

# PLANNING MONITORING AND ENFORCEMENT - POLICY AND PROCEDURE

## 1.0 INTRODUCTION

1.1 The Town and Country Planning Acts give local planning authorities discretionary powers to tackle breaches of planning control. This document sets out the policy and procedures that the Council will adopt when monitoring, investigating and, where applicable, remedying breaches of planning control. This strategy will be reviewed annually or whenever there is a significant change in legislation, national or local policy.

1.2 Unauthorised development can have adverse consequences and, if unchecked, can undermine confidence in the planning system. The Council is, therefore, committed to the effective enforcement of planning control.

1.3 The Government's National Planning Policy Framework states that:

*“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.”*

1.4 Planning enforcement can be a complex and involved process with varying timescales. The aim of this strategy is to ensure the Planning Enforcement Service:

- Has a decision making process that is open, transparent and is seen to be fair and balanced
- Provides an excellent service to those who live and work in and visit Teignbridge (outside of Dartmoor National Park)
- Is accessible to all users, keeping all interested parties updated
- Takes action, where appropriate, that is timely, proportionate and reasonable
- Achieves and maintains effective and efficient monitoring and enforcement of planning control

## 2.0 OBJECTIVES AND GENERAL PRINCIPLES

2.1 The Council's objectives are:

- To remedy harm caused by breaches of planning control.
- To strike a balance between protecting public safety, amenity and other important interests and enabling acceptable development to take place, even though it may initially have been unauthorised.
- To ensure that the policies and the credibility of the Council and the planning system is not undermined.
- To carry out all enforcement duties openly, fairly, helpfully, proportionately and consistently.

- To reduce the need for enforcement by encouraging the public to seek pre-planning advice.
- To monitor major development sites to ensure that development is being delivered in accordance with the approved plans, conditions and legal agreements (See Appendix A)

## 2.2 General Principles

- All reasonable complaints will be investigated
- Complaints will be prioritised according to their urgency and potential harm
- Enforcement action will be taken where it is expedient to remedy harmful consequences and when it is in the wider public interest.
- Formal action will be proportionate to the breach.

## 3.0 MAKING A COMPLAINT

3.1 Most investigations into breaches of planning control result from complaints from the public, Councillors or Parish Councils, but the Council will act pro-actively where a significant breach of planning control is apparent even if no complaint has been received, or where breaches become apparent through monitoring major development sites. All investigations will follow the same general procedure as set out in 4.0 below

3.2 The Planning Enforcement service will not normally take the lead in investigating possible breaches of planning control that occur on Council-owned land or on highway land. The appropriate Council service or the Highway Authority will have stronger powers to remedy such breaches.

3.3 When the complaint is received:

- It will be acknowledged within 5 working days normally using the same medium in which it was received e.g. a letter will be acknowledged by post and an email by email. Phone callers will not receive a separate acknowledgement as the complainant will be advised of the way forward during their initial call
- Complainant's identities will be kept confidential, unless they are asked to collect and submit evidence to help secure a prosecution in which case their identity and evidence may subsequently be made public
- Anonymous complaints will not normally be investigated unless they allege serious breaches of planning control.
- Action on complaints will be prioritised (see 3.4 below).

### Complaint Priorities

3.4 Complaints will be prioritised in accordance with the following categories:

#### A. High Priority Complaints – Requiring Immediate Investigation

- Development resulting in concerns for public health and safety which are controllable through the planning legislation.
- Works of demolition, significant alteration or extension causing substantial harm to, or total loss of, a heritage asset.

