

# Local Planning Enforcement Plan July 2024



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## COMMONLY USED TERMS

When you report an alleged breach of planning control to us, we may use planning related terms. These are explained below:

- **Request for Service (RFS):** This is your request to us to investigate and we will give your request a reference number starting with RFS.
- **Initial investigation:** This is when we undertake various checks to establish if there is a breach of planning control. It is the first action undertaken by the investigating officer, before moving to consider the next steps, should a breach of planning control be established.
- **Expedient/expediency:** The term expedient or expediency relates to the 'planning balance' for instigating formal enforcement action. When assessing if formal action should be taken, we will ensure that the action is reasonable, proportionate and is in the public interest, to achieve a meaningful outcome.
- **Harm:** We consider the planning harm associated with a breach of planning control. Planning harm is the term used to describe any negative impacts of a development.
- **Discretionary:** There is no legal requirement for us to investigate or to take enforcement action against alleged breaches of planning control. Enforcement action requires planning judgement, as to whether formal action is appropriate. In some cases, we may decide formal action is not expedient, and an alternative approach is more appropriate, for example, by inviting a retrospective planning application, securing the removal of the works or cessation of the use, or no further action.
- **Material consideration:** A material planning consideration is one which is relevant to the matter in question (i.e., relevant to the development concerned, its scale and nature, and not a matter addressed by other regulatory or private controls). Whether a particular consideration is material or not will depend on the circumstances of the case. In general terms, planning is concerned with land use in the public interest, so the protection of purely private interests such as the impact on property value or loss of a private view would not be considered material considerations.

## **1. INTRODUCTION**

The Borough Council is firmly committed to providing an efficient and effective planning enforcement service. The purpose of this Local Planning Enforcement Plan (LPEP) is to explain the role of the planning enforcement service and sets out our procedures for how the Council will deliver the service to the Community. It should be read alongside adopted local and national planning policies.

## **2. THE PURPOSE OF PLANNING ENFORCEMENT**

Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another. The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Area) Act 1990 (as amended). This legislation is supported by Government advice, which includes the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

Government guidance contained within the National Planning Policy Framework advises: *“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control”*.

Thus, formal enforcement action is discretionary. National policy and guidance set out that a Local Planning Authority must only take formal action when expedient and in the public interest to do so. Any action must be proportionate to the breach of planning control to which it relates.

## **3. THE CONTENT OF THE LOCAL PLANNING ENFORCEMENT PLAN**

- The Council's Planning Enforcement Policy
- The principles of planning enforcement
- What constitutes a breach of planning control and how to report a breach
- Priorities for investigation, case categories and target times
- How the Council investigates alleged breaches of planning control and possible outcomes

- The role of the customer, ward members and town and parish councils
- How the checking of compliance with permissions will be undertaken
- Monitoring of development for compliance
- How the LPEP will be monitored and reviewed

#### **4. THE COUNCIL'S LOCAL PLANNING ENFORCEMENT POLICY**

The Council recognises the importance of planning enforcement to maintain the quality of the existing environment in the Borough and to ensure that new development is carried out to a high standard. The purpose of the Local Planning Enforcement Plan is to set out what can and what cannot be controlled through planning legislation and the Council's approach to undertaking planning compliance and enforcement. The Council will:

- Make every effort to commit reasonable resources to ensure that planning enforcement control can be put into effect and maintained. If the level of resources reduces, we will need to reappraise the level of service that can be provided.
- Exercise all reasonable powers (granted under the provisions of the Town and Country Planning Act 1990, and all other subordinate and any subsequent legislation), to control unauthorised development in appropriate circumstances when planning harm is being caused. We will take account of the policies in the adopted Development Plan and all other material considerations when deciding what approach will be taken to address breaches and whether, or not, to take formal enforcement action.
- Act proportionately to the scale of the alleged or actual breach and the level of planning harm that results from this. To be consistent in its actions - having a similar approach to similar circumstances to achieve similar outcomes.
- Be transparent in its actions - being open when dealing with business and the public. (Although some information, such as the name of the complainant, will remain confidential)
- Be helpful, courteous and efficient at all times.
- Perform against agreed standards (see priorities table in Section 9) – resources will be targeted to prioritise those cases where the greatest harm is being caused.

