



## LOCAL ENFORCEMENT PLAN

(Revised 2025)



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## 1.0 Introduction

- 1.1 The Borough of Test Valley is made up of a wide variety of environments including attractive countryside, along with historic towns, villages, and hamlets and the two largest settlements of Andover and Romsey. There are also a number of suburban areas, commercial business parks and industrial estates.
- 1.2 This local enforcement plan sets out Test Valley Borough Council's approach to planning enforcement and explains how alleged breaches of planning control will be investigated. It provides guidance on a range of options available to achieve compliance, where physical works or new land uses have taken place without planning permission, and sets out our priorities for investigating different types of cases.
- 1.3 The Council is firmly committed to providing a customer focused, effective and efficient enforcement service. This document sets out our procedures, priorities, and performance standards so the public and our other customers understand the service they can expect to receive.
- 1.4 This document is therefore intended for all users and providers of the service, including members of the public, other interested parties that may be involved in enforcement matters, town and parish councils and Borough Councillors.

## 2.0 Government Advice and Legislation

- 2.1 **The Town and Country Planning Act 1990** provides the main legislative framework for dealing with breaches of planning control. The Act provides the Council with the necessary powers to deal with breaches of planning control, whilst the **National Planning Policy Framework (NPPF)** and **National Planning Practice Guidance (NPPG)**, provide information on how the Council should deal with breaches of planning control including putting in place a local enforcement plan.
- 2.2 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient and proportionate to do so. Section 6.0 of the plan explains expediency and how decisions are made as to whether to take formal action. Any action taken should be commensurate with the seriousness of the breach of planning control identified and the harm caused, or harm that may be caused:

In relation to Enforcement matters the NPPF states that:-

***“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. They 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 appropriate.”***

- 2.3 NPPG provides additional guidance to that contained in the Framework under the title “Ensuring Effective Enforcement” for further advice please follow the link [Ensuring effective enforcement - GOV.UK](#)

### **3.0 Aim of Planning Enforcement**

- 3.1 The Council aims to provide an efficient and effective planning enforcement service making best use of the resources available, whilst treating all customers with courtesy, respect and impartiality. It is acknowledged that in some instances the party responsible for a breach of planning control may have acted without knowing or realising that their actions required planning permission. Therefore, whilst it is important to take timely and robust action to address unauthorised development that is having an unacceptable impact, the officers are committed to handling cases proportionally and sensitively in response to the circumstances of the breach being investigated.
- 3.2 The Council aims to stop unauthorised development, or reverse the unacceptable effect it is having, in circumstances where it is causing material harm in planning terms. Where the development may, in principle, be acceptable, the Council will encourage the submission of a retrospective planning application to see if the breach can be resolved by permission being granted. However, in cases where the planning assessment undertaken as part of the investigation concludes that there is little prospect of permission being given an application would not be invited, although one could still be submitted, and will need to be assessed and determined in the usual way. Under such circumstances the Council will decide whether to proceed with enforcement action or to wait until the application has been determined.
- 3.3 The Council will, when it considers it to be appropriate and proportionate to do so, take formal enforcement action against a breach of planning control in order to alleviate the harm that it is causing.

### **4.0 What is a breach of planning control?**

- 4.1 A breach of planning control is defined in S.171A of the Town and Country Planning Act 1990. In essence a breach of planning is caused when one of the following takes place:
- Carrying out of operational development (building, engineering, mining or other operations) without planning permission
  - Carrying out of material changes in use of land without planning permission.
  - Failing to comply with a condition or limitation subject to which planning permission was granted.
  - Carrying out of ‘permitted development’ not in compliance with the relevant limitations and conditions set out in the **Town and Country (General Permitted Development) (England) Order 2015**
  - Carrying out of works to a Listed Building without the relevant consent (s).
  - Unauthorised works to a tree protected by a Tree Preservation Order or unauthorised works carried out to trees within a Conservation Area.
  - The display of advertisements without consent.

- Where the condition of any untidy land or buildings is causing an adverse effect on the amenity of the area.
- Failure to build in accordance with the approved plans following the granting of planning permission.

4.2 Most breaches of planning control, where development is carried out without planning permission, are not, in themselves, criminal offences. Under current legislation a criminal offence may arise when an Enforcement Notice has been served, has taken effect and the requirements of such a Notice have not been met within the time frame set out in the Notice. However, certain other breaches of planning control do constitute a criminal offence from the outset. These include:

- Unauthorised works to a Listed Building.
- Unauthorised works to a tree with a tree preservation order (TPO) in place, or a tree located within a Conservation Area where the Council has received no prior notification of the intention to carry out works.
- The display of unauthorised Advertisements.
- The carrying out of 'Relevant Demolition' – see S.196D of the Town and Country Planning Act 1990.

4.3 Failure to comply with the terms of a Section 106 Agreement (sometimes called planning obligations or unilateral undertakings). NB: In technical terms this is a breach of contract (civil matter) as opposed to a breach of planning control. The potential remedies differ but is covered by the planning team and can be subject to action when agreements are not complied with.

