

LICHFIELD DISTRICT COUNCIL

LOCAL ENFORCEMENT PLAN

DECEMBER 2018

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1.0 Introduction

- 1.1 All planning decisions - from deciding whether to build a new shopping centre; to whether to approve a new housing development or even an extension to an existing house- are assessed against a framework.
- 1.2 This type of framework is called a local plan. It helps to make sure the district is developed in the right way, including building the right number and types of houses, developing the right kind of shopping and recreation facilities, getting the right office and industrial spaces, creating opportunities for local jobs to be nurtured and protecting our wildlife, landscapes and heritage. The Enforcement Plan sets out how the planning enforcement service will be delivered, and how it will contribute to the delivery of these objectives, by ensuring that where unauthorised development does not accord with the specific policies of the Lichfield District Local Plan it is effectively remedied.
- 1.3 Complaints and enquiries are received about alleged breaches of planning control, from a variety of sources. The integrity of the development management process depends on our readiness to take proportionate enforcement action when it is considered expedient to do so. We recognise the importance of establishing effective controls over unauthorised development, where it assists in the preservation and enhancement of the qualities of both the built and natural environment and to protect public amenity.
- 1.4 Paragraph 58 of the National Planning Policy Framework (July 2018) states that: “Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate.”
- 1.5 This Enforcement Plan sets out the Council's approach to planning enforcement. Importantly, the Council considers that the disregard of planning regulations is a serious matter, and action will be taken in accordance with this Plan, where necessary. The main legislative powers are explained and how enquiries will be prioritised and pursued is also set out in this document.

- 1.6 The Council adopts a firm but fair approach which endeavours to strike a sensible balance between the need for effective control, and the need to be reasonable and pragmatic. The Council is committed to the Government's Enforcement Concordat and the Regulators' Compliance Code (see Appendix A). The principles set out in these codes are intended to ensure:
- Openness about how we carry out our work
 - Helpfulness in terms of providing advice and assistance
 - Proportionality i.e. any action we take will be proportional to the harm caused, and,
 - Consistency i.e. our duties will be carried out in a fair and consistent manner.
- 1.7 This Enforcement Plan helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens on individuals or businesses. This is in accordance with the Regulators' Compliance Code (see Appendix A).
- 1.8 This document covers all enforcement activities carried by Development Services staff. Its purpose is to provide an enforcement standard that respects the principles of the Enforcement Concordat and the Regulators' Compliance Code and meets with the requirements of all other relevant legislation (see Appendix B) and guidance published by central government. The Enforcement Plan can be viewed on the Council's website at www.lichfielddc.gov.uk. Individuals and businesses will be notified of this policy through officer verbal advice, the distribution of summary leaflets (Appendix C) or in conjunction with formal letters and notices.
- 1.9 With regard to the preparation of the original Enforcement Plan (April 2013) Parish and Town Councils were consulted and asked to identify their top five enforcement priorities. The results of the consultation are shown in graph form at Appendix H.
- 1.10 Four Councils identified Green Belt as a top priority, eleven identified development in Conservation Areas as one of their priorities and nine identified highway issues as one of their priorities. This is reflected in the priorities given to cases in Section 6.
- 1.11 Ten Councils identified development not in accordance with approved plans as one of their priorities. Section 8 of the Plan sets out how the implementation of development and compliance with conditions will be monitored.

2.0 Enforcement Activities

2.1 The enforcement activities referred to in this document relate to the following principal Acts of Parliament:

- Town and Country Planning Act 1990 (as amended)
- Localism Act 2011
- Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended)
- Part 8 of the Anti-Social Behaviour Act 2003
- The Proceeds of Crime Act 2002
- Together with Regulations, Orders and guidance produced under these Acts, and European Directives; as set out in Appendix D.

2.2 The overarching responsibility for planning enforcement lies with the Director of Place and Community. The majority of planning enforcement related functions are delegated to Officers as detailed in the Council's Constitution under the approved Scheme of Delegation; copy available on the Councils' website.

2.3 The day-to-day general planning enforcement activities are mainly undertaken by a small team that reports to the Planning Development Manager.

2.4 The enforcement team work closely with colleagues in Development Management; Conservation and Urban Design; Arboriculture Officers; Spatial Policy & Delivery and Environmental Health, in relation to the submission and determination of planning applications for unauthorised development; the monitoring and discharge of conditions; formal high hedge complaints, unauthorised works to listed buildings and protected trees. The Enforcement Officers also work closely with the Councils' Solicitor who provides support and advice. This ensures that decisions taken about whether or not to pursue enforcement action are consistent with current planning case law.

2.5 This Enforcement Plan will be reviewed when there are significant changes in national planning policy, the law, and following any operational experience and feedback from individuals and businesses.

2.6 The Council may from time to time identify priority areas where proactive enforcement could really benefit. For example, area based action on untidy land and buildings; targeting illegal advertisements; or a Conservation Area project to coincide with the making of an Article 4 direction. However, Senior Officer and Member 'buy

in' will be crucial in the identification and proper resourcing of such projects if they are to be effective.

3.0 Definitions of Enforcement Action

3.1 In this document enforcement action means:

- Serving Statutory Notices
- Serving of Injunctions
- The issue of a Simple Caution
- Legal proceedings in a Court of Law, including the consideration of a Confiscation Orders under the Proceeds of Crime Act 2002
- Taking Direct Action

4.0 Performance Standards

4.1 We will:-

4.2 Investigate all alleged breaches of planning control reported to the Council either in writing, by e-mail, by telephone or in person;

4.3 Keep personal details confidential at all times, unless required to disclose as part of court proceedings, or to the Local Government Ombudsman. Necessary information will be kept indefinitely, unless the Council receives an erasure request. It is considered that the retention of information is justified so that the Council can fulfil its statutory duty in dealing with breaches of planning control.