- Works to protected trees (either those covered by a Tree Preservation Order or those within a conservation area) and important hedgerows.
- Demolition of important unlisted buildings in conservation areas
- Development that may adversely affect or destroy a site of nature conservation value
- Development that has a significant impact on the natural environment
- Significant unauthorised building works/structures
- Uses and activities that cause significant disruption by reason of noise, smell, fumes or other forms of nuisance

**B. Medium Priority Complaints – Investigation to commence and complainant to be informed of progress within 15 working days**

- Operational and building works
- Changes of use resulting in harm to residential amenity or the immediate environment.
- Non-compliance with conditions/planning obligations resulting in harm to residential amenity
- Building and other works within conservation areas
- Where immunity from enforcement action due to lapse of time will come into effect shortly
- Other works causing less than substantial harm to the significance of a heritage asset

**C. Low Priority Complaints – Investigation to commence and complainant to be informed of progress within 25 working days**

- Other changes of use
- Other minor building works and structures e.g. garden sheds, walls, fences etc.
- Untidy land
- Non-Compliance with other conditions
- Advertisements
- Satellite dishes
- Works to listed buildings not carried out recently

**4.0 ENFORCEMENT INVESTIGATION**

**Initial action**

4.1 The investigation will be carried out by a Planning Enforcement Officer or a Planning Officer, as considered appropriate, since the latter will have greater knowledge of the site and breach if it relates to a planning permission not built in accordance with plans or where a planning condition has not been complied with.

4.2 Following receipt a complaint will be screened to see if a breach of planning control may have occurred. This will be a desktop investigation to check, for example, planning history, other records and relevant legislation. If it is established at this stage that there is no breach the Complainant will be advised and no further action will be taken. Where appropriate, information will be passed to other departments or organisations for investigation e.g. Building Control, Devon County Council, Environment Agency etc.

## **Site Visit**

4.3 If the initial screening indicates that there may be a breach a site visit will be made. If the land and/or building(s) are occupied the enforcement officer may make an appointment with the owner/occupier. This is not always possible or advisable as it may alert them and enable them to temporarily remove or disguise the subject matter of the complaint. In some cases 24 hours notice may be required to enter certain properties.

4.4 If the site visit involves entering private land the officer will identify themselves and explain the reason for the visit. Proof of authorisation to enter land under the Planning Acts will be provided if requested.

4.5 The officer will record a description of the site and the alleged breach of planning control, take any necessary measurements/photographs, obtain the identity of the owner/occupier/person responsible for the activity/operations taking place if possible and identify any neighbouring properties likely to be affected.

4.6 If a breach of planning control has clearly taken place the owner/occupier/person responsible will be informed straight away (if they are present) and advised that if they carry on with the activity/development this will be entirely at their own risk and may be subject to enforcement action. The investigating officer will have regard to the provisions of Sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 (PACE) in relation to cautioning suspected offenders.

## **Following the site visit**

4.7 If the owner/occupier/person responsible was not present they will be contacted and advised of the Council's intended action and options available to resolve the matter.

4.8 If it was established at the site visit that there is no breach the Complainant will be advised and no further action will be taken.

## **Further investigations**

4.9 Further investigation may be necessary following the site visit to determine whether a breach has occurred and may involve:

- Monitoring the site to collect further evidence. Where appropriate, the complainant will be requested to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal enforcement action.
- Serving a Planning Contravention Notice (PCN) requiring the owner/occupier/person responsible to provide information relating to the potential breach of planning control within 21 days.
- Consultation with other departments or organisations
- A Land Registry Search to establish ownership of the land (if registered) and a 'Requisition for Information' to identify any other people with an interest in the land together with information about the length of time the activity/development has been in existence.

## Results of Investigations

4.10 The complaint may relate to a non-planning matter such as disputes over land ownership, boundary disputes, private covenants and legal agreements/obligations, moral or ethical concerns, commercial competition and private interests. As these are outside the jurisdiction of planning, no planning enforcement action can be taken. However if the complaint can be dealt with by another Council service the Complainant will be advised and the relevant information passed on. If it appears that another authority or organisation may be able to assist the Complainant they will be advised of this and provided with contact details if possible.

4.11 The complaint may relate to an activity, building or works that are lawful for planning purposes, for example the works may be “permitted development”. In these circumstances no planning enforcement action can be taken and the Complainant will be advised of this.

4.12 The complaint may relate to a very minor breach of regulations and regarded as so trivial that formal action would not be justified. If action were taken in these circumstances the Council could be justifiably criticised and costs may be awarded in any resultant appeal. No planning enforcement action will be taken in these circumstances and the Complainant will be advised of this.

4.13 A breach of planning control has occurred. In these circumstances the Council will consider what enforcement action should be taken.