## **5. THE PRINCIPLES OF PLANNING ENFORCEMENT**

- The carrying out of development without planning permission, although unauthorised, is not illegal. Some actions may become illegal only following non-compliance with all types of formal Enforcement Notice.
- All alleged breaches of planning control will be investigated by the Council except those made anonymously.
- The Council will seek to resolve all breaches of planning control through informal negotiation in the first instance unless the breach is causing or is likely to cause imminent irrevocable harm requiring immediate action. This occurs in only a very small number of cases (1-3%). The focus is to achieve compliance without resorting to formal proceedings.
- Where appropriate, the Council will give reasonable timescales for voluntary compliance through removal of the breach or through regularisation.
- Legislation does allow planning permission to be sought retrospectively and government guidance recommends that local planning authorities seek to regularise potentially acceptable unauthorised development through granting planning permission. Where there is a breach of planning control an application will be requested by the Council where it believes consent could be granted with conditions imposed to satisfactorily control the development. Despite this, the Council must accept all valid applications and determine these even if they have not been invited. Formal action will not usually be taken when there is an undetermined valid planning application or appeal. When determining a retrospective planning application, the fact that it is retrospective will not influence the planning assessment in any way.
- Any action should be proportionate to the level of harm (see box below for explanation of harm) involved and should consider relevant circumstances where it is expedient and necessary to do so, i.e. in the public interest. The Council needs to consider whether it is expedient having regard to the Development Plan and any other material considerations and in the public interest to undertake formal enforcement action to remedy breaches of planning control. Expediency will depend on the level of harm caused and the likelihood of achieving voluntary compliance. There is a box below which explains harm in more detail and a 'Tool to assist with assessing harm' at Appendix 2.

- There are formal enforcement powers available to Councils to address breaches of planning control and we will apply the most appropriate power dependant on the circumstances of each particular case.

This LPEP applies to the enforcement activities carried out under the legislation enforced by the Planning Enforcement Team. The Council also has other powers of enforcement in relation to other legislation such as: Building Regulations, highways and environmental health but this Plan does not apply to these powers (see below).

### **Planning harm**

Planning harm is not defined in the Planning Regulations. Harm caused by unauthorised development can be described as the injury caused to public amenity or public safety. Planning enforcement action will not be taken where the matter is addressed through other legislation. Before taking planning enforcement action regard will be made to the Development Plan and other material planning considerations. It would not be appropriate to issue an enforcement notice for unauthorised development which is acceptable in planning terms (i.e. If planning permissions would normally be granted for this development if it was the subject of a planning application).

Harm can include an unacceptable impact on:

- Planning Policy
- Visual amenities and the character of the area
- Privacy/overbearing/daylight/sunlight
- Noise/smells/pollution such as contamination
- Access/traffic/Highway safety
- Health and safety
- Undesirable precedent
- Ecology, Trees and Landscape
- Amenity standards of users of the development

A 'Tool to assist in assessing harm' is set out in Appendix 2.



## **6. WHAT IS A BREACH OF PLANNING CONTROL?**

Breaches of planning control vary considerably and could involve many matters. Examples of breaches of planning control include:

- Unauthorised works to Listed Buildings
- Unauthorised advertisements
- Unauthorised works to trees that have a tree preservation order (TPO) or are in a Conservation Area
- Unauthorised demolition within Conservation Areas
- Breaches of conditions attached to planning permissions
- Not building in accordance with the approved plans of planning permissions
- Untidy land where it adversely affects the amenity of the area
- Unauthorised engineering operations, such as raising of ground levels or earth bunds
- Unauthorised stationing of a caravan or mobile home for use as an independent dwelling
- Unauthorised material changes of use of land or buildings

Examples of non-planning breaches of control include:

- Obstruction of a private right of way, parking in front of access to driveway, gutter overhang or private drainage obstruction (these are civil matters)
- Parking of private and commercial vehicles on the highway or on grass verges (contact Thames Valley Police)
- Parking caravans or commercial vehicles 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
- Land ownership, boundary disputes or trespass issues e.g. scaffolding erected on neighbouring property or building works/guttering encroaching over the boundary (these are civil matters)
- Covenants on property deeds (these are civil matters)