4.4 Register a complaint and provide an acknowledgement within 5 working days, which will include a reference number and named officer as the point of contact;

4.5 Seek to carry out a site visit within 10 working days of receipt of a complaint;

4.6 Keep any complainant informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved;

4.7 Actively pursue a complaint to a satisfactory conclusion;

- 4.8 Investigations into alleged breaches of planning control may take some time however we will seek to close 80% of all cases within 12 weeks from the date of receipt;
- 4.9 In cases where there may be a technical breach of planning control but the harm caused is insufficient to warrant formal action, we will notify the complainant of the reason for not taking formal action and close the case;
- 4.10 Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice, unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

5.0 **Targeting**

- 5.1 Taking formal enforcement action can be complex, time consuming and expensive. Where unauthorised development occurs resources will be targeted primarily towards development which gives rise to serious harm to public interests.
- 5.2 In deciding whether to take enforcement action the Council will have regard to national planning policy, the development plan and any other material considerations. Enforcement action will only be taken where it is expedient to do so and, the action taken will be proportionate to the nature of the breach. Where a trivial or small technical breach of planning control has occurred consideration will be given to the impact of the unauthorised development on public amenity and/or interests. In taking a decision on whether or not to pursue enforcement action, each case will be assessed in accordance with its individual merits.
- 5.3 Perceived harm caused to private interests, for example, the loss of value of a neighbouring property; competition to or from another business; loss of an individual's view or trespass onto someone else's land are not matters which can be taken into account by the planning system, although in certain circumstances there may be redress through civil laws.

6.0 **Enforcement Priorities**

- 6.1 When complaints and enquiries are received in respect of alleged unauthorised development they will be prioritised according to the criteria set out below. A case

may be given a higher or lower priority once a site visit has been undertaken depending on the nature of the breach

- 6.2 **Priority 1 This applies where the breach relates to unauthorised development which poses a serious threat to the environment or public amenity, for example, by causing a serious traffic hazard, or poses permanent damage to the environment, for example, unauthorised work affecting a Listed Building or the loss of a protected tree.**

We will visit the site as soon as practicable (within 24 hours) after the receipt of the enquiry to identify the appropriate course of action; which could be commencing injunctive or legal proceedings or issuing statutory Notices.

- 6.3 **Priority 2 If the breach relates to development where planning permission is unlikely to be granted without substantial modification or removal, for example development in Sites of Special Scientific Interest, Green Belt and Conservation Areas.**

We will contact the relevant owners and occupiers as soon as possible (within 5 working days) to arrange to meet to discuss the matter and negotiate a solution. Enforcement action will be pursued if negotiations fail to address the harm arising from the development.

- 6.4 **Priority 3 Development which gives rise to problems that may be resolved by limited modification, for example, by the imposition of conditions on a planning approval, where the complaint relates to untidy land or buildings and breaches of conditions on existing planning permissions.**

We will contact the owners and occupiers and give advice on what measures are required to address the issues, and give a reasonable timescale (usually 28 days) for them to carry out any necessary work or submit a planning application.

- 6.5 **Priority 4 Breaches of a minor nature which do not raise any planning issues.**

We will contact owners and occupiers, where appropriate or necessary. Advice may be given about the difficulties of selling the property in the future if the breach is not resolved.

7.0 **How Investigations Will Be Managed**

- 7.1 Officers will visit the site and establish if a breach is occurring. Advice will be given regarding the need for planning permission and/or compliance with conditions, where appropriate. This will be followed up in writing and timescales will be set for any

relevant actions, for example, ceasing any activity; removing the development; or submitting a planning application.

7.2 In the correspondence, informal advice will be given about:

- the case officer dealing with the matter and their contact details
- the nature of the breach and ways in which it can be resolved
- follow up actions and timescales
- relevant planning policies
- the likelihood of planning permission being granted
- the type of enforcement action which could be pursued and the penalties for non-compliance.

7.3 Where a breach of planning control cannot be resolved and the unauthorised development is causing material harm, formal enforcement action may be taken, in line with the Councils' procedures and delegated powers. The action will be proportionate to the breach occurring. The details of the types of Notices and the rights of appeal, and other powers which may be used, are set out in Appendix E.

7.4 Where it is appropriate we will try to resolve the matter through negotiation or by the submission of a planning application, which can control the impact of the development through the imposition of conditions. If further information is required about the ownership of the land or the nature of the breach, a Planning Contravention Notice or Requisition for Information may be served.

7.5 Where a breach of planning control is occurring, but there is no resulting harm to public amenity or interests, a decision may be taken that, it is not expedient to take enforcement action, in line with the Councils' procedures and delegated powers. Ward Members will be notified of these decisions. The approach set out above is consistent with Government guidance as contained in Planning Practice Guidance-Ensuring Effective Enforcement. . All investigations will be carried out in accordance with other relevant legislation, which cover privacy, surveillance and evidence, as set out in Appendix B. A flow chart to show the Enforcement Process is attached at Appendix F.

8.0 **Potential for Chargeable Services**

8.1 Whilst charging for enforcement investigation services has been considered, this is not appropriate as the Local Planning Authority has a duty to investigate and deal effectively with breaches of planning control.

8.2 However, income can be generated through investigations that result in retrospective planning applications and Lawful Development Certificates; appeal fees and costs; prosecution and caution costs and recovered cost from direct action.

8.3 In some cases where there has been an unauthorised a change of use of land there may have been an underpayment of Council Tax and this is then brought to the attention of the Revenues & Benefits team. There may well be instances where the unauthorised activity has occurred for a considerable period of time and there could be circumstances where this charge can be applied retrospectively.

