

Planning Enforcement Plan

September 2017
(reviewed November 2021)



Section 1 The purpose of planning enforcement

The council's planning enforcement function is a vital part of the development management process and ensures that where development is undertaken without planning permission, action is taken to minimise or remove any harm which is being caused.

The council is committed to ensuring that all valid **and** registered enquiries relating to an alleged breach of planning control are duly investigated and the appropriate action taken. These actions range from taking no action if there is no breach which can be dealt with under planning powers, through to formal enforcement action and prosecution proceedings if necessary.

Every year the council receives a large number of enquiries relating to alleged breaches of planning control. The council appreciates that local people play a vital role in reporting suspected planning breaches which require further investigation, in order to help protect residents and businesses within the community from the sometimes harmful effects of unauthorised development.

The aims of the enforcement plan:

- **To set out the council's commitment to enforcing planning control in the borough and its policies for achieving this**
- **To be clear on the complaints process as well as explaining what falls in and out of the council's planning enforcement powers**
- **To explain how the planning enforcement process works and to set out what residents can expect if they submit a planning enforcement complaint to the council**
- **To explain what you should do if you are the subject of an enforcement complaint**

The legal basis for the planning enforcement policy

Planning legislation empowers the council to control and manage development and use of land and buildings in the public interest. These powers are set out in the Town and Country Planning Act 1990 (as amended), which defines what can be considered as 'development' and sets out the processes for enforcing against unauthorised development. The Act defines a breach of planning control as:

"the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted."

The Act is supported by the National Planning Policy Framework, adopted by Government in 2012, which provides guidance to Local Authorities in terms of how they should manage breaches of planning control and when enforcement action should be taken. Paragraph 207 of the Framework states the following:

"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."

Section 2 What can the planning enforcement team investigate under its powers?

Residents often report issues to the council which, although they relate to buildings or land, are not always covered under planning enforcement powers. Below is a guide to the complaints which can, and cannot, be investigated by planning enforcement. Where appropriate, the guide also includes contact details for the relevant council department which may be able to assist if the issue is not planning related.

Planning enforcement issues

- Works to **listed buildings**
- **Demolition** of buildings in a **Conservation Area** (and some buildings in other locations)
- Works to trees subject of a **Tree Preservation Order (TPO) or in a conservation area**
- **Building** without consent (i.e. extensions, outbuildings, fences, walls)
- **Change of use** of buildings or land
- **Advertisements** and signage
- **Non-compliance with conditions** attached to planning permissions
- **Not building in accordance with the approved plans** of planning permissions
- **Untidy land** where it affects the amenity of the area
- **Engineering operations**, such as raising of ground levels or earth bunds
- **Deliberate concealment** of unauthorised building works or changes of use

Non-planning enforcement issues

- **Internal works** to a non-listed building
- **Obstruction of a highway** or public right of way (these matters are dealt with by the police - dial 101)
- **Temporary structures/fencing** associated with building works
- **Parking caravans** on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity
- Boundary disputes, land ownership disputes or trespass issues (these must be raised with the people involved or failing that, through a solicitor)
- Covenants imposed on **property deeds** (these must be raised with the people involved or failing that through a solicitor)
- Any development or works that are **exempt from planning** controls under the Town and Country Planning (General Permitted Development) Order 2015 or by any Local Development Orders. Check this here:

www.planningportal.co.uk/info/200125/do_you_need_permission

www.dudley.gov.uk/resident/planning/planning-services/local-development-order/

- **Advertisements which do not require advertising consent** under the Town and Country Planning (Control of Advertisements, England) Regulations 2007. A booklet providing guidance on this can be found here:
<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>
- **Dangerous structures or other health and safety issues** (these must be raised with the council's dangerous structures team on 0300 555 2345)
- Activity at a neighbouring site which the complainant feels could **devalue their property**
- **Unsociable working hours** or practices on building sites (e.g. noise or dust from building work)
- Issues relating to **party walls**. A booklet providing guidance on party wall matters can be found here:
www.gov.uk/guidance/party-wall-etc-act-1996-guidance

Section 3 How can residents report a planning enforcement issue to the council?