## **5.0 Matters which are not usually a breach of planning control**

5.1 The following list contains examples of those matters which do not generally constitute a breach of planning control. This list is not exhaustive, but is included to provide information and clarity for people that are not usually involved in planning matters:

- Internal alterations to a building (excluding those buildings that are Listed Buildings).
- Obstruction of a highway or public right of way. This is usually a matter for Hampshire County Council.
- Land ownership disputes and boundary disagreements. Normally this would be a civil matter between interested parties.
- Parking of vehicles on the highway or on grass verges. Again, this may be a matter for Hampshire County Council.
- Working or operating a business from home, where the residential use remains the primary use of the property, and when no significant impact on the residential amenity and change to the character of the area arises. In other words, where the nature and scale of the business being run is incidental and not having such an affect that it causes a material change in use of the residential property.

- Breach of covenants and other restrictions on Deeds. These are civil matters between parties who are affected by the terms of the Deed.
- Advertisements which are either exempt from requiring consent, or benefit from deemed consent, by virtue of **The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as modified)**
- Any development deemed to be “Permitted Development”, and compliant with the relevant limitations, as set out in **The Town and Country Planning (General Permitted Development) (England) Order 2015** or in any statutory instrument revoking and re-enacting that Order. Permitted development covers both building works and changes of use and allows development to take place without permission from the Council. Some types of permitted development do require the Council to be notified before works proceed. This procedure is called prior approval and does give the Council some control over the development.
- Clearing land of overgrowth, bushes or trees (provided the trees are not subject to a Tree Preservation Order or within a Conservation Area).

## **6.0 Determining whether to take enforcement action**

- 6.1 In most cases it is not a criminal offence to undertake development without first obtaining planning permission as explained above at 4.2.
- 6.2 The Government has made it clear through legislation and guidance that the response to an alleged breach of planning control is a matter for the discretion of the local authority. Not every breach of planning control justifies the taking of enforcement action and the Council will not simply seek to take formal action as a punitive measure or to make sure the breach is regularised.
- 6.3 In deciding whether to take enforcement action, the Council must make a judgement based upon the nature of the alleged breach, and the impact it is having, which is referred to in planning terms as ‘expediency’. This works in a similar manner to how the Council determines a planning application, which involves having regard to national and local planning policies, and any other material planning considerations, any other relevant circumstances and taking into account relevant case law and appeal decisions. Making the right decision on whether to take enforcement action is important and our Planning Enforcement team work collaboratively with the Councils Planning Officers and other relevant specialist consultees as part of the process.
- 6.4 Where possible, officers will try to negotiate a solution with the relevant party rather than taking Enforcement action in the first instance. There may be exceptions to this approach for the most serious breaches when action needs to be taken without delay. Accordingly, those responsible for the breach will be advised of what needs to be done in order to remedy the matter and, if agreeable, shall be given a reasonable period of time to do so. As set out above at 3.2, this can include inviting the submission of an application which seeks permission to regularise the alleged planning breach. In circumstances whereby agreement to resolve the breach cannot be reached, or is not addressed as agreed with the relevant party, then the Council will need to decide whether or not the breach is causing a level of harm which warrants formal enforcement action. The way this is considered is set out above at 6.3. Action will be taken

in cases where the alleged breach has been assessed, is considered to be causing unacceptable planning harm, and it is expedient to take action.

- 6.5 In exercising planning functions which includes enforcement, the Council is required to consider whether enforcement action is in the public interest (i.e.: legitimately seeking to uphold the integrity of the Planning system, whilst maintaining public confidence). At the same time, it is also under an obligation to act consistently with the European Convention on Human Rights (in particular, Article 8 – the Right to Respect for Home, Privacy and Family Life, Article 14 – Prohibition of Discrimination, and Article 1 of the First Protocol – Right to the Enjoyment of Property). Regard must also be had to the Public Sector Equality Duty as contained in the Equality Act 2010.

## **7.0 How to report an alleged breach of planning control**

- 7.1 If someone believes that a breach of planning control has occurred, they should notify the Council's Planning Enforcement Team using one of the following options:

- By reporting it online to the Council (see reporting forms): <http://www.testvalley.gov.uk/>
- By telephone: 01264 368 000
- By email to: [planning@testvalley.gov.uk](mailto:planning@testvalley.gov.uk)

- 7.2 In order for the Council to investigate your complaint you will need to provide the following information:

- The full address of the site or clear directions to it.
- What the alleged breach of planning control appears to be and when it was first noticed.
- The name and address of the landowner(s) and/or the person responsible for carrying out the works (if known).
- Your name, postal address, email address and telephone number (your details will be treated as confidential but please see 8.1 below)

- 7.3 Anonymous complaints will not generally be investigated, except in circumstances where the allegations appear to be related to a very serious breach, for example:

- Works to protected trees.
- Works affecting heritage assets.
- Development causing serious irreversible environmental damage or a significant public safety risk.

- 7.4 The Council will determine whether the alleged breach merits further investigation. If complainants do not wish to give their personal details, they will be advised to contact either their Local Borough Councillor, or their Parish Council, who may decide to contact the Planning Enforcement Team on their behalf.

