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Dear Councillor

SOUTH HAMS EXECUTIVE - THURSDAY, 30TH NOVEMBER, 2023

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

Agenda No	Item
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16.	<u>Planning Enforcement Plan Task and Finish Group Review (Pages 1 - 24)</u>
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Yours sincerely

Darryl White
Democratic Services Manager

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Report to: **Executive**

Date: **30 November 2023**

Title: **Planning Enforcement: Task and Finish Group Review**

Portfolio Area: *Planning and Enforcement – Cllr Dan Thomas*

Wards Affected: **all**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: Upon the expiry of the call-in period.

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RECOMMENDATIONS:

That the Executive:

- 1. Thank the Task and Finish Group for their considerable and in-depth work reviewing and developing the new approach to planning enforcement; and**
- 2. Consider the recommendations set out by the Task and Finish Group in section 2.**
- 3. Delegates authority to the Assistant Director of Planning, in consultation with the Lead Member for Planning, to update the draft Enforcement Plan as set out in Appendix A to include relevant powers introduced by the Levelling-up and Regeneration Act 2023.**

1. Executive summary

- 1.1 At its meeting held on 21 September 2023, the Executive asked that the Overview & Scrutiny Committee consider: *'setting up a Task and Finish Group to further develop the new approach to planning enforcement and report back to the Executive accordingly.'*

- 1.2 A Task and Finish Group was set up and Councillor Samantha Dennis chaired the Group. The focus of the Planning Enforcement Task and Finish Group was to:
 - Undertake a detailed review of the existing Planning Enforcement Policy; and
 - To review the current approach to handling Enforcement complaints and the associated resources required.
- 1.3 The Group has reviewed the current Planning Enforcement Plan and a new simpler and user-friendly Enforcement Plan produced.
- 1.4 Several changes are proposed to streamline existing processes, removing minor allegations of breaches from the system quickly, focusing on key cases and improving the communication of the service.
- 1.5 The improvements in communication are specifically targeted at how the service communicate with Councillors, Parish Councils, and members of the public to ensure that they understand the enforcement process, how decisions are made and in indicative timeline for the consideration of cases.
- 1.6 The Group considered that the Enforcement team was dealing well with most of the new cases received however there are historic cases which need to be resolved and a strategy is required to deal with this.
- 1.7 The report contains a number of operational changes that will help improve the efficiency and transparency in the way that the Council considers enforcement cases.

Task And Finish Group Report of the Overview and Scrutiny Committee

2. Summary Recommendations

1. The updated, draft Enforcement Plan, subject to updates from the Levelling-up and Regeneration Act 2023, be approved.
2. The Head of Development Management takes a quarterly report to Development Management Committee setting out the current position with enforcement cases.
3. Following the introduction of the new planning IT system in November 2023, the monthly report updating Members on enforcement cases is amended to provide greater clarity for Members, Town, and Parish Councils.
4. Enforcement Officers are to be geographically based to develop local knowledge and working relationship with Ward Councillors.

5. An annual programme of six monthly Ward Member Enforcement meetings to be reintroduced and diarised.
6. The Enforcement Team commences a process of reducing historic planning enforcement cases and close cases where there is no active ongoing investigation.
7. The Enforcement Team delivers a dedicated training session on the new enforcement plan within the next 3 months.

2. Background

- 2.1 Planning Enforcement is a discretionary service but it is vitally important in supporting the planning process and in managing, preserving and enhancing the built and natural environment.
- 2.2 The Council receives a significant number of complaints, termed planning breach notifications, each year which require investigation. In 2022, 505 notifications were received and, at the time of drafting this report in mid-November, 506 notifications requiring investigation have already been received to date in 2023.
- 2.3 These are managed by the Councils Planning Enforcement Service who investigate them and where appropriate and where it is both expedient and in the public interest to do so. The breach notifications cover a wide scope from minor issues to significant, on-going breaches of planning control with widespread impacts on the built and/or natural environment.
- 2.4 Over the past few years significant change has happened in the Planning Enforcement team with a host of new officers being brought into the service under the management of the Planning Business Manager (Principal Enforcement Officer). The Team has been delivering service improvements, however, there remain further improvements which need to be implemented as part of the wider Planning Improvement Plan.

