

SHEFFIELD CITY COUNCIL

Sheffield Local Enforcement Plan

Planning Enforcement Team



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1.0 Introduction

1.1 Importance of the Local Enforcement Plan

The production of a Local Enforcement Plan is advised within the National Planning Policy Framework (“the NPPF”) to ensure that planning enforcement remains a clear and transparent process;

‘They (local planning authorities) should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate’ (to do so).

The Local Enforcement Plan provides a guide to how the Council will approach and handle planning enforcement issues. It sets out what can and cannot be investigated, priorities, what action is to be proposed regarding a breach and sets out key targets for responding to enquiries at key stages within the enforcement process. The Council will review the plan from time to time in response to changes in national and local legislation, relevant enforcement guidance and the Council’s policies.

1.2 Principles of Planning Enforcement

Planning enforcement aims to control planning breaches where development has been carried out without the necessary planning permissions. The NPPF states;

‘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’.

Sheffield City Council adheres to the principles of good enforcement as identified in the Enforcement Concordat which includes;

- **Proportionality** - enforcement action will be proportionate to the risks and seriousness of any breach, including any actual or potential harm caused by the breach and the economic impact of averting it. We will consider a full

range of enforcement powers which includes negotiation and retrospective planning application. Where appropriate we would take formal action.

- **Helpfulness** – where it should be possible for breaches of control to be quickly remedied, officers will give developers the opportunity to quickly rectify matters. Correspondence will identify the officer dealing with the matter and provide contact details. We will not tolerate abusive language or behaviour.
- **Targeting of enforcement action** - an Enforcement Priority Allocation System (EPAS) will be used. Focusing enforcement action on the most serious cases and recognising that it is not possible to prioritise all issues of non-compliance or to take action against breaches causing no or little harm.
- **Consistency of enforcement approach** - consistency does not mean uniformity, however a similar approach will be taken in similar circumstances with the appropriate exercise of individual discretion and professional judgement.
- **Transparency of how enforcement operates and what can be expected** - where non-compliance has been identified, officers will state what must be done to remedy the breach, clearly explain the reasoning behind their decision, give reasonable timescales (subject to the nature of the breach) for compliance and provide clear guidance on the next steps if they do not comply. To improve transparency and accountability, we will develop our website to; report on formal enforcement actions being taken, the progress being made, maintain the enforcement register and transfer this onto the website.
- **Accountability for our actions** - whilst officers will have delegated powers to take urgent and routine enforcement action, controversial or difficult enforcement decisions will be made by the Council's Planning & Highways Committee. We will also report on our performance to the Committee.

2.0 Breaches of Planning Control

2.1 What is a breach of planning control?

Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 ("the 1990 Act") as;

‘carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted’ (s.171A).

Section 55 of the 1990 Act defines development as;

“the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land.”

Development carried out without planning permission is not ordinarily a criminal offence. The exception relates to Listed Buildings, trees subject to a tree preservation order (“TPO”) and advertisements displayed without consent. All other development only becomes a criminal offence if there is non-compliance following formal enforcement action. The 1990 Act defines formal enforcement action as the issue of an enforcement notice or the service of a breach of condition notice.

2.2 Types of planning permission

All development (as defined by reference to section 55 of the 1990 Act) requires planning permission, of which there are two main types.

‘Deemed’ planning permission

Some types of development can be carried out without having to apply for written planning permission, this is sometimes known as ‘permitted development’. In these circumstances legislation is deemed to grant planning permission. In order for works to gain deemed planning permission, development must meet certain criteria and conditions set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

In addition the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) grants deemed consent for advertisements that satisfy the relevant criteria and conditions.

‘Express’ planning permission

All development that is not granted consent by deemed planning permission requires ‘express’ planning consent from the Council. This requires a formal written planning

application to be submitted to the Council. Planning applications are usually dealt with by Planning Officers under the Council's scheme of delegation. More contentious applications are often dealt with by the Council's Planning & Highways Committee. Most planning applications are subject to public notification to nearby residents, relevant consultees and Parish Councils, and are available for comment from any member of the public. More information about this process is available on the Council's website.

2.3 Immunity from enforcement

Section 171B of the 1990 Act restricts the Council's ability to take enforcement action after certain periods of time have elapsed. These time periods are dependent on the type of breach. In these instances, development without planning permission becomes lawful and therefore immune from enforcement action.

