

# Local Planning Enforcement Plan

How Milton Keynes will manage and prioritise  
Planning Enforcement

Planning, January 2021



MK

milton keynes council



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## Executive Summary

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

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

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

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

Further information about the Council's planning enforcement policies and how to report planning breaches is available online: <https://www.milton-keynes.gov.uk/planning-and-building/report-it-planning-enforcement>.

## Introduction

- 1.1 The planning system is concerned with works which physically alter the land or change its use. It exists to promote the best use of land and to safeguard individuals, business and the environment from harmful development. Planning decisions are taken within a legislative and regulatory framework and in accordance with national and local planning policy. Effective enforcement of planning is necessary to protect the amenity and environment of the Milton Keynes borough. Investigation powers are entrusted to LPAs by Parliament to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.
- 1.2 The primary role of enforcement is to investigate alleged breaches of planning control and bring about reasonable and proportionate remedial action where appropriate. Development requiring planning permission includes:
  - Most types of building works;
  - Engineering works; and
  - Material changes of use to land including buildings.
- 1.3 Development undertaken in breach of a planning permission may include failure to comply with plans or conditions which are incorporated into a planning permission. Planning enforcement also investigate complaints about untidy land or buildings which adversely affect amenity. Consent is also required for works to listed buildings, works to protected trees and to display advertisements.
- 1.4 In most cases, planning breaches do not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop or Temporary Stop Notice, most unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued, which requires steps to be taken (and appeal procedures are exhausted or time barred) and the time for compliance has expired, it is a criminal offence not to take those required steps.
- 1.5 Planning enforcement action cannot be undertaken if there are no breaches of planning control, for instance where the dispute concerns boundary disputes, covenants, deeds or civil issues. Neither can it be taken against development permitted by Development Orders issued by Central Government, that is development that benefits from permission by virtue of the General Permitted Development Order (GPDO) or changes of use by the Use Classes Order (UCO) provided that the requisite limits and conditions are met. Similarly, display of advertisements that comply with specific conditions and limitations within the relevant class of the Advertisement Regulations may not require advertisement consent from the Local Authority.

- 1.6 In certain cases, developments may become established in planning law and therefore 'immune' from enforcement action by virtue of the passage of time. This is a complex area of planning law.
- 1.7 Undertaking work without the relevant permissions and consents or in breach of conditions can lead to serious consequences so it is advisable to seek professional advice from the Council or from a Planning Agent if you are proposing to undertake works.
- 1.8 The Enforcement Plan does not prevent a case by case assessment. Planning considerations must be the basis for the decision, and the investigating officer must judge and report on the impact of the unauthorised development, the options available and the time for compliance. Each case will be considered on its merits, the facts and the degree of harm. We will use powers proportionately and will target our resources at the most harmful breaches of planning control. We will consider the expediency of enforcement action in the context of local and national planning policies and will consider whether it is appropriate to use formal powers (set out in Appendix 1) to seek to remedy breaches of planning control.
- 1.9 The Enforcement Plan sets out the areas of priority, the framework for assessment and whether formal action is required. This enables effective, consistent and transparent decision making. The Planning Enforcement team aim to deal with complaints in a clear and consistent manner based on a set of agreed objectives. The NPPG and NPPG make it clear that planning enforcement action should be proportionate. The Enforcement Plan lays down clearly and transparently what is a priority for investigation and the action taken to be proportionate. Each investigation will be on a case by case basis.
- 1.10 The Council is responsible for maintaining the statutory register of enforcement and stop notices as required under Section 188 of the Town and Country Planning Act 1990.
- 1.11 Decisions made by officers which affect the rights of individuals to be recorded and published as soon as practicable after the decision. The record must contain, the title of the decision-making officer and the date the decision was taken along with a record of the decision taken along with reasons for the decision.
- 1.12 Such decisions are to be retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information.
- 1.13 The Enforcement Plan includes appendices providing information on trees, advertisements, untidy land (Section 215 of the Town and Country Planning Act 1990) and High Hedge complaints.
- 1.14 The enforcement register is available on the website here:

<https://www.milton-keynes.gov.uk/planning-and-building/report-it-planning-enforcement>

## Context

### Plan:MK

- 2.1 Plan:MK (adopted March 2019), together with Supplementary Planning Guidance and Neighbourhood Plans set out the planning policies against which breaches of planning control will be assessed. Any adopted or emerging documents would also be taken into account in decision making.