3. Matters considered by the Task and Finish Group

- 3.1 The Group considered the enforcement process from end to end, reviewed an updated, simplified enforcement plan, and looked at communication with all parties.
- 3.2 As a result, an 'Enforcement Investigation Process flow chart' has been developed to improve customers understanding of the process.
- 3.3 The flow chart forms part of the proposed refreshed Council Enforcement Plan as set out in Appendix A. The Plan will replace the existing enforcement strategy, is simpler and easier to

- understand whilst still setting out the Councils formal position in the event of enforcement action.
- 3.4 The plan sets out the legislative process, how to report a potential breach, the Councils approach to investigating, simplified flow process diagram, detail of the potential outcomes of an investigation including the action that can be taken by the Council.
 - 3.5 A key theme for the Task and Finish Group has been improving communication and engagement from the service with both the ward members and the wider community. The updated Plan including the flow chart makes it much easier to understand the enforcement process, potential timeframes and outcomes. It also clearly sets out when communication will be provided by the team and when it is not able to be provided, for example during formal court proceedings. The Group recognised that during the more formal stages of action communication may be reduced.
 - 3.6 Effective and timely engagement with Members is essential. The Group is therefore recommending that the opportunity for six monthly Ward Member Enforcement meetings be reintroduced to ensure Members are better aware of, and can engage where relevant in, enforcement cases.
 - 3.7 The group also identified that the existing monthly emails Members receive do not make it easy to identify new, ongoing, and closed cases and where enforcement action is being taken.
 - 3.8 Following the implementation of the new Planning IT system at the end of November this will be reviewed to ensure clear information is set out and will be the basis for 6 monthly meetings going forward.
 - 3.9 The Group recommended the Head of Development Management should report a quarterly report to the Development Management Committee on the current number of open enforcement cases, the number of cases which have been received, closed and where formal Enforcement Action is in the process of being taken.
 - 3.10 The Group also supported Enforcement Officers being geographically based to develop local knowledge and working relationship with Ward Councillors.
 - 3.11 The Group reviewed the current approach to investigating enforcement cases. It was agreed that the Enforcement Team was progressing well with the current enforcement cases, and that while progress on some case was elongated this was due to the need to properly investigate and resolve the breaches, in particular where there is the need to take formal action.

- 3.12 The Group identified that sometimes the time periods given to people who are being investigated is either not defined or too long. The Group is therefore recommending that a clear period was set with 12 weeks being a reasonable period for most enforcement breaches to be resolved. It was acknowledged that some cases may be more complex and in those instances, there was an understanding that they will go beyond the 12 weeks.
- 3.13 However, to ensure that momentum is retained in resolving these breaches then clear timescales will be agreed with the Planning Business Manager for the transgressors to resolve the breach. This allows the case to progress while setting a clear requirement for those committing breach to resolve the breach. It also gives a clear period by which the investigating officer should then seek to move forward to considering enforcement action.
- 3.14 The Group identified that there remained a number of outstanding historic 'legacy' cases in some Wards. It was agreed that there needs to be a proactive, pragmatic approach to reducing the number of legacy cases and that the six monthly enforcement review meetings with Ward Councillors would be the best time to implement this.
- 3.15 As a result of the changes proposed above, the Group also felt that that a targeted training session on the new approach to enforcement should be arranged for Councillors.

4. Proposed Way Forward

- 4.1 That the Executive consider the recommendations set out in Section 2 and the Head of Development Management implements any changes, as necessary.

5. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The proposed new Enforcement Statement will guide the Councils approach to Planning Enforcement but is not in itself a policy. It accords with Councils Enforcement Policy.
Financial implications to include reference to value for money.	Y	While there are no specific financial impacts of the recommendations of the Task and Finish Group the potential for enforcement action can have both financial and resource impacts on the council's planning and legal services. While the process of dealing with the back log of cases will require

		resources this is considered able to be managed through the existing service resource.
Risk	Y	The tackling of the back log of cases is necessary and considered manageable within the existing services although there may be a potential impact on service while this takes place
Supporting Corporate Strategy	Y	The proposals will improve the Council's response to unauthorised development. This contributes to protecting, conserving and enhancing our built and natural environment. It also aligns with current draft Corporate Strategy, Good Quality Core Services and priority aim 3 To enhance services such as planning, enforcement and waste & recycling
Consultation & Engagement Strategy	Y	The Task and Finish Group has been set up to deliver the agreed outputs.
Climate Change - Carbon / Biodiversity Impact	N	No direct carbon/biodiversity impact arising from the recommendations.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	In delivering planning enforcement action the human rights are considered.
Safeguarding	N	None
Community Safety, Crime and Disorder	N	While there are no direct impacts planning enforcement activity help deal with disorder though dealing with unauthorised development
Health, Safety and Wellbeing	N	While there are no direct impacts planning enforcement activity help deal with disorder though dealing with unauthorised development
Other implications	N	None

Supporting Information

Appendices:

Appendix A Draft Enforcement Plan

Background Papers:

None

PLANNING ENFORCEMENT PLAN

1. Introduction

1.1 Planning enforcement is a discretionary service but it is vitally important to the planning process.

1.2 The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to proactively manage planning enforcement in a way that is appropriate to their area.