8.4 The Proceeds of Crime Act is potentially where large sums of money can be obtained. This would apply when it is proven that development has persisted unlawfully contrary to the requirements of a planning enforcement notice and the owner, or developer has then profited from the illegal activity. In appropriate cases, and as part of a prosecution proceedings, the Local Authority can request that a Confiscation Order is made. If successful, the investigating and prosecuting authority are entitled to keep 37.5% of any confiscation order made through the Court.

9.0 **Monitoring the Implementation of Planning Permissions.**

9.1 Many planning permissions are granted subject to conditions which are required to be complied with before development commences on site. Compliance with these conditions is important as they can have a major impact on the form of the completed development. These conditions may include, for example:

- the erection of protective fencing around important trees, shrubs and hedges which are to be retained as part of the development
- the approval of external materials
- the approval of joinery details, mortar, external finishes and materials (particularly for Listed Buildings and in Conservation Areas)
- the removal of contaminated material on brownfield sites
- protected species mitigation measures.

- 9.2 Officers will identify sites with important pre-commencement conditions and write to the developer to advise about the importance of complying with the conditions before work commences on site. Officers will also carry out checks when they are in the area to see if works have commenced and use information from the Council's Building Control Service to monitor the commencement of development.
- 9.3 Where works commence without pre-commencement conditions being complied with, the developer will be contacted and may be advised that works should cease, depending on the nature of the breach of condition for example, if tree protection in the form of protective fencing is required for trees covered by a Tree Preservation Order and the continuation of the works threatens the long term life of the trees or if the works affect a Listed Building or a Conservation Area. If the works do not cease voluntarily then the issue of a Temporary Stop Notice may be considered. The action taken will be proportionate to the breach and an explanation will be given why action is being considered or pursued.

10. **Prosecutions**

- 10.1 Failure to comply with any requirement of a statutory Notice is a criminal offence. There are a number of options available to the Council depending on the harm caused and the circumstances of the case, which include prosecution, an injunction, or direct action. Prosecution will be the most common form of initial further action, but there may be circumstances where direct action, or an injunction, may be preferred and it does not necessary follow that the Council will always chose to prosecute first, before considering the other options available.
- 10.2 The Council will always consider what form of further action should be taken in these circumstances. Key questions in considering whether or not to take further action and what form that action should take are: would the action be proportionate to the breach of planning control?; is the action in the public interest?; would the action be likely to resolve the issue?; and whether or not there is sufficient evidence to progress the case.
- 10.3 Powers are delegated to Officers to instigate legal proceedings. This will involve discussions with the Council's Solicitor. However, the use of direct action will require authorisation from the Council's Planning Committee (see paragraph 12 below).
- 10.4 Further action will normally be taken against persons or companies who blatantly disregard the law, where their actions severely affect public amenity or put the

environment at risk. The circumstances that warrant such action will normally be characterised by one of the following:

1. Where the alleged offence involves a flagrant breach of the law which has destroyed the fabric of a historic building or involved the removal of a protected tree.
 2. Where the alleged offence involves a flagrant breach of planning law, which is continuing to affect public amenity or the environment, for example, where advertisements are displayed without Advertisement Consent, particularly in relation to where these are attached to Listed Buildings or in Conservation Areas.
 3. Where the alleged offence involves failure to comply with Enforcement Notices and the offender has been given a reasonable opportunity to comply with its requirements.
 4. Where there is a history of similar offences related to the risk to the protection of the environment.
- 10.5 The District Council must make the decision on whether or not to take further action having regard to public interest.
- 10.6 In addition, when prosecuting for a planning offence, the Council will also consider the provisions of the Proceeds of Crime Act 2002 in relation to securing a Confiscation Order where there is evidence that an offender has benefited financially from a breach of planning control. Where it is considered that a Confiscation Order may be appropriate, financial investigations by a qualified financial investigator will be commissioned at the outset of the process.

11.0 **Simple Cautions**

11.1 The “Simple Caution” (see Appendix G), may be used, in certain circumstances, as an alternative to prosecution (Home Office guidance, Circular 016/2008 visit: <http://www.homeoffice.gov.uk>)

11.2 Simple Cautions are used to:

- deal quickly and simply with less serious offences,
- divert less serious offences away from the Courts,
- reduce the chances of repeat offences.

- 11.3 In order to safeguard the offenders' interests, the following criteria must be satisfied:
- Sufficient evidence must be available to prove the case;
 - The offender must admit the offence;
 - It must be in the public interest to use a Simple Caution
 - The offender must be 18 years old or over
- 11.4 We will also take into account the following when making our decision:
- The offender should not have received a Simple Caution for a similar offence within the last 2 years.
- 11.5 A record of the Formal Caution will be sent to the Office of Fair Trading and the Local Authorities Coordinators of Regulatory Services (LACORS) as appropriate, and will be kept on file for 2 years. If the offender commits a further offence, the Formal Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in Court, and this may influence the severity of the sentence that the court imposes (see Appendix G).
- 12.0 **Direct Action**
- 12.1 Provision is made in the Town and Country Planning Act 1990 (as amended), under Section 178 in relation to unauthorised development, and Section 219 in relation to Notices served to require the maintenance of land, for the District Council to take 'Direct Action' to enter the land and remedy the problem.
- 12.2 Direct Action will only be taken after consultation with and authorisation from the Council's Planning Committee. Reports to Planning Committee on such matters will be held in private session to ensure that staff safety is not compromised. However, all avenues will be explored with the contravener to avoid having to take such action. No prior notice of the date and time of such action needs to be given to the offender.
- 12.3 If Direct Action is taken the cost to the Council can be considerable. A charge in favour of the Council for the cost of the action will be registered on the land to ensure that money raised by any future sale will be used to recoup the Councils' costs. The monetary charge on the land would also be subject to favorable annual interest increases.

