

## WEST DEVON BOROUGH – LOCAL ENFORCEMENT PLAN

### 1. Introduction

**1.1** The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage planning enforcement proactively and in a way that is appropriate to their area.

**1.2.** The Local Enforcement Plan sets out the West Devon Borough Council priorities for investigation, explains what will be investigated and what will not, and it outlines the Councils' general discretionary powers with regard to planning enforcement. The plan sets out the priorities for responses to complaints and details the timescales for response by planning enforcement officers along with explaining the assessments and considerations that are undertaken and actions and outcomes that may result.

**1.3.** Paragraph 207 of the NPPF sets out that effective enforcement is important as a means of maintaining public confidence in the planning system, that planning enforcement action is discretionary, and that Local Planning Authorities should act proportionately in responding to suspected breaches of planning control.

**1.4.** This Local Enforcement Plan sets out how the Council will investigate alleged cases of unauthorised development and take action where appropriate. It also ensures that development takes place in a sustainable manner and that the credibility of the planning system in West Devon is not undermined. The planning enforcement function needs ongoing review recognising that the Council is required to set balanced budgets presenting how its financial resources are to be allocated and utilised; thus showing the Council's financial plan for any coming year with regard to statutory services as well as local key priorities and objectives. West Devon Borough Council like many across the country remain subject to financial challenges. Discussions do include stakeholders, service users and the public who help us to re-design our services to achieve the best outcomes within the resource limits. The amount of resource which can be applied to planning enforcement will be subject to change over time and this Local Enforcement Plan must be reviewed and amended according to resource and priority setting.

**1.5.** West Devon Borough Council believe that planning enforcement has a key role in achieving the high standards of development being sought, and the purpose of this Local Enforcement Plan is to set out our approach to handling planning related enforcement matters. The Council will, in exercising their planning enforcement function, take account of National Planning Policies including the NPPF, the Governments Planning Practice Guidance, the relevant policies of the Local Plan and all other relevant material planning considerations.

The relevant pages on planning enforcement from the Government's Planning Practice Guidance can be accessed via the following link:  
<https://www.gov.uk/guidance/ensuring-effective-enforcement>

**1.6.** Specifically the Government's Planning Practice Guidance sets out that the preparation and adoption of a local enforcement plan is important because it: allows engagement in the process of defining objectives and priorities which are tailored to local circumstances; sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action; provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers; provides greater certainty for all parties engaged in the development process.

**1.7.** Planning controls can assist in effectively guiding and managing the pattern of development and change across West Devon Borough Council and secure the delivery of planning objectives of the Local Plan. The Development Management team (of which the Planning Enforcement is a part) is at the heart of achieving this, and it is crucial that developments are not only authorised, but are also carried out in accordance with approved plans.

**1.8.** One of the Council's key corporate aims is to provide and safeguard an attractive built and natural environment. Planning enforcement, in association with other Council enforcement functions, contribute to the Corporate Enforcement Policy which has a key role to play in achieving this aim. The Council take breaches of planning control seriously, particularly if it is either done intentionally, or results in significant harm. Although it will try to negotiate solutions where this is appropriate and possible, it will use the powers available to take formal action only when necessary and in a way proportionate to the harm caused by any breach.

**1.9.** The Planning Enforcement Team will investigate when there are reasonable grounds to suspect that there has been a breach of planning control and take the appropriate form of action. The aim is to provide a service that is reactive to complaints made by citizens, members and stakeholders.

**1.10.** Where appropriate, the Planning Enforcement Team will liaise and work with other enforcement bodies such as Building Control, Highways, Premises Licencing and Pollution Control.

**1.11.** This Local Enforcement Plan has been approved by the Council for use in all its Planning enforcement work. As the plan does not form part of the Statutory Local Plan there is no requirement to conduct formal consultations.