1.3 The Planning Enforcement Plan sets out the Council's priorities for investigating reports of breaches of planning control, the priorities for responses to complaints and details of the timescales for response by planning enforcement officers, along with explaining the assessments and considerations that are undertaken, as well as actions and outcomes that may result. Section 171A of the Town and Country Planning Act 1990 defines a breach of planning control as:

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

1.4 Paragraph 58 of the NPPF sets out that effective enforcement is important as a means of maintaining public confidence in the planning system, that planning enforcement action is discretionary, and that Local Planning Authorities should act proportionately in responding to suspected breaches of planning control. The Council will always endeavour to resolve breaches of planning control quickly and efficiently wherever possible.

1.5 This Planning Enforcement Plan sets out how the Council will investigate alleged cases of unauthorised development and take action where appropriate. It also ensures that development takes place in a sustainable manner and that the credibility of the planning system is not undermined.

1.6 The Council will take a proactive approach to planning enforcement. We believe that planning enforcement has a key role in achieving the high standards of development being sought, and the purpose of this Plan is to set out our approach to handling planning related enforcement matters. The Council will, in exercising their planning enforcement function, take account of National Planning Policies including the NPPF, the Government's Planning Practice Guidance, the relevant policies of the Local Plan and all other relevant material planning considerations when making decisions on enforcement cases.

1.7 The relevant pages on planning enforcement from the Government's Planning Practice Guidance can be accessed via the following link:
<https://www.gov.uk/guidance/ensuring-effective-enforcement>

1.8 Planning controls can assist in effectively guiding and managing the pattern of development and change across the area and secure the delivery of planning objectives of the Local Plan. The Planning Service (of which the Planning

Enforcement is a part) is at the heart of achieving this, and it is crucial that developments are not only authorised, but also carried out in accordance with approved plans.

1.8 The Council's 20 year vision for the South Hams, titled 'Better Lives for All' includes within it a commitment to Protect, Conserve and Enhance our building and natural environment [this will be updated to reflect the new Corporate strategy once agreed]. Planning enforcement, in association with other Council enforcement functions, contribute to delivering the Corporate Enforcement Policy which has a key role to play in achieving this aim.

1.9 The Council takes breaches of planning control seriously, particularly if there is a clear intent or results in significant harm. Although it will try to negotiate solutions where this is appropriate and possible, it will use the powers available to take formal action only when necessary and proportionate to the harm caused by any breach.

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2. Mission Statement

The Council will investigate breaches of planning control in a timely and proportionate manner and take effective action in the public interest where an unacceptable harm is identified.

2.1 We will do this by:

- operating in accordance with the procedures explained in this Plan, which sets out the level of service and performance the public and businesses can expect.
- providing information and advice in plain language on the policies and procedures of the service, communicating this mainly by electronic means whilst giving access for all and only sharing the information that we are able to given the confidential nature of enforcement investigations.
- working with the community on compliance with planning controls on the basis that prevention is better than cure, and to ensure that our efforts are coordinated with other enforcement agencies within and outside the Council.
- making decisions in each case in accordance with planning law, national policies, guidance and our adopted Joint Local Plan.
- only intervening when, in the Council's view, action is necessary and proportionate given the scale of the planning harm.

2.2 We do this to:

- provide an efficient service with appropriate publicised contact points.
- ensure the integrity of the planning system and decision making process.
- protect and enhance the built and natural environment of South Hams District Council by active and responsible use of the full range of enforcement powers.
- deliver the commitments set out in the Council's Strategic Objectives.

2.3 Our Commitment:

- We will aim to acknowledge all reports of breaches of planning control within 7 working days.
- We will also assess the reports, allocate them a priority relating to the harm arising and commence investigation within 7 working days.
- We will aim to conclude the majority of investigations within 6 weeks (mindful that in some cases external agencies will need to be involved).
- We will seek the resolution of matters, in the first instance working to achieve an appropriate outcome within 12 weeks, or in more complex cases, in line with an action plan for the resolution to be concluded agreed with the Local Planning Authority.
- We will take action where it is expedient and in the public interest to do so.
- We will notify all interested parties of the outcome of the investigation.
- Where there are signification breaches and a harm is being caused we will prioritise expedient action.