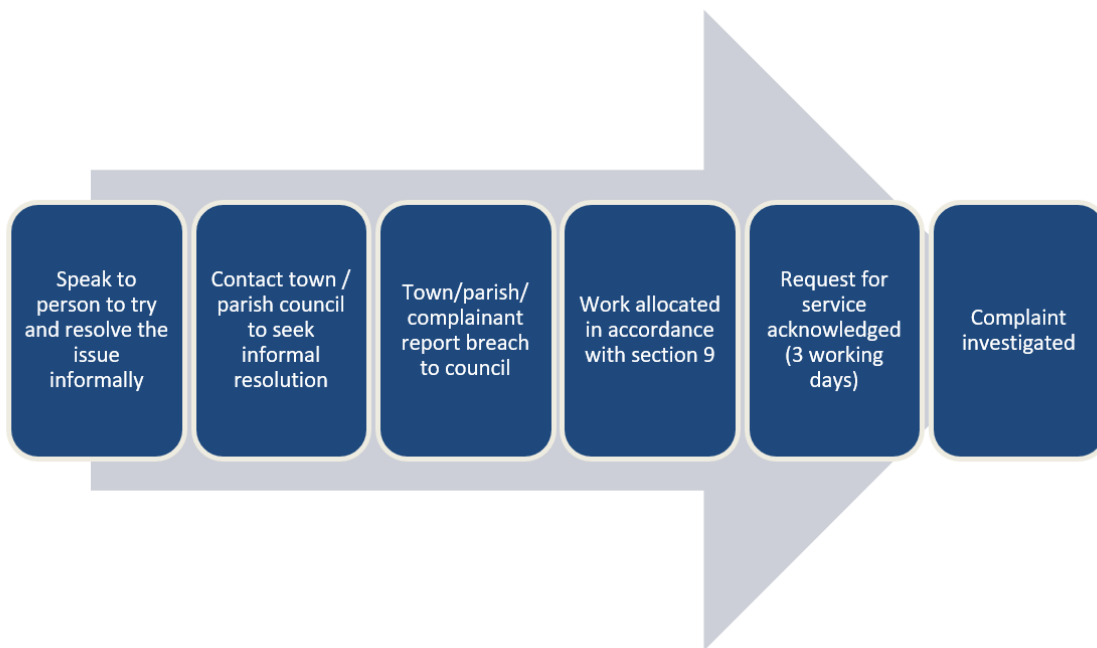
- Internal works to a non-listed building
- Obstruction of a highway (contact Thames Valley Police), public right of way (PROW - Contact the Council's footpaths officer)
- Any works that are deemed to be 'permitted development' under The Town and Country Planning (General Permitted Development) Order 2015 as amended
- Advertisements that are either excepted from "deemed" and have "express" consent under The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 as amended
- Clearing of land of overgrowth, bushes or non-protected trees (unless within a designated nature conservation area)
- Dangerous structures or other health and safety issues (Building Control Solutions or the Health and Safety Executive)
- Damage caused to neighbouring property during construction work (this is a private matter)
- The behaviour of builders and other antisocial behaviour (contact: [asb@wokingham.gov.uk](mailto:asb@wokingham.gov.uk))

## **7. NON-PLANNING ENFORCEMENT ISSUES**

Planning enforcement sits within Planning Services, within the Place and Growth Directorate in the Council. Where an issue is not within the remit of planning legislation but still capable of being pursued by the Council, it will be passed to the relevant team. Enforcement action across the different regulatory regimes is coordinated, and in some cases using alternative means and powers available to the Council (e.g. serving a Noise Abatement Notice) may well result in a speedier resolution of the issue.

## **8. REPORTING A BREACH**

The diagram below suggests what a complainant may wish to do before reporting an alleged breach. It goes on to set out the initial process by which the Council will register and acknowledge the Request For Service (RFS) before the investigation commences.



**Figure 1: Process prior to submitting and post registering RFS**

The Council strongly encourages that residents communicate with each other and developers to try and resolve a breach of planning control informally. They can also approach their ward members (<https://wokingham.moderngov.co.uk/mgFindMember.aspx>) or town or parish council (<https://wokingham.moderngov.co.uk/mgParishCouncilDetails.aspx?bcr=1>) to help achieve an informal solution. If the suspected breach cannot be resolved informally, it can be reported in confidence as set out below, however anonymous matters will not normally be investigated.

#### **How to report a breach**

To report an alleged breach of planning control use the [online reporting form available on the Council's website](#). Alternatively, you can do this through your local ward members or your parish or town council.

#### **Useful Information for reporting a breach**

- An accurate description of the location or address for the particular site, ideally including the town or parish

- A detailed description of the activities taking place that are cause for concern, including what harm the breach is causing and/or how it affects you
- Names, addresses and phone numbers (if known) of those persons responsible for the alleged breach or the landowners
- The date and times of when the alleged breach took place including when it first started
- Any other information or evidence that may be able to assist, e.g. a planning application number; any previous problems / breaches
- Your name, address, phone number and e-mail address (Note: Anonymous complaints will not normally be investigated)

## **9. PRIORITIES**

The Council receives approximately 1000 Requests for Service (RFS) every year. Planning enforcement investigations can be lengthy and complex and since resources are limited it is necessary to prioritise, as set out below:

### **Category 1 – High Priority**

Type of development: When irreversible and serious damage to the environment or public amenity would result. Examples include Works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; serious traffic hazards; contamination and or pollution being created, unauthorised caravan sites, or other development where there is actual or imminent residential occupation.

Level of service: Receive immediate attention, where possible the same day; where this is not possible, within one working day. The planning enforcement team may be required to devote all of its time to the investigation of one category 1 complaint depending on its nature, but in normal circumstances will be able to address more than one complaint of this nature at any given time.

Potential resolution: Where a negotiated approach is unsuccessful in bringing a halt to development which has been identified as category 1, a further assessment will be made to identify the course of action which is proportionate to the nature of the breach (this does not apply where the breach has required immediate action as set out in the earlier Principles).

### **Category 2 – Medium Priority**

Type of development: This covers less immediate yet still serious and harmful breaches and is likely to include breaches where building works have just commenced, where severe harm is being created and non-compliance with certain planning conditions (particularly pre-commencement conditions).

