

Planning Local Enforcement Plan

**Brighton & Hove City Council
September 2022**

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1. Introduction

Brighton and Hove City Council, as the Local Planning Authority, has the duty to determine whether a breach of planning control has taken place and if so whether it is expedient take enforcement action. As part of its role, it also undertakes investigations concerning unauthorised works to listed buildings as well as other planning breaches. This document is the Planning Local Enforcement Plan for Brighton and Hove City, excluding the area covered by the South Downs National Park Authority.

Background

The [National Planning Policy Framework](#) identifies that effective enforcement is important to maintain public confidence in the planning system.

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. However, whilst all relevant cases received will be investigated, enforcement action is discretionary and should be exercised in a proportionate way. National Planning Practice Guidance advises that the Local Planning Authority has discretion to take enforcement action when it is expedient to do so having regard to the development plan and any other material planning considerations.

The National Planning Policy Framework guides local planning authorities to publish a local enforcement plan to manage enforcement in a way that is appropriate to their area. The local enforcement plan is a material planning consideration.

This document is the Planning Local Enforcement Plan for Brighton and Hove City excluding the South Downs National Park Authority area. Planning enforcement decisions will have regard to this Plan as a material planning consideration.

Planning enforcement is subject to various legislation, but of importance are the enforcement provisions contained within the [Town and Country Planning Act 1990, as amended](#) and the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#). Further, national policy is contained within the [National Planning Policy Framework](#) and guidance is provided through the [National Planning Practice Guidance](#). It is often the case that legislation and national guidance are subject to change. Where this takes place, the legislation and national guidance these will take precedence.

2. Aims and Objectives

The content, procedures and policies within this Planning Local Enforcement Plan seek to meet the aims of the Planning Enforcement Service, which in turn is based upon the legislation, national policy and guidance for planning enforcement and local circumstances.

The aims and objectives of the Planning Enforcement Service are:

- 1) To focus resources and prioritise planning enforcement cases where it is expedient to take enforcement action and where it is in the public interest to prosecute criminal offences relevant to planning breaches. To achieve this we will seek to:**
 - prioritise cases and action, based on the level of harm caused;
 - where resources permit, introduce a proactive approach to planning enforcement prioritising cases dependant upon local circumstances and the level of harm;
 - reduce the number of enquiries that are not matters dealt with the Planning Enforcement Service;
 - reduce the number of cases received that result in a conclusion of no breach;
 - close cases, where it is not expedient to take action; and
 - reduce, where possible, any duplication of resources with other departments or agencies; and
- 2) To manage customer expectations, and provide good customer service, we will:**
 - clarify the discretionary nature of planning enforcement and identify as early as possible when it is expedient to take action or not;
 - explain to customers, early on in the investigation, what the next steps are and possible outcomes;
 - to respond to customer enquiries in a timely manner; and
 - take a joint approach with other departments and agencies.
- 3) To apply a consistent approach. Where it is expedient to take action we will aim to negotiate a solution, where possible, but identify situations where it will be necessary to take enforcement action to remedy a breach or prosecute a criminal offence.**
- 4) To treat all customers, including complainants and contraveners, in a fair and inclusive manner and make decisions taking into account all relevant factors and circumstances.**
- 5) To introduce a paid for service to respond to customer enquiries concerning compliance with notices and conditions as well as withdrawing notices after the notice has taken effect.**

3. Planning Breaches

Types of planning breach

Planning breaches dealt with by the Planning Enforcement Team at Brighton and Hove City Council include:

- **breaches of planning control;**
- **unauthorised works to listed buildings;**
- **unauthorised advertisements;**
- **untidy land and poorly maintained buildings; and**
- **criminal offences relevant to these matters.**

Why is it important to explain the differences between the types of breaches?

Planning breaches, as described in this document, are treated differently in law. This means that each type of breach will be treated and considered differently as described below.

Breach of planning control

A breach of planning control is defined by the Town and Country Planning Act, 1990 as amended 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.

Unauthorised development

Carrying out of development without the required planning permission or in breach of a planning condition or limitation is also known as unauthorised development.

Where it is alleged that a breach of planning control may have occurred, it is necessary for the Local Planning Authority to first consider whether development has taken place. [Section 55](#) of the Town and Country Planning Act 1990, as amended, identifies what constitutes development for planning purposes.

Development can take the form of:

- Operational development;
- Material change of use

Operational development is concerned with external physical changes and material changes of use relate to how buildings and land are used. Certain matters may not constitute development for planning purposes. This includes where operations do not materially affect the external appearance of the building; the change of use is not material; or the development is so minor it is considered to be de minimis. Please see [Section 55](#) of the Town and Country Planning Act 1990 for a full explanation as to what constitutes development.