2.8 What we will do

- We will act in a fair and proportionate manner investigating on behalf of the Council and not on the instructions of any third parties reporting the breach
- We will undertake formal enforcement action when it is appropriate to do so (formal action is discretionary and must be proportionate, in the public interest when a harm is arising)
- We will maintain the confidential nature of our planning enforcement records which are not open to public scrutiny.

2.9 What we will not do

- We will not use our planning enforcement powers as a punitive measure
- We will not investigate anonymous complaints (anyone wishing to remain anonymous should approach their local elected councillor)
- **For data protection reasons we cannot provide updates on ongoing cases even to those reporting suspected breaches**
- We cannot get involved in neighbour disputes.
- Not investigate matters which are outside of the planning legislation (although we may inform other agencies where breaches are relevant to them).

2.10 A list of those matters we are not responsible for:

Matter and Responsible Agency

Obstruction of a highway or public right of way Parking of commercial or other vehicle on the highway in residential areas or on grass verges	These matters are either subject to Devon County Council controls or if there is a highways safety issue can be reported to the police
Trespass on land Deeds and covenant restrictions Boundary Disputes	These are private matters not dealt with under planning legislation. Details of the Party Wall Act 1996 can be found on line at; https://www.gov.uk/party-wall-etc-act-1996-guidance Any advice on civil matters should be sought from a solicitor or the Citizens Advice Bureau
Clearing land of hedges, bushes or undergrowth	In most cases we do not enforce against the removal of hedges, bushes or general undergrowth unless forming parts of important hedges as defined by the Hedgerow Regulations 1997 https://www.gov.uk/guidance/countryside-hedgerows-regulation-and-management
Internal works to a non -listed building	Structural works may be subject to building control regulations. Devon Building Control

	Partnership can be reached using the following link https://www.devonbuildingcontrol.gov.uk/contact-us/
Parking a caravan within the curtilage of a residential building providing its use is incidental or ancillary to the main dwelling	In most cases caravans are not classed as buildings and therefore it is their use that is subject to planning controls. However, if you are in any doubt please contact the planning team for advice
Insertion of additional windows in residential dwellings	Once a building has been occupied windows may be inserted into existing walls provided there is not a planning condition to prevent the insertion of additional windows or a restrictions set by permitted development rights
Health and safety issues including noise and activity on building sites	These matters are ordinarily the responsibility of the Health and Safety Executive. They can be contacted at: http://www.hse.gov.uk/contact/contact.htm

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3. Reporting a Breach of Planning Control / the process

3.1 To report a suspected breach of planning control you will need to have as much detail as possible, including:

- location (either a postal address, grid reference or What3Words reference)
- nature and scale of the alleged breach
- if possible, details of any interested parties
- your contact details so that we are able to contact you for more information if necessary

3.2 We prefer to receive reports through our online form as it ensures that we have the minimum information needed to investigate the alleged breach. The form can be found here – [insert link](#)

3.3 Prior to making a report you should check our online Planning Register to see whether planning permission has been granted for the development – [insert link](#)

3.4 Privacy Statement

The information we collect is for the purposes of investigating an alleged breach of planning control. We need to collect this information:

- To maintain accurate records of suspected breaches.
- In case we need further information to aid our investigation.
- To inform those reporting alleged breaches of the outcome of our investigation.

3.5 Reporting a suspected breach of planning control to us constitutes explicit consent for us to process the data for this purpose. Please see further details Privacy and Personal Data [insert link](#)

3.6 When the Council receives a report of a suspected breach of planning control a case is raised. The contact details of the complainant will be kept confidential. However, if legal action is taken it may not be possible to keep your name or details of your complaint confidential. We will always seek your consent to reveal your details before doing so. During the course of the investigation the Council will only be able to disclose certain information to interested parties to ensure we are complying with Data Protection legislation and also to maintain the integrity of our investigation and not to compromise any future Legal action that the Council may need to take.

4. What happens when we receive a report of a breach

4.1 When we receive a report of a suspected breach of planning control we will do the following:

- Acknowledge receipt of the report within 7 working days
- Review the information provided, triage the report and assess the level of potential planning harm and determine whether there is a breach to continue to investigate, if there isn't we will contact you and close the case. If there is a case to investigate it will be prioritised and allocated to an investigating officer. Investigate and seek to resolve the case within 12 weeks, where possible.

4.2 Please see the simple investigation diagram and flow chart on the next pages which sets out the enforcement investigation process. Please note that timescales are approximate, some complicated cases may take considerably longer. A flexible approach must be taken, if circumstances change, we may need to alter our course of action.