- For building, engineering, mining or other operations, action cannot be taken after four years beginning with the date on which operations were substantially completed.
- For a change of use of a building to a single dwelling house, action cannot be taken after four years beginning with the date of the breach.
- For any other breach, action cannot be taken after ten years beginning with the date of the breach, including a continuous breach of planning conditions.
- It should be noted that there is no time limit in respect of listed buildings and in this regard enforcement action can be taken at any time.

The land owner does have the option of applying for a certificate of lawful development to regularise the development. The serving of an enforcement notice in respect of a particular development 'stops the clock' in relation to the time limit.

2.4 Concealment

The Localism Act 2011 introduced section 171BA into the 1990 Act. This power permits the Council to take enforcement action against deliberate concealment of breaches of planning control after the usual time limit for enforcement action has expired. The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. If such an order is

granted by the magistrates, this allows the Council an additional 12 months in which to take enforcement action.

2.5 Expediency

Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the Council's discretion to use enforcement powers. In accordance with section 172 of the 1990 Act 'expediency' is a test of whether the unauthorised development is causing serious harm and is assessed with reference to national and local planning policies and to any other material considerations (eg, amenity, design) to justify formal action.

If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unlikely. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred or to punish those responsible for the breach regardless of whether the breach was carried out deliberately or in ignorance. EPAS will be used as an additional aid in determining the expediency test. (See section 5.1).

If a decision is made not to take any further action, it will still be in the owner's best interest to regularise the breach. This can be a serious issue when it comes to selling or re-mortgaging a property, as evidence to show permission has been obtained for all extensions and alterations is often required by the purchaser's solicitor or the mortgage company.

3.0 Reporting alleged breaches

3.1 Reporting a breach

If you are concerned about any development that you believe may be unauthorised, please report this to the Council. The easiest way to report a breach is through our online form; however, it is also possible to request a paper copy by contacting the Council. Before you submit a complaint, you are advised to check whether the particular development or activity already benefits from planning permission. This information can be found on the Council's website.

All complainants are required to provide their contact details, including their full name, address, telephone number and email address, when reporting an alleged breach so that they can be contacted for further information if necessary, and to keep them informed about the progress of the investigation.

Anonymous complaints or complaints with limited personal or incorrect details will not be dealt with, unless they are concerning a Listed Building, Tree Protection Order (TPO). This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious complaints and also due to the importance of being able to fully assess the impact of the development on the complainant as part of the investigation.

The subject of a complaint will be public information; however the identity of the complainant will be kept confidential. It is possible, that the person who is the subject of the complaint may draw their own conclusions about the source of such. In some cases, a court may declare that personal information has to be made available; however, this is very unusual. If the case is referred to another department within the Council your personal information would also be passed on but would remain confidential.

We will not investigate a complaint based on speculation or information regarding what may be planned and where no actual breach of planning control has taken place.

3.2 Types of development that we investigate

There are a number of matters that do not fall within planning control and therefore no planning enforcement action can be taken. Often this is where other legislation covers and controls the matter, such as Highway, Environmental Protection Services and Building Control or external organisations such as the Health and Safety Executive or the Police

The following is a list of some examples of what the planning service can investigate:

- Carrying out development where no planning permission has been sought
- Carrying out development which deviates from that which has been granted planning permission

- Breach of conditions which were imposed under an existing planning permission
- Unauthorised change of use
- Unauthorised display of advertisements
- Unauthorised works to a Listed Building
- Unauthorised works to a protected tree
- Unauthorised works in a conservation area or a protected area such as greenbelt
- Untidy land

3.3 What we do not investigate

- Internal works unless they relate to Listed Buildings
- Obstruction of highway, parking of vehicles on the road or grass verges
- Matters controlled under building regulations such as dangerous structures
- Private issues between neighbours (that don't involve material planning considerations)
- Opposition to business competition
- None material planning considerations such as loss of property value or loss of view
- High hedges
- Land ownership or boundary issues
- Party wall disputes
- Blocking of designated rights of way
- Breaches of property deeds or covenants
- Damage to property
- Health and safety and site security

Other works that are not classed as breaches of planning control such as:

- Clearing of land of vegetation unless it is the subject of a planning condition or protected under a Tree Preservation Order
- Parking of a caravan within a residential property, as long as it is used incidental or ancillary to the main dwelling

- Conversion of garages or outbuildings to residential as long as it is used incidental or ancillary to the main dwelling
- Operating of business from home where the residential use remains the main use and there is no serious harmful impact on neighbouring amenity

If a breach of planning control is confirmed and this is deemed to be sufficiently harmful then we will initially try to resolve the issue through negotiation and informal action, however, in some cases due to the level of harm it may be considered appropriate to take immediate formal enforcement action, without any initial contact with the contravener. (See section 4.6).