Once the Local Planning Authority has identified that development has taken place it is then necessary to determine whether planning permission is required from the Local Planning Authority.

Planning permission is not required from the Local Planning Authority where:

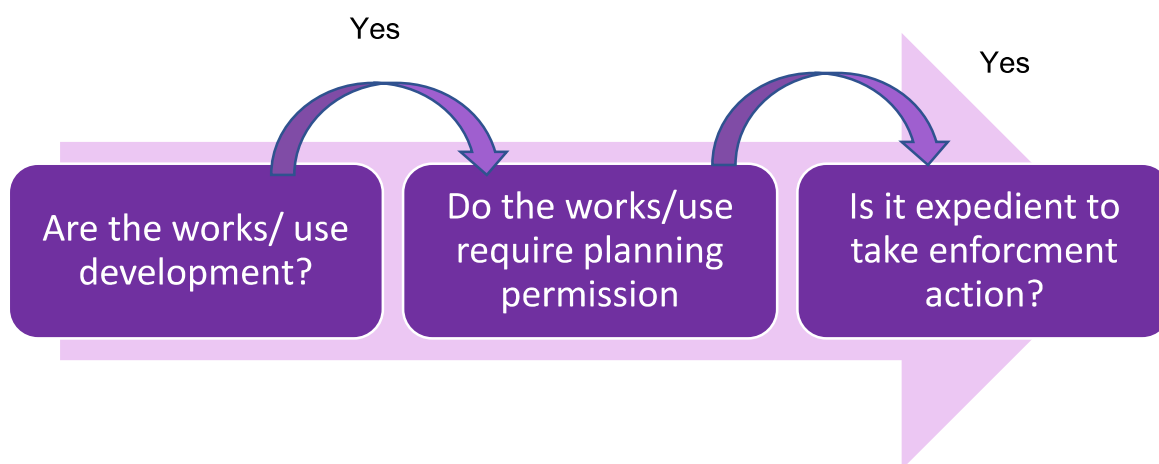
- General Permitted Development Order grants planning permission, known as permitted development;
- an enforcement notice allows for the development to take place, by under enforcing development;
- The development is immune from enforcement action.

We use both case law and appeal decisions to help us interpret whether development has taken place and whether planning permission from the Local Planning Authority is required. This interpretation can change as case law and appeal decisions update our understanding. However, it is often the case that planning permission is not required from the Local Planning Authority because it is permitted development.

In some cases, development is subject of a Lawful Development Certificate which confirms whether planning permission is required.

If it is considered that planning permission is required for the development, it is then necessary to consider whether it is [expedient](#) to take enforcement action. If it not [expedient](#) then no further action will be taken. Expediency

Figure One: Steps for considering unauthorised development



Breach of Condition.

Planning permission may be granted subject to conditions. To attach a condition, there are certain [tests](#) identified in the National Planning Policy Framework that need to be met. Similarly planning permission granted by legislation (permitted development) is subject to conditions and limitations. Failing to comply with any condition or limitation subject to which planning permission has been granted is known as a breach of condition.

For enforcement action to take place it is necessary to ensure that the condition has met the tests identified in the National Planning Policy Framework. Breach of conditions are also subject to immunity. If a breach of condition has taken place for 10 years, or 4 years relating to a change of use to a dwelling house, then the breach may be lawful and enforcement action cannot be taken.

Whilst conditions attached to planning permission from the local planning authority may be in breach, it remains necessary to consider whether it is [expedient](#) to take enforcement action. This includes consideration of the development plan at the time of the breach as well as other material considerations. It will not be expedient to take enforcement action on 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.

Unauthorised works to listed buildings

Works to listed buildings are controlled through the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#). Listed building consent is required for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. This can include physical works to the interior of a building which cannot be seen from the outside.

There is no immunity for unauthorised works to listed buildings. However, the date of when the building was listed is important because it is the features in place at the time of listing that are considered to constitute the character of the listed building.

In many cases, but not all the time, works can be both a breach of planning control and unauthorised works to a listed building. However, if the breach only relates to works to a listed building then the scope of considerations is limited to its impact on the listed building.

In the case of unauthorised works to a listed building, it will be necessary to consider whether it is [expedient](#) to take enforcement action, having regard to the effect of the works on the character of the building as one of special architectural or historic interest. Regard must be given to the grounds of appeal that exist under [section 39 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#).