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Step 1

Report Received

The best way to report a matter to us is through our online form on our website. Please remember to include your telephone number and as much detail as possible. Anonymous complaints will not normally be investigated. Evidence to support your allegation of a breach of planning control should be provided where possible to assist our investigations.

Step 2

Triage

Information provided and available at this early stage will be assessed to see if there is a breach and to allow prioritisation. If there is no breach because it is either not development, permitted development, development which benefits from planning permission or other consent, a matter dealt with by another Agency, too late to take action or is not planning related, you will be informed in writing and the complaint closed.

Step 3

7 working days
from receipt*

Case allocated/Initial Assessment

Where further investigations are necessary the case will be allocated and an acknowledgement letter sent providing the case reference number. Breaches will be subject to an initial assessment to consider the scale, nature and significance of the breach before being considered for further investigation. If the allegation is considered Minor or Trivial breach you will be informed in writing and the case will be closed as **not expedient**.

Step 4

Investigations underway such as:

- Site visit
- Meeting with owner/occupier
- Consider legislation, guidance, third party evidence
- Discuss with other Council teams or agencies
- Land Registry searches
- Obtaining information via formal notices (Planning Contravention Notice, Requisition for information or Interview Under Caution)

Step 5

6 weeks from
receipt*

Assessment & Breach confirmed

The initial assessment of the case will be reviewed considering the information gathered during the investigation. The scale, nature and significance of the breach will be considered and a decision taken whether to pursue the matter further.

- **Not expedient** – write report and close the case
- **Expedient** – move to step 6

Step 6

12 weeks from
receipt*

Work to find appropriate outcome:

Officers will seek to secure the appropriate remediation of the planning breach.

- Negotiate remedial works
- Negotiate removal of unauthorised works and/or require use to cease
- Regularise with retrospective application where necessary – case remains open until determined

Step 7

Negotiations successful

- **No** – continue to Step 8
- **Yes** – where breach has ceased or remedial works undertaken to remedy harm, case will be closed and you will be informed of the outcome

Step 8

20 weeks from
receipt*

Consider expediency of formal action:

- Assess against local and national policy
- Consider harm caused/material planning issues
- Consultee comments
- Consider relevant appeal decisions / case law
- Consider Human Rights and Equalities legislation
- If not expedient, write report and close case otherwise continue to Step 9

Step 9

Commence formal action:

- Draft notice and report
- Gain authorisation in accordance with the Council's constitution
- Notify Local Ward Member(s) & Committee Chair
- Instruction Councils legal team

Step 10a

Serve Formal Notice

Once the relevant Notice(s) are prepared then the following action is taken:-

- Notice served on anyone with an interest in the Land
- Notice placed on Planning and Land Charges Register
- Notice takes effect or an appeal is lodged (Step 10b)
- Monitor for compliance

Step 10b

Notice Appealed (where appropriate)

An appeal can be lodged against an Enforcement Notice/Listed Building Enforcement Notice. Once the Council has been notified by the Planning Inspectorate of an Appeal the Council will then respond to the Appeal and await the Planning Inspector's Decision. Whilst the appeal is being considered the Notice does not take effect.

Step 11a

Compliance

The Notice(s) will be monitored for compliance. Sometimes Notices have more than one compliance date to remedy different parts of the breach.

Step 11b

Non-Compliance

Once the compliance date has passed if those with an interest in the land have failed to meet the requirements of the Notice(s) the Council will gather evidence of the ongoing breach. The Council's Lawyers will make an assessment whether the evidence supports prosecution and it is in the public interest to do so.

Step 12

Case Closed

Once the Notice has been complied with the case can then be closed.