13.0 Review of the Enforcement Plan

13.1 In common with most formal documents, regular reviews of this enforcement plan will be necessary to ensure its status remains current, within the framework of the most up-to-date legislation and guidance issued by the Government.

13.2 Reviews will take place when:

- Current legislation and/or guidance changes or;
- When comments received from residents, customers, businesses and visitors to the District can improve how the policy is being developed and used.

14.0 Help Us To Help You!

14.1 We are constantly looking at ways to improve our services and welcome comments on this Enforcement Plan or any other matter relating to our services. Contact details are below:-

Head of Development Services
Lichfield District Council
District Council House
Frog Lane
Lichfield
Staffordshire
WS13 6YZ
Tel: 01543 308174
E-mail: devcontrol@lichfielddc.co.uk

Specific enquiries relating to a particular case should be referred to the case officer or his/her immediate line-manager.

Further information on Planning Enforcement can be found by visiting the Councils' website www.lichfielddc.gov.uk and on the Planning Portal at www.planningportal.gov.uk.

APPENDIX A

Our Commitment to the Regulators Compliance Code & the Enforcement Concordat

Lichfield District Council is committed to good enforcement practice.

Our work is primarily to protect the public interests and the environment. Carrying out this work in a fair, practical and helpful manner helps to achieve this while promoting a thriving local economy. We will encourage economic progress and only intervene in the operation of a business when there is a clear case for protection.

1. Information & Advice

- We provide information setting out our approach to enforcement both in general and in particular areas.
- Clear, concise and accessible information, advice and guidance, will be provided to help individuals and businesses meet their legal obligations.
- Clear distinctions will be made between legal requirements and guidance

If you need advice or assistance on a planning enforcement issue, either ring or ask for general help or take the question up with the case officer. Full contact details will be given on any correspondence.

2. Resources

Resources will be targeted towards development which gives rise to serious harm to public interests.

3. Visits

- No inspection will take place without reason.
- Some visits will be advisory and we will give you help to meet your obligations by suggesting and advising.
- Where appropriate, this will include giving you a chance to discuss and remedy problems before action is taken.
- When action is required, then you will be given proper details of the action and fully advised of any right of appeal or review of the matter. Sometimes such action is required immediately for public protection and if it is, we will need to take it straight away.

- If a prosecution is required the Council will normally consider whether it is in the public interest to proceed. Where it is appropriate you will be given the opportunity to contribute information to help us reach an informed decision.

6. Our Complaints Procedure

Details of the District Councils' Corporate Complaints Procedure is available by speaking to a member of Staff or on the Council's website.

7. Proportionality

We will only require or take action that is proportionate to the risks involved and where we have taken account of all the circumstances of the case to minimise the costs of compliance. However, we must comply with the law where necessary.

8. Consistency

All of our planning enforcement work will aim to be consistent and transparent, although we will have due regard to the circumstances of each individual case. This will be achieved through the use of our enforcement plan and procedures.

Regulators' Compliance Code, Statutory Code for of Practice for Regulators 17 December 2007, Department for business Enterprise and Regulatory Reform.

Website: <http://bre.berr.gov.uk/regulation>

APPENDIX B

Other Relevant Legislation and Codes of Practice

Police and Criminal Evidence Act 1984

Regulation of Investigatory Powers Act 2016

Criminal Procedure and Investigations Act 1996

Human Rights Act 1998

General Data Protection Regulation 2018

Data Protection Act 2018

Freedom of Information Act 2000

Code of Practice of Crown Prosecutors

Planning Enforcement

A guide to our approach to Planning Enforcement

The purpose of this leaflet is to provide a guide to residents, businesses, property owners and planning agents about our enforcement standards in Development Services.

Principal Acts that relate to the policy are:

- Town and Country Planning Act 1990 (as amended)
- Listed Buildings and Conservation Area Act 1990 and subordinate Regulations.

The fundamental Principles of Good Enforcement

- We recognise the importance of establishing effective controls over unauthorised development to assist in the preservation and enhancement of the qualities of both the built and natural environment and to protect public amenity.
- Each case is unique and will be considered on its own facts and merits. In arriving at a decision to recommend formal enforcement action officers will be **fair, independent and objective**.

- Open about how we carry out our work.
- Helpful in providing advice.
- Proportional in relation to the scale and impact of the breach.
- Consistent in carrying out our duties in a fair and consistent manner, in line with policies set out in the Development Plan.

Unauthorised Development

The types of enquiries which can be dealt with by Development Services include building works or changes of use, advertisements, non-compliance with conditions imposed on planning approvals, the felling of protected trees and the removal of hedgerows, works to Listed Buildings and demolition in Conservation Areas. Where enquiries are received which cannot be dealt with by Development Services advice will be given on which Service area or other agencies may be able to provide assistance.

If you make an enquiry about unauthorised development

If you enquire about development which may not have planning permission your details will be kept confidential. Your enquiry will be acknowledged and you will be given advice about the enforcement process and what action can be taken. You will be advised of progress on the matter.

If you carry out development without planning permission

Our staff will ensure that you understand what you are required to do and why and explain the enforcement process.

Officers will try to negotiate to resolve the problem. The majority of the enforcement investigations are resolved without the need for formal enforcement action.

You will be encouraged to discuss the matter with Officers and given advice on whether planning permission is likely to be granted for the development.

If formal enforcement action is taken

Depending upon the circumstances formal action may sometimes be necessary. Where it is necessary to take enforcement action, the owner, occupier or developer will be advised in writing on the course of action to be pursued, setting out the type of action to be taken. The advice will include what rights of appeal are applicable and the penalties for non-compliance.