## 5.0 TAKING ENFORCEMENT ACTION

5.1 Once investigations are complete and a breach of planning control has been identified, officers will decide whether or not it is expedient to take enforcement action. They take into account the development plan and any other material considerations. Many breaches of planning control can be resolved informally and by negotiation with the owner/occupier. Formal action will be taken only where other means to resolve the problem have been unsuccessful.

5.2 The Council will take enforcement action when it is essential to maintain public safety, the character and appearance of the area, the area’s social and economic wellbeing and to preserve the natural and built environment. The impact of developments varies greatly and enforcement action should be proportionate to the specific breach. Enforcement action will not be taken merely to rectify an absence of planning permission if it is likely that planning permission would have been granted for the development.

5.3 Where enforcement action is considered expedient officers will draw this to the attention of the person responsible (and the landowner if different). They will be advised of the most appropriate course of action depending on the circumstances, as follows:

### **A. The development could satisfy relevant policies and other material considerations with modification and/or the imposition of appropriate conditions**

The Council will request a “retrospective” application for the relevant permission/consent. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that permission will be granted. Any application would follow the normal planning process, including consultation and notification of neighbours. Formal enforcement action will not take place until after the application has been

determined and will not be taken at all if the breach of planning control is remedied by the grant of permission. If no application is submitted within the given period the Council must decide whether to take enforcement action. In circumstances where the Council determines it is not expedient to take enforcement action the procedure in Appendix B will be followed.

**B. The breach could be immune from enforcement action due to the passage of time**

The person responsible will be advised of the option to submit an application for a Certificate of Lawful Use or Development. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that a certificate will be granted. Any application would follow the normal planning process. Formal enforcement action will not take place until after the application has been determined and will not be taken at all if the breach of planning control is remedied by the grant of a certificate. If no application is submitted within the given period the Council must decide whether to take enforcement action. In circumstances where the Council determines it is not expedient to take enforcement action the procedure in Appendix B will be followed.

**C. The breach is causing serious harm and permission is unlikely to be given**

The Council will ask for the activities or the works to cease voluntarily. A reasonable time will be allowed, depending on what needs to be done. For example business tenants will be allowed a suitable time to find somewhere else to operate if livelihoods are affected. A retrospective planning application will not be invited, but if one is submitted enforcement action will normally be suspended to allow determination of the application.

**D. The breach cannot be resolved by negotiation and/or a retrospective application is refused**

Enforcement action will be taken if it is expedient. This is a discretionary decision made on a case by case basis and must be taken only after proper consideration of the relevant facts and planning merits. Formal action must be justified and the specific requirements and the time period to comply with these must be reasonable. The responsible person will be advised of the right of appeal against refusal of retrospective permission but the Council will not await the submission and outcome of an appeal before taking formal enforcement action, because this can be used as a mechanism for prolonging a breach. There is a right of appeal against an enforcement notice and this can be dealt concurrently with an appeal against a refusal of permission.

**E. The Breach is resulting in serious and irreversible harm requiring immediate prohibition**

The responsible person will be advised to stop work immediately. If the request is not complied with the Council will serve a 'Stop Notice' or 'Temporary Stop Notice' (TSN). These will only be directed at preventing the specific harm that is occurring. As a Stop Notice can only be served in conjunction with an enforcement notice it is not possible to serve one immediately a breach of planning control is identified. A TSN can be served on its own and so can be served promptly. This will stop the breach of planning control straight away (but only for a limited period of 28 days). During this time the Council will decide whether further enforcement action is expedient. A TSN cannot be used to effectively deprive someone of their home but it can be used to prevent the home being established. Stop Notices and Temporary Stop Notices are only available to deal with development requiring planning permission, they cannot, for example, stop unauthorised works to listed buildings.

## **6.0 AUTHORISATION OF ACTION**

6.1 Enforcement action is normally authorised by the Business Manager – Strategic Place (Development Management) under delegated powers. However, in the circumstances set out in 6.2 and 6.3 below, the matter will be referred to the Planning Committee for a decision.