Communication

We will communicate with you at the following stages

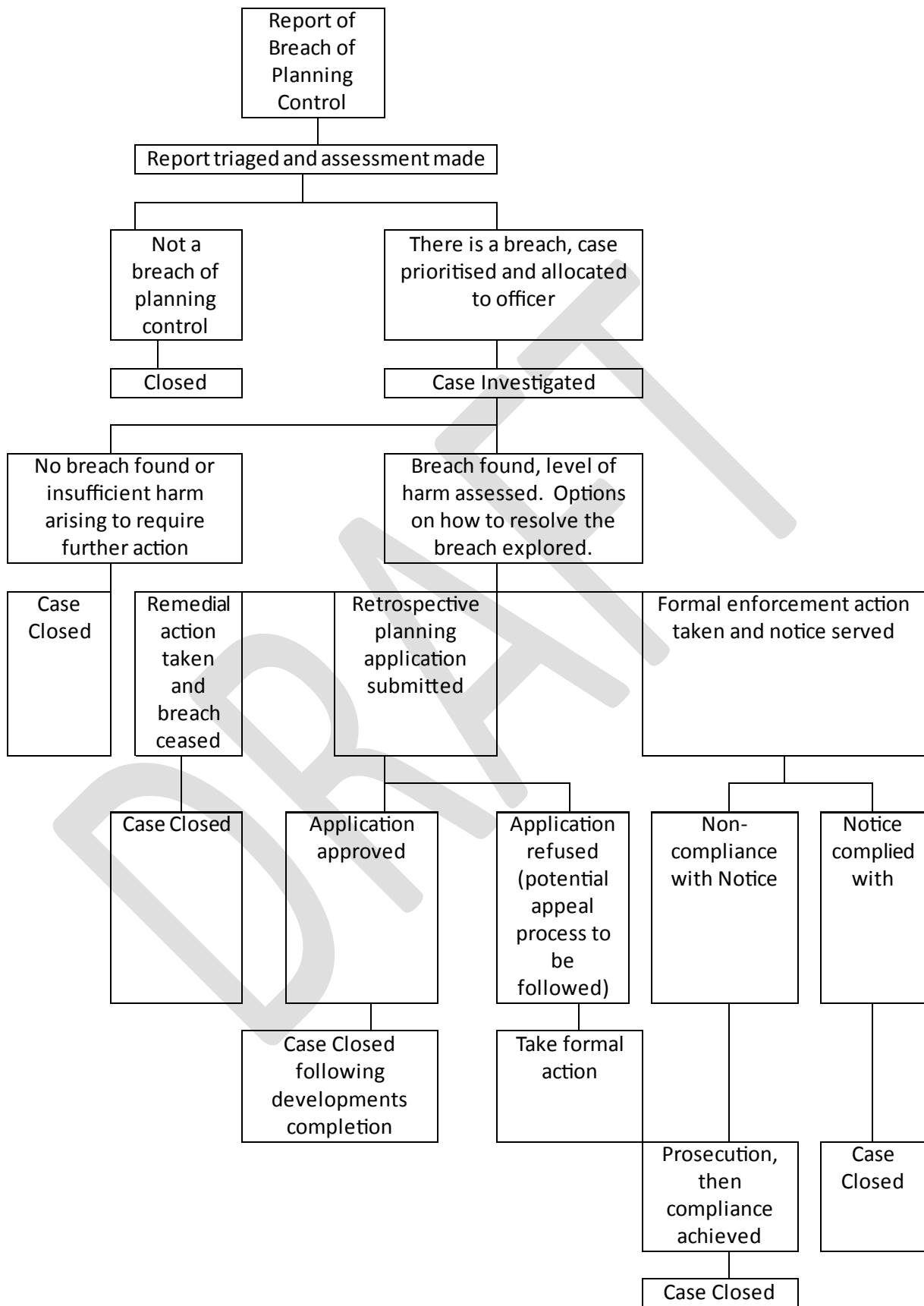
Stage 2, 3, 5, 7, 8, 11a and 12 **if the case raised is closed** advising you why the decision has been made.

Stage 4 **if we require any additional information only**

During the other stages the Council will work through the case. From stage 9 onwards the Council will need to undertake the work to take the action but will not be able to communicate the progress with the matter except its conclusion. This is to ensure the case is properly managed and in the interest of securing the right result.

* timescales are approximate, some complicated cases may take considerably longer/urgent cases less. A flexible approach must be taken, if circumstances change we may need to alter our course of action.

Simplified Planning Enforcement Investigation Diagram



4.3 Enforcement Cases are prioritised into the following three categories:

High Priority:

- Permanent damage to the environment e.g. demolition or alteration to a listed building resulting from unauthorised works or felling a protected tree or breach of a statutory notice.
- Where there is a significant harm arising due to the nature and scale of the planning breach in a protected landscape setting following an Assessment of the breach by a Senior Officer.
- Major development schemes where development or the construction is causing significant local nuisance.

Medium Priority:

- Development within 12 months of immunity.
- Breaches of planning condition.

Low Priority:

- Possible breaches of Permitted Development Rights.
- Possible breaches with no widespread harm arising.
- Other breaches likely to remain stable e.g. development that has been completed.

5. Possible Outcomes of our Investigation

5.1 In most cases, a Breach of planning control is not a criminal offence. On receipt of a Planning Breach Notification the Council will investigate the circumstances of the case and determine how the development could be made acceptable (ranging from removal / cessation to minor alteration). Having assessed the allegation there are several potential outcomes informed by the investigation undertaken by the case officer. Regardless of the outcome the person who raised the allegation will always be informed.