Once you have checked to make sure there is a planning breach, in order for the planning enforcement team to investigate your complaint you will need to submit a planning enforcement enquiry form. This is necessary in order for us to obtain a full picture of the situation and avoid allocating resources to enquiries which cannot be taken further.

You can obtain an enquiry form by:

- Visiting www.dudley.gov.uk/resident/planning/planning-services/planning-enforcement/
- Emailing planning.enforcement@dudley.gov.uk
- Calling **01384 814136**
- Writing to Planning Enforcement, Council House, Priory Road, Dudley, West Midlands DY1 1HF
- Asking for a form in person at 4 Ednam Road, Dudley, West Midlands DY1 1HL

Submit the completed enquiry form online, via email, in writing or in person using the details above.

PLEASE NOTE: Enquiries received without a completed enquiry form will be deemed invalid and will not be investigated.

All complainants are required to provide their full name and a postal address. Anonymous complaints and those made by telephone will not be investigated. This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious complaints. It is also important that, should legal action become necessary in relation to a complaint, the council can state in court that the matter was reported by a local resident. All details provided by a complainant will always remain totally confidential, unless the information is required for use as evidence in court. If this does happen, the council will make all reasonable efforts to check with you before disclosing any information.

We may also need to contact you prior to any site inspection being carried out to look into your complaint, for the team to seek further information or clarification from you regarding the details of the alleged breach. This is because some development, particularly that which is carried out at domestic properties, is exempt from planning control as it qualifies as 'permitted development', meaning that planning permission is not required. It may therefore be the case that the development in question does not need permission and therefore cannot be enforced against. You are strongly advised, prior to submitting any enquiry, to check using the web links in Section 2, whether the particular development or activity which is causing you concern is exempt from planning permission.

PLEASE NOTE: the council will not investigate enquiries relating to matters which are outside of the remit of the planning system or where the development or activity qualifies as 'permitted development' and does not require planning permission.

Section 4 What happens when a valid complaint is received?

Upon receiving a valid complaint, the planning enforcement team will log the details and begin investigating as quickly as possible. Once the complaint has been confirmed as valid and has been logged, an acknowledgment letter will be sent out immediately. All registered complainants' details are kept confidential. The council will not disclose complainants' personal or contact details or any other information that could help identify the person who registered the enquiry, and will do everything possible to protect the anonymity of anyone who submits an enquiry, notwithstanding the advice in Section 3. This information will be held in full accordance with the provisions of the Data Protection Act 1998 and in accordance with the Freedom of Information Act 2000.

How we deal with different cases

The council understands that all issues raised with the planning enforcement team are very important to the person who has reported them, and that planning matters can cause major concern and often distress. As the council receives a large number of planning enforcement enquiries every year and has limited resources for investigating them the planning enforcement team has a system of prioritising complaints to make sure that the most serious or potentially dangerous issues are investigated most urgently.

Once a case has been assigned to a planning enforcement officer they will carry out an initial desk top assessment in order to establish the facts of the enquiry and to determine whether or not a site inspection will be necessary.

PLEASE NOTE: The council does not automatically visit every site which is the subject of an enforcement enquiry. A visit will be made only if it is necessary to further investigate the matter and establish the facts.

Priority system for planning enforcement investigations

Priority 1 (most urgent)

- Unauthorised works to listed buildings
- Unauthorised demolition of buildings in Conservation Areas
- Unauthorised felling of or works to trees protected by a Tree Preservation Order

(If an inspection is necessary, these sites will be visited on the day of receipt of a valid complaint if possible, or within one working day if not)

Priority 2

- Unauthorised development which could cause immediate serious harm to surrounding residents, businesses or members of the public (e.g. unauthorised changes of use resulting in noise or health or other pollution issues)
- Unauthorised development where prompt intervention by the council would reduce or prevent further harm being caused (e.g. unauthorised erection or conversion of buildings or serious breaches of planning conditions which are fundamental to the development)
- Minor unauthorised development and deviations from approved plans which are causing some harm to residents (e.g. extensions built larger than approved or with windows and doors in places different to shown on plans)