Level of service: The complaint will normally be investigated within 10 working days of the complaint being received.

Potential resolution: Retrospective applications will be sought where there is a reasonable prospect that planning permission could be granted, subject to necessary conditions and or legal agreements. Where it is considered that an application could not be supported it may be necessary to resort to formal action if it is expedient to do so.

### **Category 3 – Low Priority**

Type of development: This category relates to all other breaches and which are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities. Such breaches may include untidy sites, non-compliance with other planning conditions, the unauthorised display of advertisements and the erection of fences.

Level of service: The complaint will normally be investigated within 28 working days of the complaint being received.

Potential resolution: Resolution of this category of breach is likely to be sought by negotiation and/or the submission of a retrospective planning application to secure a development which is acceptable in planning terms. In cases which cause no significant harm, the Council may decide not to pursue any formal action even when a breach of planning control has occurred. In these cases, the Council will undertake an expediency assessment (report) which can be provided on request.

## **10. INVESTIGATING A BREACH OF PLANNING CONTROL**

A summary of the procedure adopted for the handling of enforcement complaints is shown in the flow chart included as Appendix 1.

## **11. POSSIBLE OUTCOMES OF THE INVESTIGATION**

In approximately 50% of cases investigated, there is no breach of planning control and no action can be taken. In those cases where there is a breach, in accordance with government guidance the Council will seek to secure a negotiated solution, unless there is substantive irreversible harm that necessitates immediate action. While adequate time-scales for compliance following a negotiated solution must be given, the Council will not allow negotiations to result in delay to formal enforcement action, if this is necessary. A tool to assist with assessing harm can help to determine whether formal action should be taken or not is set out in Appendix 2.

<b>Outcome of investigation</b>	<b>Proportion of cases</b>	<b>Action</b>
<b>No breach established</b> e.g. no development has taken place, the development is permitted development or is not within the control of planning legislation,	Represents approximately 50% of RFSs submitted per year	Close case and take no further action. The complainant will be notified of closure and the reasons for this.
<b>Breach identified but it is not expedient to pursue.</b> e.g. if a technical breach has taken place, for example a house extension that is only marginally larger than permitted development limits, then it is not normally expedient to pursue enforcement action.	Represents approximately 3% of RFSs submitted per year	A retrospective application will be requested to regularise the breach, or an expediency report will be prepared. The case will then be closed, and no further action taken
<b>Development is lawful</b> i.e. The development or use has been in existence for a period of time that makes it exempt from enforcement activity (4	Represents approximately 5% of RFSs submitted per year	Close case and take no further action. A certificate of lawful development may be invited to regularise.

years for a building operation and 10 years for a use)		
<b>Attempt to negotiate a resolution.</b> In line with government guidance, the first priority is to try to resolve a breach of planning control through negotiation.	Approximately 40% of breaches are resolved through a negotiated solution through the submission of a planning permission or removal of the breach.	A retrospective application will be requested and/or appropriate timescales will be given for: - <ul style="list-style-type: none"> <li>• Removal of breach</li> <li>• Alterations to the development to make it acceptable</li> </ul>
<b>The development is harmful and not acceptable,</b> and amendments cannot be achieved that will result in removing the harm	Approximately 1-3% of all cases	Formal action will take place. This is a lengthy process and the last resort if a negotiated solution and voluntary compliance cannot be achieved. Adequate timescales for compliance with a formal action must be provided.

## **12. TYPES OF FORMAL ENFORCEMENT ACTION**

If negotiation does not secure compliance with what the Council considers acceptable then it has the discretionary power to take formal action against any breach. The nature of the breach will dictate what route the Council chooses to pursue. The formal tools available include:

<b>Type of enforcement action</b>	<b>Purpose</b>
Planning Contravention Notice	Requires persons to divulge information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action

Breach of Condition Notice	To secure compliance with conditions specified within a planning permission
Enforcement Notice	To require steps required to remedy the situation
Stop Notice / Temporary Stop Notice	To require the unauthorised activities to cease
Section 215 Notice	To secure the proper maintenance of land and buildings
Injunctions	To prevent unauthorised development and only used in a very limited number of specific circumstances
Prosecution	Failure to comply with a notice is a criminal offence. To secure compliance with any formal enforcement notice and / or to bring the offence before the court for its consideration and, if convicted, sentence including ancillary Orders

### **13. CONSEQUENCES OF PLANNING ENFORCEMENT**

There are a number of consequences for a person who has undertaken a breach of planning control if the development has an unacceptable harmful impact, and these include:

- Failure to comply with a notice is a criminal offence and prosecution may result in the person getting a criminal record.
- The owner or persons responsible will be required to remove a building work and/or cease an activity and remove from the site and everything associated with the activity at their own expense.
- The Council may take direct action to undertake the appropriate works and recover the costs from the responsible person and /or prosecute.
- Where a crime has been committed the Council will consider whether to make an application under the Proceeds of Crime Act.