Outcome 1. No Breach Found: we will not take any action if we establish that there is no breach of planning control and the case will be closed.

Outcome 2. Breach has become lawful due to the passage of time: in these circumstances during the investigation it has become apparent to the investigating officer that a breach has become lawful and no action can be taken.

5.2 All other allegations will require a more detailed investigation and assessment of the harm arising from the breach of planning control. These breaches will also require a planning judgment to be made on the course of action which may be undertaken including considering its accordance with planning regulations and both local and national policies. As part of this there are 2 key tests that have to be applied in that assessment, these are: the public interest test and the expediency test

5.3 **Public Interest:** it is not the role of the Council to protect the private interests of one party against those of another, unless these also coincide with the wider public interest. Nor is it the role of planning enforcement to act punitively against breaches of planning control or to punish minor or trivial breaches which do not result in demonstrable harm to the public interest. The Council will need to ensure that any responses to breaches of planning control are proportionate and have regard to the extent to which the public interest is affected by a decision to take or not to take action. Part of this assessment is the expediency test.

5.4 **Expediency Test:** in cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken. An expediency test will usually involve the Planning Enforcement Officer assessing: whether the breach is in accordance with the policies of the Local Plan; the breach against any other material planning considerations; whether had a planning application been submitted before the development occurred, permission would have been likely to have been granted; whether the breach unacceptably affects public amenity; whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest; whether action would be proportionate with the breach to which it relates; whether action would be in the public interest; whether action is plainly necessary.

5.5 following the assessment there are a number of other possible outcomes:

Outcome 3. A minor/trivial breach: where it is considered that there is a breach of planning control and the case officer considers planning permission would have been granted for the development if it had gone through a planning application process the case will be closed. (Please see Para 5.10 below)

Outcome 4 Negotiation/Compliance: The Council will initially attempt to resolve all breaches of planning control through negotiation, seeking voluntary compliance either through the removal of the unauthorised works, ceasing an unauthorised use or to the point where the case officer considers planning permission would have been granted for the development if it had gone through a planning application process. In these cases, where the breach has been remedied, no further action will be taken and the case will be closed.

Negotiation will not be allowed to unjustifiably delay any necessary planning enforcement action.

Outcome 5 Formal Enforcement Action: formal action is discretionary and will be taken where the Council considers it to be: essential having considered the provisions of the national planning policies, legislation and local planning policies and to any other material planning considerations; and is considered necessary in the public interest (unacceptably affecting public space or the existing use of land and buildings requiring protection in the public interest) and expedient to take action.

5.7 The types of formal action which can be taken are as follows (further detailed information on each set out in Appendix A):

- Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice
- Section 215 Notice
- Prosecution
- Injunctive Relief
- Planning Enforcement Order
- Planning Contravention Notice

5.8 The decision to take formal action will be made by the investigating officer and the Planning Business Manager. The Elected Member(s) for the effected Ward will be notified in accordance with the Council's Scheme of Delegation – [add link](#)

5.9 The Council will be flexible and consider genuine solutions prior to taking formal action. Where possible, any alternative solution will be considered in order to achieve a satisfactory conclusion to a reported breach of control.

5.10 When considering a minor or trivial breach of planning control as detailed in Outcome 3 there can be a perception that the Council has failed in their duty by not taking action against the breaches of planning control. It is important to be aware that it is not an offence to undertake works which require Planning Permission without first obtaining permission (although we would always strongly encourage this to take place). In reaching the decision not to take action the works undertaken need to be considered in terms of both the public interest and expediency of taking action. Having considered such matters the conclusion may well be that further action should not be taken. The reasons for this will always be provided when closing the case. The [National Planning Policy Guidance](#) provides important clarification on the approach that should be taken with the following section of key importance to the authorities approach:

When might formal enforcement action not be appropriate?

Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.*

Paragraph: 011 Reference ID: 17b-011-20140306

Revision date: 06 03 2014

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6. Additional Information

Add Links

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Appendix A

Planning enforcement interventions and powers available to the Council

We may decide to instigate formal proceedings. This could result in one or more of the actions set out below being pursued.

Planning Contravention Notice (PCN): The main purpose of a PCN is to gather initial information so that the Council can establish whether there is a case for taking Enforcement Action. It is an offence if the recipient of the notice fails to provide the required information. If convicted of such an offence the offender would be liable on conviction to a fine currently not exceeding £2,500.