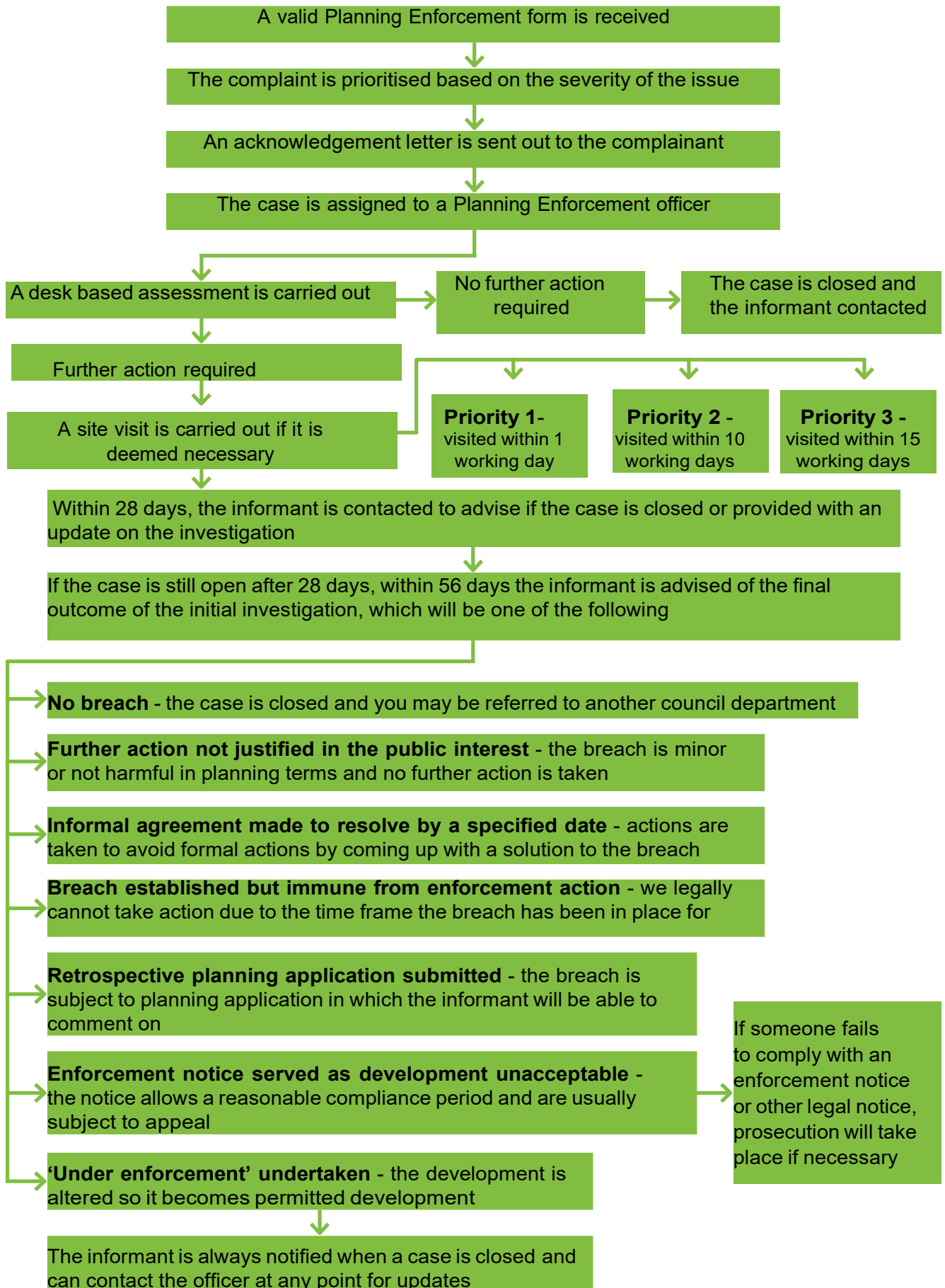
(If an inspection is necessary, these sites will be visited within 10 working days of receipt of valid complaint)

Priority 3

- Minor alterations which are not causing immediate harm but which may require permission, e.g. fencing, walls, advertisements, untidy sites
- Unauthorised development relating to existing residential dwellings, including extensions and alterations.
- Where buildings/structures are complete

(If an inspection is necessary, these sites will be visited within 15 working days of receipt of valid complaint)

Section 5 If a site visit is necessary, what happens after it has been carried out?