### The National Planning Policy Framework

- 2.2 Enforcement is referred to in paragraph 58 of the National Planning Policy Framework (NPPF) 2019. The discretionary and proportionate nature of enforcement is stressed, and it is suggested that local planning authorities should consider publishing an Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

### The Planning Practice Guidance

- 2.3 The Planning Practice Guidance (NPPG) sets out fourteen options available to local authorities to tackle possible breaches of planning control in a proportionate way. These are described in the Planning Enforcement Toolkit (see Appendix 3).

### Legal Context

- 2.4 The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. The Council has powers to investigate and take action to remedy breaches within the relevant legislation and regulations including the Town and Country Planning Act 1990 (as amended), the Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.5 The Localism Act 2011 inserted into the Town and Country Planning Act 1990 powers to restrict tactics that were seen as abuses of the planning system, such as twin tracking an appeal against an enforcement notice, limiting applications for retrospective approval where an EN has been issued, the power to apply to remove time limits for deliberately concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti.
- 2.6 The Council can consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice should it be in the public interest to do so.

## Service standards

- 3.1 The Council's existing practices have sought to achieve the principles of good enforcement practice.

### Openness

- 3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the Council's website supporting technical details and links to government guidance. We will keep as much as possible in the public domain whilst protecting the confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.
- 3.3 The identity of complainants (excluding Parish/Town Councils and Milton Keynes Councillors) is kept confidential and we will ensure that information relating to individuals and business is treated carefully. This will be in accordance with the Data Protection Act 2018, implementing the General Data Protection Regulations (GDPR), whilst also complying with the Council's statutory responsibilities in respect of Freedom of Information Act and Environmental Information Regulations. We will not disclose correspondence or detailed information on an investigation to a third party but will summarise what action (or inaction) is complained about and what we have done. Most matters are resolved without formal action. If a matter does proceed to formal action the Notice will be published on the Council's web site.

### Proportionality

- 3.4 We will deal with each case on a priority basis following an initial investigation to establish the facts and will refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to any undertakings given, the history of the site or use and whether time limits are approaching which would confer immunity on unlawful development.
- 3.5 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear and flagrant breach of a planning decision or a serious case of harm.

### Consistency

- 3.6 We seek to manage enforcement cases with maximum efficiency and standard procedures, making the best use of technology and electronic communication. Our standard documents in relation to the 'Planning Enforcement Toolkit' set out in Appendix 3 which are subject to



the most up to date government guidance for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve, as far as practicable, a fair and equitable outcome.

### Helpfulness

- 3.7 We aim to be polite but firm with the those that are alleged to be in breach of planning control. Where reasonable, we will meet when requested, to try and achieve a satisfactory outcome. Complainants and Councillors will be kept informed of progress. We will ensure that Parish Councils and Ward Councillors are notified when any Notices are served in the relevant area.
- 3.8 We will keep reliable and up-to-date records of all Planning Enforcement Investigations.

## Identifying and reporting unauthorised development

- 4.1 To report an alleged breach of planning control, a complainant is required to complete the online form. The online form can be found at: <http://www.milton-keynes.gov.uk/planningenforcement>
- 4.2 The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters where there is a potential breach of other legislation will be referred onto relevant regulatory authorities, where it is not a civil matter between individuals or landowners.
- 4.3 Civil matters are private matters between the respective parties and can include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.
- 4.4 The planning history of a site is always investigated to establish any planning permissions or whether the works are permitted development.
- 4.5 An assessment is then made as to the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.
- 4.6 Anonymous complaints about a third party will not be investigated. The identity of persons reporting suspected breaches will be treated as confidential by Councillors and officers of the Council. If a member of the public wishes to be anonymous then they must go through either their local Ward Councillor or Parish Council to submit the online form on their behalf.



- 4.7 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to, or support for, an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.
- 4.8 The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the LPA are set out in the Planning Enforcement Toolkit (see Appendix 3).

