as a free scheme, including the first renewal period. The trial was implemented as a paid permit scheme in April 2017 with the anticipation that its costs would be covered through permit sales and Parking Charge Notices (PCN's).

At its inception the scheme had 4 principle objectives:

- To protect residents for increased parking pressures around the town centre.
- To be simple for residents to use.
- To be cost effective to operate.
- To be enforceable by Civil Enforcement Officers.

The free 2-year trial was never intended to be self-funding, however the fee structure and requirement to pay for permits from April 2017 was implemented with the intention of recovering costs and making the scheme self-financing from there on in. In proposing the fees due regard was also given to other Berkshire local charging regimes and the fact that parking regimes should be at least self-financing.

During the free trial the permit uptake was in the region of 1600 permits which would have generated in excess of £45,000 on permit sales alone, in conjunction with income from PCNs this would have equated to a self-financing scheme.

From April 2017 when the scheme was introduced as a paid scheme the number of permit applications dropped significantly. From April 2017 to March 2018 a total of 560 permits were sold. This is just a 35% uptake in comparison to the original number of free permits issued. The significant drop in demand could be attributed to a variety of factors such as more people clearing out and using their garages, an increase in dropped kerb applications to park their vehicles off street or displacement to other areas. The original figure of 1600 also included for approximately 280 permits in zone A and part of zone B which was removed from the scheme.

From April 2017 to March 2018 the income from permit sales was £19,250 and £6,010 from the sale of scratch cards. 697 penalty charge notices were issued with an income of £15,100. The total income received in 2017/18 was £40,360.

Under the terms of the existing contract the parking contractor are required to manage the Councils residents parking scheme which includes the administration of the scheme and enforcement. The annual cost to do so is £60,160. There is a cost of

£6,000 to the Council for goods/services including scratch cards/permits. The total cost of the scheme is therefore £66,160.

During 2017/18 the scheme was not self-financing and the cost to the Council was £25,800.

The position improved slightly in 18/19. During April 2018 to March 2019 the income from permits and scratch card was £17,190. 982 penalty charge notices were issued with an income of £27,815. The total income received in 2018/19 was £45,005. The total operational cost of the scheme remains in the region of £66,000 so the loss to the Council in 18/19 is £20,995.

The scheme should be fully reviewed by the Place, Planning and Regeneration Directorate in the future at which point options need to be considered for the future. This should include consideration to a reduction or expansion of the scheme as well as a review of the charging regime. A single permit is £25 per annum and it is very competitively priced. Permit charges have not increased since the paid scheme was implemented in April 2017. Implementing an increase is also likely to have the devastating effect of reducing permit sales.

#### 10. Strategic objectives for the future

There are a number of key points identified through the preparation of this strategy that could be taken forward in the short (1-3yrs) to medium (3-5yrs) term. The short- and medium-term timescales align with the review period for this strategy. However, this strategy should perhaps be viewed as a living flexible document which can be adapted to emerging issues and opportunities.

Objective	Timescale
1 At the end of 19/20 review the effectiveness of the residents parking scheme having regard to the fiscal implications.	Short term
2 Fully integrate the LR management system within the multi storey car parks to enable better data visibility, usage patterns and capacity monitoring	Short term
3 Implement an online season ticket and a virtual permit solution. This will enable customers to apply and pay online. This will reduce administration and delays. Implement a pay by phone option as part of the new contract.	Short term
4 Consider a season ticket offer for residential parkers in multi storey car parks.	Short term
5 Review the parking infrastructure at our leisure sites, namely Coral Reef, the Look Out and the proposed Horseshoe Country Park.	Short term
6 Consider additional smart overhead space counter technologies in High Street and Braccan Walk car parks.	Short term
7 Consider a differential pricing schedule which encourages low emission vehicles. This could be linked into the Council's Climate Change policies	Medium term
8 Consider commercialisation opportunities as appropriate.	Medium term
9 Review of parking options outside schools.	Medium term

In delivering this strategy the Council will face the challenge of delivering value for money while maintaining and developing the parking service so that it remains and is seen to be fair, efficient, effective and responsive to change.

Parking is an emotive subject that generates much discussion and debate often at the very local level. Undoubtedly there will be a number of ongoing parking challenges that the Council will need to address in future years and careful management will be required to ensure that provision and control align with development and transport priorities.

**11 Annex 1 Bracknell Forest Council Car Parks**

Location inc. spaces	Types of car park	Hours of operation	Charging Hours	Waiting period
<b>Town Centre</b>				
High Street - 926	Multi Story - Pay on Foot	All hours - All Days	7 Days per week, 24 Hours per day	Not Applicable
Braccan Walk - 730	Multi Story - Pay on Foot	All hours - All Days	7 Days per week, 24 Hours per day	Not Applicable
The Avenue - 1295	Multi Story - Pay on Foot	All hours - All Days	7 Days per week, 24 Hours per day	Not Applicable
Weather Way - 29	Surface- Pay and Display	All hours - All Days	7 Days per week, 24 Hours per day	Not Applicable
Wick Hill - 125	Surface- Pay and Display	All hours - All Days	7 Days per week, 24 Hours per day	20 Hours
Albert Road - 223	Surface- Pay and Display	All hours - All Days	7 Days per week, 24 Hours per day	Not Applicable
Behind Banks - Service Yard D - 28	Surface- Pay and Display	All hours - All Days	Between 6am -6pm Mon-Sun Between 6pm - 6am Mon-Sun	Not Applicable
Easthampstead House - 110	Surface- Pay and Display- Closed	All hours - All Days	Between 4pm and 6am Mon-Fri Between 6am and 6pm Sat-Sun Mon-Sun 6pm to 6am	Not Applicable
Time Square - 134	Surface- Pay and Display- Closed	All hours - All Days	Between 7:30pm -6am Mon-Fri From 7:30pm Fri to 6am Mon 24 Hours per day on Bank Holidays and Public Holidays	10 Hours
Market Street Service Area - 28	Surface- Permit	All hours - All Days	Not Applicable	No Limit

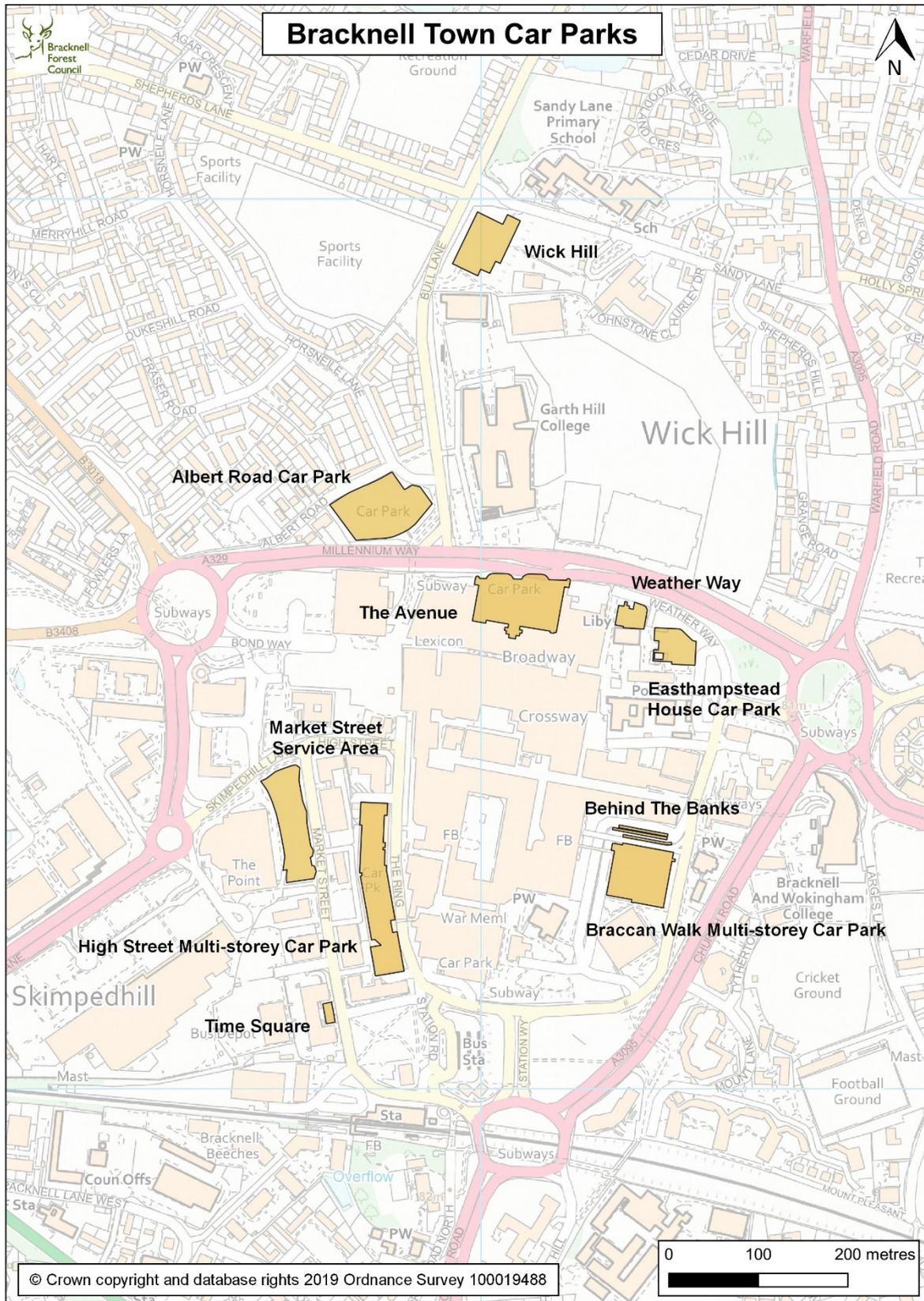
Location inc. spaces	Types of car park	Hours of operation	Charging Hours	Waiting period
<b>Leisure Sites</b>				
Coral Reef - 259	Surface- Pay and Display	7am- 10:30pm Mon-Fri 8am-9pm Sat-Sun - All days	7am- 10:30pm Mon-Fri 8am-9pm Sat-Sun - All days	7am- 10:30pm Mon-Fri 8am-9pm Sat-Sun - All days
Look Out - 350	Surface- Pay and Display	7am- 8:30pm-April-September -All Days	7am- 8:30pm-April-September	7am- 8:30pm-April-September
<b>Out of Town</b>				
Bay Road - 14	Surface- Free	All hours- All Days	Not Applicable	No Limit
Bay Road South - 24	Surface- Free	All hours- All Days	Not Applicable	No Limit
Birch Hill - 54	Surface- Free	All hours- All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Bywood - 34	Surface- Free	All hours- All Days	Not Applicable	No limit
Crown Wood - 39	Surface- Free	All hours- All Days	Not Applicable	No limit
Great Hollands -59	Surface- Free	All hours- All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Heath Hill - 33	Surface- Free	All hours- All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Leppington - 92	Surface- Free	All hours- All Days	Not Applicable	No limit
Napier - 8	Surface- Free	All hours - All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Netherton - 35	Surface- Free	All hours - All Days	Not Applicable	No Limit