## **2. Key Service Aims**

**The Council's main aims for the Planning Enforcement Service are for it:-**

**2.1.** To operate in accordance with the procedures explained in this Plan, which sets out the level of service and performance the public and businesses can expect. We will regularly review these standards taking account of the views of stakeholders.

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

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

**2.4.** To provide an efficient service with appropriate publicised contact points.

**2.5.** To exercise the planning enforcement powers on an individual basis, considering fitness for purpose and having clear regard to an assessment in each case of the expediency and public interest tests, before taking action. The Council has a wide range of planning enforcement powers, but must act in accordance with national policy and guidance.

**2.6.** To decide when a breach of planning control has occurred, whether or not this is sufficiently harmful as to require action to be taken in the public interest. At one end of the scale, if no or little harm is identified, the matter could be treated as a 'technical breach' with no further action to be taken, or a planning application might be invited to regularise the situation. At the other end of the scale, where it is assessed that serious harm has occurred, a formal notice might be served and other formal steps considered.

**2.7.** To use the Council's planning enforcement powers in a fair and consistent manner.

**2.8.** To respond when required through the Council's compliments, suggestions and complaints procedure in an appropriate, accessible, effective and timely manner.

**2.9.** To protect and enhance the environment of West Devon Borough Council by active and responsible use of the full range of enforcement powers.

### **3. Planning enforcement law and what is a breach of planning control**

**3.1.** The enforcement of planning law is complex; this is because the government attempts to strike a balance between the rights of individuals to use or alter their property in the way they wish, and the need to safeguard the character and quality of neighbourhoods and to uphold the planning policies of the local area.

**3.2.** In general, the system tends to give the benefit of the doubt to anyone undertaking the unauthorised development, and the Council are expected to give those responsible for undertaking unauthorised development the chance to put matters right before taking formal action.

**3.3.** If the Council's actions are considered too harsh, hasty or legally incorrect, it can be ordered to pay costs or have its decisions overturned by the Planning Inspectorate or the Courts. However, the Local Government Ombudsman has held, in a number of investigated cases, that there is maladministration if a local authority fails to take effective enforcement action which was plainly necessary. Such a failing can lead to a compensatory payment to the complainant.

**3.4.** The Council's power to take enforcement action comes from laws passed by Parliament, principally by the Town and Country Planning Act 1990, the Planning

and Compensation Act 1991 and the Localism Act 2011. These laws give Councils power to take action against those responsible for breaches of planning control.

**3.5.** Not all works are classed as development and not all development requires planning permission. The main source of guidance on what is development and what requires permission includes: The Town & Country Planning Act 1990, The Town & Country Planning (General Permitted Development) Order; The Town & Country Planning (Use Classes) Order; and The Town & Country Planning (Control of Advertisement) Regulations.

These documents, which are published by the government, contain schedules which list instances where consent is not required. For example, certain structures do not need permission because of their size, height, volume, location, etc. This is called 'permitted development' and specific guidelines are given in the General Permitted Development Order (the GPDO). The Use Classes Order places most types of use into classes (e.g. retail, business, etc.) and, in general, permission is required to change from one class to another. The Control of Advertisement Regulations set out what forms of advertising are exempt, what advertisements benefit from deemed consent and what requires express consent.

**3.6.** The above Statutory Instruments are regularly revised and updated by Government, but up-to-date documents can be found on the Government's Legislation website - <http://www.legislation.gov.uk>

**3.7.** For a breach of planning control to have occurred, it must first be established that development requiring planning permission has taken place. Development is a legal term and generally means building works and/or some changes of use.

(i) Building works can include the erection of a building, excavations, alterations to buildings, larger fences, and so on, although small-scale extensions or alterations to houses may not need any permission.

(ii) Changes of use can include a change from a shop to an office or a house to flats and so on. Changes of use that occur within the same Use Class Category do not require Planning permission. This might involve a change from a clothes shop to a hairdresser, or a change from a doctor's surgery to a day nursery. In addition, some changes of use from one use class to another do not require planning permission, such as from a restaurant to an estate agent, or a solicitor's office to a shop.