## Enforcement priorities

- 5.1 Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. It is essential to use Council resources to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.
- 5.2 Complaints will be prioritised on receipt based on what appears to be their significance on receipt and initial background checking in accordance with the enforcement priorities (see Appendix 1). Priority will be reassessed and kept under review when the site has been visited and as and when further information becomes available.
- 5.3 All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.
- 5.4 Enforcement cases may require repeat site visits, negotiation, and formal action before the breach is resolved. When these occur, Enforcement Officers will keep original complainants informed of progress and indicate arrangements for this in the initial response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation.

## Site Visits

- 5.5 Planning and Listed Building legislation gives authorised officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. The Planning Enforcement Toolkit, at Appendix 3, has the statutory references. Due to the nature of enforcement work, it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours' notice be given.
- 5.6 Whilst on site visits Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where they considers an offence has occurred, interview an alleged contravener 'under caution' where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.
- 5.7 After the first site visit (and also during the investigation process) the Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.

## How we decide if an investigation is complete

- 6.1 We would consider that an investigation is complete when one of the following points has been reached:
- the investigation identifies that no breach in planning control has occurred or that due to the passage of time that no action can be taken;
  - an alleged breach of planning has been identified but then resolved by negotiation;
  - a planning application or other form of application has been submitted and approved following the investigation;
  - a breach in planning control has been identified, including when an application has been requested but not submitted, and it is not considered expedient to take formal action; or
  - formal action has been taken through issuing a relevant Notice, as set out in Appendix 3.
- 6.2 Prior to taking formal enforcement action or closing a case as not expedient, it is necessary to assess the harm resulting from any unauthorised development. This is needed to adjudge whether such a decision may be considered controversial, in accordance with the Council's

scheme of delegation on Development Management matters and may result in the referral of some cases to the Council's Development Control Committee.

6.3 Further investigation may be necessary when formal enforcement action has been taken where for instance:

- a right of appeal has been exercised against a Notice and new information relevant to the case comes to light;
- a Notice is issued and not complied with or another criminal offence under the Planning Acts has occurred, a decision is made involving the Council's legal advisors to assess whether it is in the public interest to take formal action; and/or
- a compliance check needs to be undertaken in relation to an existing enforcement notice.

## Improving planning enforcement

- 7.1 The Council will monitor the length of time taken from the receipt of information regarding an alleged breach of planning control to the initial investigation with specific reference to the timescales shown within Appendix 1 attached to this document. This monitoring is carried out in order to ensure the timely progression of all complaints received.
- 7.2 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact as necessary with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers, as well as informing and updating Parish and Ward Councillors.
- 7.3 The outcome of a compliance check will be reported to the applicant, agent, complainant or landowner. Any noncompliance will be addressed through usual enforcement practice.
- 7.4 The Council monitors Planning Conditions attached to Planning Permissions and other consents using the process identified in the flow chart (see Appendix 2).

## Appendix 1: Prioritisation of Enforcement Cases

Priority	Description	Response time
<b>High</b>	<ul style="list-style-type: none"> <li>• Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a Conservation Area or to the open countryside</li> <li>• Unauthorised works to a Listed Building</li> <li>• Irreversible harm to the amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area</li> <li>• Non-Compliance with planning conditions</li> </ul>	Within 2 working days
<b>Medium</b>	<ul style="list-style-type: none"> <li>• Breach which results in serious demonstrable harm to the amenity of the Neighbourhood</li> <li>• Unauthorised development in a designated area</li> <li>• Source of significant public complaint</li> </ul>	Within 10 Working Days
<b>Low</b>	<ul style="list-style-type: none"> <li>• Unauthorised development which is not the source of significant public complaint</li> <li>• Erection of Advertisements</li> <li>• Untidy Land</li> </ul>	Within 20 working days
<b>No Action</b>	If more appropriate to be investigated by another department, agency or organisation or a matter not subject to planning control.	N/A