## **8.0 What can you expect if you report an alleged breach of planning control?**

### **8.1 We will:**

- Investigate alleged breaches of planning control reported to the Council.
- Keep your personal details confidential at all times, unless required to disclose as part of Court proceedings or pursuant to a request for information under the Environmental Information Regulations to which an exemption does not apply
- Register your complaint within 3 working days, providing you with an acknowledgement and reference number, along with the name of the Planning Enforcement Officer who will be investigating the matter.
- Check the site planning history.
- Visit the site within the requisite time period (see priorities below) – in cases where access cannot be arranged by agreement with the relevant party Planning Enforcement Officers have powers to enter land at any reasonable hour to investigate alleged breaches of planning control. However, should access be required into a dwellinghouse then 24 hours notice must be given in accordance with S196A of the Town and Country Planning Act 1990.
- Take photographs and measurements on site (if necessary).
- Establish whether, in our opinion, a breach of planning control has taken place.
- Find out the details of the landowner.
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner).
- On occasion, the Council may issue a Planning Contravention Notice (PCN). This is a request for information to be provided to the Council relating to the suspected breach.
- Keep you informed of the progress of the case, including when there has been a change in circumstances, or other developments, including any decisions made with regard to whether to take action, or what action will be taken, if that is the intended approach, and likely timescales involved (see Section 6 above).
- Actively pursue the matter to a conclusion.
- In cases where we decide there has not been a breach of planning control, we will notify you of the outcome and the case will be closed.
- In cases where there may be a technical breach of planning control, but the harm caused is insufficient to warrant formal action (not expedient – see Section 6 above) we will inform you of the reason(s) for not taking formal action and close the case.
- We may negotiate with those responsible for breaching planning control, allowing them the opportunity to resolve the matter, if possible, within a reasonable timeframe. The Council reserves the right, however, to take formal enforcement action when the breach is so serious it warrants such a

response or when negotiations become protracted with no real likelihood of a timely resolution (see Section 6 above).

8.2 When a breach of planning control is found to have occurred the investigation will continue until such a time that:

- The breach has ceased and any remedial works, if necessary, have been completed.
- The breach is regularised via a planning permission being granted.
- It is established that the development is lawful due to the passage of time (immunity from the Council being able to take action).
- A decision is reached that it will not be expedient to pursue by taking formal action (see Section 6 above).
- Any extant Enforcement Notice has been complied with.

8.3 It is an offence not to comply with an Enforcement Notice and in the event that a formal Enforcement Notice takes effect, and is not complied with, the Council may prosecute through the criminal courts. In deciding whether to commence a prosecution, the same tests will be applied as to any potential criminal prosecution by the Council. Exceptionally the Council may, for the most serious breaches, seek an injunction from the Courts or decide to carry out works as required by the Notice and then seek to recover the costs of doing so. Enforcement Notices can be the subject of appeal and the matter will be decided by a Government appointed Inspector. If the appeal is allowed, the Notice will be quashed, and in most instances, when this happens, the case will be closed by the Council. In the event that the appeal is dismissed, the notice will stand, and the Council will seek to secure compliance in the usual way.

8.4 More information regarding the possible outcome of enforcement investigations is explained below in section 12.

8.5 The Council will not re-open a case that has been closed unless there is a significant new piece of information or change on site.

## **9.0 What happens if an allegation is made that you have breached planning control?**

9.1 If a complaint is received you will be contacted by a Planning Enforcement Officer. In cases where access to a dwelling house is required, the Officer will give at least 24 hours notice. However, the site inspection may be undertaken without any prior notification should it be considered necessary in order to establish whether there may be a breach of a planning control. The purpose of a site visit is to establish the facts and whether there is any basis to the allegations made which will assist in working out if there is a planning breach. The Enforcement Officer will, where necessary, take measurements and photographs of the development or activity taking place. We understand that in some cases a breach may have occurred without the person responsible having realised permission was required and Officers will investigate cases with proportionally and sensitively as per Section 3.1 above.

- 9.2 Planning Enforcement Officers do have the legal right to enter land to undertake investigations relating to a suspected breach of planning control, as authorised under Section 196A of Town and Country Planning Act 1990.
- 9.3 If it is established that there is a breach of planning control then, as the landowner/occupant/developer, you will be advised of the details of the breach and what steps need to be taken to either rectify the matter or regularise the situation.
- 9.4 You may be given a reasonable period of time (subject to the nature of the breach) to resolve the breach of planning control.
- 9.5 If the breach of planning control is not resolved either by the submission (and approval) of a planning application, or the cessation and/or removal of the unauthorised development, then formal enforcement action may follow if the Council decide that it is necessary and expedient to do so.
- 9.6 Significant decisions relating to the enforcement case, such as the intention to take formal enforcement action, or to close the investigation, will be communicated to you.

## **10.0 Performance Standards**

- 10.1 Enforcement investigations carry varying degrees of complexity meaning that some cases are resolved within a few days whilst others can take many months to complete.
- 10.2 There are currently no set national targets relating to the investigation of alleged breaches of planning control. The Council's Enforcement Team is, however, committed to providing an efficient and effective service and as such it aims to:
- Register new cases that require investigation within 3 working days of receipt.
  - Complete initial site visits within 1-10 working days, as per the priority rating - section 11 below.
  - To conclude 70% (or above) of all planning enforcement investigations within 42 working days from the date of registration of the complaint.