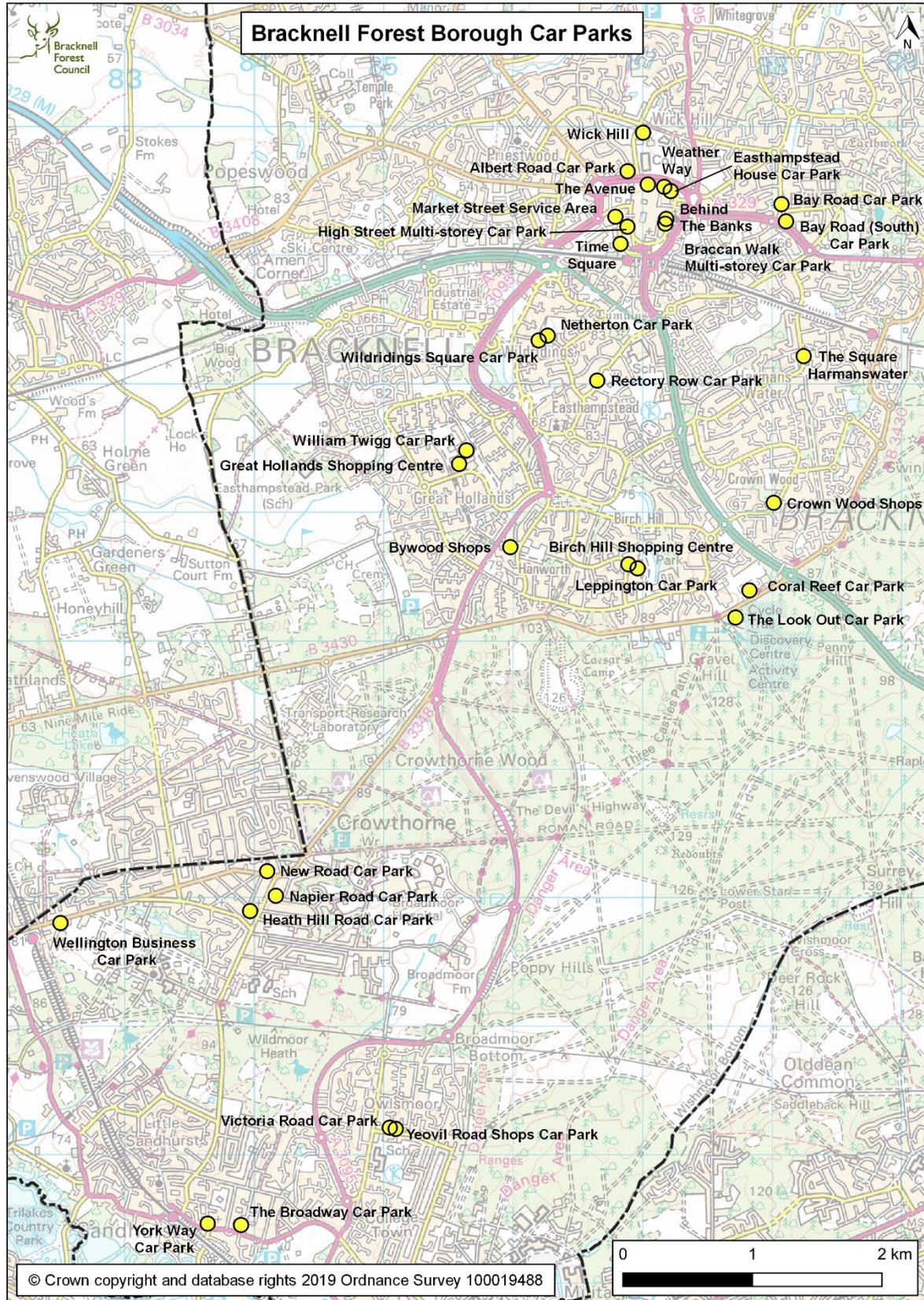
Parking Strategy for Bracknell Forest Council 2019-2024

Location inc. spaces	Types of car park	Hours of operation	Charging Hours	Waiting period
New Road - 18	Surface- Free	All hours - All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Rectory Road - 15	Surface- Free	All hours- All Days	Not Applicable	No limit
Broadway - 42	Surface- Free	All hours - All Days	Not Applicable	No limit
The Square - 31	Surface- Free	All hours- All Days	Not Applicable	No limit
Victoria Road - 8	Surface- Free	All hours- All Days	Not Applicable	No limit
Wellington - 25	Surface- Free	All hours - All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
Wildridings - 18	Surface- Free	All hours- All Days	Not Applicable	No limit
William Twigg - 77	Surface- Free	All hours- All Days	Not Applicable	No limit
Yeovil Road - 29	Surface- Free	All hours - All Days	Not Applicable	2 hours with return prohibited within 2 hours between 8am and 18pm Mon-Sat inclusive
York Way - 4	Surface- Free	All hours- All Days	Not Applicable	No limit