Where it is necessary to serve formal enforcement notices, the content of the notice will clearly state what is required and why action is being taken. Information will also be given on how to make an appeal against the issuing of the notice.

- Where there is a history of similar offences related to the risk to the protection of the environment.

Prosecution

Failure to comply with any requirement of a statutory notice is a criminal offence. The Council will always consider whether legal proceedings should be instigated in these circumstances. The circumstances that warrant prosecution will normally be characterised by one of the following:

Where the alleged offence involves

- A flagrant breach of the law which has destroyed the fabric of a historic building or involved the removal of a protected tree.
- A flagrant breach of law which is continuing to affect public amenity or the environment, for example where advertisements are displayed without Advertisement Consent, particularly in relation to where these are attached to Listed Buildings or in Conservation Areas.
- Failure to comply with Enforcement Notices and the offender has been given a reasonable opportunity to comply with its requirements.

All general enquiries about the Enforcement Plan should be referred to:

**The Director
of Place and Community
Lichfield District Council
District Council House
Frog Lane
Lichfield
WS13 6YZ**

If you wish to contact the **Enforcement Team** on **01543 308205, 01543 308274** or **01543 308197** or email devcontrol@lichfielddc.gov.uk

A full copy of this Enforcement Plan is available on the Council's website at www.lichfielddc.gov.uk

Planning Enforcement

A Guide to our approach to
Planning Enforcement

Development
Services

APPENDIX D Schedule of Legislation

The enforcement activities referred to in this document relate to the following principal Acts of Parliament:

Town and Country Planning Act 1990 (as amended)

Planning and Compensation Act 1991

Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended)

Planning and Compensation Act 2004

Localism Act 2011

The Proceeds of Crime Act 2002

Together with Regulations, Orders and guidance produced under these Acts, and European Directives, as set out below:

Town and Country Planning (Control of Advertisements) Regulations 2007

Town and Country Planning (General Permitted Development) Order 2015, as amended.

Town and Country Planning (Use Classes) Order 1987, as amended

Local Government (Miscellaneous Provisions) Act 1982

Caravan Sites and Control of Development Act 1960

Town and Country (Tree Preservation) Regulations Order 2012

Hedgerow Regulations 1997

Cleaner Neighbourhood and Environment Act 2005

APPENDIX E – Statutory Notices, Powers and Penalties

Statutory Notices are legal documents, normally requiring the recipient to carry out works to ensure compliance with an Act of Parliament.

Main Definitions

The main definitions and Notices referred to below, relate to the principal legislation used by Development Services.

Planning Contravention Notice (PCN)

Served under Section 171C of the Town and Country Planning Act 1990. Used where the District Council considers there may be a breach of planning control and further information is required about the development or the ownership of land. It requires responses to specific questions about the development. A PCN can be used to establish the facts of a case and let the owner/occupier/operator know that the Council is seriously concerned about an alleged breach. It is intended to act as both an information-gathering tool and a statement of intent. It is a criminal offence not to respond to the Notice and a fine of up Level 3 can be imposed on summary conviction, for not responding to the Notice and up to Level 5 for giving false or misleading information.

Requisition for Information Notice (RFI)

Used to obtain information about the ownership of land. Served under Section 330 of the Town and Country Planning Act 1990, in relation to Listed Buildings and the Display of Advertisements (for which a Planning Contravention Notice cannot be used). It is a criminal offence not to respond to the Notice and a fine of up Level 3 can be imposed on summary conviction, and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

Breach of Condition Notice

Served under Section 171A of the Town and Country Planning Act 1990. Used where conditions imposed on the grant of planning permission have not been complied with or a limitation set out in Regulations has been exceeded. It sets out requirements to be complied

with and a timetable for the required works to be carried out. There is no right of appeal to a Breach of Condition Notice, other than to the High Court on a point of law. The Notice must be served on the person responsible for the breach. Where there is any doubt about who is responsible or where human rights issues may arise due to the inability to appeal it may be more appropriate to serve an Enforcement Notice. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to Level 4 can be imposed on summary conviction.

Enforcement Notice (EN)

Served under Section 187A of the Town and Country Planning Act 1990 where development is carried out without planning permission and gives a list of requirements and a schedule of reasons for issuing the notice. There is a right of appeal to the Secretary of State on 7 grounds:

- a) that planning permission should be granted for what is alleged in the Notice
- b) that the breach has not occurred as a matter of fact
- c) that there is not a breach of planning control
- d) that the development is immune from enforcement action
- e) that the copies of the Notices have not been correctly served
- f) that the requirements of the notice are excessive to remedy the breach
- g) that the compliance period is too short.

If an appeal is submitted action against the notice is suspended until the appeal has been heard. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to £20,000 can be imposed on summary conviction or an unlimited amount on summary indictment.

Stop Notice (SN)

Served under Section 183 of the Town and Country Planning Act 1990 where there is a breach of planning control that is causing serious harm, or has the potential to cause serious or irrevocable harm to amenity. It may be served with an Enforcement Notice as set out above or before an Enforcement Notice has taken effect, but requires the relevant activity to cease immediately and it cannot continue whilst an appeal against an enforcement notice is in progress. In certain circumstances the District Council may be liable to pay compensation to the recipient of a Stop Notice. It is a criminal offence not to comply with the requirements

of the Notice and a fine of up to £20,000 can be imposed on summary conviction or an unlimited amount on summary indictment.

Temporary Stop Notice (TSN)

Served under Section 171E of the Town and Country Planning Act 1990. This may be served where it appears that there is a breach of planning control occurring and it prevents that development or activity taking place, for a period of up to 28 days. It gives the Council and the contravener the opportunity to consider further how to deal with the matter. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to £20,000 can be imposed on summary conviction or an unlimited amount on summary indictment.