## 11.0 How we prioritise complaints

11.1 To make the most effective use of resources, complaints regarding suspected breaches of planning control will be assigned a Priority Rating depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses.

Priority	Alleged Breach of Planning Control
<p>1 <b>Site Visit within 1 working day of receipt.</b></p>	<ul style="list-style-type: none"> <li>• Unauthorised development/activity which is causing immediate and irreversible harm in the locality.</li> <li>• Unauthorised works to trees subject of a Tree Preservation Order or to trees in a conservation area.</li> <li>• Unauthorised works to a Listed Building.</li> <li>• Development which is likely to give rise to a serious risk of harm to public health, public safety or seriously compromise highway safety (including a Breach of Condition of a planning permission).</li> </ul>
<p>2 <b>Site Visit within 5 working days from receipt.</b></p>	<ul style="list-style-type: none"> <li>• Stationing a caravan, for residential use, in the countryside.</li> <li>• Works not in accordance with a planning permission.</li> <li>• Householder development.</li> <li>• Commencement of development (following the grant of planning permission) without discharging ‘pre-commencement’ conditions – except for issues such as landscaping or means of enclosure, which are unlikely to require immediate action.</li> </ul>
<p>3 <b>Site visit within 10 working days from receipt.</b></p>	<ul style="list-style-type: none"> <li>• All other breaches of conditions.</li> <li>• Changes of use not covered by Priority 1 or 2.</li> <li>• Earthworks and changes to land levels.</li> <li>• Display of advertisements.</li> <li>• Agricultural developments.</li> <li>• Equestrian related developments.</li> <li>• Gates, walls, fences.</li> <li>• Satellite dishes.</li> <li>• Untidy land.</li> <li>• Any other breaches not included in Priorities 1 or 2.</li> </ul> <p><u>(Note: adverts and fence issues may be increased in priority if highway safety issues are identified).</u></p>

## **12.0 What are the possible outcomes of an investigation?**

- 12.1 **No breach established** – Following a site inspection and researching of the planning history of the site it may be found that there is no breach of planning control because, for example, the unauthorised use has ceased, or the development meets the permitted development provisions, or no development has taken place. It may also be that the works, or land use, is authorised by an existing planning permission.
- 12.2 **There is a breach of planning control but not considered expedient to pursue formal action** – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and should only be used when it is reasonable and proportionate to do so. For minor and technical breaches, which cause little or no planning harm, it may be considered not expedient to pursue, i.e. the breach is too minor to warrant the time and public expense of pursuing further. This is explained in more detail above in Section 6.
- 12.3 **The development is lawfully immune from enforcement action** – The time period required to gain lawful immunity from Planning Control has been amended through the Levelling-Up and Regeneration Act 2023. Both unauthorised operational development (substantially completed), and unauthorised material changes of use, will both now need to have existed for a period of at least 10 years in order to be lawfully immune from any enforcement action. Some breaches of planning control may become immune in less time, but that depends on the type of breach and when it took place. Planning conditions, imposed on a planning permission, will also become immune after ten years if it can be shown that they have not been complied with for this length of time. The Council may request that an application is submitted for a Certificate of Lawful Use or Development. Such applications will enable the Council to make a formal decision, on the balance of probability, as to whether the development is lawful and immune from enforcement action. These time limits may not apply where there is evidence that the alleged breach has been ‘deliberately concealed’ from the Council. This is explained in more detail below under the heading “Deliberate Concealment – Planning Enforcement Orders”.
- 12.4 **Negotiations take place to find a solution** – In accordance with Government guidance, the first priority is to try and resolve a breach of planning control through negotiation. In circumstances where negotiations are unsuccessful the Council will then need to consider taking formal enforcement action. The Council will not allow negotiations to become protracted and will use its discretion to decide when formal action is required in order to remedy on-going breaches that are causing unacceptable planning harm.
- 12.5 **Invitation to submit a retrospective application** – In accordance with Government guidance, where a breach of planning control is considered to be potentially acceptable in planning terms, the Council may decide to invite the submission of a retrospective planning application. Alternatively, it may issue an Enforcement Warning Notice requesting that such application is made. Such steps will only be taken in circumstances where the Council considers that there

is a reasonable likelihood that permission or consent may be granted in line with Local and National planning policies, and taking account of any other material planning considerations, or where a development could be made acceptable by way of the imposition of conditions. In some circumstances pre-application advice might be useful prior to the submission of the planning application itself. The fact that a planning application is invited does not necessarily mean it will be approved. The breach would be regularised if permission is finally granted by the Council.