3.4 Required information

In order to investigate an alleged breach, it is important that we have as much information about the development as possible. Breaches can be investigated more rapidly when sufficient information is provided up-front.

To ensure that relevant information is included in a complaint, this list highlights the key pieces of information that should be submitted to aid the investigation.

- An accurate address of the site including the postcode; if the address is unclear or the site is particularly unusual, an annotated map of the site may be more appropriate;
- The enforcement complaint; a detailed description of the building works or use;
- If necessary, approximate dimensions of the development;
- Any other information to assist the enquiry; a 30 day log of activities if it relates to a change of use complaint, photos of the development/proof of use;
- If possible, name and address of person/company involved in the use/development/poor maintenance;
- Approximate time when the use/development/poor maintenance commenced and if necessary, the stage of building works;
- The harm caused by the use/development/poor maintenance; this should be limited to planning matters (eg, loss of sunlight, overshadowing/loss of outlook, loss of privacy).

4.0 Enforcement Powers and Process

4.1 Site visits and rights of entry

An officer will initially carry out desktop research in order to establish the fact of the complaint and determine whether a site visit is necessary. Not every site, which is the subject of the complaint, will need to be visited. A visit will only be made to establish facts and investigate the matter further. The officer will, wherever necessary take measurements and photographs of the development and activity taking place. There are situations where more than an initial site visit would be required to evidence a breach such as an alleged change of use.

In most cases, if a visit is required an officer will visit the site under investigation within 25 working days of receiving the complaint, unless it relates to a Listed Building or TPO which will we aim to visit within 1 working day. Due to the nature of planning enforcement work, the majority of site visits will be made without prior arrangement. Planning enforcement officers will carry approved identification which will be produced for inspection on request.

The Council's planning enforcement officers have extensive powers of entry which allow them to investigate planning enforcement enquiries. It may also be necessary for the officer to bring third parties onto the land to assist or advise them in carrying out their duties. Where entry is refused, a warrant to enter land may be obtained. Prosecution will also be considered where there is deliberate obstruction of the officer carrying out their duties. Abusive or threatening behaviour towards staff will not be tolerated and will be logged and reported to the Police.

4.2 What is considered?

Whilst establishing whether enforcement action should be taken, a number of elements are considered, including but not limited to:

- Whether the complaint relates to a non-planning matter eg, land ownership, private interests, moral concerns;
- Whether the enquiry falls within the Council's planning boundaries eg, Peak District planning matters are dealt with by a different Council;
- Whether the alleged breach falls within the constraints and conditions of permitted development and is therefore lawful development;

- How long the development/change of use has been present.

After considering all of these factors, if it is considered that there has been a breach of planning control the Council will then establish whether it is expedient to act upon the breach (see section 2.5). There may also be situations where another department within the Council is better placed to deal with the issue raised and in this case we will refer the complaint to the relevant department.

4.3 Formal action

If a breach is deemed to be sufficiently harmful the Council will make every attempt to encourage those responsible for a breach to resolve the issue voluntarily, negotiation is not always effective. If informal negotiations have been unsuccessful, and the Council feels that the planning breach has significant harmful effects, formal enforcement action will usually be taken. There are numerous ways in which formal action can be taken, and this depends on the type, seriousness and harmfulness of the breach. In some cases dealing with planning enforcement can be a lengthy and complex process, involving appeal, prosecutions before the case is resolved. For more details of actions that can be taken see Appendix 1.

Planning enforcement notices issued by the Council are kept on the Planning Register and are available to view by the public on request. The Council is working towards having these available on the Council's website.

4.4 Prosecution

Prosecution is an integral part of the enforcement process and the Council will pursue a prosecution where circumstances warrant such action. Before commencing legal proceedings the Council will need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will also seek to recover costs in connection with the enforcement action. Where the defendant has been found guilty the Council may also request a Confiscation Order under the Proceeds of Crime Act 2002.