6.2 The relevant Ward Member(s) and the Chairman of the Planning Committee are advised of the Business Manager's authorisation and given 14 days to request that the matter go to Planning Committee if they consider it necessary.

6.3 Where enforcement action could result in the loss of a person's principal home, the case will always be reported to the Planning Committee for authorisation.

## **7.0 TYPES OF ACTION**

7.1 The Town and Country Planning Act 1990 (as amended) ('the 1990 Act') defines taking enforcement action as either the issue of an enforcement notice or the service of a breach of condition notice.

### **The Enforcement Notice**

7.2 The legislation requires that an enforcement notice shall: -

- State the nature of the alleged breach.
- Identify the land to which the notice relates.
- Clearly state the matters that appear to constitute the breach of planning control.
- State the Council's reason for issuing the notice, including any relevant development plan policies that are allegedly contravened.
- Specify the date on which the notice takes effect (not less than 28 days after service to allow for an appeal).
- Specify the steps which the Council require to be taken or the activities which the Council require to cease in order to remedy the breach or any injury to amenity it has caused.
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the effect that the breach is having.
- Be registered as a local land charge in Part 3b of the Land Charges Register

7.3 The enforcement notice will state the breach of planning control, the reasons for serving the notice and the steps to be taken in plain language that will be understood by anyone required to comply with its requirements. This is particularly important given that criminal liability attaches to any breach of the requirements of an enforcement notice. This should also make checking for compliance easier and assist in mounting a successful prosecution if the notice is not complied with. The enforcement notice may require the restoration of the land to its condition before the unlawful development took place; the demolition or alteration of any building or other works; the discontinuance of the use of land; or the carrying out of any building works or other operations.

7.4 The enforcement notice must be directed only at the specific breach. It cannot take away existing lawful rights to use land or retain building and other works. The Council can direct an enforcement notice to only part of the breach of planning control and/or it can require only a partial remedy. This is termed "under enforcement".

## **Appeals against an Enforcement Notice**

7.5 There is a right of appeal to the Secretary of State against an enforcement notice. The appeal must be lodged before the notice takes effect. Details of how to appeal will be included with the enforcement notice. An appeal can be lodged on one or more of the following grounds:

- a) That planning permission should be granted for what is alleged in the notice.
- b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
- c) That there has not been a breach of planning control.
- d) That at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice
- e) That the notice was not properly served on everyone with an interest in the land.
- f) That the steps required to be taken, or the activities required to be ceased, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by the breach
- g) That the time given to comply with the notice is too short.

When an appeal is made against an enforcement notice on ground a) above, an application for permission to retain the development is deemed to have been made. This will only be considered by the Planning Inspectorate if the appropriate application fee (two times the planning fee where applicable) has been paid.

## **The Breach of Condition Notice (BCN)**

7.6 This is an alternative to an enforcement notice that is available to remedy the failure to comply with any condition of a planning permission. There is no right of appeal and failure to comply is an offence.

7.7 The BCN must specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). The BCN may, therefore, be positive (requiring something to be done) or prohibitory (requiring something to stop). Unlike an enforcement notice, a BCN can only require full compliance. A BCN also has to specify a period for compliance, which shall be not less than 28 days.

## **8.0 COMPLYING WITH AN ENFORCEMENT NOTICE OR BCN**

8.1 As soon as the compliance period set out in an enforcement notice or BCN has passed, enforcement officers will investigate whether or not the breach of planning control is continuing.

8.2 When officers conclude that notices have been complied with, this will be confirmed to the owner/occupier and to anyone who has complained about the building works or activity. Compliance with an enforcement notice does not, however discharge it. The notice will remain in place to prevent any further breaches and it will continue as a registered charge on the land or property.

8.3 Failure to comply with the requirements of an enforcement notice or BCN is an offence. If there are grounds to suspect that an offence has been committed, interviews of suspects or witnesses will be carried out in accordance with Police and Criminal Evidence Act 1984 (PACE)

requirements. The Council will take firm action where the requirements of an enforcement notice or BCN have not been complied with, but consideration will be given to any mitigating circumstances.