**12.6 Formal Action** - The Council considers that the harm caused by the unauthorised development is unacceptable and it is therefore necessary to take formal enforcement action to remedy the breach of planning control. The more common forms of enforcement action are listed below:

- The service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990, that identifies a breach of planning control and requires specific steps to be undertaken to remedy the breach within a specified time period. Enforcement Notices can seek to resolve a variety of planning breaches including operational development work, material changes in use of land and circumstances where a breach of condition has occurred.
  - Where the development could be made acceptable by imposing conditions, a retrospective application may be invited. If after a reasonable period of time the owner or occupier of the land fails to submit such a planning application, consideration will be given to serving an Enforcement Notice which “under-enforces”; that is, it has the effect of granting planning permission for the unauthorised development but subject to the terms of the Enforcement Notice being complied with in full. This will only be used where it is considered that the harm caused by the unauthorised development is such that it can be made acceptable if controlled by restrictions or requirements imposed by a Notice. In such circumstances the Council will notify the owner or occupiers of the land, the complainants and the Local Borough Councillors, of the intended course of action.
- The service of a Listed Building Enforcement Notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires specific steps to be undertaken to bring a listed building back to its former state, or to carry out work to alleviate the effects of unauthorised works, or to bring the building into the state it would have been if the terms of any listed building consent had been observed. There are also powers that can be considered for listed buildings where the condition of the premises is cause for concern, but these may involve the Council having to use its own resources and then trying to recover its costs. For example, an Urgent Works Notice would mean the Council having to undertake the works required itself and so funds would need to be identified before pursuing this option.

- The service of a Breach of Condition Notice (BCN) under Section 187A of the Town and Country Planning Act 1990, to secure compliance with conditions imposed on a planning permission. A BCN will provide details of the relevant planning permission and specifically state which condition is being breached. The notice shall also explain what is required to remedy the breach and provide a timeframe for compliance. BCN's take effect on the date of service and there is no right of appeal to the Planning Inspectorate, although the Notice could be legally challenged by way of Judicial Review. If the requirements of the BCN are not complied with, within the specified timeframe, then the persons responsible for causing the breach shall be guilty of an Offence. A summary prosecution can be brought in the Magistrates' Court and any person found guilty is liable on conviction to an unlimited fine.
- The service of a Stop Notice or a Temporary Stop Notice (TSN) under Section 183 and Section 171E of the Town and Country Planning Act 1990 requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. Before issuing a Stop Notice the Council will carry out a cost-benefit analysis, so that any costs incurred by the developer by having to stop works are fully taken into account, and weighed against both the harm being caused and the likelihood of planning permission being granted, which could lead to compensation being awarded against the Council in the event an Enforcement Notice were quashed by a Planning Inspector. A TSN is not issued in conjunction with an Enforcement Notice and will last a period of up to 56 days from the date it is served. There is no right of appeal to the Planning Inspectorate against either a Stop Notice or a TSN and these Notices can only be challenged by way of Judicial Review.
- The service of a Notice under Section 215 of the Town and Country Planning Act 1990 can be issued in circumstances whereby the untidy condition of land is adversely affecting the amenity of the area.
- In extreme cases, where the need arises because of the nature of the breach, applications seeking an Injunction order may be considered. The Council is entitled under s187B of the Town and Country Planning Act 1990 to seek to obtain an injunction order in either the High Court or County Court, in order to restrain (prohibitory injunction) a breach of planning control or to take steps to remedy the breach (mandatory injunction). Should there be non-compliance with an injunction, the person/company in breach will be in contempt of Court, and may be liable to financial penalty, or committal to prison.

12.7 If enforcement action is necessary, the Enforcement Team will instruct the Council's Legal Team and aim to issue an Enforcement Notice, or other relevant Notice, within 28 days of sending those instructions. The Enforcement Team will notify the Local Borough Councillors in advance of serving the Notice.

12.8 **Rights of Appeal** - The recipient of an Enforcement Notice and Listed Building Enforcement Notice has the right to lodge an appeal before the date on which the Notice takes effect (which must be at least 28 days from the date when the notice is served). Appeals are decided by an independent Planning Inspector and it will take several months, or longer in complex cases, before there is a formal decision. If there is an appeal interested parties will have an opportunity

to make representations to the Planning Inspectorate. Should the Planning Inspector dismiss the appeal, the Notice will take effect and compliance with its terms will be required (it may be as originally drafted by the Council or amended by the Inspector). Alternatively, the Inspector could allow the appeal, in which case the Notice is quashed, and the breach will often be regularised by the Inspector's decision.

**12.9 Failure to comply with the requirements of a Notice** - Where a landowner/ occupier or other person responsible for a breach of planning control does not comply with an Enforcement Notice (after either the appeal process has been exhausted and the Notice has been upheld or the Enforcement Notice has come into effect without an appeal being made), the Council can:

- Prosecute landowners who fail to comply with an Enforcement Notice within the compliance period.
- Take direct action to remedy a breach. Where such action is taken the Council will seek to recover the costs of undertaking the works from the landowner, including charging the land with the costs incurred. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it can also involve a significant cost to the Council. Such action will, therefore, only be considered in exceptional circumstances, and will be subject to appropriate resources being identified.
- Prosecute landowners who have committed other criminal offences such as unauthorised works to protected trees and listed buildings and the display of advertisements without consent.
- Apply to the County Court or High Court for an injunction order (Prohibitory or Mandatory Injunctions) in serious cases. Injunctions are orders of last resort and the Courts' powers are discretionary, so there is no guarantee an injunction will be granted to the Council.

## **13.0 Enforcement Register**

13.1 The Council has a statutory duty to hold and maintain an enforcement register. This records details and basic information about notices that have been issued. The notices contained in the register are:

- Enforcement Notices
- Breach of Condition Notices
- Stop Notices
- Temporary Stop Notices.

13.2 The enforcement registers are public records. Hard copies of the Notices are available to view in person at Test Valley Borough Council, Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ.