4.5 What happens if you are the subject of a complaint?

We understand that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or being unaware of the planning

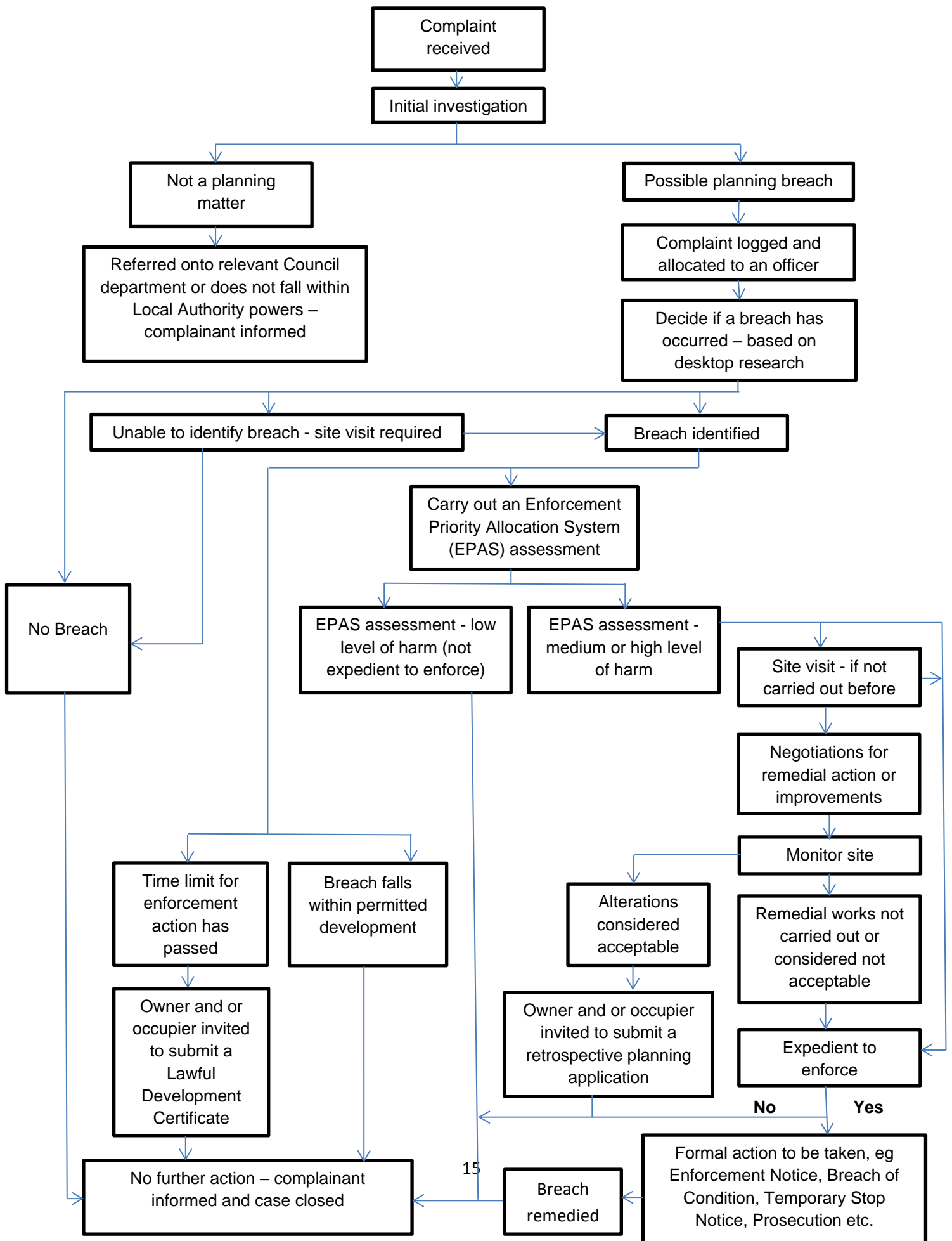
requirements. If you are contacted about an alleged breach of planning control, you will be informed of what the allegation is, but not who made it.