### **Further action following non-compliance with an Enforcement Notice or BCN**

8.4 The Council may attempt to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts (usually Magistrates Courts). Any decision to prosecute will have due regard to the availability, nature and strength of evidence and will consider whether the public interest is served. Any prosecution action will be taken in accordance with the provisions of the Code for Crown Prosecutors. This code, produced by the Crown Prosecution Service, seeks to ensure that prosecutions are carried out in the interests of justice and not solely for the purpose of achieving a conviction.

8.5 Alternatively, an injunction may be sought. This is an order from the Court to comply with the Enforcement Notice. Failure to then follow the court order is contempt of court and carries an automatic prison sentence.

8.6 The Council is empowered to take direct or default action to remedy a breach of planning control. This will only be considered in exceptional circumstances. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise when successive fines by the Courts have not proved to be a sufficient deterrent for the perpetrators of the breach. It may also be considered where the effects of a breach of planning control are so harmful that compliance with notices should not be subjected to delay in Court processes.

## **9.0 OTHER PLANNING ENFORCEMENT POWERS**

9.1 Some breaches of planning control are subject to separate legislation as follows:

### **Listed Buildings**

9.2 The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of this Act to carry out any works to a listed building that affect its character, without proper consent. The owner of the building, those who have an interest in the property or who have carried out the works may be prosecuted by the Council for unauthorised works, irrespective of whether consent is later obtained retrospectively or the works are later made satisfactory. It is a defence to a prosecution to prove that the works were *urgently* necessary to protect health and safety or to preserve the building and it was not practicable to secure these by repair or temporary support or shelter. The works must be the minimum measures immediately necessary and a justification in writing must be given to the Council as soon as reasonably practicable.

9.3 Where unauthorised works are carried out, the Council may serve a listed building enforcement notice, requiring remedial works to rectify the effects of any unacceptable works. An enforcement notice will usually be a more appropriate course of action than prosecution, where it is possible to put right the harm to the building. Prosecution punishes the offender but it does not secure the remedial works. In deciding whether prosecution is appropriate, the

Council will consider what, if any, material benefits from the unauthorised works are gained by the perpetrator.

9.4 It is for the Council to specify in a listed building enforcement notice, what needs to be done to put matters right. Works carried out in accordance with such requirements will then benefit from deemed listed building consent.

9.5 Both prosecution and enforcement proceedings will be carried out in accordance with the steps set out earlier in this document. In addition, when officers visit a site and observe unauthorised works, they will advise the contractors and/or owners to stop work until the matter is resolved and appropriate consents are received. They will be further advised that works carried out will be at their own risk and may result in either more painstaking or costly remedial works to put things right. It may also increase a risk of prosecution if works become thorough and irreversible.

## **Advertisements**

9.6 The display of advertisements is controlled by the Town and Country Planning (Control of Advertisements) Regulations 2007. Advertisements are divided into three groups:

- Those advertisements that are expressly excluded from control altogether
- Those which have 'deemed consent'. The planning authority's consent is not required for these.
- Those for which the planning authority's consent is always needed.

9.7 Section 224 of the Town and Country Planning Act 1990 makes it an offence to display an advertisement without the necessary consent. The Council may prosecute the offender in the Magistrates Courts. Unless the offence is particularly flagrant or repeated, the Council will initially invite the advertiser to apply for the necessary consent (unless it is clear that consent would be very unlikely to be granted). If consent is refused action will be taken to remove the unauthorised advert.

9.8 Section 225 of the 1990 Act empowers the Council to remove or obliterate any unauthorised placard or poster (often referred to as 'fly posting'). If the advert identifies the advertiser, the Council must give 2 days' notice in writing before removal or obliteration takes place. The Council must make reasonable inquiries to find out identities if none are provided on the placard or poster. The Council will utilise this procedure, rather than prosecution, wherever possible as it will result in a swifter remedy.

## **Trees and Hedgerows**

9.9 Section 198 of the 1990 Act provides the Council with the power to protect trees through the making of Tree Preservation Orders. Consent is then required to carry out works to the protected trees. Section 210 of the Act makes it an offence to cut down, uproot or wilfully destroy a protected tree or to wilfully damage, top, or lop a protected tree in such a manner as to be likely to destroy it.