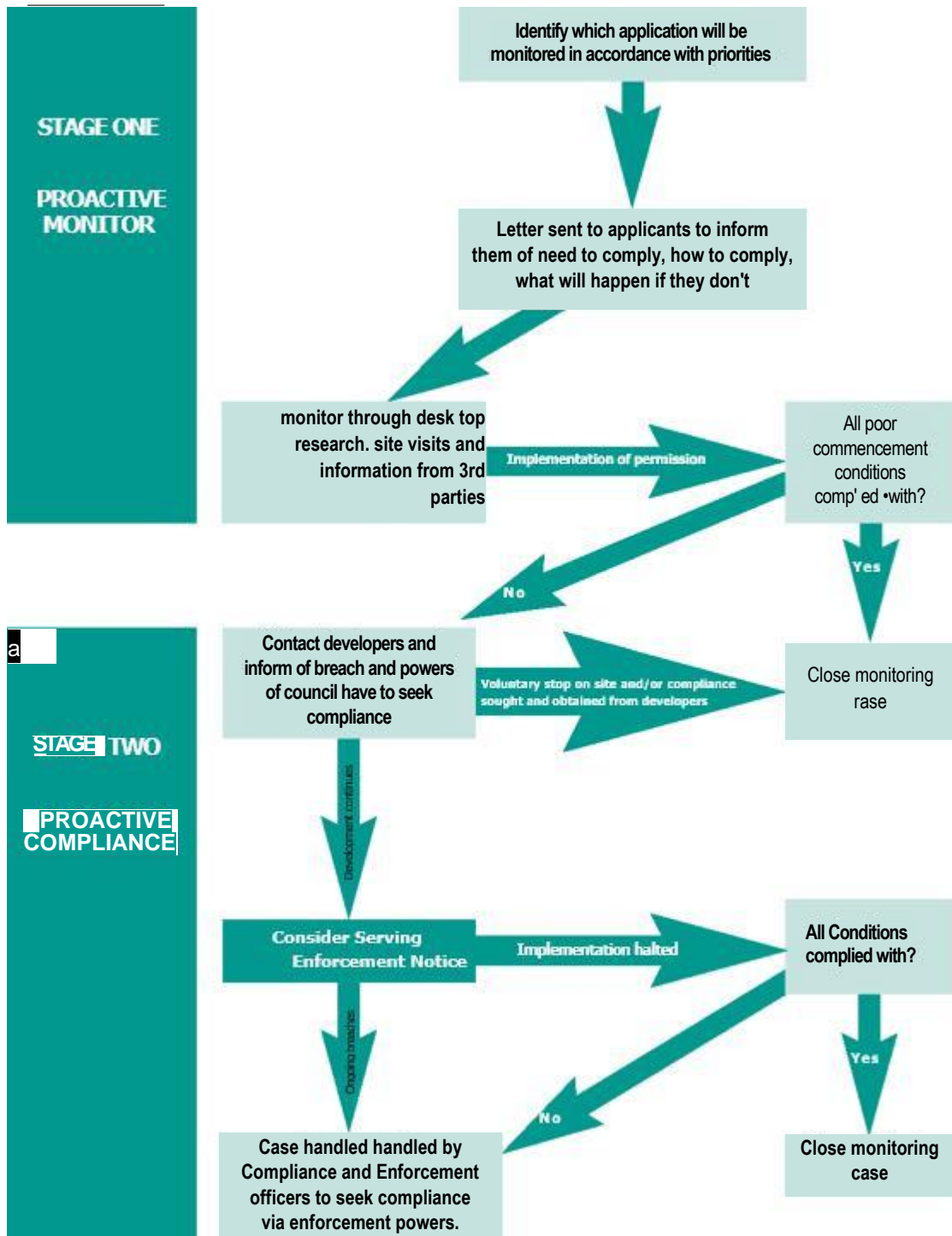
## Prioritisation with regard to unauthorised Tree Works

Response Level	Response Criteria	Response time
1	Ongoing works likely to have a significant impact on public amenity	Within 1 working day
2	Completed works likely to have a significant impact on public amenity	Within 5 working days
3	Other works including longstanding issues	Within 28 working days



Appendix 2: Conditions Monitoring

Flow chart for- monitoring of Planning Conditions.



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

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

### **No formal action**

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

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

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

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

### **Invite Retrospective planning application**

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

### **Planning Contravention Notice**

6. This can often be the first formal step in resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may advise of a date, time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial



works will be considered by the authority. An opportunity to make such representations must be made. This is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information referring to these rights.