If a breach is established, you will be clearly advised of the details of the breach and how to put it right. You will be advised not to do any more work and that any further work that is done would be at your risk as you may have to undo the work. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. Do not delay in responding to our advice as it is in the interests of all parties if an identified breach can be addressed at an early stage.

However, if no positive progress is made, then the matter will be reported for enforcement action and formal notices maybe served if it is expedient to do so.

If you are served with a formal notice you will be given the details of the breach, the reasons for the action, steps required to resolve the issue and a time period for compliance.

4.6 The enforcement process



5.0 Performance Standards and Priorities

5.1 Priorities

The Council receives a large number of complaints of alleged breaches of planning control therefore cases need to be prioritised based on their level of harm.

Resources are limited and need to be focused on the most serious breaches of planning control as these are likely to cause most harm to the public.

Once a complaint has been received, the level of harm will be assessed by an officer. In assessing the degree of harm we use an Enforcement Priority Allocation System (EPAS). The EPAS is desk based research; however, in some cases a site visit will be required to identify the breach if it cannot be established from desktop research, which will form the first stage of the investigation of the complaint. Each complaint will be allocated a score to assess the level of harm.

The EPAS will provide the enforcement team with clear guidance on how to deal with enforcement complaints in a fair, effective, consistent and transparent manner and takes into account matters such as the level of harm caused to amenity from ongoing noise nuisance, air pollution, highway and other safety issues. Additionally, whether the harmful effects are escalating or stable, whether there is serious effect or harm to neighbours or residential amenity, where the development is located ie is it in a Green Belt, Conservation Area or flood risk area and so on. This system will be subject to review and refinement.

The EPAS will be used to:

- Determine whether a case can be closed without any further investigation. The complainant will be notified that the development causes insufficient harm to warrant any further action.
- Identify those cases that will score more highly and which will need to be investigated further. Thus ensuring that the most harmful cases are dealt with as soon as possible.

The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained and this will be reviewed.

Where there is a change of use, a 30 day log will need to be submitted showing the activity before the case is investigated further unless substantial harm can be shown. If the person reporting the breach is unwilling to do this, then this may result in the Council not being able to pursue the investigation further due to there not being enough evidence.

All retrospective refused planning applications; Listed Building and Tree Protection Order complaints and complaints from Ward Members and MPs will automatically receive a full investigation so the EPAS will not be used.

5.2 Contacting the complainant and our performance standards

We recognise the importance of keeping individuals up to date with our progress. Some investigations can take longer than others due to lengthy and complex negotiations, statutory time periods in serving notices, appeals and prosecutions and in some cases there may be nothing new to report. We will endeavour to contact the complainant at key stages throughout, but potential stages of notification will vary depending on the nature and outcome of the investigations.

However, we will aim to;

- Acknowledge complaints that are a potential breach within 5 working days, which will include the investigating officer's contact details
- Provide a detailed response to the complainant within 25 working days. However, if a detailed response cannot be given then an update will be provided which will include a date by when the full response will be given.

After these updates, it is requested that complainants wait to be contacted by the enforcement team about the progress of an enquiry. Due to workloads, it may not always be possible for the enforcement team to respond to complainant requests for updates. Please be assured that you will be updated at key points throughout the investigation

5.3 Monitoring of sites

It is not possible to monitor all development being carried out within the Authority. It is the responsibility of the individual developer to comply with planning conditions and to check if particular developments require planning permission. The Council

does provide a 'do I need planning permission' enquiry service. Please contact the Council for further details.

The Council relies on public complaints, enquiries from Councillors, MPs and Parish Councils, and planning officers proactively monitoring of sites to establish breaches of planning control. The Council informally monitors sites through site visits, and the planning enforcement team also relies on other Council departments to raise potential breaches.