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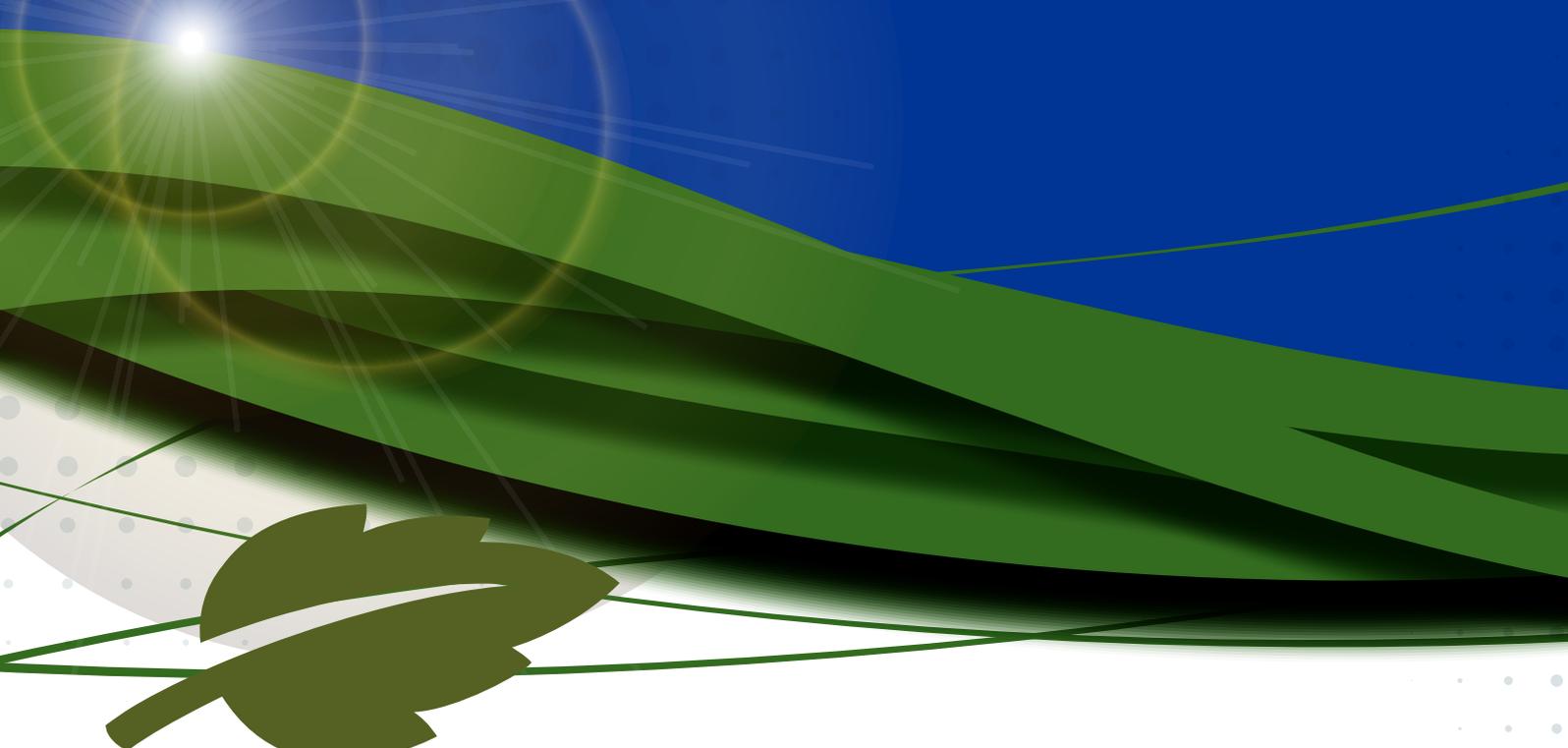
12 Annex 2 Map of Bracknell Forest Car Parks





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# Bracknell Forest Council Local Enforcement Plan - Planning





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# 1. Executive Summary

- 1.1 As a public authority, the Council has a responsibility to deliver services with fairness, openness, and proportionality when considering interventions such as planning enforcement.
- 1.2 This document sets out the approach we will take in relation to breaches of planning rules in Bracknell Forest. In dealing with enforcement we must take into account the key themes of the Council's Corporate Priorities.
- 1.3 Relevant Council priorities are:
  - Priority 4 – Economic Resilience
  - Priority 6 – Protecting and Enhancing our environment

These policies have guided the content of this document.

- 1.4 Nationally, the planning enforcement system is based on two important principles:

A breach of planning control is not a criminal offence, except for:

- unauthorised works to listed buildings;
- illegal advertisements (such as illuminated poster hoardings); and
- unauthorised works to or felling/causing death of protected trees;

Other than those breaches described above, a criminal offence for a breach of planning control only arises when an Enforcement Notice has been served and has not been complied with.

It is at the Councils' discretion whether action will be taken – and any action taken must be proportionate to the harm caused by the breach. (NPPF Para 58)

- 1.5 The enforcement service seeks to record and investigate all legitimately made reports of breaches of planning control. This plan sets out how the enforcement service can be accessed by members of the public, and the structured process by which investigations will be carried out in a fair and proportionate way. This will be delivered using an 8 Phase investigation process, which sets out when people reporting breaches can expect to be updated on the progress of an investigation, and when the service will aim to have delivered particular results on an investigation.
- 1.6 This plan also explains how decisions are made, and describes the tools available to the Council for carrying out planning enforcement.

# 2. Introduction

## Objectives & Values

- 2.1 The Council's has 6 overarching priorities which each seek to deliver their own vision for the Borough.
- 2.2 To deliver each vision, the Council also has a number of Medium Term Objectives. The relevant priorities and objectives for planning enforcement are:
- 2.3 Priority 4: Economic Resilience
  - Adopt a new Local Development Plan that enables the development of employment areas along with the right mix and location of houses and infrastructure.
  - Objective: Seek CIL and Section 106 funding for new infrastructure in the Borough to support growth.

A strong enforcement system will help ensure that inappropriate development is discouraged and controlled. This supports the delivery of planned economic growth and new housing that is sustainable.

### **Priority 6: Protecting and enhancing our environment**

- Objective: Protect our highly valued green spaces and strategic green gaps
  - Objective: Improve parking in residential areas
  - Objective: Protect green spaces, the Thames Basin Heaths Special Protection Area and maintain strategic gaps between communities.
- 2.4 This priority forms part of the policy basis under which the Council will seek to protect communities from undesirable and unacceptable development, and use the available planning powers to help keep the borough clean and protect it's character.
  - 2.5 By having a public plan about how planning enforcement will be delivered, and having measurable service delivery targets, the enforcement service is being open and transparent about how planning enforcement will take place in the Borough. It also shows that the process has been considered, and is open to review to ensure that the service is accessible and provides value for money.

## What is Planning Enforcement?

- 2.6 Planning enforcement is the mechanism of control that upholds the integrity of the wider planning system. The function sits within the Development Management Team in the Council's Planning and Transport Division. The function is led by a Principal Planning Officer supported by a Senior Planning Enforcement Officer and an Enforcement Officer.
- 2.7 The planning enforcement system is based on two important principles:
  - A breach of planning control is not a criminal offence, except for unauthorised works to listed buildings, works to protected trees, illegal advertisements (such as illuminated poster hoardings) and in some cases, demolition without consent. A criminal offence for other breaches of planning control arises when an Enforcement Notice has been served and has not been complied with.

- It is at the Councils' discretion whether action will be taken – and any action taken must be proportionate to the harm caused by the breach.

2.8 Fair and effective enforcement is essential to protect the public, businesses and the environment from unauthorised development and its harmful impacts. Decisions about the appropriate form of enforcement action to take, and in particular the decision to prosecute, can have serious implications for all involved.

## **What is a Local Enforcement Plan?**

2.9 *“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.”*

*DCLG National Planning Policy Framework in February 2019 at paragraph 58*

2.10 The statutory framework of legal controls for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990 (as amended). The National Planning Policy Framework (NPPF) provides the Government's planning policies for England and how these are expected to be applied.

2.11 National guidance entitled 'Ensuring Effective Enforcement' is provided in the National Planning Practice Guidance (NPPG) and is available to view on line at : <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

2.12 Where an enforcement role is shared with another agency, joint working may be undertaken with them, including the Police, where appropriate. This work will be subject to that agency complying with the underlying principles of this statement.

# 3. What are breaches of Planning Control?

## What constitutes a breach of planning control?

- 3.1 A breach of planning control is the carrying out of development without consent. Section 55 of the Town and Country Planning Act 1990 defines development as ‘the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change in the use of any buildings or other land’.
- 3.2 Section 171A of the 1990 Act establishes that the carrying out of development without the required planning permission and the failure to comply with any condition or limitation, subject to which planning permission has been granted, constitutes a breach of planning control.
- 3.3 In more simple terms, most types of building works, changes of use of land or buildings, works to protected trees and advertisements require planning approval. If this sort of development takes place without the relevant approval, the works are defined as ‘a breach of planning control’ and enforcement action can be taken at the discretion of the Council.
- 3.4 The law that the Council must use to deliver any formal action, determines that ***it is not a criminal offence to carry out development without first getting planning permission.***
- 3.5 This effectively means that it should not be a default position that people be punished for breaching planning control. In many circumstances, breaches are unintentional, or result from a misunderstanding of the very complex planning system.
- 3.6 Exceptions (i.e. breaches that are criminal offences): include the felling of or unauthorised works to protected trees covered by a Tree Preservation Order, unauthorised works to a Listed Building and contraventions of the Advertisement Regulations. These offences can lead to prosecution from the outset.