## **14.0 Proactive Enforcement and Compliance**

14.1 It is the responsibility of developers and individuals to comply with the conditions imposed on a planning permission along with any S106 agreements. Failure to

comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties, but it can also undermine the reasons and justification for granting planning permission in the first instance.

- 14.2 The Council will also proactively monitor certain developments to ensure that they are being built in line with the approved plans and are compliant with associated conditions and S106 agreement. This is to help ensure that the development remains acceptable in planning terms whilst maintaining an attractive, high-quality built and natural environment.
- 14.3 The Council will operate a priority-based approach in deciding which permissions will be monitored thereby making use of its available resources in a targeted and focused way.

## **15.0 Deliberate concealment - Planning Enforcement Orders**

- 15.1 In accordance with Sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Council can apply to the Magistrates' Court for a Planning Enforcement Order to be made if it finds that an owner/occupier has deliberately concealed an unauthorised development.
- 15.2 In these circumstances, the Council will need to produce evidence that the owner/occupier has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the Council about it. An application for a Planning Enforcement Order must be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the Council's knowledge.
- 15.3 If a Planning Enforcement Order is made, the Council is able to take enforcement action in relation to a breach of planning control notwithstanding that the time limits for taking enforcement action may have expired. If an Order is granted the Council has a further 12 months to complete its investigations and take formal action.

## **16.0 Other useful links**

<http://www.testvalley.gov.uk/>

[https://www.planningportal.co.uk/info/200125/do\\_you\\_need\\_permission/90/interactive\\_house](https://www.planningportal.co.uk/info/200125/do_you_need_permission/90/interactive_house)

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

<http://www3.hants.gov.uk/archives/hals-collections/hedgerows.htm>

<https://www.hants.gov.uk/transport/parking/droppedkerbs>

<http://www3.hants.gov.uk/mineralsandwaste/monitoring-and-enforcement-homepage.htm>

<https://www.gov.uk/government/organisations/environment-agency>

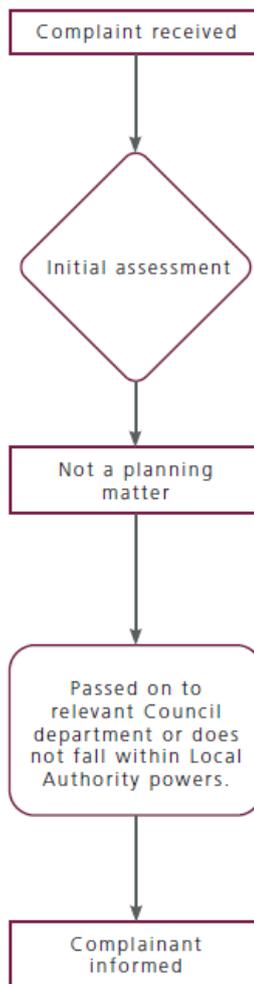
<https://www.gov.uk/government/organisations/land-registry>

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

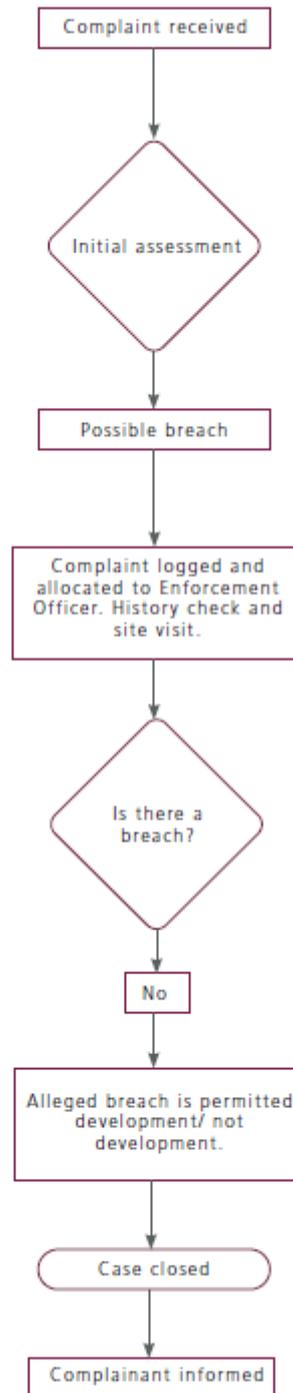
## 17.0 Procedure Flow Charts

- 17.1 The flow charts below show some of the most common enforcement scenarios and how the Council will usually seek to deal with those types of investigations.