Listed Building Enforcement Notice (LBEN)

Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Notice may require the building to be brought back to its former state, or other works specified in the Notice to alleviate the effects of the unauthorised works, or the building to be brought back to a state it would have been in if the terms of any Listed building Consent had been observed, within a timescale specified in the Notice. There is a right of appeal against a LBEN. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to £20,000 can be imposed on summary conviction

Unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. A person who is guilty of such an offence will be:

- liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both
- liable on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine or both

Listed Building Urgent Works and Repairs Notices

Served under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives Local Authorities the power to carry out works to unoccupied or partly occupied Listed Buildings. At least 7 days notice must be given to the owner. Section 55 of the Act allows for reasonable costs to be recovered. Section 48 of the Act gives the power to serve

a Repairs Notice specifying works which are considered necessary for the proper conservation of the Listed Building. Section 47 of the Act allows for a Local Authority to compulsorily purchase any Listed Building where a Repairs Notice is not complied with. These powers do not relate to ecclesiastical buildings or ancient monuments.

Conservation Area Enforcement Notice

As above, but relates specifically to demolition in a Conservation Area. Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Notice under Section 215

Served Under Section 215 of the Town and Country Planning Act 1990. Used to require the maintenance of untidy land. There is a right of appeal to the Magistrates Court. It is a criminal offence not to comply with the requirements of the Notice and a fine of up Level 3 can be imposed on summary conviction.

Injunctions

The District Council can apply to the High Court or County Court for an Injunction requiring works to cease where they consider it expedient to do so. Failure to comply with an Injunction can lead to proceedings in the County Court where an unlimited fine or prison sentence can be imposed.

Discontinuance Notice

Requires the discontinuance of the display of any advertisement, or the use of a site for the display of an advertisement, which has the benefit of deemed consent under the Control of Advertisements Regulations where the Council is satisfied 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. Served under Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulation 1995. It is a criminal offence not to comply with the requirements of the Notice and a fine of up Level 5 can be imposed on summary conviction.

Unauthorised Display of Advertisements

It is a criminal offence to display an advertisement, which requires Advertisement Consent, without consent being obtained. A fine of up to Level 3 can be imposed on summary conviction.

Contravention of a Tree Preservation Order

Under section 210(1) or (4) it is a criminal offence to cut down, lop, top or wilfully destroy any tree which is the subject of a Preservation Order. A fine of up to the statutory maximum can be imposed on summary conviction or an unlimited fine on summary indictment.

Completion Notice

Served under Section 94 of the Town and Country Planning Act where development has commenced and where the Local Planning Authority is of the opinion that that a development will not be completed in a reasonable period. It must be served on any owner and occupier, stating that a planning permission will cease to have effect at the end of a further period, of at least 12 months. It only takes effect after confirmation by the Secretary of State and there is an opportunity for those served with the Notice to be heard at a Public Local Inquiry. It does not require any development already carried out under the planning permission to be removed, nor does it guarantee that a development will be completed, but merely takes away planning permission for any further development once the period stated on the Notice has expired.

High Hedge Remedial Notices

Served under Section 69 of the Anti-Social Behaviour Act 2003 to require the reduction of an evergreen hedge. There is a right of appeal against a Notice and also by the complaint if no Notice is served. It is a criminal offence not to comply with any requirement of High Hedge Remedial Notice and a fine of up to Level 3 can be imposed on summary conviction.

Powers of Entry

Enabled by Sections 196A 196B and 196C of the Town and Country Planning Act 1990, to enter land specifically to investigate alleged breaches of planning control.

Section 74 of the Anti-Social Behaviour Act 2003 to enter land specifically to in relation formal High Hedges complaints

Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to enter land specifically to in relation to alleged breaches of Listed Building Consent.

Officer have rights of entry under the Council's Scheme of Delegation, as set out in the Constitution.

New Enforcement Provisions brought in under Localism Act 2011:

Power to decline to determine retrospective planning applications

Insertion of Section 70C to the Town and Country Planning Act 1990, the power to decline to determine a retrospective planning application in relation to land where an enforcement notice has been served prior to the receipt of the application and would involve granting planning permission for the matters specified as the alleged breach of planning control.

Time limits for enforcing concealed breaches of planning control

Insertion of Section 171BA to the Town and Country Planning Act 1990, the power to apply to the magistrates court for a planning enforcement order, to extend the period for immunity in relation to an apparent breach where the court is satisfied, on the balance of probabilities, that the apparent breach has deliberately been concealed.

Power to remove structures for the unauthorised display of advertisements

Insertion of Section 225A of Town and Country Planning Act 1990, the power to serve a removal notice and dispose of any display structure used for the unauthorised display of advertisements. There is a right of appeal to the magistrates court against the issue of a removal notice.

Insertion of section 225C of the Town and Country Planning Act 1990, the power to serve an action notice in relation to the persistent display of unauthorised advertisements on any surface. There is a right of appeal to the magistrates court against the issue of an action notice.