**3.8.** The enforcement process is closely regulated by legal procedures, planning legislation and guidance from the Government. This provides the framework within which the Council's planning policies and its enforcement process are applied.

#### **4. Service commitments and reporting suspected breaches of planning control**

4.1. The Planning Enforcement Team will investigate complaints relating to suspected unauthorised development and changes of use, and non-compliance with planning consents and conditions when there are reasonable grounds to do so. A certain amount of information is needed (e.g.: location, nature of activity) in order that the complaint can be registered. The use of the online reporting form is

encouraged as it ensures that the complaint goes direct to the correct team and ensures that all of the information we need is provided.  
<https://www.westdevon.gov.uk/article/3088/Planning-Breach>

**4.2.** The Council encourages the reporting of suspected breaches of planning control, a development can gain immunity from enforcement action over time. It is important that any suspected breaches are reported as soon as possible in order that harmful development can be removed or the impact minimised.

**4.3.** If the information initially provided is insufficient we will ask for additional information before investigating the breach. In all but the most exceptional (Emergency) cases, the Planning Enforcement Service is unable to investigate alleged breaches of planning control from anonymous sources. If, during the course of investigation, the contact details of the complainant are found to be false, in most circumstances, the investigation will cease.

**4.4.** The Council will not investigate complaints believed to be malicious or spurious or after provisional checks are found to be without basis.

**4.5.** In accordance with the Data Protection Act 1998, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have informed the Council.

**4.6.** To make the most effective use of resources all incoming enforcement cases are prioritised when registered based on information provided and an assessment of any planning history, with early site visits undertaken for deemed Emergency and High Priority cases. This will determine mainly the speed at which the cases are investigated and actioned and will be affected mainly by the assessment of the type and extent of the harm caused. There are three enforcement priorities:

**(a) Emergency** – i.e.: where irreversible harm is likely to be caused if the Council does not act immediately. For example: Ongoing unauthorised works to listed buildings; unauthorised felling/pruning of protected trees.

**(b) High Priority** – i.e.: where there is significant public concern or where there is (or is the potential for) significant harm to be caused to residential amenity in the surrounding area. For example: Breaches of planning conditions specifically identified to meet expressed public concerns, such as hours of operation; unauthorised uses/activities which are causing significant harm.

**(c) Lower Priority** – i.e.: smaller scale infringements which do not result in significant immediate or irreversible harm. For example:

- Unauthorised building of walls/fences;
- Unauthorised erection of satellite dishes.

Action	Priority		
	Emergency	High	Lower
Register and allocate to case officer	Immediate background/history check	Within 4 working days	Within 7 working days
Site Visit (where applicable)	As soon as possible, and certainly within 24 hours (excluding weekend and Bank/Public Holidays)	Within 5 working days	Within 20 working days from the date that the complaint was registered
Contact complainant with update on the case	As soon as possible, and certainly within 72 hours (excluding weekend and Bank/Public holidays) from the date of the site visit.	Within 10 working days from the date of the site visit	Within 30 working days from the date of the site visit
Commence formal enforcement or conclude that it is not expedient to take action or a planning application to regularise the breach is submitted	As soon as possible if irreversible harm is being done	Within 10 weeks from the date of the site visit	Within 20 weeks from the date of the site visit

**4.7. Our service targets which ensure our performance can be measured are:**

- Enforcement complaint received to be registered and allocated to an officer within the times as set out in the table at 4.6. Target – 100%
- Enforcement cases prioritised as emergency all of the timescales as set out in the table at 4.6. Target - 100%
- Enforcement cases prioritised as High all of the timescales as set out at 4.6. Target – 100%
- Enforcement cases prioritised as Low all of the timescales as set out at 4.6, with the exception of registration and allocation. Target – 80%.

## **5. The assessment and decision making process for planning enforcement cases**

**5.1.** Breaching planning control is not a criminal offence in most cases. For each allegation the Council will investigate the circumstances of the case and determine what, if required, would make the development acceptable and accord with planning regulations and policies.