## What isn't a breach of planning control?

Some operational works do not require planning permission and some examples follow:

- 3.7 Most works that are undertaken inside a building do not require consent (unless the building is Listed). This might include taking down, or putting up an internal wall, replacing a kitchen or bathroom, or reorganising rooms inside a house for example.
- 3.8 A lot of landscaping or gardening works do not require planning permission. For example creating a flower bed in a garden or planting or removing a bush, hedge or a tree (unless the tree or hedgerow is protected). It's worth noting however, that landscaping works might imply or assist a change of use of the land, which might require planning permission, or the landscaping might be required to be retained by a condition attached to a planning permission.
- 3.9 Works that are being carried out in accordance with an express consent (such as a

planning permission granted by the Council, or advertisement consent), or in accordance with permitted development regulations such as the Town and Country Planning (General Permitted Development) Order 2015 (as amended) are not a breach of planning control.

- 3.10 There are time limits on the ability of the Council to take enforcement action over a particular breach:
- operational development (essentially any building works excepting those to a Listed Building) - the Council can take no action after 4 years from the date on which operations were substantially completed
  - change of use of a building to a single dwelling house – the Council can take no action 4 years from date of the change of use
  - all other changes of use (for example, an agricultural field being used as residential garden) – the Council can take no action 10 years after the date of change
  - failure to comply with planning conditions – the Council can take no action 10 years from the date that the condition is breached or not complied with.

It should be noted that works to a Listed Building however are not subject to any time limit to take enforcement action.

- 3.11 In all of the above cases, the time limits mean that a development would be immune from enforcement action provided that the Council has not taken any action before the specified time period expired. It is worth noting however that section 171BA of the Town and Country Planning Act 1990 (as amended) allows Councils to seek a 'Planning Enforcement Order' if deliberately concealed breaches of planning control have occurred.

## **Simple Remedies to Breaches of Planning Control**

- 3.12 Some breaches of planning control can be easily resolved, either through minor amendments to a development, or where appropriate, they can be conditionally granted planning permission if a planning application is made.
- 3.13 In most cases, it will be explained in writing to the owner or occupier of a property how to remedy the breach of planning control before formal action is considered (usually accompanied by a Planning Contravention Notice). If operational works to remedy a breach would take more than 28 days to complete, they will not normally be considered to be minor changes.
- 3.14 If, a breach of planning control has occurred, and the property owner or occupier wishes to negotiate an alternative solution (to the current breach) that would also require planning permission – negotiations will normally only be entertained by the Council through the planning application process. Submitting a planning application to carry out negotiations will not always stop the Council taking enforcement action if it is considered expedient to do so.

# 4. Handling Reports of Contraventions

- 4.1 Every credible report of an alleged breach of planning control received by the Council from an identifiable party (anonymous reports will not normally be entertained), will be logged so that a permanent record is kept. The logging of complaints enables the Council to ensure that all reports are followed up and action is taken as appropriate. It also enables the Council to ensure that all complainants are kept informed of the outcome of the investigation.
- 4.2 All reports received from members of the public and other third parties (although not including Parish/Town Councils) shall be treated on a confidential basis, unless the express authorisation is given by the complainant for his/her identity to be revealed. This is subject to compliance with the requirements of The Freedom of Information Act 2000 and The Data Protection Act 2018.

## Contacting the Planning Enforcement Team

- 4.4 It is Council policy normally not to respond to anonymous calls or letters and to ask that all enforcement service requests are made in writing. This helps in monitoring the number and type of cases received and may be useful later if formal action is pursued. During an enforcement investigation, the identity of a complainant is kept confidential, so you may write to the Council with confidence.
- 4.5 Where a telephone message is initially received relating to a potentially urgent and serious transgression that is likely to result in irreversible harm (for example, works to a Listed Building or works to protected trees), it is at the officer's discretion whether or not to waive the need for a complaint to be made in writing.
- 4.6 Possible breaches of planning control can be reported via a number of channels:  
website:  
E-Mail: [planning.enforcement@bracknell-forest.gov.uk](mailto:planning.enforcement@bracknell-forest.gov.uk) (preferred)  
Councils Website: [www.bracknell-forest.gov.uk](http://www.bracknell-forest.gov.uk)  
Telephone 01344 352000  
Post: Planning Enforcement, Bracknell Forest Council, Time Square  
Bracknell RG12 1JD

## What should be reported to Planning Enforcement?

- 4.7 Reflecting the diverse nature of planning enforcement within the authority, reports of breaches of planning control are likely to consist of reports about:
- the carrying out of development (development includes a change of use of land) where no planning consent exists;
  - the carrying out of development (development includes a change of use of land) which deviates from an already granted planning consent;
  - the breach of a condition imposed under a planning consent;
  - the unauthorised display of advertisements;
  - unauthorised works to a listed building;
  - unauthorised works to a protected tree; and,
  - untidy land issues.

## Priorities

4.8 In order to make the most effective use of available resources, reports about alleged breaches of planning control will be investigated with a priority order rating of 'A', 'B' or 'C' depending on the nature of the breach and the degree of harm deemed by the enforcement team to be caused. Individual cases may be re-prioritised as the investigation progresses. Initial site visit targets are set for each priority level and normally the Council will expect to operate within these targets. There may be times when a number of Priority A cases require the urgent allocation of available resources. At such times, targets for other priorities may not be always be achievable.

### Priority A

- Activities that have the potential to cause irreversible harm to the environment, especially sensitive sites such as Sites of Special Scientific Interest, or harm to protected species
- Activities that cause significant danger to the public;
- Activities resulting in significant disturbance to the amenity of third parties (this will be undertaken in consultation with other regulatory functions of the Council);
- Ongoing unauthorised works to a listed building;
- Ongoing unauthorised works to protected trees.

The target is to carry out an initial site visit within 1 working day.

### Priority B

- Activities resulting in serious ongoing disturbance to third parties;
- Breach of a condition, which results in serious demonstrable harm to amenity
- in the neighbourhood;
- Unauthorised development in a Conservation Area or which contravenes an article 4 direction;
- Completed unauthorised works to a protected trees;
- Completed unauthorised works to a Listed Building;
- The erection of unauthorised advertisements that could have a detrimental impact on highway safety.

The target is to carry out an initial site visit within 7 working days.

### Priority C

- Any unauthorised development (development includes a change of use of land) where the time limit for enforcement action will expire within the next 6 months;
- Unauthorised development (including a change of use), which is not the source of significant public nuisance complaint;
- The display of unauthorised advertisements that do not significantly impact highway safety;
- Minor breaches of condition;

The target is to carry out an initial site visit within 14 working days.

# 5. Investigation Process

- 5.1 Development, and Breaches of planning control are usually obvious, and difficult to hide from open investigation. For the majority of enforcement investigations, covert surveillance is not required. There are circumstances however, where covert surveillance may be required, and the Regulation and Investigatory Powers Act 2000 (RIPA) provides a statutory framework for use of investigatory techniques including surveillance and gathering information on the use of covert operatives. For the purposes of that framework, the authorised Officers are those authorised by the Council.
  
- 5.2 The Council carries out investigations using a model of a phased investigation. The objective of each phase is to filter out and close investigations which are unlikely to result in formal enforcement action, either because they are not breaches of planning control, because a simple solution can fix the problem or because the Council does not think formal action is necessary (expedient). Below is a brief outline of each phase an investigation will follow. A more detailed explanation of each phase can be found at Appendix B, and shown in Diagram 1 in that appendix.

Investigation Phase	Explanation
1 – Complaint receipt and logging	<p>Once a complaint relating to a breach of planning control is received by the Planning Enforcement Team they shall log the complaint, acknowledge the complainant, and set the investigation priority level. Where a complaint is considered not to be a planning matter from the outset, correspondence shall be issued to the enquirer accordingly and no case need be opened - if the query may be relevant for another Council department or the matter is a civil one then advice shall be issued appropriately.</p> <p>Where a complaint has previously been investigated recently by the team further evidence of the potential breach may be invited and a new case would be investigated respectively.</p> <p>All other investigations will move onto the next phase.</p>
2 – Initial research and site visit	<p>Research property history, assess allegation against regulation, conduct site visit, and issue a Temporary Stop Notice (TSN) if necessary. If a complaint is found to be unfounded, or it is discovered that planning permission has already been granted for the development the investigation will be closed.</p> <p>All other investigations will move onto the next phase.</p>
3 – Information gathering and obvious remedies	<p>Carry out Land Registry Searches and Issue, warning letters/ emails, Requisition for Information Notices such as S330 Notices or Planning Contravention Notices (PCN). If the breach is immune from enforcement action and no deception has caused this, or is found at this stage not to be a breach of planning control, the investigation will be closed.</p> <p>All other investigations will move onto the next phase</p>
4 – Consideration & Formal Action	<p>Consider the merits of the breach/offence and issue relevant notices / proceedings to remedy the harm caused, and consider the expediency of further action. If planning permission is granted for a retrospective application, or there is no significant planning harm to be corrected as a result of the breach, the investigation will be closed.</p> <p>All other investigations will move onto the next phase (in the case that an appeal is made against action this will be Phase 5 – otherwise the next phase jumps to Phase 6).</p>
5 – Appeals/Court Challenges	<p>The Council will follow due process to defend the Council's actions. If the Appeal is upheld and the notice is quashed, or planning permission is granted under a ground A appeal the investigation may be closed, or if the action was quashed because of a technical error, the investigation may go back to Phase 4 and formal action re-considered.</p> <p>All other investigations will progress to the next Phase.</p>
6 – Compliance Period Monitoring	<p>Check compliance with any formal action preparing witness statements where appropriate, and notify offenders. If the requirements of a notice have been complied with, within the relevant timescales the case will be closed.</p> <p>All other cases will continue to the next phase.</p>