NOTE:

Level of fines at February 2013:

Level 3 - not exceeding £1,000

Level 4 – not exceeding £2,500

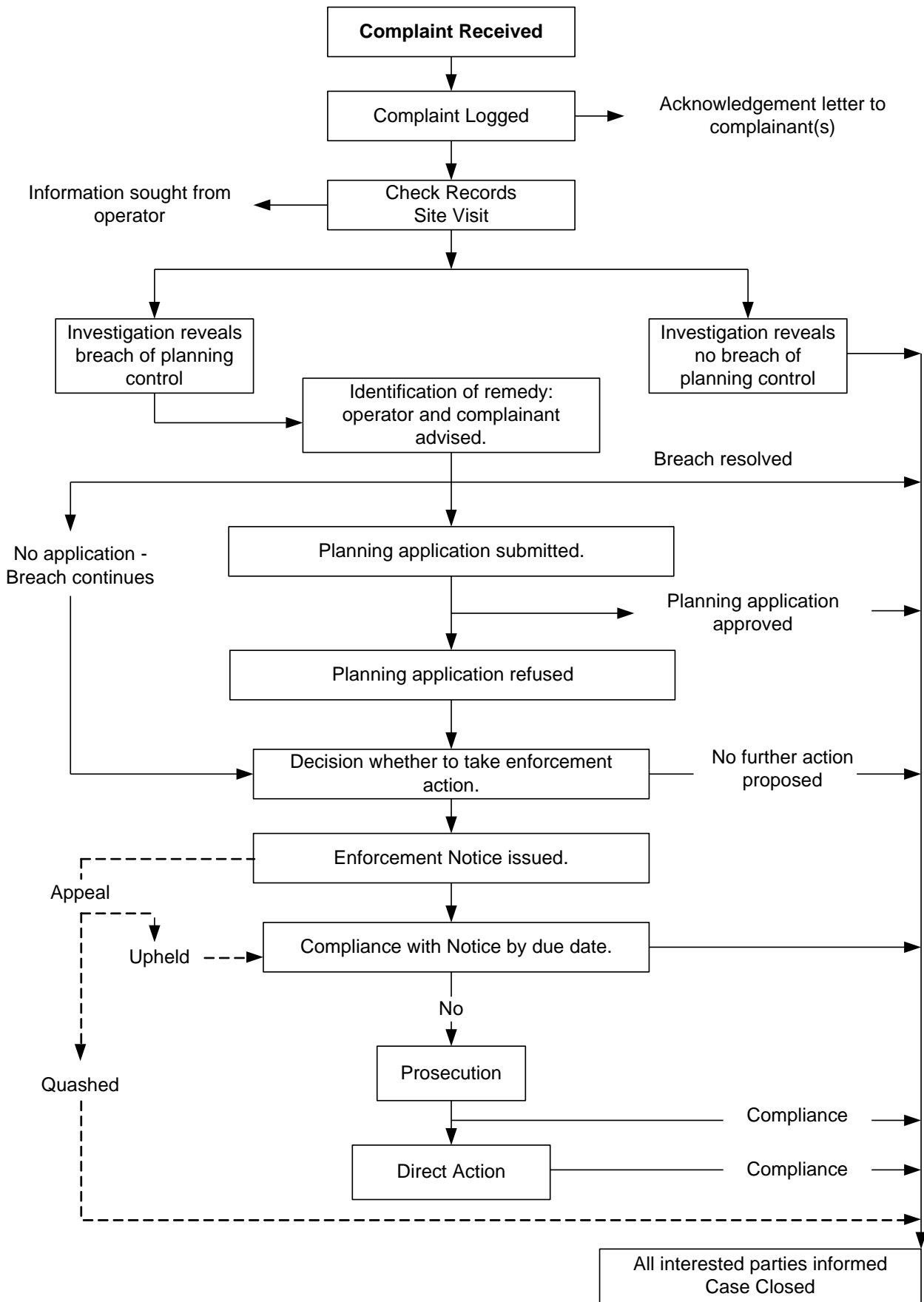
Level 5 – not exceeding £5,000

Statutory maximum fine - £20,000

Summary Conviction – in the Magistrates Court

Conviction on Indictment – in the Crown Court

ENFORCEMENT FLOWCHART



APPENDIX G: The Simple Caution



SIMPLE CAUTION (COMPANY)
HOME OFFICE CIRCULAR 16/2008

CASE REFERENCE: COMPANY NAME: COMPANY REGISTERED ADDRESS: COMPANY REGISTERED NO:	
--	--

DATE of OFFENCE(S): PLACE of OFFENCE(S): BRIEF CIRCUMSTANCES of OFFENCE(S):	
--	--

Please read the declaration below and make sure you understand it before you sign.

1. The company admits to committing the offence(s) shown above. A simple caution is not a criminal conviction, but I understand that details of the caution may be kept on any national convictions databases.
2. If new evidence comes to light suggesting that the offence(s) the company has committed are more serious, you might still take legal action against the company.
3. If there are any victims as a result of these offences, they might still take civil action against the company and you might give the name and address of the company's registered office to the victims so they can do this.
4. If the company is charged with another offence and we go to court, you will tell the court that the company has received this simple caution.

5. If the company applies for certain licences connected with the business, e.g. under the Consumer Credit Act 1974 or Licensing Act 2003, this caution may be taken into account in any decision whether to issue any licence.
6. I also understand that in some circumstances the company may be under a duty to disclose the existence of this Caution.

DECLARATION

**I have read and understand all this information.
I hereby declare that I**

I am authorised by the company to admit the offence(s) described above and agree to accept a Caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should the Company be found to be infringing the law in the future. I further understand that this Caution may be cited should the Company subsequently be found guilty of an offence by a Court of Law. I also understand that in some circumstances the company may be under a duty to disclose the existence of this Caution.

NAME (*Block capitals*) _____

SIGNED: _____

POSITION WITH THE COMPANY _____

DATED THIS _____ **DAY of** _____ **20**



SIMPLE CAUTION (INDIVIDUAL)
HOME OFFICE CIRCULAR 16/2008

CASE REFERENCE: OFFENDER'S SURNAME: FORENAME(S): NATIONAL INSURANCE No.: ADDRESS: DATE of BIRTH:	
DATE of OFFENCE(S): PLACE of OFFENCE(S): BRIEF CIRCUMSTANCES of OFFENCE(S):	

Please read the declaration below and make sure you understand it before you sign.