Once a site visit has been carried out to investigate an enquiry, the case officer will take the appropriate action to progress the matter. The case officer will be available throughout the investigation to respond to queries and phone calls and, as a minimum, will provide written responses to the complainant at certain points in the investigation (listed below).

It is important to note that, with the exception of works to listed buildings, works to protected trees, and the display of some advertisements, breaching planning control is not, in itself, an offence. The process of dealing with planning enforcement issues therefore requires time and, where appropriate, negotiation with the persons responsible. Formal action is taken as a last resort once all other attempts to resolve the issues have failed.

Following assessment and once appropriate course of action has been determined - a full response advising either that the case is closed and the reasons for this decision, or an update on the investigation up to that point and what is likely to happen with the case next. For example we may allow the defendant time to resolve the breach, allow the defendant time to submit an application, allow the defendant time to implement an agreed compromise or allow time for a formal enforcement notice to be served.

Upon closure, or progression to formal action - a further letter or email advising that the case has been closed or moved to the next stage for further formal action.

Possible outcomes of the investigation

- **No breach** - The investigation reveals that no breach of planning control has occurred
- **Further action not justified in the public interest** - The investigation reveals that there is a planning breach but that, in the council's judgment, it is minor in nature or is not harmful in planning terms
- **Informal agreement made with the landowner to resolve the matter by a specified date** - Planning legislation requires the council, where possible, to negotiate resolutions to planning breaches, thus avoiding formal action. If the investigation does reveal a planning breach, the council will seek, where possible, to negotiate with the responsible parties and agree an informal solution. This could mean, for example, allowing a landowner a set time period to tidy a piece of land, or to cease an unauthorised use. If these works to resolve or mitigate the breach are not undertaken within the requested period then formal action will be considered.
- **Breach established but now immune from enforcement action** - The investigation reveals that a planning breach has occurred, but that it has been occurring continuously for so long that it has now become immune from enforcement action. The complainant will receive confirmation of this, in writing, including an explanation of the legal circumstances relating to this type of planning breach. In cases relating to residential development or structures this period is normally four years. In other cases such as changes of use, advertisements and breaches of planning conditions, it is normally two years
- **Retrospective planning application submitted** - Where the investigation reveals that a planning breach has taken place, the landowner is entitled, should they wish, to submit a retrospective planning application seeking consent to retain the structure or continue the use. This means that the development will be subject to the planning application process and assessed against planning policies, taking into consideration the views of local residents. The planning team will advise the complainant of this in writing and provide the relevant details so that the complainant can submit any comments they may have regarding the development for

consideration during the application (the contents of the enforcement investigation file will not be carried over to that of the planning application as this is a public document). If the unauthorised development is deemed unacceptable, the council will not automatically invite a retrospective application, but will act to cease the unauthorised development within a reasonable timeframe. If a retrospective application is not received within the requested period then formal action through will be considered

- **Enforcement Notice served because development deemed to be unacceptable** - In cases where the investigation reveals that a planning breach has occurred, and where the council is of the view that the development is clearly not acceptable and that harm can be demonstrated, it will if necessary serve a Planning Enforcement Notice on the responsible parties. In serving a notice the council is again required to allow a reasonable compliance period, and notices are usually subject to an appeal process. There are various enforcement notices which the council is able to serve if negotiation is not possible. If an enforcement notice is served, the case officer will explain to the enquirer which type of notice is being served and how it works (the formal process for the service of notices can be viewed here <http://www.dudley.gov.uk/resident/planning/planning-services/planning-enforcement-/types-of-enforcement-notices/>)
- **'Under-enforcement' undertaken** - In instances where unauthorised development has occurred which is unacceptable, but could be made acceptable by an alteration or a change in operation, the council is required by planning legislation to seek to 'under-enforce'. This means that the council may not require an unauthorised development to be reversed entirely, but may require it to be altered in a way which makes it acceptable. For example, in a case where a wall was built too high but would be acceptable if its height were to be reduced, the council would require that it was reduced to the appropriate height, rather than forcing the builder to take it down altogether. Where possible, the council will seek to negotiate, using under-enforcement, to reach a resolution to a planning breach which is fair and reasonable to all parties. If the council agrees to under-enforce a planning breach by negotiating with the person responsible, the enquirer will be informed of the agreed solution and the reasoning behind it