Investigation Phase	Explanation
7 – Prosecution	Where non-compliance with formal action persists, consideration will be given to instruct the Borough Solicitor to prosecute liable parties, and where appropriate those instructions will be issued. If the requirements of a notice have been complied with or it is not considered to be in the public interest to progress with legal proceedings, or the Courts find some legal flaw in the notice, the case may be closed. All other cases will progress onto the next phase.
8 – Direct Action and Injunctions	Consideration will be given to carrying out (or instructing contractors to carry out) Direct Action to remedy the breach, and seek to recover any incurred costs. Where the Council has removed the breach, and recovered incurred costs. If Direct Action is no considered viable for the Council to carry out at this stage, consideration will be given to seeking an Injunction from the Courts requiring compliance.

## Keeping People Informed

Performance Indicator	Target
Acknowledgement to be sent to complainant	Within 5 working days
Complainant will be notified of initial findings	Within 10 working days of first site visit
Inform complainant of formal action	Within 10 working days of decision
Inform the complainant of the closure of a case	Within 10 working days of decision
The Council will seek to have closed, or issued formal (Completed Phase 4) action against 80% of new investigations	Within 8 months of the initial complaint.

- 5.3 Some cases may result in formal action being taken much sooner than the above time periods, for example in higher priority cases. Some of the more complex investigations however, will take longer to process through the various stages.

# 6. Decisions on Enforcement Matters

## **Decisions on action in respect of alleged breaches of planning control**

- 6.1 The taking of formal enforcement action is at the discretion of the Local Planning Authority and all action must be proportionate to the breach that has taken place. Therefore, where there is a clear identified breach of planning control, which a contravener does not regularise either through carrying out remedial works or by way of a retrospective application for consent, the investigating officer must assess the expediency of taking formal enforcement action (i.e. enforcement action is not automatically taken against every breach of planning control). The same considerations must be made in respect of retrospective applications that have been refused, although it follows that the planning merits of such cases would have already been considered, but the issues of impacts on Human Rights, proportionality of action and the public interest tests of any action would still have to be considered.
- 6.2 The Council's constitution delegates the planning enforcement function of the Local Planning Authority to the Director of Place, Planning and Regeneration , who then in turn delegates relevant functions to appropriate officers within the Planning Service. A Table of how these functions are delegated is attached at Appendix C and may be updated from time to time to reflect operational changes. Typically, an officer working in the planning enforcement team will write a delegated report with either a recommendation to close a case, or to take formal action, that will be signed off by an officer holding delegated authority for that function and this action forms the decision of the Council acting as the Local Planning Authority.
- 6.3 There is no formal requirement for the Council to undertake a public consultation when considering the expediency of taking enforcement action. Taking enforcement action is at the sole discretion of the Local Planning Authority (as which the Council acts). Any complaints received in writing to the Council regarding a breach of planning control, will be considered on their planning merits as part of the consideration process. As any potential enforcement action is likely to be taken against an existing development or use, it is not unreasonable for the Council to assume any party wishing to object to a development would have raised a complaint causing the matter to be investigated in the first place.

## **Expediency of Enforcement Action**

- 6.4 In considering any enforcement action, the decisive issue for the Council is whether the breach of control would unacceptably affect public amenity, conflict with planning policy for the proper planned development of the area, or impact on other material considerations, such as the protection of designated ecological sites or protected species, therefore meriting protection in the public interest.
- 6.5 Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the

locality of the site). As with all planning decisions, a decision to take enforcement action should usually only be made where the development is contrary to development plan policy or other material considerations.

- 6.6 Where the Council's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required.
- 6.7 Appendix C sets out what decisions and powers can be exercised by different officers at the Council with regards to planning enforcement.

## **Equality and Diversity**

- 6.9 Planning Services' activities, including Planning Enforcement, are relevant to all the requirements of the Council's statutory Equality Duties under the Equality Act 2010, including to:
- Eliminate discrimination, harassment and victimisation.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a characteristic and those who do not.
- 6.10 The Enforcement Service has been the subject of an Equality Analysis which identified the following actions which currently support the Council's Equality duties:
- The Council's website contains a page explaining the Planning Enforcement service. It aims to conform to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0. These guidelines make web content more accessible for people with disabilities
  - Assistance to anyone who has difficulty with understanding English, including the use of plain English in documents where possible..
  - The Council's offices and Customer Service Centre are wheelchair accessible, enabling disabled persons to take part in making requests for investigations and making Planning Enforcement enquiries.
  - Induction loop systems are available upon request to enable those who are hard of hearing to take part in meetings and communicate with Enforcement Services staff.
  - Large print versions of publications (including this Plan) are available upon request.
- 6.11 Every effort will be made to ensure that enforcement decisions will be taken in a fair, independent and objective way. They will not be influenced by issues such as ethnicity, national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will also not be affected by improper or undue pressure from any source.

## 7. What to do if you are unhappy with the Council's decision

- 7.1 There is no third party right of appeal within the planning system. Enforcement action is therefore taken at the sole discretion of the Council. An investigation will not normally be re-opened, unless significant further information or evidence is provided, showing compelling reason to review a previous decision. To make a request of this nature you should contact the planning enforcement team in the normal manner, providing any new information you think should be considered.
- 7.2 If you think the Council hasn't followed the correct procedures in coming to their decision, then a complaint about the process can be made using the Council's Comments, Compliments and complaints procedure, which can be found here: <http://www.bracknell-forest.gov.uk/commentscomplimentsandcomplaints>
- 7.3 The subjects of any formal action will have their rights of appeal set out in any enforcement notice they receive,

## 8. Enforcement Options

- 8.1 There are a number of different notices and/or actions that are able to be taken by the Local Planning Authority. Some of these are summarised as follows:
- Enforcement Notice
  - Breach of Condition Notice
  - Stop Notice
  - Temporary Stop Notice
  - Section 215 Notice
  - Injunctive Action
  - Formal Cautions
  - Planning Enforcement Order
  - Direct Prosecution (for offences committed under advertisement or TPO regulations)
  - Direct Prosecution (for non-compliance with other formal notices)
  - 225A Removal Notices (advertisements)
  - Tree Replacement Orders
  - Listed Building Enforcement Notice
  - Direct Prosecution for Listed Building offences
  - CIL Stop Notices
  - CIL Surcharges
- 8.2 The definition and purpose of some of these various options are contained within appendix A, or a more complete outline of the enforcement tools available to the Council can be found on the governments national planning guidance pages: <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

## Publicity

- 8.3 Whilst not a direct form of enforcement, officers may seek to raise awareness and increase compliance levels by making public, details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so. This action will be taken in conjunction with the Council's communications team.
- 8.4 Where a breach of planning control has not yet been subject to formal enforcement action, the Planning Enforcement Team may seek to make potential future purchasers aware of any ongoing investigation by placing a note on the land charges register, or on the Council's website, and as officers deem appropriate.

# 9. Additional Information

## Monitoring the Implementation of Planning Permissions

- 9.1 Once planning permission is granted, the applicant may need to get formal approval of any details required by conditions. It is therefore imperative that landowners carefully read their permission once it is received ensuring that works do not commence on site in breach of planning conditions.
- 9.2 The onus is on the landowner or developer to make sure that all the necessary consents are in place before work starts, and to make sure that all the conditions are complied with. The Planning Service will not write reminding the applicant of this responsibility to discharge conditions.
- 9.3 There is a requirement to inform the Planning Service when work starts on site if the development is subject to Community Infrastructure Levy CIL. In addition where building regulations approval is also required the Council is able to monitor commencements to ensure that :
- All pre commencement conditions have been discharged;
  - any financial contributions that formed part of a section 106 agreement required prior to commencement of development have been received by the Council; and
  - any payments due under the Community Infrastructure Levy have been received by the Council.
- 9.4 If conditions have not been discharged or section 106 contributions paid, a new investigation is opened and conducted in accordance with the process set out above.