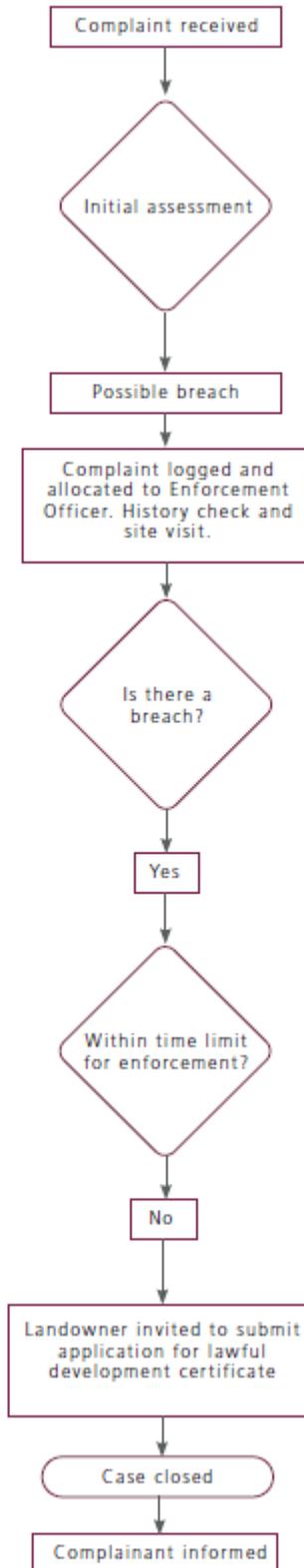
### **Complaint received is not a planning matter**



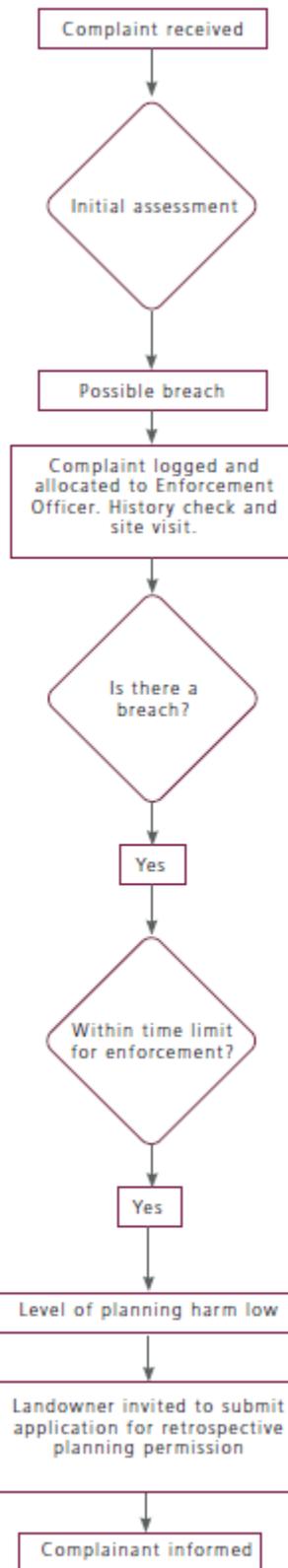
**Complaint received is not a breach of planning control**



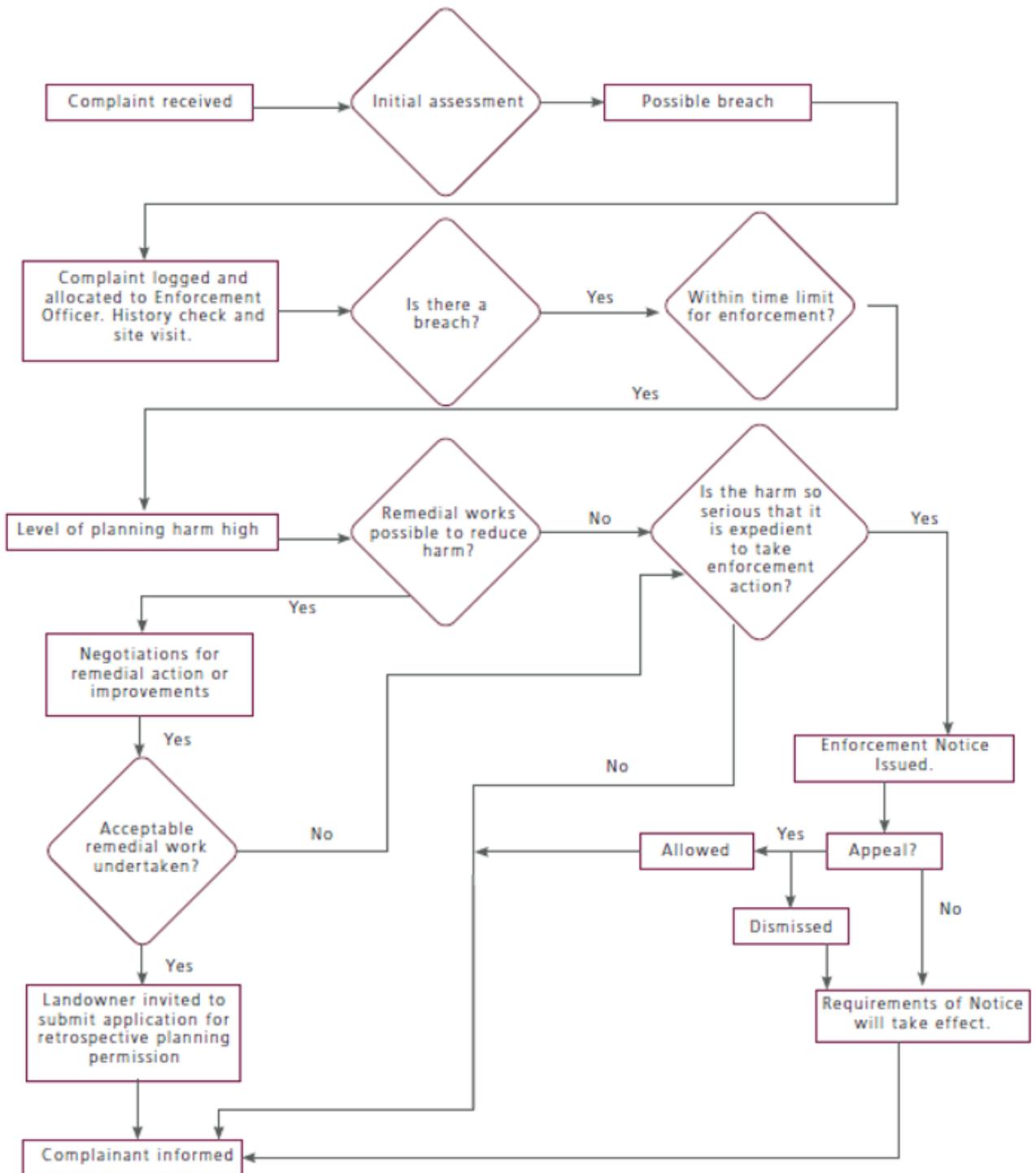
**The planning breach is too old for action to be considered**



