

Planning Enforcement Strategy

Two Councils
One Team



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Planning Enforcement Strategy

This Enforcement Strategy supports the Enforcement Plan and explains the planning enforcement function. It will clarify the various breaches of planning control and criminal offences that planning enforcement can address and detail the powers given to the Council and how and when these powers may be employed.

The strategy gives clear guidance on what we can do and how complaints are prioritized. It explains how complaints can be made, and sets out what can reasonably be expected from the Council once a complaint has been made.

The document has been prepared in accordance with the advice contained in the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states: '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'.

What will we investigate?

A breach of planning control is defined in the Town and Country Planning Act 1990 as “the carrying out of the development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”. Whether something requires planning permission is not straightforward and while there are some fairly obvious breaches, such as building a new house without planning permission, many others are more difficult to define or less well known.

For example:

- Building work, engineering operations and material changes of use that are carried out without first obtaining planning permission;
- Development that has planning permission but is not carried out in accordance with the approved plans;
- Failure to comply with conditions or the terms of a legal agreement attached to a permission or consent;
- The unauthorised demolition of a building within a conservation area without planning permission;
- Works carried out to a listed building (both internal as well as external), which affect its historic character or setting, without listed building consent being granted;
- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order (TPO) or which is within a Conservation Area (CA);
- Unauthorised Advertisements;
- Failure to properly maintain land so that it detrimentally affects the amenity of the area;

- Failure to comply with the requirements of enforcement notices, breach of conditions notices and stop notices.

It should be noted that a breach of planning control becomes immune from enforcement action if no formal action has been taken within the time limits set out in the Town and Country Planning Act 1990 (as amended).

Essentially these time limits are: Four years from the substantial completion of a building or other operational development and for the change of use of any building to a dwelling house; and ten years for a continued use of land or breach of planning condition

Similarly, planning enforcement action can only be pursued where works have taken place without the benefit of, or are inconsistent with, planning permission. Therefore, domestic extensions, regardless of their impact on neighbours, are immune from planning enforcement action if they fall within permitted development rights; and those commenced with permission and built as approved also are beyond further control, even though a neighbour, perhaps new to the area, was not consulted.

In addition to investigating complaints which we receive relating to breaches of planning control, we will also undertake proactive investigations to ensure that development is built in accordance with its planning approval and associated conditional requirements.

Whilst it is not possible to check all developments, the combination of responsive and a pro-active approach should raise awareness of the need for compliance, so maintaining a culture of compliance. This is likely to involve working more closely with other Council departments to ensure a co-ordinated and targeted approach which has the maximum impact.

What will we not investigate?

What is not a breach of planning control?

Many issues that arise the council cannot get involved in as they are issues that are between two private parties, as those are considered to be civil matters. Other matters may be covered by other legislation but are not issues that the council as Local Planning Authority can get involved with. Some of these are:

- Internal works to a non-listed building;
- Matters controlled by other legislation such as Building Regulations / public nuisance / Highways / or the Environment Agency;
- Competition from another business;
- On street parking of commercial vehicles in residential areas;
- Obstruction of a highway or public right of way (the Police or Highways Authority may be able to get involved);
- Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling;
- Clearing land of undergrowth, bushes and trees (provided they are not subject to Tree Preservation Order, within a Conservation Area or owned by the council);
- Operating a business from home where the residential use remains the primary use;
- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation;
- Deeds and covenants which are a private matter between the signatories to the documents;
- Loss of value to a neighbouring property;
- Insertion of windows in dwellings – once a building has been occupied windows can normally be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows;
- Where development is 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015.



How will the matter be investigated?

Allegations about suspected breaches of planning control will be investigated thoroughly and accurately in accordance with the principles of Good Enforcement set out within the Local Government Concordat, and the principles contained within the Regulators Code.