**5.2.** For the majority of cases, a council officer will undertake a visit to the site which is subject of the allegation to establish whether a breach of planning control has taken place. To allow timely investigation and effective work-planning, the majority of site visits are made without prior arrangement. It may not be necessary for the officer to visit a complainant's property or meet with them.

**5.3.** Planning Enforcement Officers are authorised under Section 196A of the Town and Country Planning Act 1990 to enter, at any reasonable hour and when it is reasonably necessary, any land to ascertain whether there is or has been any breach of planning control.

**5.4.** If no occupier can be found at the time of visit, Officers have powers to inspect the land in their absence.

**5.5.** Officers do not have powers to force entry into any dwelling house. Where appropriate, they will leave a calling card requesting the occupier of the land to contact the Council. In the event admission to a dwelling house is reasonably required, 24 hours' notice of intended entry will be given to the occupier of the dwelling. If entry to land or buildings is refused and it is reasonably necessary to gain entry to the site, Officers may apply to the Magistrates Court for a Warrant under Section 196B of the Town and Country Planning Act 1990. This course of action will only be taken in cases where it is considered both necessary and proportionate to the alleged breach under investigation.

**5.6.** Whilst on site, officers may ask questions of any present occupiers and may take photographs or measurements. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter. The site may need to be visited by different officers depending upon the nature of the case.

**5.7.** Where officers can find no evidence of a breach of planning control the investigation will be closed, the relevant parties informed and no further action taken. In some circumstances the complainant may be asked to provide additional evidence to identify or substantiate the allegation, for example logs, records and diaries. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

**5.8.** When investigating breaches of planning control, officers must identify whether or not a breach is immune from enforcement action. With the exception of works to Listed Building and works to protected trees, breaches of planning control will become lawful by the passage of time. When this occurs the breach is immune from enforcement action and the Council is unable to remove or mitigate any planning harm. Immunity from enforcement action for all building and engineering operations

occurs four years from the date the development was substantially completed. The four year rule also applies to any breach of planning control that involves the change of use of any building to a dwelling house. All other breaches of planning control are subject to immunity after 10 years have passed. Legislation covering Listed Buildings does not include an immunity period and action can be taken at any time, subject to expediency considerations, where it is found that unauthorised works harm its character as a building of special architectural or historic interest.

**5.9.** The general test applied is “would planning permission have been granted for the development if it had gone through a planning application process”. Non-planning considerations will not be part of this process. Issues that cannot be taken into account include:

Breaches of restrictive covenants, Private disputes, Competition between businesses, Damage to property, Boundary or other land disputes, reduction in value of land or property.

**5.10.** The Council will initially attempt to resolve all breaches of planning control through negotiation, with the exception of breaches of planning control which could not be rectified to meet planning criteria and should be resolved as a priority. Negotiation will not be allowed to unjustifiably delay any necessary planning enforcement action. Formal planning enforcement action is discretionary and will be taken where the Council considers it to be: essential having considered the provisions of the Local Plan and to any other material planning considerations; and necessary in the public interest (unacceptably affecting public space or the existing use of land and buildings requiring protection in the public interest).

**Public interest** - it is not the role of the Council to protect the private interests of one party against those of another, unless these also coincide with the public interest. Nor is it the role of planning enforcement to act punitively against breaches of planning control, to punish minor or trivial breaches which do not result in demonstrable harm to the public interest. The Council will need to ensure that any responses to breaches of planning control are proportionate and have regard to the extent to which the public interest is affected by a decision to take or not to take action. Part of this assessment is the expediency test.