## Liaison with Other Regulatory Bodies and Enforcement Agencies

- 9.5 Where there are breaches of wider regulations (e.g. noise nuisance), enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 9.6 Where an enforcement matter has impacts beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

- 9.7 The officers will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:
- Other Council Departments
  - Government Agencies
  - Police Forces
  - Fire Authorities
  - Statutory Undertakers
  - Other Local Authorities
- 9.8 The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard for the requirements of the Data Protection Act 2018.

## **Community Infrastructure Levy**

- 9.9 Some development is liable to the Community Infrastructure Levy (CIL). The CIL regime is subject to The Community Infrastructure Levy Regulations 2010 details of which can be found here: <http://www.legislation.gov.uk/ukdsi/2019/9780111187449/contents>
- 9.10 In the event that development requiring planning permission is carried out without permission, and the development would be CIL liable if permission were granted, formal enforcement action may be considered expedient because the CIL liabilities cannot be levied on the development without the appropriate planning consent being granted.
- 9.11 Investigation of non-compliance with CIL regulations and the subsequent enforcement of the regulations is not explicitly covered in this plan, save for the fact that the Council will seek to recover all liabilities owed, and will use the mechanisms (Surcharges and CIL Stop Notices) provided in the Community Infrastructure Levy Regulations 2010 as deemed appropriate and necessary to do so. Non-payment of CIL charges can attract daily surcharges and other fines.
- 9.12 The general public are unlikely to report breaches of CIL regulations, and breaches are likely to be discovered through internal monitoring and review undertaken by the Council. A member of the public wishing to report a CIL breach can contact the Council's customer services by phone on 01344 352000, by email: [customer.services@bracknell-forest.gov.uk](mailto:customer.services@bracknell-forest.gov.uk) or by post or in person at Time Square, Market Street, Bracknell, RG12 1JD.

# 10. Review of the Local Enforcement Plan

- 10.1 The Council will review this plan from time to time and at least every four years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures. The Council will monitor performance against the plan targets, and the overall effectiveness of the Plan on an annual basis.
- 10.2 This document is not subject to formal public consultation. However, comments on this document will be welcomed and will be considered as part of the review process, (please email comments to [development.control@bracknell-forest.gov.uk](mailto:development.control@bracknell-forest.gov.uk) heading your e mail Local Enforcement Plan)

## APPENDIX A

### Actions That Can be Taken by the Council

#### Enforcement Notice

An Enforcement Notice is issued in the majority of cases where formal enforcement action is taken. It specifies the breach and sets out prescriptive steps, with specific timescales, for remedying the breach. A notice can be served in respect of:

- operational development
- material change in use of land,
- breach of a condition attached to an extant planning permission.

Any such notice must be served on the owners, occupiers and all other parties with an interest in the land that is materially affected by the service of the notice. This notice is also entered onto the local land charges, and is disclosed in the event that the land is sold or changes ownership, as the notice remains in place.

An Enforcement Notice must come into effect not less than 28 days after its date of issue. There is a right of appeal to the Planning Inspectorate, as set out under Section 174 of the Town and Country Planning Act 1990 (as amended) and such an appeal must be lodged before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided. It is normal procedure for the Principal Planning Officer (Enforcement) to act as the lead officer when an appeal has been lodged under Section 174 of the Act.

Failure to comply with the requirements of an Enforcement Notice is a criminal offence which is liable, on summary conviction, to a fine not exceeding £20,000 per offence, or on conviction on indictment to an unlimited fine.

Section 173A of the Town and Country Planning Act 1990 (as amended) gives Local Planning Authorities the power to withdraw an Enforcement Notice issued by them. Equally, the Planning Authority may relax or waive any of the requirements of the notice or extend the time for compliance. This can be done both before and after the notice has taken effect and all parties to the Notice will be informed.

The withdrawal of an Enforcement Notice does not limit the Council from reissuing or serving a further notice, either within the statutory time period or for a period of four years from the taking of previous action.

#### Listed Building Enforcement Notice S.38 to 46 of the Planning (Listed Buildings and Conservation Areas) Act 1990

This is very similar to the Planning Enforcement Notice in that it specifies the unauthorised works to the relevant Listed Building, specifying requirements to take to remedy the harm within a set timescale. It can be served on its own –for example, where unauthorised works to a listed building only required listed building consent and did not require planning permission – or it can be served in conjunction with a Planning Enforcement Notice. As with the planning notice, there is a right of appeal against the Listed Building Enforcement Notice, with the appeal having to be made before the notice takes effect.

Works to a listed building without the appropriate consents is a criminal offence. A local planning authority has also been given an express power to apply to the court for an injunction where it considers it necessary or expedient to restrain any actual or apprehended breach of planning

control. The power is available whether or not the authority has exercised or is proposing to exercise any of its powers to serve an Enforcement Notice.

### **Stop Notice (S.183 of the Act)**

A Stop Notice can only be served with an Enforcement Notice, although the latter can be served on its own. The service of a Stop Notice is essential where the local planning authority considers it expedient to stop an activity before the associated Enforcement Notice comes into effect. It is used as a means of stopping development that is likely to result in irreparable harm to the environment or where ongoing activities are causing a major adverse impact on the amenity of adjoining landowners.

There is no right of appeal against a Stop Notice which comes into effect no less than 3 days after service. An appeal against an Enforcement Notice will hold the requirements of that notice in abeyance, but the requirements of the Stop Notice to cease a particular activity remain effective. However, because a Stop Notice is preventing an activity from continuing, there is a risk that a claim for compensation could be made against the local planning authority and this will need to be weighed into the decision making process when considering the expediency of taking action. A Stop Notice cannot be issued against use of a building as a dwelling house.

Non-compliance with the requirements of a Stop Notice is an offence, currently punishable by a maximum fine on summary conviction of £20,000 and, on conviction on indictment, to an unlimited fine.

### **Temporary Stop Notice (S.171E of the Act)**

This notice can be served before the issue of an enforcement notice and only lasts for 28 days after which it may be followed up by an Enforcement Notice and if required a full Stop Notice, once displayed on the land the notice takes immediate effect and is usually used as an emergency measure to cease development that poses immediate harm to its local amenities. Non-compliance with this notice is an offence and can result in prosecution.

### **Breach of Condition Notice (S.187A of the Act)**

A Breach of Condition Notice (BCN) may be served where there has been a breach of a condition that is attached to an extant planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for judicial review. The BCN will set out the necessary remedial action to ensure compliance with the condition being breached, with a minimum period of 28 days for compliance.

There are advantages and disadvantages to serving a BCN over an Enforcement Notice. However, where there is concern about the validity of a condition, the local planning authority is best advised to issue an enforcement notice that cites a breach of condition, therefore allowing the transgressor a right of appeal. This would prevent the need for a judicial review.

Currently the penalty for breaching the requirements of a BCN is a maximum fine on conviction of £2,500.

### **Section 215 Notice (of the Act)**

Where the Local Planning Authority is concerned about the condition of land or buildings, and where that condition is considered to be adversely affecting amenity, the Council is able to issue a notice under Section 215 of the Town and Country Planning Act 1990. This is sometimes known as an 'untidy land' notice.

Not only can a notice require land or buildings to be tidied, it can also require the demolition of derelict buildings. It should be noted that the land in question should be visible from public

vantage points and have an impact on the amenity of the area for a Section 215 Notice to be served. There is a right of appeal against such a notice, but this is made to the Magistrates' Court.

## Prosecution

The Council recognises the use of the criminal process to institute a prosecution as an important part of enforcement. It uses discretion in making such a decision because other approaches to enforcement may equally or more effectively resolve the matter. Where circumstances warrant, the Council will, however, pursue prosecution.

The Local Planning Authority will consider prosecution when one or more other following applies:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law;
- there is a risk to public health and safety as a consequence of the breach;
- the offence was as a result of a deliberate act or following recklessness or neglect;
- the approach of the offender warrants it, eg, repeated breaches, persistent poor standards;
- the breach is considered to seriously affect public amenity.

The decision to prosecute will also take account of the evidential and public interests and tests set down in the Code for Crown Prosecutors. <https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion#a02>. These include:

- the age and evidence of the state of health of the alleged offender
- the likelihood of re-offending; any remedial action taken by the alleged offender.

Before an enforcement notice and/or prosecution is taken, the alleged breach or offence will be fully investigated and a report compiled by the investigating officer who will make a recommendation as to the appropriate course of action to be taken.

Any decision to undertake a prosecution will consider whether such action is in the public interest, and whether there is sufficient evidence to bring successful proceedings.

## Injunctive Action S.187B of the Act

Where the local planning authority deems it expedient to restrain (a legal term meaning 'to stop or prevent') any actual or apprehended (meaning that it is imminently about to happen – and can be evidenced) breach of planning control, it may apply to the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its powers to enforce planning control. The taking of such action is not to be taken lightly, but is critical where ordinary enforcement powers are unlikely to stop unauthorised activities.