In all cases the complainant will receive confirmation, in writing, explaining the outcome of the investigation and the reasons why this is the case. If further action is to be taken in relation to the subject of the complaint, the next steps will also be explained in this letter. If the issue can be investigated by another service within the council, the complainant will be referred to them for further attention.

Prosecutions

It is not an offence to carry out development without planning permission. However, failing to comply with a Planning Enforcement Notice or other legal notice issued by the council is an offence for which those responsible can be prosecuted. In cases where the council has served an enforcement notice and the persons responsible fail to comply by the set deadline, they will have committed an offence for which, if the council deems it to be in the public interest, will proceed with prosecution. In deciding whether or not to prosecute a person for failing to comply with an enforcement notice, the council will be mindful of the likelihood of any prosecution being successful, and whether or not it represents a responsible use of public resources.

In determining whether prosecution action is appropriate the Local Planning Authority will have regard to the following:

Does the LPA have sufficient evidence?

- Is there sufficient evidence to provide a realistic prospect of conviction on each charge?
- Consider what the defence case may be and how it is likely to affect the prospects of conviction.
- Can the evidence be used in court?
 - Could the evidence be excluded by the court?
 - Is the evidence reliable?
 - Is the identification of the defendant reliable?
 - Are the witnesses reliable and credible?

Is prosecution in the public interest?

Examples of public interest may be:

- Conviction likely to result in a significant sentence
- The offence was pre-meditated
- Prosecution would have a significant positive impact on maintaining community confidence in planning
- There are grounds for believing that the offence is likely to continue or be repeated
- There are previous relevant previous convictions or simple cautions
- The offence was committed in order to facilitate more serious offending
- Advantage was taken of a vulnerable victim

Common public interest factors tending against prosecution:

- The court is likely to impose a nominal penalty
- The seriousness and consequences of the offence can be dealt with by a simple caution
- Offence was committed as a result of a genuine mistake or misunderstanding (balanced against seriousness)
- Loss/harm is minor and result of single incident
- Defendant has put right the loss or harm
- Long delay between offence and report/trial (with exceptions)
- Prosecution will be likely to have serious consequences on a victims health
- Defendant suffering from significant mental or physical ill health (balanced against seriousness and risk of offence being repeated)

Section 6 What should I do if someone makes a complaint against me?

The council recognises the anxiety that is caused by finding out that someone has complained about alleged development or activity on your property. It is therefore important to us to make sure that people or companies who are the subject of the planning enforcement complaints are treated fairly and given the opportunity as part of the investigation to explain the situation from their perspective.

If you have received a visit or a letter from an enforcement officer explaining that a complaint has been made against you:

DO make contact with the council at the earliest opportunity to discuss the complaint, whether this is by responding to a letter or holding a meeting with the enforcement officer at the site. In many cases a short meeting with the enforcement officer, or even a telephone conversation, can be sufficient to clear up whether or not a planning breach has occurred and whether or not enforcement action will be required. If you make contact with the planning enforcement team early on, they will be able to:

- **Confirm whether or not a planning breach has occurred** and whether or not further action will be necessary on your part in order to resolve the matter
- **Advise** you on the next steps in the investigation, whether that be:
 - Inviting you to submit a retrospective planning application seeking permission for the development/activity which has taken place
 - Negotiating a solution with you to address the problem in a way that is fair both to you and to the complainant. This could mean reducing the scale of development or activity, altering or reconfiguring it, or relocating it
 - Requesting that you reverse the unauthorised development or cease the unauthorised activity within a reasonable timeframe