**Expediency test:** - In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken. An expediency test will usually involve the Planning Enforcement Officer assessing: whether the breach is in accordance with the policies of the Local Plan; the breach against any other material planning considerations; whether had a planning application been submitted before the development occurred, permission would have been likely to have been granted; whether the breach unacceptably affects public amenity; whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest; whether action would be proportionate with the breach to which it relates; whether action would be in the public interest; whether action is plainly necessary. This will be undertaken using a Harm Assessment Matrix

**5.11.** The Council has a duty to ensure proper consideration in cases where there has been previous involvement or there will likely be future involvement of the Development Management Service.; Consultation with the relevant Development



Management Officer will take place prior to concluding the expediency assessment to ensure consistency of decision making. This can include discussions around enforceability and reasons for conditions attached to planning decisions.

**5.12.** In cases where specialist knowledge may be required to determine the expediency of taking action, the Planning Enforcement Officer will consult the relevant department or authority prior to concluding the expediency decision.

**5.13** Enforcement action will not be taken against a minor or technical breach which causes no harm to the local area, nor will enforcement action be taken purely to regularise breaches of planning control that have been found to be acceptable. A Harm Assessment Matrix will be used as an assessment tool to provide consistency and transparency in the decision making process. A planning application will only be invited in cases where a potential impact of the development requires to be controlled by a planning condition. In circumstances where the best reasonable course of action to deal with the harm being caused lies outside of planning controls. The planning enforcement team will refer the matter to the relevant department/team for action, as more effective and efficient outcomes can sometimes be achieved by use of powers outside the Town and Country Planning legislation, such as the Environmental Protection Act or the Highway Act.

**5.14.** The decision to take enforcement action will normally be made by the Enforcement Specialist or another Specialist in Development Management in accordance with the Council's officer scheme of delegation arrangements. Equally, decisions not to take enforcement action will be made under officer delegation arrangements and reasons for not taking action will be recorded in writing. It is in the public interest that decisions not to take enforcement action are properly recorded.

**5.15.** The Council will not allow prolonged negotiation to delay essential enforcement action. The Councils will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible. However, the enforcement system rapidly loses credibility if unacceptable developments remain due to protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set in accordance with the priority of the case.

**5.16.** In situations where an unauthorised development may be acceptable, or made acceptable by appropriate planning conditions, a planning application will be invited so as to regularise the development. Where such an application is not forthcoming a decision of whether to take action will then need to be made.

**5.17.** Details of the planning applications can be found at <https://www.southhams.gov.uk/article/680/Planning>

**5.18.** The Council will make efficient use of the relevant investigative powers and will justify their use as required. Full use will be made of Planning Contravention Notices or section 330 notices to elicit information about alleged breaches of control where evidence is not otherwise forthcoming. Where appropriate, powers of entry on to land will be used to obtain information for enforcement purposes.

**5.19.** In carrying out its planning enforcement investigations the Council will make efficient use of HM Land Registry records and its own records. Close links are established with other Teams of the Council to improve and enhance investigations. Information relevant to enforcement investigations is held in a variety of locations. Sources outside the Council include HM Land Registry, national and local amenity groups, national bodies, (e.g.: Environment Agency, Health and Safety Executive, DVLA, Historic England). Within the Council, Housing and benefit records, electoral roll, and Council Tax records are all examples of areas where information relevant to enforcement investigations can be located.

5.20 The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 (as amended) [PACE] when interviewing persons suspected of a criminal offence (in so far as it applies to those being interviewed by a non-police agency) and with the Criminal Procedures and Investigations Act 1996 [CPIA] and Section 222 of the Local Government Act 1972, when carrying out prosecutions. It is not a criminal offence to carry out development without first obtaining planning permission. However, it is an offence to erect unauthorised advertisements, do work to a protected tree without consent, carry out unauthorised works to a listed building, or fail to comply with an enforcement, breach of condition, planning contravention or stop notice. For a successful prosecution to take place it is essential that the provisions of PACE, CPIA and the Code of Conduct for Crown Prosecutors are followed.