Breaches of conditions attached to Listed Building consents and unauthorised works for the demolition or alteration of listed buildings can also be criminal offences, which are subject to different considerations, please see [evidential and public interest tests](#).

Unauthorised advertisements

Advertisements, which include flags, shop signs, awnings and estate agent boards, are different than breaches of planning of planning control.

Advertisements do not require planning permission. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) regulates whether advertisement consent is required.

However, it can be the case that signage on a listed building requires both advertisement consent and listed building consent.

Advertisement considerations are limited to amenity and public safety, although development plan policy is a material consideration. The display of an advertisement without consent may also be a criminal offence, which is subject to different considerations, please see [evidential and public interest tests](#).

Untidy land and poorly maintained buildings

Under Section 215 of the Town and Country Planning Act 1990, as amended, if it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may seek to remedy the condition of the land.

It is necessary to justify that amenity is adversely affected by the condition of the building or land. Case law has a significant part to play in the interpretation of this part of the legislation, but it generally means where there is a need for repair, maintenance and sometimes clearance of land.

4. Matters not investigated by the Planning Enforcement Team

The Planning Enforcement Team receive numerous enquiries everyday about matters taking place in the City. Not all of the complaints we receive are about planning breaches.

Examples of matters that are not planning breaches which are not investigated by the Enforcement Team:

- works or a use that has not commenced;
- rumours that work will take place;
- concerns regarding the [Party Wall Act 1996](#);
- health and safety issues not related to a planning breach (please contact the [Health and Safety Team](#));
- concerns regarding [vermin](#) not related to a planning breach;
- legal disputes not related to a planning breach;
- landownership and boundary disputes;
- [dangerous structures](#) and building control matters;
- [noise, light and odour](#) nuisance not associated with a planning breach;
- Parking and highway [obstruction](#) issues not related to a planning breach;
- [high hedges](#);
- [works to trees](#) not associated with a planning breach; and
- [Antisocial behaviour](#) not associated with a planning breach.

If the Service receives a complaint that is not a planning breach, we will not commence an investigation. However, if it is a matter that may be dealt with by another service area, we will:

- let you know that it is not a planning breach dealt with by the Planning Enforcement Team;
- not commence a planning enforcement investigation;
- send the complaint and details to the service area we believe may be able to assist with your enquiries;
- let you know we have passed on your details; and
- close the case.

If the complaint is both a planning breach and another matter that maybe dealt with by another service area we will:

- Open an investigation for the planning breach only;
- Send the complaint and details to the service area we believe may be able to assist with your enquiries concerning non- planning matters;
- Let you know that we have passed on your details;
- Investigate the planning breach and liaise with other relevant departments.

Planning legal agreements

A Section 106 legal agreement is a contract between parties which usually includes (but not limited to) the Council, a developer and/or a landowner. The Planning Enforcement Team does not enforce against a breach of a Section 106 legal agreement. However, if a breach of a Section 106 legal agreement is identified by the Planning Enforcement Team this matter will be reported to the relevant persons within the Council for consideration with regard to a potential breach of contract.

5. Making a Complaint

Prior to making a complaint

Before making a complaint, you may wish to look at the [Planning Register](#) to see if planning permission, listed building consent or advertisement consent has been obtained. You can also see if a lawful development certificate has been approved.

There are several operations/ changes of use that can take place that do not require planning permission. This is called permitted development. To give you an idea as to what is permitted, prior to making your complaint, you can look at examples using the following link: [Planning portal](#)

You may also wish to speak to the person(s) you are making a complaint about if you feel that you can. You may be able to resolve your concerns by talking it through.

If your concerns relate to construction activities, and the site is registered with the [Considerate Constructors Scheme](#) you may also contact the scheme direct. This organisation provides a service to deal with complaints concerning construction activities if it is relevant to their Code of Considerate Practice, including matters that are not within the remit of the Local Planning Authority. However, if they look into the matter and consider the concern to be a planning enforcement issue, they will refer the matter to the planning enforcement service.

Complaint form

Our preference is that all complaints are made on the on-line complaint form which can be accessed using the following link <https://www.brighton-hove.gov.uk/planning/planning-enforcement-complaint>. The online complaint form will ask for personal details including information required for equalities monitoring.

We will not accept emails or other forms of submission except where the complainant has genuine issues with accessing the online service and/ or providing written communications. If this is the case, the Council will fill in a form on behalf of the complainant.

Anonymous complaints

Anonymous complaints will not be recorded and an investigation into the allegation will not commence. This is because we may need to validate the allegations made, ask for details and verify the harm being caused.