Appendix 1

Formal enforcement action toolkit

Options available to tackle possible breaches of planning control	Brief explanation
No formal action	This is appropriate for when there is no breach of planning control or when the impact of the breach is not considered expedient for formal enforcement action.
Monitor site	This is appropriate for when further evidence or investigation is required to establish an alleged breach.
De-minimus	These are minor works that have been carried out, which are considered so minor that they would practically fall outside the scope of planning. Whether works are de-minimus is a decision made by the Council on a case-by-case basis.
Allow time to remedy	Time may be given to remedy the breach where there is no significant harm and it is not serious enough to warrant immediate action. Therefore the opportunity will be given to resolve the breach.
Retrospective planning application	A retrospective planning application allows for an application to be submitted after the development has been carried out. In some cases a retrospective planning application can be requested, when it is considered as an appropriate way forward to regularise the situation. A retrospective application is dealt with in the same way as any other planning application.
Lawful Development Certificate	A lawful development certificate application can be submitted to regularise the development/use after the expiry of time period for taking enforcement action.
Planning Contravention Notice (PCN)	A PCN is a discretionary procedure, and is a way for the Council to find out more information about an alleged planning breach to establish what, if any enforcement action should be taken. It usually involves a series of questions about operations being carried out, or about how the breach may be satisfactorily remedied. Failure to complete, or to provide false or misleading information is a criminal offence.
Section 330 Notice	Similar to a PCN, this notice is a way for the Council to find out more information about the occupier's interest in the land.

Planning Enforcement Order	A magistrates' court may only make this order. It can be made where a person has deliberately concealed an unauthorised development and enables the Council to take action withstanding the usual time limits that may have expired. This order is used to extend the amount of time the Council can take formal action, the 'enforcement year'. This gives the Council time to decide the most appropriate course of action.
Enforcement Notice	This is the most common type of notice and instructs the recipient to carry out steps to remedy the breach. The notice will specify what the alleged breach is, and prescriptive steps, with specific timescales, that must be taken to remedy it. Failure to comply with the requirements of an Enforcement notice within the time period given is a criminal offence.
Listed Building Enforcement Notice	This notice is similar to an enforcement notice, and will specify the unauthorised works to the relevant listed building. It can be served on its own, where listed building consent was required but not planning permission, and can also be served in conjunction with a Planning Enforcement notice.
Breach of Condition Notice (BCN)	A BCN may be served where there has been a breach of condition that is attached to an extant planning permission. It requires the recipient to comply with the specified planning conditions. Failure to comply with a BCN within the time period given is a criminal offence.
Stop Notice	A stop notice can only be served with an Enforcement notice and they aim to prohibit any or all of the activities which comprise the alleged breach. They are used when the Council feels that it is expedient that any relevant activity should cease before the deadline for compliance in the related notice.
Temporary Stop Notice	Temporary stop notices can prohibit a range of activities relating to a planning breach, if it is expedient to do so. Unlike a stop notice, a temporary stop notice can be issued immediately without having to wait for an enforcement notice to be issued. They expire after 28 days from issue.
Advertisements	The display of advertisements that do not meet the criteria set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 are illegal unless they have been granted express consent.
Discontinuance Notice	This notice can require that the display of a particular advertisement which has deemed consent is discontinued. This action may be taken if the Council feels that the advertisement causes substantial harm to the amenity of the locality or danger to members of the public.

Section 225 Notice	This notice enables the Council to require the removal of any placard or poster displayed illegally. The notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of unauthorised advertisements in a specified time limit.
Section 215 (Untidy Land) Notice	This notice is served when land requires to be cleaned up because its condition adversely affects the amenity of the area. It can also require the demolition of derelict buildings. The notice sets out the steps needed to be taken and time limits in which they must be carried out.
Direct action	The Council has the option to take direct action to remedy a planning breach if an Enforcement notice or a section 215 notice has not been complied with. The Council may carry out works required in the notice and seek to recover those costs from the landowner.
Injunction	An injunction can be obtained if the Council need to restrain a breach of planning control, and it is considered expedient for any actual or apprehended breach of planning control to be restrained. This is done by applying to the High Court or Country Court. An injunction is a last resort attempt, and will only be applied for if ordinary enforcement powers have been, or will be unlikely to stop unauthorised activities.
Enforced sale	An enforced sale is used when direct action has been taken and the Council is owed money for carrying out the work. If a charge has been placed on the property the Council has the ability to sell the property in order to recover its costs. This is a last resort and would only be used when other repayment methods have been exhausted.
Prosecution	The Council will consider commencing a prosecution in the Courts when there has been a failure to comply with any of the above notices and will recover costs.
Confiscation Orders under the Proceeds of Crime Act 2002 (POCA)	This is used when the defendant has benefitted financially from a breach of planning control and enforcement action has been taken. It allows the Council to bring an action to recover the money they have gained as a result of disregarding enforcement action.