**5.21.** The Council will endeavour to allocate resources to see priority actions through to the end. Once a priority investigation has been commenced, the Council will ensure that resources are made available in order to ensure that the matter is concluded satisfactorily. This will mean that lower priority cases have less resource allocated to them. From time to time, the Council will prepare supplementary policies to deal with specific areas of focus relating to breaches of planning control which may arise.

**5.22.** The Council will be clear and precise in specifying breaches and requirements. Every effort will be taken to ensure that those being regulated fully understand what action is being taken, the steps that are required to remedy the breach, and the possible implications should they fail to comply with the requirements of that action.

**5.23.** The Council will make sure the reasons for issuing an Enforcement Notice match its requirements. Only those actions necessary to remedy a breach will be included in a notice. The Council will stick to procedural time limits unless there are justifiable reasons for extensions. In certain circumstances additional time may be required in order to comply with the Council's requirements. When this is apparent, due consideration will be given to permitting such requests so long as the apparent harm to third parties can be minimised.

**5.24.** There is a right of Appeal against a Planning Enforcement Notice. The details of which can be found at this link: - <https://www.gov.uk/appeal-enforcement-notice>

**5.25.** The Council will be flexible and consider genuine solutions. Where possible, any alternative solution will be considered in order to achieve a satisfactory conclusion to a reported breach of planning control. The use of formal enforcement action will in some circumstances be as a last resort.

## **6. Planning enforcement interventions and powers available to the Council**

**We may decide to instigate formal proceedings. This could result in one or more of the actions set out below being pursued.**

**6.1.** Planning Contravention Notice (PCN). The main purpose of a PCN is to gather initial information so that the Council can establish whether there is a case for taking Enforcement Action. It is an offence if the recipient of the notice fails to provide the required information. If convicted of such an offence the offender would be liable on conviction to a fine currently not exceeding £2,500.

**6.2.** Enforcement Notice. This is the most common form of notice used to deal with unauthorised development, operations and/or uses. Before such action is embarked upon the Council must be satisfied that it is appropriate to issue the notice having regard to the nature of the unauthorised development and in the light of Government guidance. An Enforcement Notice will specify the alleged breach, the steps that must be taken to remedy the breach, and a time period in which to comply. The recipient of the notice has a right of appeal to the Secretary of State. If any person is subsequently found to be in breach of an Enforcement Notice the Authority will consider whether to prosecute. If found guilty in any court hearing that person would be liable on conviction in the Magistrates Courts to a maximum fine of £20,000.

**6.3.** Breach of Condition Notice (BCN). This type of notice can only be used where planning consent has been granted subject to conditions. The Council can issue a BCN to ensure full or part compliance with planning conditions. As with the Enforcement Notice a BCN would specify the breach and steps required to secure compliance with the notice. Unlike the Enforcement Notice a BCN must allow a minimum of 28 days in which to comply with the requirements. There are no rights of appeal against a BCN. If any person is found to be in breach of a valid BCN he or she shall be guilty of an offence with a maximum fine currently not exceeding £2,500 on conviction.

**6.4.** Stop Notice. The Council can, when appropriate to do so, serve a Stop Notice requiring activities to cease immediately. Such a notice can only follow the service of an Enforcement Notice. There are limitations on the service of this notice and additionally compensation may be payable by the Council in some circumstances if the recipient makes a successful challenge. It is used very selectively and it is not necessarily an instant solution.

**6.5.** Injunction. Where the Council considers a breach of planning control to be a serious and immediate risk to health and safety, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction. This can be extremely expensive, but can be effective in appropriate circumstances.

**6.6.** Temporary Stop Notices. Where the Council consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the Town and Country Planning Act 1990 enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition, the effect of the temporary stop notice will be

immediate, it will not have to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately.