Planning enforcement officers will always seek, where possible, to agree a negotiated solution to an issue rather than pursue formal action. It is therefore in your interests, should a complaint be made against you, to co-operate with the enforcement team and to make sure that the investigating officer is aware of your perspective and has the fullest possible information available to them. This will enable them to give you the clearest possible advice when handling the complaint in terms of what you need to do in order to avoid formal action and potentially prosecution. If a request is made to resolve or mitigate the breach, or for a retrospective application to be submitted the Local Planning Authority will provide a reasonable time scale to comply with this request. However, if the necessary actions are not undertaken then the Local Planning Authority will consider taking formal action to mitigate or resolve the breach.

DON'T ignore the issue and pretend that you aren't aware of the complaint. When the council receives a complaint from a member of the public it is obliged to carry out all necessary investigations to get to the bottom of it. The law provides the council with a series of tools in order to make sure this happens. This means that the matter will not 'go away' if you ignore the correspondence you have received regarding the complaint which has been made against you. If you do not engage with the council from the outset to address the matter, one of the following will be likely to happen:

- A **Planning Contravention Notice** will be issued requiring you to answer a series of questions

regarding the complaint. Failure to respond to such a notice and provide the requested information is an offence which you will be prosecuted for if necessary

- The council will use its **powers of entry** to access the site of the alleged planning issue and investigate further. Obstructing an officer who needs to gain access to investigate a complaint is also an offence
- You will be called to an **interview** under conditions set out in the Police and Criminal Evidence Act. The interview will be carried out **under caution**, meaning that your responses will be recorded and potentially used against you as evidence in court if prosecution proceedings are necessary
- If the council has reason to believe that development or activity is taking place which requires planning permission, it has the right to serve various types of **enforcement notices** upon you without further notice. Again, failure to comply with an enforcement notice is an offence. Any person prosecuted for failing to comply with a Planning Enforcement Notice faces an unlimited fine upon conviction, and is also liable for the full costs incurred by the council in bringing the matter to court. It is therefore in your interests, should a complaint be made about you, to engage with the council early on in order to avoid this

Section 7 What should I do if I am not satisfied with the way the case was managed?

If, having received the council's final response to your enforcement enquiry, you are dissatisfied with the way the investigation has been managed (rather than being unhappy with the outcome if it has been decided that no action can be taken), you should, in the first instance, raise these concerns with the relevant manager within the planning service. If, having done that, you are still dissatisfied with the team's handling of your enquiry; you may submit a complaint using the council's corporate procedure which is three stages.

Corporate complaints can be submitted by clicking <http://www.dudley.gov.uk/community/directorates/contact-us/compliments-comments-complaints/>, or by contacting Dudley Council Plus on **0300 555 2345**.

If, having received the council's final response to your complaint, you are still not satisfied with the outcome; you can refer the matter to the Local Government Ombudsman via www.lgo.org.uk/make-a-complaint

Please note The Ombudsman will not investigate any complaint until the complainant has first followed the council's own corporate complaints procedure and sought resolution directly with the council in the first instance.

Section 8 Review and monitoring of this plan

In formulating this plan the council recognises the need to make sure that it is reviewed periodically and updated as necessary to ensure that it remains fit for purpose in the future. The planning department will therefore undertake a review of the plan every two years and submit any proposed amendments or updates to Development Control Committee for consideration and endorsement on that basis. The first review of this plan will be carried out in early 2019, and will be reported to the Development Control Committee shortly afterwards.

It is also considered important that the Development Control Committee is kept informed of officers' ongoing activities and performance in respect of planning enforcement matters. In this regard, a quarterly monitoring report will be submitted to the committee for information, containing the following data:

- Number of planning enforcement enquiries received
- Number of valid enquiries investigated
- Number of enforcement notices served (including Section 215 'tidy up' notices)
- Number of prosecutions concluded
- Number of cases resolved
- Number of appeals determined

Finally, as and when appropriate officers submit to the Development Control Committee, individual reports relating to enforcement cases either where the view of the committee is sought regarding a proposed course of action, or where specific cases arise which are considered to be of wider interest to members, or where members have requested that the issue is reported to the committee.