## **14. TIMESCALES**

Seeking to resolve enforcement cases can be a lengthy and complex process. For example, someone may decide to appeal against an enforcement notice, which will significantly extend the times for resolving a case. For both negotiated solutions and formal action, a reasonable time period for compliance must be given. Following formal action, legal action to secure compliance is sometimes necessary and the timescales for this are set by the courts and can be lengthy. Sometimes there is limited progress with which to update a complainant and interested parties. In these cases, the Council welcomes interested parties contacting the responsible officer to check timescales and action. As a result, it is not possible to give a standard time for dealing with enforcement cases, but enforcement officers will work to the targets identified in section 9 above.

## **15.HUMAN RIGHTS ISSUES**

The Council is committed to treating all recipients of enforcement action fairly, keeping them informed of action being planned, or taken, at each stage, and informing them of any rights of appeal. In particular, regard will be given to the Human Rights Act 1998<sup>1</sup>. However, when decisions are taken relating to enforcement action, the public interest must be considered. Decisions will, therefore, be taken by balancing private rights, the public interest and, as appropriate, the resources required to take action. Essentially, private interests must be balanced against the wider public interest and against competing private interests. Such a balancing exercise is essential in the decision-making process when considering enforcement action. The Council will also comply with its public sector equality duty as set out in the Equality Act 2010 or subsequent legislation.

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The European Convention on Human Rights (ECHR) was brought into law via the Human Rights Act 1998 (HRA) There are 3 Convention Rights likely to be most relevant to planning decisions:

- Article 1 of the First Protocol - Protection of Property
- Article 6 - Right to a Fair Trial
- Article 8 - Right to respect for Private and Family Life

It is important to note that these types of right are not unlimited. Although in accordance with the concept of 'proportionality' any interference with these rights must be sanctioned by law, (e.g. The Town and Country Planning Act 1990) and must go no further than necessary.

## **16. MONITORING DEVELOPMENT**

The Council recognises the importance of pro-actively monitoring development that occurs within the Borough. However, the Council issues approximately 3000 planning permissions every year and these range from small-scale residential extensions to major housing and commercial developments. As such it is impossible for the Council to monitor all permissions and relies on the local knowledge of local people, ward members and the town and parish council to be its eyes and ears and to follow the process outlined above.

The Council will focus its resources for compliance checking on those cases identified at application stage as being particularly controversial/sensitive in planning terms. Of course, what is “sensitive” will always be a matter of judgement; however, for the purpose of identifying permissions to be monitored the Council will consider the following factors with each case being considered on its merits (e.g. in some instances a factor may be more important than others):

- location in relation to a Conservation Area and/or Listed Building and/or Designated Heritage Assets, which includes Historic Parks and Scheduled Monuments
- significant number of objections at application stage
- scale of development
- condition(s) requiring defined relationship to adjoining properties

Whilst the Council’s enforcement officers, with the assistance of planning staff, undertake monitoring of ongoing development, it is very important that those who obtain and implement a planning permission take full responsibility for compliance with that planning permission.

A valid commencement of a planning permission can only take place if the following steps have been undertaken:

1. *Firstly*, fully discharge all pre-commencement conditions of the permission, i.e. those conditions which start with “No development shall take place until ....”

2. *Then*, commence building work on the ground, which is in accordance with the approved plans, before the expiry date of the permission.

It is also very important if anyone undertaking development wishes to make any amendments to an approved scheme that they obtain the necessary further approval prior to carrying out the work. Some amendments will require the submission of a further application for planning permission, and if this is the case, any further application will be assessed in accordance with normal planning policy and procedure.

The Council will prepare reports for the information of the Planning Committee on a quarterly basis clearly setting out what enforcement action has been taken.

## **17. CUSTOMER ROLE**

The Council welcomes the involvement of its residents and businesses in the operation of this Local Planning Enforcement Plan. The Council will: -

- Provide periodic updates to the complainant as the case progresses until resolved
- Undertake periodic reviews of and amendment as appropriate to the LPEP
- Enable effective engagement of the Parish and Town Councils

It is accepted good practice that neighbours should talk to each other to attempt to resolve any issue between them.

If matters cannot be resolved it is recommended that neighbours/residents should contact their ward member/ Town or Parish Council to see if they can help resolve the issue or advise on appropriate action.

## **18. WARD MEMBERS**

Elected ward members are representatives of local residents and are available to help resolve issues about all council matters including planning enforcement. If local people have concerns about any possible breach of planning control, they can contact their ward members to discuss this with them and they will coordinate with officers to address these concerns. A list of ward members can be found on the Council's website. Ward

members are kept informed about requests for service by the enforcement team through a monthly update.