Enforcement Notice: This is the most common form of notice used to deal with unauthorised development, operations and/or uses. Before such action is embarked upon the Council must be satisfied that it is appropriate to issue the notice having regard to the nature of the unauthorised development and in the light of Government guidance. An Enforcement Notice will specify the alleged breach, the steps that must be taken to remedy the breach, and a time period in which to comply. The recipient of the notice has a right of appeal to the Secretary of State. If any person is subsequently found to be in breach of an Enforcement Notice the Authority will consider whether to prosecute. If found guilty in any court hearing that person would be liable on conviction in the Magistrates Courts to a maximum fine of £20,000.

Breach of Condition Notice (BCN): This type of notice can only be used where planning consent has been granted subject to conditions. The Council can issue a BCN to ensure full or part compliance with planning conditions. As with the Enforcement Notice a BCN would specify the breach and steps required to secure compliance with the notice. Unlike the Enforcement Notice a BCN must allow a minimum of 28 days in which to comply with the requirements. There are no rights of appeal against a BCN. If any person is found to be in breach of a valid BCN he or she shall be guilty of an offence with a maximum fine currently not exceeding £2,500 on conviction.

Stop Notice: The Council can, when appropriate to do so, serve a Stop Notice requiring activities to cease immediately. Such a notice can only follow the service of an Enforcement Notice. There are limitations on the service of this notice and additionally compensation may be payable by the Council in some circumstances if the recipient makes a successful challenge. It is used very selectively and it is not necessarily an instant solution.

Injunction. Where the Council considers a breach of planning control to be a serious and immediate risk to health and safety, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction. This can be extremely expensive, but can be effective in appropriate circumstances.

Temporary Stop Notices. Where the Council consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that

the activity that amounts to the breach should stop immediately, Section 171E of the Town and Country Planning Act 1990 enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop

notice does not have to wait for an enforcement notice to be issued. In addition, the effect of the temporary stop notice will be immediate, it will not have to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately.

Section 215 Notice: The condition of certain buildings or land often causes serious harm to the visual amenity of an area. Should the Council consider it appropriate to do so they may serve on the owner and occupier a Notice under Section 215 of the Town and Country Planning Act, 1990. Such a notice would require steps for remedying the condition of the land or buildings and specify a period of time for complying but in any event not less than 28 days. This Notice can be appealed via a magistrates' hearing. If any person is subsequently found guilty of an offence of not complying with the requirements of a 215 Notice they shall be liable on conviction to a fine currently not exceeding £2,500

High Hedges: If a complaint has been properly made and we decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti-Social Behaviour Act 2003 and is known as a remedial notice. This can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although we cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners.

Signs and Advertisements: Where an advertisement is not lawfully displayed and causes harm to the amenity or public safety, and it is considered that express consent would not be granted, the owner/ occupier shall be requested to remove the offending sign. If the sign is not removed by agreement the Council does have the power to prosecute. If a person is found guilty of an offence under The Control of Advertisement Regulations he or she could be liable to a fine not exceeding £2,500 per advert. The Council also has the power to serve a Notice requiring the discontinuance of a lawfully displayed advertisement if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Recipients of a Discontinuance Notice do have a right of appeal.

Prosecution: The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with. The prosecution is to seek to establish that an offence has occurred.

In considering whether to initiate prosecution proceedings against the offender the Planning Enforcement Officer will consider the possible defences (reasons to appeal) against the prosecution proceedings as set by legislation, the Code for Prosecutors evidential test and the Code for Prosecutors public interest test. All decisions will be reviewed and agreed with a Council Legal Officer.

The Council's Legal Officer is responsible for taking the matter before the Magistrates or Crown Court. A notice may have to be served on more than one person to meet the terms of 'good service' for example a mortgage provider or an occupant where the landowner has also been served. The Council can at any time decide not to proceed with a prosecution.

Evidential Test: The evidence to be presented to the Magistrates Court must be reliable and sufficient to satisfy the Council's Legal Officer (prosecutor) that there is a realistic prospect of conviction. The evidence must clearly prove that the offence has occurred and identify who is legally responsible for that breach (the defendant).

Public Interest Test: If the case does pass the evidential stage, the Council's Legal Officer (prosecutor) must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

In cases where it is considered disproportionate, likely to be ineffective in resolving the breach, there is no realistic prospect of conviction, or where it is not in the public interest, the Planning Enforcement Service will not initiate prosecution proceedings. In cases where it is necessary to use witnesses not employed by the Council the witness will be advised of the possible need to attend court and will be asked to provide a written witness statement. In such circumstances, if witnesses cannot or do not provide the necessary evidence, those prosecution proceedings may not be pursued.