9.10 Provided the trunk diameter is more than 75 cm at 1.5m above ground level, trees in Conservation Areas are similarly protected. Notice of any intended works has to be given to the

Council and work is unauthorised until the Council has responded to the notice or 6 weeks have elapsed, whichever is the sooner.

9.11 Consent is not required for the following works to protected trees.

- Works to trees that are dead
- Works to trees that are urgently necessary to remove an immediate risk of serious harm
- Works to trees that are necessary in order to implement a planning permission
- Works to trees cultivated for the production of fruit where such work is in the interests of that trade or business.

9.12 Section 97 of the Environment Act 1997 makes it an offence to remove what are termed “important” hedgerows, without the consent of the Council. Where this takes place the Council has the power to serve a ‘hedgerow replacement notice’.

9.13 The Council will give high priority to complaints relating to works to protected trees and hedgerows as any harm will be irreversible.

### **Land Adversely Affecting the Amenity of a Neighbourhood.**

9.14 Owners and occupiers sometimes neglect their land and buildings and allow them to become seriously unkempt or derelict. This can create eyesores that can be particularly damaging for the neighbourhood. Section 215 of the 1990 Act empowers planning authorities to require owners to take steps to alleviate these problems. These powers can be used in a variety of situations – e.g. heavily overgrown and neglected gardens; derelict buildings and sites that disfigure town centres. The power can also be exercised in conjunction with other environmental powers such as those directed to the upkeep of listed buildings and powers exercised by the Council’s Environmental Health and Building Regulations Services. Officers will liaise with these services to ensure that the most appropriate remedy is used.

9.15 Officers will investigate such sites and if remedial action is necessary they will contact the owner and advise them that the state of their land and/or buildings is causing problems. They will be advised of the steps they need to take to alleviate the problems and given (initially) 28 days to voluntarily carry these out. If no serious effort has been made, the Council will serve a formal notice compelling the owner/occupier to take the necessary steps. The notice becomes effective after 28 days. There is a right of appeal to the Magistrates or Crown Court. If this happens the notice has no effect pending the outcome of the appeal.

9.16 Once the notice becomes effective, it is an offence not to carry out the required steps within the specified time period. The Council may prosecute the offender for non-compliance. It may also enter the land, carry out the works and recover the costs from the owner either by sending them a bill or applying to the Land Registry to place a charge on the property.

9.17 In deciding whether or not to institute formal action under these provisions, the Council will take into consideration any mitigating circumstances.

## **APPENDIX A – PROCEDURE FOR MONITORING MAJOR DEVELOPMENT SITES**

A1 Major development sites require a more pro-active approach to monitoring and enforcement. Often major sites are not inspected by Local Authority Building Control. Due to their scale, development on major sites may be well away from existing properties, and active building sites are usually not readily accessible to the public. There is therefore scope for significant breaches of planning control to go unreported. Whilst these breaches may well come to light as the development progresses, and properties are sold and occupied, by this stage it may be much more difficult and costly to remedy the breach.

A2 Major developments will also often have a significant number of planning conditions and complicated Section 106 Agreements requiring the delivery of affordable housing, public infrastructure and a range of other requirements. It is the developer's responsibility to comply with the approved plans, conditions and legal agreements, but these responsibilities are often dealt with at different levels of the developer's organisation and it is not uncommon for inadvertent breaches of conditions and agreements to occur as the development progresses. If these are brought to the developer's attention at an early stage compliance will be easier to achieve.

A3 In view of these considerations the Council's Executive resolved on 9 February 2017 to introduce a pro-active system of monitoring major development sites whereby planning officers organise periodic site tours with the local Ward Councillor(s) to identify issues. The procedure is set out below.

A4 For the purposes of this Procedure a Major Development Site is defined as one that will provide 50 dwellings or more, or is an employment or mixed development site of more than 5 Hectares.