## **19. PARISH AND TOWN COUNCILS' INVOLVEMENT**

The Council recognises that parish and town council members have an important role to play. Town and parish councils have a great deal of local knowledge and awareness of what is happening in their areas and the Council encourages that they act as its eyes and ears on the ground. Town and parish councils can inform the planning enforcement and compliance process. The Council encourages town and parish councils to engage with officers over planning enforcement issues and could play a helpful role in alerting officers that development has commenced on site. They can also help to monitor development and alleged breaches of planning control. This way the town and parish council can take an active role in the investigation process.

Often the town and parish councils can also help to resolve breaches informally through negotiating on behalf of residents. They receive monthly notification of all new Requests for Service within their area and information when these are closed. They are therefore able to update local councillors and residents about planning enforcement and compliance issues. It is intended that town and parish council involvement should operate on an entirely voluntary basis but even if they do not want to be directly involved in an enforcement case, they are a source of valuable advice about the process and how to report a breach of planning control.

## **20. MONITORING THE COUNCIL'S OWN PERFORMANCE**

The Council is keen to demonstrate that it is operating this LPEP in a fair, equitable and transparent manner; that it adheres to its responsibilities; and that its performance is openly monitored and reviewed when appropriate.

The Council will:

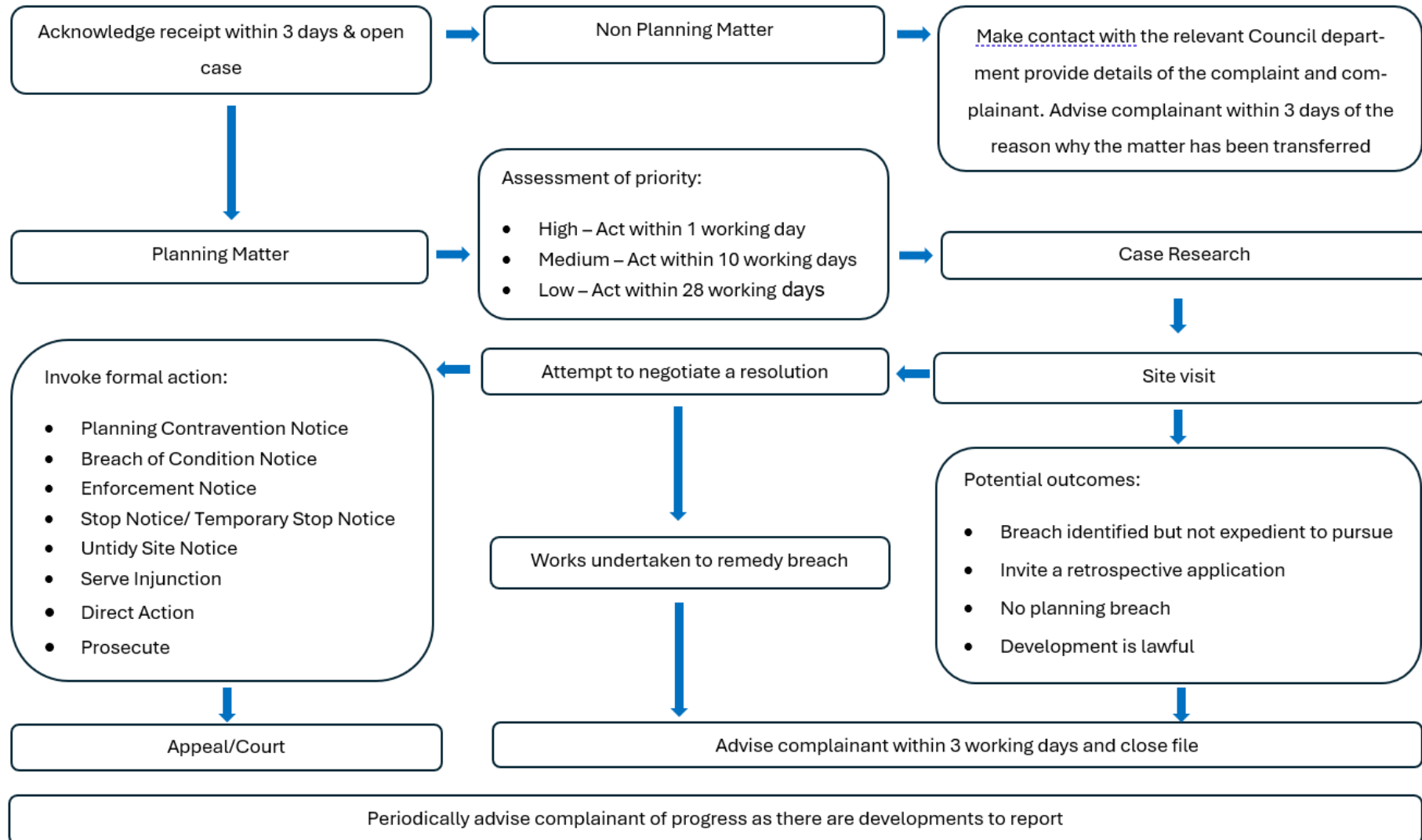
- Submit annual and quarterly monitoring reports to the Planning Committee clearly setting out what enforcement action has been carried out in the preceding period.