Complainant details

Complainant details and the nature of the complaint will be recorded and kept on file. In most cases complainant details will not be disclosed. However, we may be required to disclose the nature of the complaint or information provided to us. If this is the case, we will do so without providing personal data.

However, there may be circumstances where we may be required to disclose personal information, for example as part of a prosecution case. If you contact the

Council regarding a criminal matter, we may also ask you to provide a witness statement, for the case to progress.

If you make a complaint to the Planning Enforcement Team, but your concerns relate to another service we will forward on your complaint and details to that other service area within the Council.

Complaints from other service areas

Occasionally we will be forwarded information from another service area about a complaint that maybe a planning breach. In these circumstances, we will ask the complainant if they wish for the Planning Enforcement Team to open a case and record their details.

In certain circumstances, where the same breach can be dealt with by two or more departments under different legislation it may be necessary to identify a lead enforcement department. This may be necessary to avoid duplication. However, if the outcomes of the case will be different it may be necessary for both (or more) departments to consider the breach and liaise with each other.

Where there are two or more departments investigating a breach, this can often be difficult for both the complainant and the contravener to navigate because different teams will be working with different legislation which aim to achieve different results. We will aim to achieve a coordinated approach to investigations where possible, however this may impact upon timescales.

Re-opening of cases

After a decision has been made to close a case because it is considered that there is not a breach or it is not expedient to act, cases will not normally be reassessed. Cases will only be re-opened in the circumstances where it has been alleged that a thorough investigation has not been carried out, with associated relevant evidence to back the claim; or where it has been identified that it is not expedient to take action and new material information is provided to challenge the conclusion. However please note that decisions are a matter of planning judgement considering case law and appeals and whilst an outcome may be disappointing the Council cannot take action if it is considered that there is not a breach, or it is not expedient to take action.

6. No breach

After a complaint has been received and an investigation has taken place, a significant proportion of cases result in a conclusion that there is no planning breach. It will be for the case officer to determine whether there has been a breach, taking into account legislation which is interpreted taking into account case law and appeals concerning similar matters.

A decision of no breach will be concluded when:

- **There is no / not enough evidence to conclude that the allegation has taken place.**
- **The evidence provided by the complainant cannot be verified.**
- **Information is requested from the complainant, to confirm the breach, and not received after one month of the request.**
- **The alleged works are not development or, in the case of a listed building, do not affect its character as a building of special architectural or historic interest.**
- **The development is permitted development.**
- **The advertisement does not require or has deemed consent.**
- **The development has been granted planning permission or listed building consent, as relevant.**
- **The advertisement has consent from the Local Planning Authority.**
- **The untidy land is not considered to be of a condition that adversely affects the amenity of the area.**
- **The building is not considered to be sufficiently deteriorated to adversely affect the amenity of the area.**
- **An Enforcement Notice allows for the development to take place (including under enforcement).**
- **The Enforcement Notice/ Breach of Condition Notice/ Section 215 Notice has been complied with.**
- **Enforcement action cannot be taken because it is immune from enforcement action.**
- **The part of the listed building of concern was in place at the time of listing.**

Immunity

Where there has been a breach of planning control involving operational development, legislation prevents enforcement action being taken after the end of the period of four years beginning on the date on which the operations were substantially completed. Where there has been a breach of planning control resulting in a change of use of any building to a use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In most other cases, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. This includes breaches of conditions and other changes of use.

7. No Further Action

Where an investigation is carried out and a planning breach has been confirmed by the Local Planning Authority the next step is consider whether it is expedient to take enforcement action. This is because enforcement action is discretionary and, in relation to certain formal enforcement action, it is necessary for the Council to justify that it is expedient.

It will not be expedient to take enforcement action for planning breaches* taking into account the following:

- 1) Development is in accordance with local plan policy.**
- 2) In accordance with the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004 material considerations outweigh development plan policy.**
- 3) It is considered that unconditional planning permission would be granted for the development.**
- 3) There is a trivial or technical breach of planning control which causes no material harm or adverse impact on the amenity of the site or the surrounding area.**
- 4) An advertisement would be acceptable taking into account its affect on amenity and public safety.**
- 5)The harm is temporary in nature and there is an operational requirement for the breach. The acceptability of the temporary nature of the breach will be dependent on the level of harm caused, what is lawful and the consideration of other suitable methods to achieve the operational requirement.**
- 6) In relation to operational development there are a number of other similar breaches or permissions in the area, which have already changed the character of the area.**
- 7) Enforcement action would cause severe hardship** that outweighs the harm caused and does not prejudice any future prospects.**
- 8)The remedy would have consequences that would in itself cause harm in planning terms.**
- 9)The enforcement action would be disproportionate to the scale of the breach or the harm arising.**
- 10) The Local Planning Authority is reliant upon the complainant to verify the breach (and are unable to evidence the breach in any other way) and the complainant wishes to remain anonymous.**
- 11) The complaint has been made for the purposes of removing a competitor and no other harm is identified and/ or verified.**
- 12) The complainant is a landowner who has yet to try civil legal processes to rectify the breach.**