Failure to comply with the terms of an injunction is in contempt of court. The court has discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

## Simple Caution

The Local Planning Authority will consider Simple Cautions as an alternative to prosecution.

Examples of where they may be appropriate are:

- to deal quickly and simply with less serious offences;
- to divert less serious cases away from the court process;
- to deter repeat offences.

Before a caution is administered the officer will ensure:

- there is evidence of the offender's guilt sufficient to sustain a prosecution;
- the offender admits the offence;
- the offender understands the nature of the formal caution and agrees to be cautioned for the offence.

Simple cautions are administered in accordance with CPS guidelines [http://www.cps.gov.uk/legal/a\\_to\\_c/cautioning\\_and\\_diversion/#a02](http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/#a02). Simple cautions will only be issued where a person or party has not been previously been issued with a simple caution within the Borough for a similar offence.

### **Planning Enforcement Order**

Section 171BA of the Town and Country Planning Act 1990 allows a local planning authority that discovers an apparent breach of planning control to apply to a magistrate's court for a planning enforcement order, within six months of discovery. That order allows the authority an 'enforcement year' in which to take enforcement action, even after the time limits in section.171B of the Town and County Planning Act 1990 has expired.

Link to further information on Planning enforcement Orders:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-order/>

Planning enforcement orders can only be made by a magistrate. In assessing the local authorities application for a planning enforcement order the magistrate's court may make a planning enforcement order only if it is satisfied, on the balance of probabilities, that the "actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach. The court must also consider the application just to make the order.

The effect of a planning enforcement order is that the local planning authority will be able to take enforcement action against the apparent breach of planning control or any of the matters constituting the apparent breach during the "enforcement year". This means that once the "enforcement year" has begun, the local planning authority can at any time during that year, take enforcement action in respect of the apparent breach of planning control or any of the matters constituting that breach. The enforcement year commences at the end of 22 days starting with the court decision.

### **Enforcement on Crown Land**

Enforcement action is possible in relation to Crown Land, but there some restrictions which do not apply elsewhere. Subject to these restrictions, a local planning authority can serve a notice or make an order (other than a court order) intended to enforce compliance on Crown Land without having to follow any procedures other than those which are already set out in the planning Acts as being generally applicable. There is no requirement to obtain the consent of the appropriate authority before serving the notice or making the order.

A local planning authority cannot, however, enter land for any purposes connected with the making or enforcing of any such notice or order without first securing the consent of the relevant Crown body. And, in granting such consent, the appropriate authority may impose such conditions as it considers appropriate. This might mean, for example, that any site visit by the local planning authority has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

The local planning authority is also required to secure the consent of the appropriate authority, before taking any action to enforce the notice or order, even against a non-Crown interest, such as a private leaseholder on a Crown freehold. This includes bringing proceedings or making an application to the courts.

The Crown is also immune from prosecution under these provisions.

## **APPENDIX B - PLANNING INVESTIGATION PHASE EXPLANATIONS**

### **Investigation Phase 1 – Complaint receipt and logging**

On receipt of a new complaint or notification regarding a breach of planning control, the matter will be registered and given a reference number. A case officer will be allocated the investigation, and the complainant (where appropriate) will be acknowledged and notified of the case reference number, case officer and the priority level of the case. Where it is clear that the allegation does not represent a breach of planning control from the outset, correspondence will be made to that effect by the team. In the event that it may involve a breach of regulations of a different department of the Council or it is a civil matter, then the enquirer shall be responded to appropriately and a case may not be set up to investigate the enquiry unless it also comprises a breach of planning control.

With regard to the above, it may also be that the development does not require planning permission; express planning permission has clearly already been granted, or it complies with permitted development regulations, the complainant/s will be notified and the case closed by the case officer. Sometimes it can be appreciated that a development complies with permitted development regulations or that the development already has planning permission from the information submitted by the enquirer; where this is the case a formal investigation may not be required to be set up and the enquirer can be responded to accordingly.

### **Investigation Phase 2 – Initial research and site visit**

The case officer will normally undertake some initial research into the property history to see whether any previous investigations or relevant planning permissions exist for the development.

An initial site visit will be undertaken by the case officer in accordance with the case categorisation and performance targets, to establish whether the allegation is founded. This may be by appointment if access is required, or simply viewing the site unaccompanied.

Officers serving as part of the Enforcement Team, are authorised officers of the Local Planning Authority, and have rights of powers of entry (to land and property) under Sections 196A-C; 214C; 324 and 325 of the Town and Country Planning Act 1990 (as amended), and Section 88 of the Planning (Listed Building and Conservation Area) Act 1990, for the purpose of undertaking planning enforcement investigations. Where entry to a private dwelling house is required, at least 1 day written notice will normally be given where formal powers of entry are sought to be used. An officer may however approach the occupiers of land/property (e.g. by simply knocking on the door) to request an invitation to access, whereby the occupiers may choose to volunteer (or not) to allow officers immediate access, without the use of formal powers of entry. An officer will always carry an ID card – and their identity can be checked by calling the Council's customer services department on 01344 352000.

Where allegations are unfounded (the alleged development has not occurred, or does not represent a breach of planning control) the case will be closed and the complainant updated[update after 10 days of site visit anyway Andrew]. Where the allegation appears to be founded, the investigation will progress.

In exceptional circumstances, the harm caused may be so immediately obvious or irreversible, that the Council may consider it necessary to issue immediate enforcement action, normally taking the form of a Temporary Stop Notice (TSN) or a Court Injunction. This would then allow for the rest of the investigation process to progress with appropriate protections in place.

### **Investigation Phase 3 – Information gathering and obvious remedies.**

The next step in the investigation process would ordinarily require the Council to inform the property owner, occupier or developer that a breach has occurred, and sets out the steps necessary to remedy the breach of planning control usually inclusive of a timeframe within which works should be undertaken. It is important to explain the risks of potential enforcement action as early as possible, so that it does not come as a surprise later in the process. This step will therefore be formally done in writing, and may include an appropriate requisition for information notice (either a PCN or a S330 Notice), the response to which helps the Council to ensure any enforcement notices or other action is properly carried out if it becomes necessary.

If throughout Phase 2 and early correspondence with a contravener it is proven that compliance shall be gained within a short timeframe it is at the officer's discretion as to whether to issue a deadline-inclusive missive and whether to explain the consequences of non-compliance within such any formal letter.

It is at this stage, if considered appropriate by the case officer, an opportunity will be given to the developer to submit an application to Council for consideration 'without prejudice'. Where the breach is clearly unacceptable, and the harm could not be overcome by imposing planning conditions on any planning permission, no application will be invited.

Where the developer, occupier or landowner claims lawfulness and there is evidence to support any such claim they may be invited to submit an application for a Lawful Development Certificate so the evidence can be fully examined.

Where the investigation relates to an advertisement, and it is clear a breach of the regulations exist, or unauthorised works to protected trees or a Listed Building has occurred – an offence is being committed and the Council may commence gathering evidence in preparation for an instruction to the Borough Solicitor to consider prosecution.

### **Investigation Phase 4 – Consideration of planning harm**

The Council will consider issuing formal enforcement action to ensure any harm caused by the breach of planning control is remedied in the event that:

- no application is invited because the planning harm is so obvious,
- an offence has been committed such as display of an advert, unauthorised works to a listed building, unauthorised works to a protected tree;
- no application is received within a reasonable time period; or,
- an application is submitted but is refused by the Council;

The Case Officer, the Council will consider the merits of the development and whether planning harm exists in the context of policy, or other material planning considerations – unless an offence has been committed, whereby there is no requirement to consider planning harm before progressing to the next stage of assessing the proportionality, public interest test and protection of Human Rights. impacts of any formal action.

Negotiation about what lesser steps might be taken to retrospectively remedy unacceptable planning harm resulting from a development will normally only be considered as part of a planning application. Pre-application advice applications are not considered appropriate where the development already exists, or is being still being progressed. The enforcement process will not normally be held in abeyance for negotiations to take place outside a valid planning application. If the Council considers it appropriate, formal enforcement action may be taken despite the submission of a planning application where the harm from the breach is significant or negotiations

have failed.

It does not automatically follow that the entire development must be removed or enforcement action taken, simply because it does not have the proper consents. The target of enforcement action is the planning harm caused by the development, which may only relate to certain aspects of an unauthorised development.

In the event that having considered all the relevant issues formal enforcement action is authorised, formal Notices will be served, and/or the Borough Solicitor instructed in the case of prosecutions against offences committed for unauthorised advertisements, works to Listed Buildings or with regards to protected trees.