The five principles of good regulation are:

- Transparency
- Accountability and Openness
- Proportionality
- Consistency
- Targeted (at cases where action is needed)

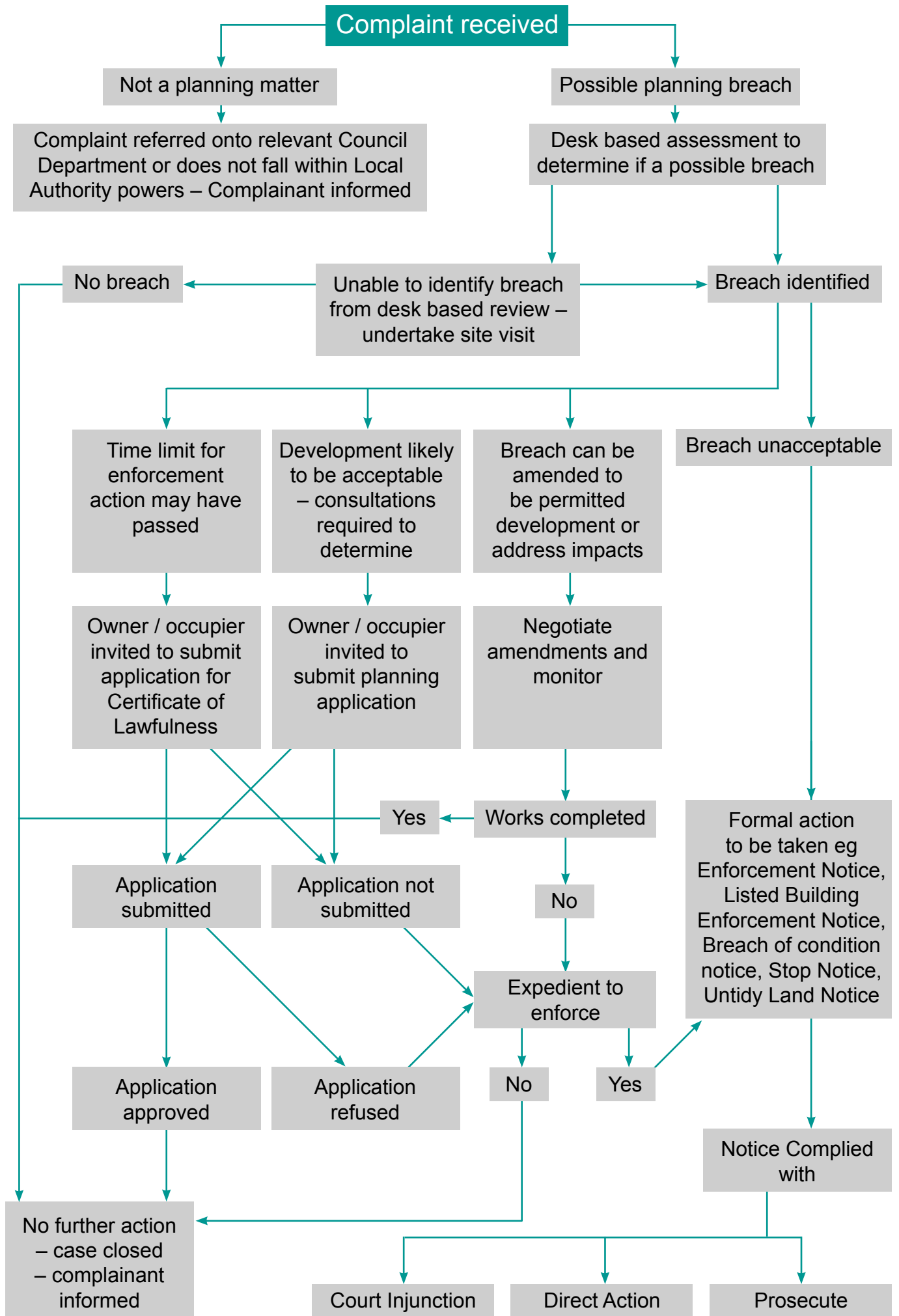
The integrity of the process depends on the Council's readiness to take proportionate enforcement action when it is required to do so. Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action is necessary within their area and the council will exercise its planning enforcement powers rigorously when it is considered expedient to do so. This means that any action taken must be in the wider public interest and the action must be proportionate to the level of the breach. We will consider this by thorough assessment of the relevant facts in each case. Our consideration will be no different to those when considering the merits of an application for planning permission before the development started. For instance, if a development would have received planning permission, it will not be enforced against simply because it was carried out before planning permission was granted. Formal enforcement powers will not be used against trivial or technical breaches of planning control which cause no harm. The Council will always

seek to 'remedy' a breach before considering formal action, often breaches can be resolved through negotiation, for example by working with the developer to alter a building so that it no longer requires consent, or by the submission of a retrospective application to seek consent.