- Cross-refer the standard documents used by the Council in the Enforcement Service with other authorities to ensure they remain up to date and applicable.
- Use the enforcement monitoring report to feed into the monitoring and review of Development Management and Planning Policy (as appropriate).
- Work towards meeting the performance targets set out in Appendix 3.

## **21. CONCLUSIONS**

- Formal enforcement action is discretionary and the relevant planning circumstances of each case must be considered.
- In line with government policy and guidance, the Council will focus on resolving most breaches through negotiation.
- Where development could be acceptable, the Council will encourage the submission of an application to regularise the breach. The unauthorised nature of the breach will not influence the planning assessment of a retrospective application in anyway.
- If a negotiated solution cannot be reached, in deciding whether to pursue enforcement action the Council is required to consider whether it is “expedient” to do so and that the action is “proportionate” to the breach.
- Enforcement action will be taken when there is an unacceptable effect on the built and natural environment and public amenity that cannot be resolved through information negotiation or regularisation.
- When the breach of planning control is causing serious harm or nuisance to public amenity formal action will not be delayed by protracted negotiation.
- The formal enforcement process is lengthy and open to challenge but where necessary and in the public interest formal enforcement action will be considered.
- In exercising the Council’s discretionary enforcement powers, the Council aims to be reasonable, equitable and proportionate.
- The Council will provide feedback to complainants and town and parish councils about cases they have reported until they are resolved.
- The Council will undertake to monitor and review its enforcement service and to update policies and processes where appropriate.

## Appendix 1 - Simplified Request for Service (Enforcement complaint) Handling Process



## Appendix 2 - Tool to assist with assessing harm (the negative impacts)

Number	Factor	Impact	Score
1	Is the breach:	Worsening? (1) Stable? (0)	
2	Highway safety issue	Yes? (2) No? (0)	
3	Other safety issue (not covered by other legislation)	Yes? (2) No? (0)	
4	Is it causing serious or irreversible harm to the environment or surrounding area	Yes - Widespread? (2) Yes - Local? (1) None? (0)	
5	Age of breach	Within 6 months of immunity? (2) Less than 3 months old? (1) More than 3 months old? (0)	
6	Planning policy breach	Yes? (1) No? (0)	
7	Flood risk	Zone 3 (2) Zone 2 (1) Zone 1 (0)	
8	Breach of planning condition or Article 4 direction	Yes? (1) No? (0)	
9	Conservation Area or adjacent to	Yes? (1) No? (0)	
10	Listed Building or affecting character or setting of a listed building/ Registered Listed Park and Garden or other adjacent sensitive site	Yes?(1) No? (0)	
11	Particularly sensitive site e.g. SSSI, AONB, Scheduled Ancient Monument, Archaeological Importance	Yes? (1) No? (0)	
12	Affecting TPO trees/Ancient Woodland/Ancient or Veteran Trees	Yes? (2) No? (0)	
13	Undesirable precedent (provide details)	Yes? (1) No? (0)	
		TOTAL	

NB For formal enforcement action to be taken it is likely that the harm score will need to be 5 or more. This is only one of the tools/tests that the Council will use to assess whether formal action should be taken.

### **Appendix 3 - Record keeping and performance targets**

The Council commits to monitoring and maintaining the following:

- Number of RFS cases received (annually)
- Number of outstanding RFS cases (target 180/month)
- Number of cases closed (annually)
- Speed with which cases are closed (target 60% to be closed within 8 weeks)
- All cases acknowledged within 3 working days
- All high priority cases investigated within 1 working day
- All medium priority cases investigated within 10 working days
- All low priority cases investigated within 28 working days
- Reasons for closure (other, no breach, not expedient, voluntary compliance, application submitted, notice served). Voluntary compliance + application submitted = cases closed through negotiation
- Number and outcome of enforcement appeals (annually)
- Number and outcome of prosecutions (annually)
- Number of injunctions (annually)



## **Appendix 4 – New Homes and Management Companies**

### **NEW HOMES**

If you are thinking about buying a new build home the Council strongly recommends that you:

- a) Familiarise yourself with the maintenance/management arrangements if the roads and open spaces are not going to be adopted by the Council
- b) Ensure that the property has been built as approved and that all planning conditions have been complied with. Planning permission decision notices, which include the conditions, are available on the council's website. Please be aware planning enforcement action is taken against landowners, which could include new homeowners. If the estate is not finished before you move in, (in many cases the final surface of the road or landscaping takes places after some houses have been occupied) then discuss with your conveyancing solicitor whether it would be prudent to hold back a small sum of money to cover outstanding matters in the event that the building companies goes into administration or fails to fully complete a development
- c) Familiarise yourself with any Planning legal agreement (Section 106) and ensure that it has been complied with, as the obligations contained therein are incumbent on all future landowners.