**6.7. Section 215 Notice.** The condition of certain buildings or land often causes serious harm to the visual amenity of an area. Should the Council consider it appropriate to do so they may serve on the owner and occupier a Notice under Section 215 of the Town and Country Planning Act 1990. Such a notice would require steps for remedying the condition of the land or buildings and specify a period of time for complying but in any event not less than 28 days. This Notice can be appealed via a magistrates' hearing. If any person is subsequently found guilty of an offence of not complying with the requirements of a 215 Notice they shall be liable on conviction to a fine currently not exceeding £2,500

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

**6.9. Signs and Advertisements** Where an advertisement is not lawfully displayed and causes harm to the amenity or public safety, and it is considered that express consent would not be granted, the owner/ occupier shall be requested to remove the offending sign. If the sign is not removed by agreement the Council does have the power to prosecute. If a person is found guilty of an offence under The Control of Advertisement Regulations he or she could be liable to a fine not exceeding £2,500 per advert. The Council also has the power to serve a Notice requiring the discontinuance of a lawfully displayed advertisement if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Recipients of a Discontinuance Notice do have a right of appeal.

**6.10. Prosecution.** The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with. The prosecution is to seek to establish that an offence has occurred.

**6.11.** In considering whether to initiate prosecution proceedings against the offender the Planning Enforcement Officer will consider the possible defences (reasons to appeal) against the prosecution proceedings as set by legislation, the Code for Prosecutors evidential test and the Code for Prosecutors public interest test. All decisions will be reviewed and agreed with a Council Legal Officer.

**6.12.** The Council's Legal Officer is responsible for taking the matter before the Magistrates or Crown Court. A notice may have to be served on more than one

person to meet the terms of 'good service' for example a mortgage provider or an occupant where the landowner has also been served. The Council can at any time decide not to proceed with a prosecution.

- **Evidential Test** The evidence to be presented to the Magistrates Court must be reliable and sufficient to satisfy the Council's Legal Officer (prosecutor) that there is a realistic prospect of conviction. The evidence must clearly prove that the offence has occurred and identify who is legally responsible for that breach (the defendant).
- **Public Interest Test** If the case does pass the evidential stage, the Council's Legal Officer (prosecutor) must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

**6.13** In cases where it is considered disproportionate, likely to be ineffective in resolving the breach, there is no realistic prospect of conviction, or where it is not in the public interest, the Planning Enforcement Service will not initiate prosecution proceedings. In cases where it is necessary to use witnesses not employed by the Council the witness will be advised of the possible need to attend court and will be asked to provide a written witness statement. In such circumstances, if witnesses cannot or do not provide the necessary evidence, those prosecution proceedings may not be pursued.

## **7. Key Principles, conclusion and contact details**

**7.1.** This Local Enforcement Plan explains how the Council has responded to government policy on planning enforcement contained in the National Planning Policy Framework. It also sets out the procedures for delivering the Council's Planning Enforcement Service within the available resources.

**7.2.** This Plan is not part of the Statutory Local Plan, but has been agreed by the Council in line with the provisions of the NPPF. This plan and the following guiding principle will be observed and taken into account in all planning enforcement matters:

**West Devon Council as a Local Planning Authority will in their consideration of and exercise of decision making in all enforcement matters have due regard to this Plan along with National Planning Policies including the NPPF, the Governments Planning Practice Guidance, the relevant policies of the Local Plan and all other relevant material planning considerations**

**7.3.** The Council will continue to seek to improve its Planning Enforcement service by regularly monitoring, reviewing and updating its policies and procedures as a matter of good practice, and consult with stakeholders to make improvements in the delivery of the service. Performance review reports will be prepared to consider service standards and performance in the context of available resources, workloads and outcomes.

**7.4.** Complaints about the service. If you are unhappy about the advice given or action taken or the level of service you have received from Development Management in relation to how it carries out its enforcement functions you can make a complaint using the Council's Complaints Procedure. Details are available on our websites.

## **Planning Enforcement Contact Details**

Website: [www.westdevon.gov.uk/planning](http://www.westdevon.gov.uk/planning)

Email: [planning.enforcement@swdevon.gov.uk](mailto:planning.enforcement@swdevon.gov.uk)

Tel: 01822 316000