When would formal action be considered?

- Where the breach presents significant harm to amenity, or the existing use of the land and buildings merits protection in the public interest.
- Where attempts to negotiate regularisation of the breach have failed, and the harmful effects of the development require enforcement action to make the development acceptable.
- Where planning permission for the development has been refused and the development is not acceptable in terms of planning policies or other material considerations.

Where formal planning enforcement action is taken, we will take steps to publicise this to act as a deterrent to other offenders.



The council has delegated authority to its officers to exercise the legislative powers available to it for breaches of planning control, the tools available are :

Before formal action

- **Planning Contravention Notice** – this requires persons to provide information in respect of the development and/or activities taking place on the land. These notices are often served as a first step to gain information from the person carrying out the development and/or activity before determining whether other notices should be served.

Types of formal action

- **Enforcement Notice** – this is the principal tool to remedy a breach of planning control. It will specify what the alleged breach is, the steps that must be taken to remedy it, and a time period in which to carry out those steps.
 - **Listed Building Enforcement Notice** – This is the equivalent Notice available under the listed building legislation
 - **Breach of Condition Notice** – this is used to require full or part compliance with the conditions on the grant of a planning permission.
 - **Stop Notice/Temporary Stop Notice** – these Notices requires activities to stop immediately on the land and are most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment.
 - **Untidy Land (s.215) Notice** – where the condition of buildings or land causes serious harm to the visual amenity of an area, the Council can serve a Notice on the owner and occupier, under Section 215 of the Town and Country Planning Act 1990, to remedy the condition of the land and buildings.
- ### **Methods of securing compliance**
- **Court Injunction** – Although they are rarely used, legal powers are available for the council to apply to the High Court or the County Court for an injunction to stop an actual or alleged breach of planning control.
 - **Prosecution** – the council can pursue prosecution proceedings against any person who carries out unauthorised works to trees that are protected by a Tree Preservation Order or are within a Conservation Area, unauthorised works to Listed Buildings, and certain unauthorised works of demolition works within Conservation Areas. Additionally, offenders may be prosecuted for non-compliance with a temporary stop notice, stop notice, enforcement notice and breach of condition notice.
 - **Direct Action (with costs recovery)** – failure to comply with the requirements of a Notice may result in the council using powers available to it to enter land and carry out such works that are required by an Enforcement Notice. All costs incurred in carrying out such works can be recovered from the landowner. Where costs are not recovered, they can be registered as a charge on the land.
 - **Advertisements** – the legislation (Town and Country Planning (Control of Advertisements) Regulations 2007) which deals with advertisements is separate from that dealing with general planning matters. The display of an advertisement without formal consent is an offence, and the council does have the power to prosecute the person displaying it, if it considered that it harms the amenity of the area or public safety. There is no need for an enforcement notice, or similar, to be served. If a person is found guilty of an offence, he or she could be liable to a fine.

Priorities

It is usually necessary to give priority to those issues where the greatest harm is being caused, as it would be inappropriate to investigate and pursue all allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach. This priority is decided by officers, and subsequently reviewed after an initial site visit.

We will prioritise:

- Unauthorised development which is causing or threatening significant harm to public health and safety.
- Cases where there is ongoing or immediate threat of irreversible harm to amenity or the environment.
- Harm to areas protected by statutory designations such as Sites of Special Scientific Interest (SSIs), Conservation Areas Archaeological sites.
- Harm to listed buildings and their setting.
- Harm to trees and hedges, especially where protected by Tree Preservation Orders (TPO's) or Regulations.
- Unauthorised development likely to harm protected species or habitats.
- Monitoring of major developments.