Alternatively if it is considered on assessment of all the issues that no planning harm results from an unauthorised development (or breach of planning control) the case will be closed as not expedient to take further action.

Any complainants and the landowner, developer or occupier will be updated at this stage about the outcome of this phase of the investigation.

### **Investigation Phase 5 – Appeals/Court Challenges**

The procedure to be followed in the event of an appeal against a notice, or a court challenge is dictated by the relevant authority (The Planning Inspectorate or the Courts). The Council will endeavour to defend its actions in such cases and, where appropriate, recover any incurred costs resulting from unreasonable behaviour on the part of the appellant through the appeal process. (Costs go with the appellant not the agent, the agent is acting on their behalf)

### **Investigation Phase 6 – Compliance period**

Once a notice has become effective, the Council will note the compliance date requirement in their systems. A site visit appointment will be carried out to check compliance shortly after the compliance period ends. If at the site visit compliance with a notice is apparent, a letter will be sent to explain that compliance with the notice has been noted on file and the case will be closed. Where the owner occupier or developer has not fully complied with the requirements of the notice they will be informed that the investigation will progress to the next investigation phase.

### **Investigation Phase 7 – Prosecution**

Periodically, the Council will review all outstanding notices that have expired compliance periods. Where appropriate, each case will be visited and a witness statement produced evidencing any offences committed for non-compliance. The witness statements will be bundled with copies of any relevant evidence and sent with an instructing memo to the Borough Solicitor to bring prosecution for the offences committed.

‘Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General; with the Criminal Procedure Rules currently in force; and have regard to the obligations arising from international conventions.’

The Council's Constitution sets out the Council's Scheme of Delegation. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised within a decision making process that is managed to ensure that the most appropriate enforcement action is taken, based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government. [Extract from the BFBC EPPD 2015]

Often times, confidence in the planning system is lost because it appears to the public that developers profit from not complying with the rules. The Proceeds of Crime Act 2002 enables prosecuting authorities (i.e. the Council) can make applications to the Courts to confiscate the proceeds of any criminal activity in the planning system following a successful prosecution. Where the Council successfully prosecutes under the Planning Acts, the Council will consider applying for the Courts to confiscate any proceeds of crimes subject of the prosecution.

### **Investigation Phase 8 – Direct Action and Injunctions**

Where all other measures have failed to remedy the harm caused by a breach of planning control, or where direct action by the Council is lawful, and the quickest and resource efficient way to remedy the breach of planning control, the Council will consider, where appropriate, using Direct Action powers to ensure works required to comply with a notice, or stop an offence from continually being committed. This normally would involve officers of the Council, or persons or organisations so instructed by the Council physically carrying out operational works to ensure compliance is achieved. In all such circumstances, the Council will seek where possible to recover any incurred costs in carrying out such direct action works.

Alternatively, if considered appropriate, the Council might choose to apply to the Courts for an Injunction – seeking a court order for the land owner or developer to remedy a breach of planning control. You may also do this instead of prosecution – for blatant breaches – to breach an Injunction is contempt of court, and contraveners face possible imprisonment. If an Injunction is granted, and the breach continues this would be referred back to the Court. There is no limit on the sentence for a breach of an Injunction and at the discretion of the Judge can include custodial sentences for contempt.

PLANNING ENFORCEMENT				
8 PHASE INVESTIGATIONS / FLOW CHART				
<b>Phase 1 - Complaint Receipt and Logging</b> Log complaint, acknowledge complainant, and set investigation priority level	Where a complaint is considered not to be a planning matter, or has previously been investigated.	→	Close	
↓				
<b>Phase 2 - Initial Research and Assessment</b> Research property history, assess allegation against regulation, conduct site visit, and issue a TSN if necessary	If a complaint is found to be unfounded, or it is discovered that planning permission has already been granted for the development.	→		
↓				
<b>Phase 3 - Information Gathering</b> Carry out Land Registry Searches and issue Requisition for Information Notices such as S330 Notice or PCN	If the breach is immune from enforcement action, or is found at this stage not to be a breach of planning control.	→		
↓				
<b>Phase 4 - Consideration of Harm and Action</b> Consider the merits of the breach/offence and issue relevant notices/proceedings to remedy the harm caused	If planning permission is granted for a retrospective application, or there is no significant planning harm to be corrected as a result of the breach.	→		
↓				
<b>Phase 5 - Appeals and Court Challenges</b> Follow due process to defend the Council's actions	If the Appeal is upheld and the notice is quashed, or planning permission is granted under ground A appeal.	→		
↓				
<b>Phase 6 - Compliance Checks</b> Check compliance with any formal action preparing witness statements where appropriate, and notify offenders	If the requirements of a notice have been complied with, within the relevant timescales.	→		
↓				
<b>Phase 7 - Prosecution</b> Where non-compliance with formal action persists - Instruct the Borough Solicitor to prosecute	If the requirements of a notice have been complied with following a prosecution, or the Courts find some legal flaw in the notice.	→		
↓				
<b>Phase 8 - Direct Action</b> Instruct/Carry-Out Direct Action against breach	Where the Council has removed the breach, and recovered incurred costs.	→		

## APPENDIX C

All planning enforcement functions are currently delegated through the Council's constitution to the Director of Place, Planning and Regeneration, with a limitation that any instruction to the Borough Solicitor to issue an Enforcement Notice or a Stop Notice only be carried out in consultation with the Chairman of the Planning Committee.

The Director of Place, Planning and Regeneration then delegates all planning enforcement functions of the Local Planning Authority to Head of Planning (who is subject to the same limitations as the Director of Place, Planning and Regeneration). A range of other planning enforcement functions will be delegated (at the discretion of the Director of Place, Planning and Regeneration) to other officers in accordance with the table below – which may be subject to modification from time to time to reflect operational needs.

### Table of Delegation to Officers

Function	Delegated Officers	Limitations
Undertake investigations into alleged breaches of planning control, including carrying out site visits and conduct relevant correspondence	All officers working within the Development Management team.	As cases are allocated by the Principle Planning Officer (Enforcement) or Team Leader for Development Management
Allocate cases to officers for investigation	Principal Planning Officer (Enforcement):  Senior Planning Officer (Enforcement):	No limitations  In the absence of the Principal Planning Officer or where the Principal Planning Officer (Enforcement) agrees to delegate.
Authorise the issue of Planning Contravention Notices (PCNs) , or Section 330 Requisition for Information Notices	Principal Planning Officer (Enforcement):  Senior Planning Officer (Enforcement):  Team Leader (Development Management):	No limitations  No limitations  No limitations

Function	Delegated Officers	Limitations
Authorise the closing of a planning enforcement investigation	Principal Planning Officer (Enforcement):  Senior Planning Officer (Enforcement):  Team Leader (Development Management):	Where a case is not considered to represent a breach of planning control, or any other case where another officer has made a recommendation.  Where a case is not considered to represent a breach of planning control.  Where a case is not considered to represent a breach of planning control, or any other case where another officer has made a recommendation.
Authorise the issue a Temporary Stop Notice, or a Section 225A Removal Notice	Team Leader (Development Management) or the Head of Planning:	Only where recommended by the Principal Planning Officer (Enforcement) or Senior Planning Officer (Enforcement)
Authorise the instruct the Borough Solicitor to issue an Enforcement Notice; Stop Notice; Section 215 Notice; or, to Seek an Injunction from the Courts	Team Leader (Development Management) or the Head of Planning :	In consultation with the Chairman of the Planning Committee.
Authorise the instruction of the Borough Solicitor to prosecute under any powers within the Planning Acts	This authority will normally only be exercised by the Director of Place, Planning and Regeneration or the Head of Planning.	None
Authorise direct action, to effect compliance with the requirements of a formal notice already issued	This authority will normally only be exercised by the Director of Place, Planning and Regeneration or the Head of Planning.	None
Authorise direct action to deface or obliterate or remove unauthorised advertisements under Section 224 or 225 of the Town and Country Planning Act (as amended)	Principal Planning Officer (Enforcement):  Senior Planning Officer (Enforcement):  Enforcement Officer:	Where the cost of direct action would amount to less than £100.00  Where the cost of direct action would amount to less than £50.00  Where the cost of direct action would amount to less than £50.00





## PPP – Enforcement Policy

The Inter-Authority Agreement of the 6<sup>th</sup> January 2017 states the enforcement policy of the services is as follows:

**Enforcement Policy:** The following Enforcement Policy will apply:

- (1) the Regulators Code will form the basis for the general approach to delivery of the Service; and
- (2) the Code for Crown Prosecutors (as amended from time to time) will be the policy basis for decisions on institution or otherwise of legal proceedings

The current version of the Code for Crown Prosecutors can be found here:

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

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