- 1 I have admitted to committing the offence(s) shown above. A simple caution is not a criminal conviction, but I understand that details of the caution may be kept on any national convictions databases.
- 2 If new evidence comes to light suggesting that the offence(s) I have committed are more serious, you might still take legal action against me.
- 3 If there are any victims as a result of these offences, they might still take civil action against me and you might give my name and address to the victims so they can do this.
- 4 If I am charged with another offence and I go to court, you will tell the court that I have received this simple caution.
- 5 If I apply for certain licences connected with my business, e.g. under the Consumer Credit Act 1974 or Licensing Act 2003, this caution may be taken into account in any decision whether to issue me with a licence.

- 6 If I already work in a job which is included in the list of notifiable occupations (these are jobs where you are in a position of trust or responsibility, for example, teachers, care workers, taxi drivers, soldiers and doctors), you might tell my employer about this simple caution. (I can ask you for a copy of the full list of notifiable occupations.)
- 7 If I apply for certain jobs, either paid or unpaid, that need me to have a criminal records check (CRB check), you might give my new employer information about this simple caution. (CRB checks are needed for nearly all jobs where you work with children or vulnerable adults, as well as for other sensitive jobs involving a high level of trust.)
- 8 I understand that accepting this simple caution may mean that some countries will not allow me to live there permanently, and some may not allow me to visit (for example, on business, for a holiday or as a student).

DECLARATION

**I have read and understand all this information.
I hereby declare that I**

admit the offences described above and agree to accept a caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should I be found to be infringing the law in the future. I further understand that this caution may be cited should I subsequently be found guilty of an offence by a Court of Law. I also understand that in some circumstances I may be under a duty to disclose the existence of this caution.

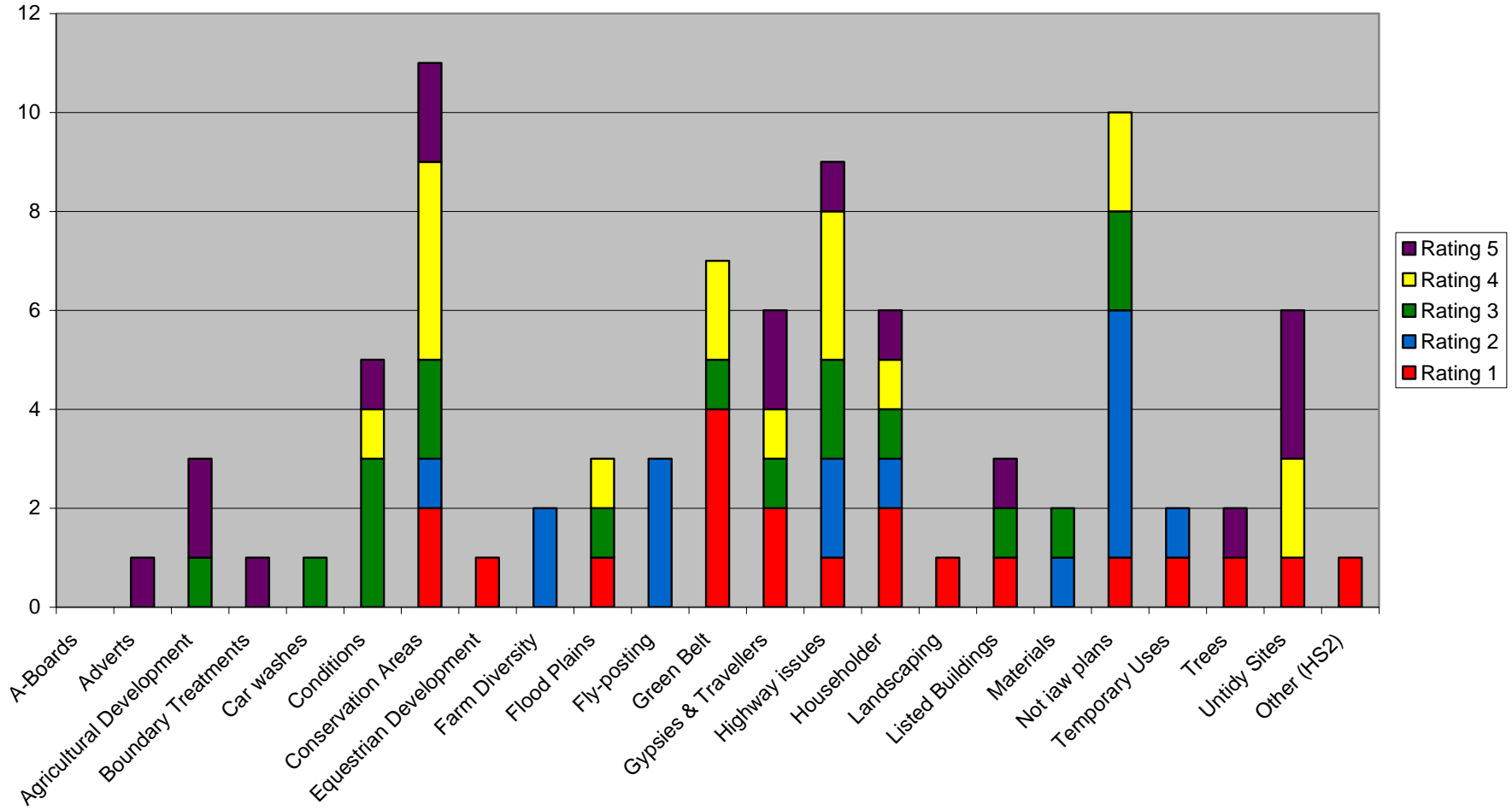
NAME (*Block capitals*) _____

SIGNED: _____

DATED THIS _____ **DAY of** _____ **20**_____

Appendix H – Consultation with Town and Parish Councils.

FREQUENCY OF RATINGS



CATEGORIES