What level of service can a complainant expect?

We will promptly register every case and acknowledge receipt either by letter or by email within three working days. You will be given the name of the Compliance Officer dealing with your complaint so you know who to contact, together with a reference number.

We will then carry out some initial checks (usually including a site visit) in accordance with the priority given to the case, but in any event within ten working days.

Complainants will be updated by telephone, email, or by letter on completion of the site visit and/or initial assessment investigations as to whether -

- No breach was identified
- That there is a need for further investigations
- That a breach of planning control has occurred

Where there is an identified breach of planning control the following assessment will be made –

- What is the planning harm – how serious is it ?
- Would it be likely to be granted planning permission (with or without conditions)?
- Is it a minor breach (technical) or more serious?
- Can we resolve it simply by negotiation or modification?
- Is action needed quickly because the development or activity is harmful and not acceptable?

The decided actions will need to be proportional to the breach and balanced with the available resources. Dealing with

enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. Where cases take a long time to resolve we will ensure complainants are updated at each significant stage of the process. For instance, complainants will be advised if a retrospective planning application is submitted and will be notified if an enforcement notice is issued and the relevant dates for compliance.

If the investigations indicate that a breach of control has occurred that justifies enforcement action an Enforcement Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Secretary of State for Housing, Communities & Local Government via the Planning Inspectorate. An Enforcement Notice may be quashed or revised by the Planning Inspector appointed by the Secretary of State.

Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.

Where a Breach of Planning control causes serious harm the Council can seek immediate remedial action. This action may involve the serving of a Stop Notice when an Enforcement Notice has already been issued. Temporary Stop Notices may be served when an immediate cessation of the harmful activity

is required, usually before an enforcement notice comes into effect. They can only last a maximum of 28 days and may only be served once. These should only be served to prohibit what is essential to safeguard amenity of public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Notwithstanding the above we will regularly review all our cases to ensure the most effective action plan is in place to secure a satisfactory outcome as quickly as possible. Complainants will be advised when cases are closed, and the reason. We will endeavour to resolve enquiries within six months of their receipt. However should further action be required, such as the issue of Enforcement Notices, clearly this timescale will not be possible.



What happens when someone complains about you?

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, as such we will always seek to work with you to understand the true facts of the case.

Initially a council officer will visit the site. This is usually without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive.

Council officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the council officer. However, we are required to give 24 hours notice to insist on entry to a residential house but if you are happy to allow us access then we will usually take up that offer.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application or other appropriate application if it is considered that consent may be granted, or an application for a Certificate of Lawfulness of Use or Development may be invited in the event that

you can show that the breach is immune from enforcement action and therefore lawful. You may be served with a Planning Contravention Notice which requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that we can determine whether a breach of control has occurred and whether formal action is appropriate. The implications of not completing and returning the Notice will be explained to you, and the officer dealing with the case will be available to answer any questions you have on the matter.

If you are running a business which is threatened by enforcement action, you will be directed to our Economic Development section to see whether alternative premises can be found to minimise the possible impact on the business, this does not mean that the enforcement action will be delayed or stopped.

If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance. You will also be advised of your right to appeal any notice issued.

The Compliance officers aim is to resolve breaches of planning control and they will work with you to achieve this in a positive and pragmatic way. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. It is in the interests of all parties if an identified breach can be addressed and then resolved at an early stage.

What to do if you are unhappy with our service

The council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use our services. Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control. If you are aggrieved with the service offered to you, there is a complaints procedure, where complaints can be investigated. Details of this procedure are available on the council's website. If you remain dissatisfied, the matter can be investigated by the Local Government

Ombudsman. They will make an independent investigation of whether maladministration has occurred by the district council and if it has, recommend what remedy ought to take place. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.

We always welcome constructive feedback and any ideas on how we can improve our services. Please contact us if you can suggest ways of improving the service.

Links

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

https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use

<https://www.gov.uk/government/publications/regulators-code>