A5 Officers will arrange a Monitoring Visit to a Major Development Site approximately 3 months after commencement of development. The Teignbridge District Ward Member(s) will be invited to attend. The Monitoring Visit will be preceded by a desktop exercise to clarify any conditions or obligations that were triggered by commencement of development or that should have been addressed at an early stage. The purpose of the Visit will be to ensure that these conditions and obligations have been complied with and to ensure that, in general, the development appears to be progressing in accordance with the approved plans. It remains the developer's responsibility to ensure compliance with the approved plans, therefore the Monitoring Visit will not involve detailed checking of setting out of roads and buildings. If the visual inspection suggests that there are discrepancies they will be drawn to the developer's attention and the developer will be asked to provide evidence of compliance with the approved plans within a reasonable timescale. Failure to provide the evidence will be treated as a potential breach of planning control and dealt with in accordance with Paragraphs 4, 5 and 6 of the Planning Monitoring and Enforcement - Policy and Procedure.

A6 Further Monitoring Visits will be arranged at approximately 6-monthly intervals, again with TDC Ward Member(s) invited. These visits will be preceded by a desktop exercise to identify any conditions or obligations that should have been complied with by this stage of the development. The purpose and outcome of the Visits will be as described in paragraph A5 above. It may be apparent at these later visits that detailed breaches of planning control are occurring (e.g. materials, landscaping, boundary treatments, etc.). These will be dealt with in

accordance with Paragraphs 4, 5 and 6 of the Planning Monitoring and Enforcement - Policy and Procedure.

A7 The timing of Monitoring Visits will accord generally with paragraphs A5 and A6, but some flexibility will be applied with regard to developments where little progress has been made since the last Monitoring Visit (where the Visit may be delayed), or where a site becomes particularly contentious (in which case a Visit may be brought forward).

A8 It may well be that the Council receives complaints from the public, Councillors or Parish Councils regarding breaches of planning control at Major Development Sites. Where these are received within the 2 months prior to a scheduled Monitoring Visit they will be investigated as part of the Monitoring Visit unless they are High Priority complaints requiring immediate attention as described in paragraph 3.4A of the Planning Monitoring and Enforcement - Policy and Procedure.

## **APPENDIX B – PROCEDURE FOR DETERMINING THAT ENFORCEMENT ACTION IS NOT EXPEDIENT**

B1 It is not an offence to carry out development without the necessary planning permission, however unauthorised development is at risk of enforcement action by the Local Planning Authority. Unauthorised development can be regularised through the grant of a retrospective planning permission. In accordance with paragraphs 5.3A and B of the Planning Monitoring and Enforcement - Policy and Procedure, retrospective applications will be invited by the Council to regularise some breaches of planning control. The Council cannot, however, demand that a retrospective application is made. If no application is submitted the Council must decide whether it is expedient to take enforcement action.

B2 Enforcement action will not be taken merely to rectify an absence of planning permission. If it is likely that planning permission or a Certificate of Lawfulness would have been granted for the unauthorised development there will be no expediency in taking enforcement action. A landowner has the right of appeal against an Enforcement Notice and if the unauthorised development is acceptable under planning policies, or is immune from enforcement action, the appeal is likely to be allowed by the Planning Inspectorate and costs may be awarded against the Council.

B3 Where no application is received and the Council considers it is not expedient to take enforcement action the following procedure will be followed. A delegated report explaining the Council's decision will be prepared by the Case Officer and authorised by a Senior or Principal Officer or the Business Manager. The report will be e-mailed to the Ward Member(s). If the Ward Member(s) do not agree with the decision they can request that the matter is referred to Planning Committee within 14 days of being notified. If no request is received within the 14 days the case will be closed and the Complainant notified that no further action is to be taken.

### **VERSION CONTROL**

Updated 24 February 2014	Amended wording in paragraphs 8.4 and 8.5 Deleted paragraph 8.7
Updated 30 June 2017	Appendices A and B added with consequential amendments

### **CONTACTS**

The District Council's Planning Enforcement team can be contacted as follows:

- E-mail: [planningenforcement@teignbridge.gov.uk](mailto:planningenforcement@teignbridge.gov.uk)
- Website [www.teignbridge.gov.uk](http://www.teignbridge.gov.uk)
- Post: Planning Department, Teignbridge District Council, Forde House, Brunel Road, Newton Abbot, Devon, TQ12 4XX
- Tel. 01626 215779