### **MANAGEMENT COMPANIES**

If you are considering buying a new-build freehold property, you may have come across the term 'management company'. A new build estate management company is responsible for managing services, including green spaces and roads on new-build sites and estates. They tend to arise when the roads and spaces are not adopted by the Council.

It means buyers are contractually obligated to pay a share of the costs with the other homeowners on the estate to manage and maintain their open spaces, roads, lighting etc. Please be aware, the Council is not involved with the Management Company and unfortunately, cannot get involved when they do a poor job, or the fees (service charge) increase.

#### **What is the role of the management company?**

The new build estate management company takes care of the service charge together with the delivery of management and maintenance services for a housing estate development. It will mostly deal with shared areas such as footpaths, steps, landscaping, and cutting of grass, and maintenance of open spaces.

The management company's obligations will be specified in the property lease, title deeds or transfer documentation, which varies from development to development.

### **Who owns the management company?**

They are generally created in one of two ways:

The developer creates the new build estate management company, which will employ a managing agent to provide or oversee the services provided. The managing agent performs most of the duties of running a property under the appointment, control, and direction of the management company.

If the development is smaller, it is more likely the owners of each property will take a share in the management company and run it collectively. This option arguably gives property owners greater control of expenditure however, it requires a substantial deal of time and effort to run such a scheme day-to-day and in reality; they are extremely rare.

### **What are the costs of a management company?**

The management costs may vary from year to year and are linked to the costs incurred providing the services, so they can increase. However, costs should be reasonable, and any increase should appropriately reflect the costs the management company incurs.

Critics say the system is open to abuse by management companies because there is no obligation to keep costs to a minimum, or even provide evidence that the services they offer are even being carried out. Homeowners have labelled it a stealth tax and say it is wholly unfair. They believe they are being forced to pay for the upkeep of privately owned public spaces which can be used by everyone, including those who do not live on the estate.

Anecdotally, other homeowners have had to pay 'permission fees' if they want to make even remedial improvements to their homes.

### **Aren't management companies only for leasehold properties?**

Leasehold properties are typically more commonly associated with service charges, however, more recently, new-build freehold properties can also be subject to annual management charges. Unfortunately, freeholders do not have the same rights as leaseholders do to challenge unfair or unreasonable practices by their management company.

### **Are management companies regulated?**

At the time of writing, there are no regulations governing management companies. The maintenance charges are unregulated and uncapped, meaning there is unfettered scope for management companies to hike charges as they see fit.

It is common for management companies of unadopted private estates to sell off the contracts to investors, who then pass on the costs to homeowners via a deed of transfer under the Law of Property Act 1925, which obligates homeowners to pay for maintenance of the land.

### **Will having a management company affect a future sale?**

There may be a restriction on the property in favour of the new build estate management company. This means that you will need to obtain the consent of the new build management company to sell the property. This will only usually be provided if all fees are paid and up to date. Some developers are even adding restrictive covenants to property deeds that ban owners from parking certain vehicles on their own driveways, or from erecting satellite dishes on the front of homes. Developers often state this is to ensure all properties on an estate retain a similar look, but those affected say such rules go against the spirit of freehold ownership.

Failure to comply with a restrictive covenant could lead to legal action from the management company or developer.

Additionally, the buyer will also be required to comply with any obligation imposed by the management company and enter into something called a 'covenant' confirming agreement when taking over the property. The buyer will be provided with details of the management company's requirements in a management pack. They may also be required to pay notice fees upon completion of the sale, which can be anything up to £100.

### **Can service charges be avoided?**

If you already own a new build and are paying the charges, realistically, there is very little you can do. You are probably subject to a binding contract. In some cases, it is included within the title deed, which leaves you liable to the charges.

Depending on your deeds, and the management agency's approach, you may be able to expect an annual statement of account for the charges you pay. Although not all management companies do this.

### **What can I do if I am unhappy with the charges?**

In the first instance, you should complain to the managing agent if one has been appointed. Managing agents report to, and take their instructions from, the management company. If the agent is following their directions, then the agent might not be at fault.

Although leaseholders can complain to a tribunal, this course of action is not available to freeholders. This is even the case on estates where there is a mix of leasehold and freehold properties, and they pay into the same pool of money. The same rights and protections from unreasonable service charges do not apply to freeholders.

Increasingly, homeowners face the unenviable situation whereby developers choose not to have roads, green spaces, drainage adopted by the Council (usually because it would mean delivering them to a higher/more expensive standard and paying a commuted sum to the Council). This leaves homeowners reliant on management companies to maintain these items and often feeling that they are "paying twice", since they pay a management

fee and Council tax. This blurring of duties and responsibilities has led to the exploitation of freeholders at the hands of profit driven developers.

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