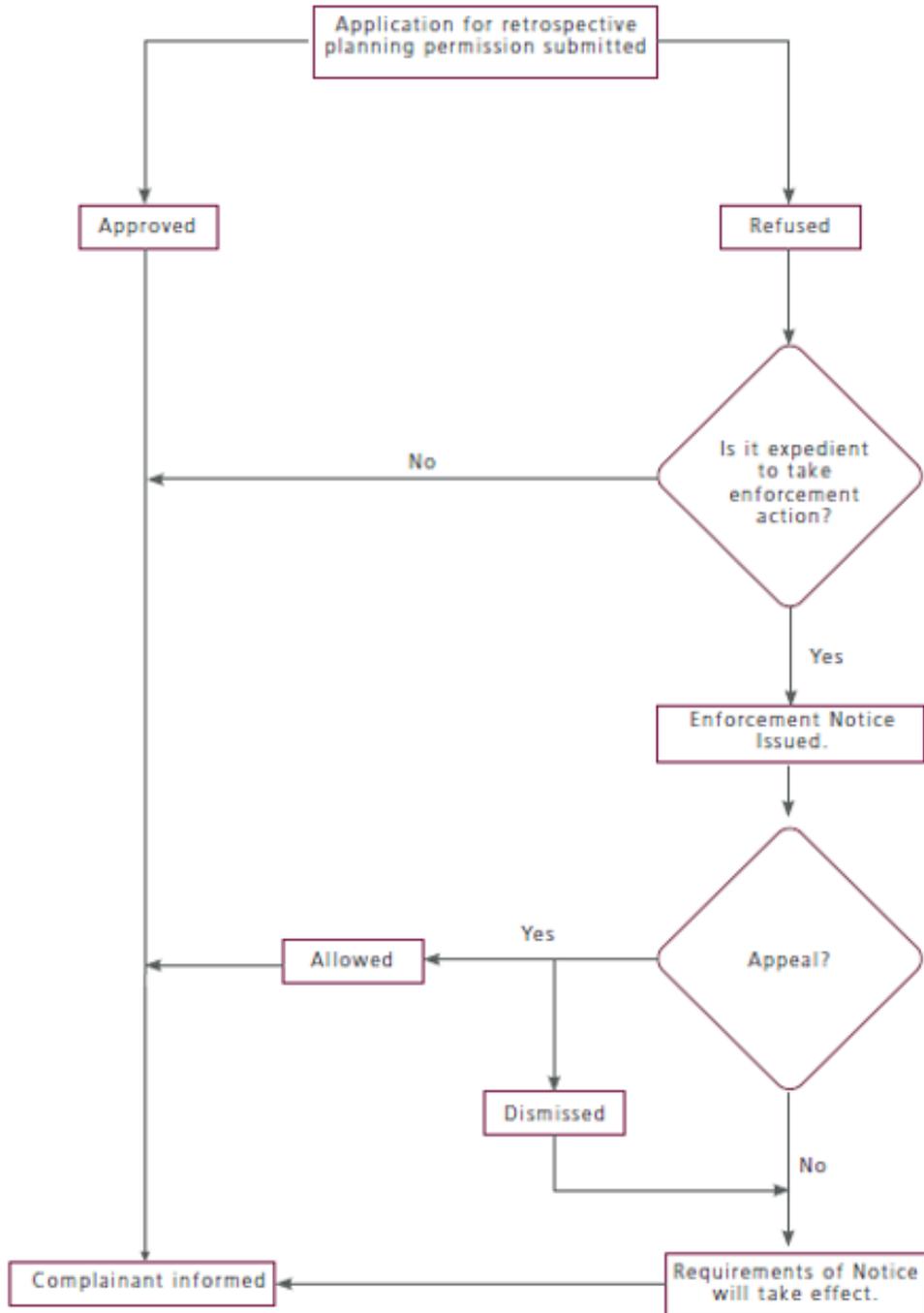
**A breach exists and the level of planning harm is low**



**A breach exists and the level of planning harm is high**



**A breach exists and an application is submitted**



**A breach exists and no application is submitted**