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

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

### **Rights of Entry**

8. The Town and Country Planning Act specifies the purposes for which entry to land including buildings may be authorised, namely to ascertain or determine:
  - whether there is or has been any breach of planning control;
  - whether any of the LPA's powers should be exercised;
  - how such power should be exercised;
  - whether there has been compliance with any requirement arising from earlier enforcement action.
9. A record should be made of the inspection with appropriate photographs. Entry to a dwelling house cannot be demanded as a right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates' Court for a warrant to allow entry. The PPG refers to these rights. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

### **Breach of Condition Notice**

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

## **Enforcement Notice**

11. The notice may be served up to four years after substantial completion of building operations or ten years after a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know exactly what, in the LPA's view, constitutes the breach of planning control and what steps the LPA requires to be taken to remedy the breach.
12. An enforcement notice may "under enforce", by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect; however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. The PPG refers to these rights.

## **Planning Enforcement Order**

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

## **Stop Notice**

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

## **Temporary Stop Notice**

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

there are limited grounds for compensation where a Notice is found to be defective. The PPG refers to these rights.

### **Listed Building Enforcement Notice**

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

- there are no application fees for listed building consent or relevant demolition;
- there are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;
- carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;
- carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990.

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

### **Injunction**

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

- photographic evidence of the persons concerned;

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

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

### **Unauthorised Advertisements**

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

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

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

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

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

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

24. This may be used in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the

Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

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

### **Section 215 Notices**

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

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

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

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

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

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

## **Other Enforcement Powers:**

### **High Hedge Enforcement**

31. If a complaint has been properly made and we decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti-Social Behaviour Act 2003 and is known as a remedial notice. This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although we cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners. While there is a default power for the Council to carry out works to a High Hedge, enforcement by prosecution and Court order is considered better practice.
32. There are also powers in Section 219 of the Town and Country Planning Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier.
33. The High Hedges Procedure, complaint form and useful links to legal and national guidance is available to view on the Council's website. <https://www.milton-keynes.gov.uk/planning-and-building/report-it-planning-enforcement>.

## **Tree Protection Enforcement**

### **Good Planning**

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

### **Tree Protection**

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

## Compliance

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

## Specific Tree Protection

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

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

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

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

- a) Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates' Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be "destroyed" for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.
- b) Secondly, anyone who carries out works to trees that are not likely to destroy it, are liable, if convicted in the Magistrates' Court, to a fine of up to £2,500. Any proceedings for



offences in this category must be brought within six months of the date the offence was committed.

41. Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that the:
- defendant has carried out, caused, or permitted works on the tree;
  - tree was protected;
  - tree works were carried out without the Authority's consent;
  - works were not exempt works.
42. If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, which exemption applies.
43. Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.
44. When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council's Arboriculture Officer will also make a site visit.
45. Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.
46. If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, they will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to. In some cases, it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the P.A.C.E and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.
47. The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 2018, implementing the GDPR and the Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a

witness and in that case, they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

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

#### **Possible actions by authority**

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

- initiate a prosecution (which may be for destroying the tree or for lesser works to it);
- administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence;
- require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990 or serving a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;
- informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs. Decisions as to what action to take will be taken in the public interest; ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually. Prosecutions will be considered against the tests of evidential value and public interest; these will be dealt with by the Council's legal advisors. Cautions may be used in accordance with guidance from the legal section.

#### **Replanting**

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

## Planning Enforcement Contact Details

Phone: 01908 691691

Email: [planning.enforcement@milton-keynes.gov.uk](mailto:planning.enforcement@milton-keynes.gov.uk)

By post: **Milton Keynes Council**

Civic Offices

1. Saxon Gate East

Central Milton Keynes

MK9 3EJ

### Useful websites:

National Policy

[www.legislation.gov.uk](http://www.legislation.gov.uk)

<https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>

Considerate Constructor Scheme

<https://www.ccscheme.org.uk/>

Royal Town Planning Institute

<https://www.rtpi.org.uk/find-your-rtpi/networks/national-association-of-planning-enforcement-nape/>

### Other useful documents

These can all be found online

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Town and Country Planning Act 1990 Section 215: Best Practice Guidance
- Planning Inspectorate — Enforcement Appeals Guides



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