***excluding prosecutions which will be considered under evidential and public interest tests**

**** Includes adaptations required to create equality of opportunity for a protected characteristic under the Equalities Act 2010**

If it is concluded that it is not expedient no further action will be taken. This does not mean the breach is lawful; it means that the Council will not pursue the matter.

Landownership and disputes

The Local Planning Authority often receive complaints from landowners regarding their own land/ property. Sometimes it is seen as a more economic option than dealing with the situation through civil legal processes. Where this is the case, and the civil legal process has not been pursued, we would normally consider that it is not expedient to take action. This is because there is another mechanism to deal with the issue without the need for planning intervention.

Also, it is the case that if an investigation progresses and the Council serves a Notice it will be served on the landowner as well as other interested parties. The Notice will then stay with the land and if a prosecution is recommended, it may be necessary to consider prosecuting the landowner. This means that public money is being used to pursue a private interest and is usually not considered to be in the public interest. Therefore, where a landowner submits an enforcement complaint upon their own land, we ask that they find a solution to stop the breach before seeking our help.

Evidential and Public Interest Tests

Criminal investigations and subsequent prosecutions are not subject to expediency considerations.

Criminal prosecutions are subject to trial at court and subject to different tests than breaches of planning control and other methods of regularising planning breaches. For a suspect to be found guilty of an offence it must be proven beyond reasonable doubt not on the balance of probabilities.

Balance of probabilities is a test that is used when considering whether a breach of planning control is immune from enforcement action by virtue of time. This is because no enforcement action after a certain length of time depending on the type of breach of planning control. Balance of probabilities is a judgement that is made as to whether an event or account is more likely than not to have occurred. Beyond reasonable doubt is a higher standard.

The first element that needs to be considered is the evidential test. This is a question of whether there is credible and reliable evidence to provide a realistic prospect of conviction. In this regard the defence of the suspect must be taken into account as well as evidence not used as part of the prosecution case. If the evidential test is not met then the public interest test will not be considered and the case will be closed.

The second, public interest, test is whether it is in the public interest to prosecute and for the matter to be considered by the court. In considering the public interest test the person authorising the prosecution must balance the factors for and against prosecution including:

- the harm caused as a result of the offence;

- allowing equality of opportunity for protected characteristics as identified under the Equalities Act 2010
- the degree of the breach;
- the knowledge of the breach;
- the suspect has failed to comply, in part or in full, with a statutory notice;
- there is evidence that the offence was premeditated;
- the level of cooperation to remedy the harm;
- the suspect's level of involvement;
- there are grounds to believe that the suspect was motivated solely by personal gain; and
- a prosecution would have a significant positive impact on maintaining community confidence.

8. What enforcement powers can be used for planning breaches

If it is considered expedient to take enforcement action, there are a number of formal enforcement actions that can be taken depending on the circumstances:

Breaches of Planning Control – Operational Development/ Material Changes of use

Enforcement Notices

If it is considered expedient to do so, the Local Planning Authority may issue and serve an enforcement notice on the landowner and other interested parties. The Council must justify that it is expedient to serve a notice and write a report recommending that a notice be served, which is agreed under delegated powers. Because the notice can be appealed on a number of grounds the following must be justified:

- that a breach has taken place and the evidence available proves, on the balance of probability, that it is not immune from enforcement action;
- the reasons for serving the notice including identifying that development is contrary to development plan policy and identifying any other material planning considerations; and
- what is required to be undertaken as part of the notice (for example we cannot ask for a better quality development than that was there previously), including the consideration of lesser steps if appropriate.

The Council may under enforce as part of an enforcement notice. This means the steps to remedy the breach are less than the steps that would be required to remove or cease all of the unauthorised development. It may be expedient to require lesser steps.

There are two dates on the enforcement notice. The first date is the date that it is issued and the second is the date the notice takes effect. If a valid appeal is submitted prior to a notice taking effect, the terms of the notice are held in abeyance until the appeal has been decided.

As it is the responsibility of the Council to identify the breach and the remedy required and to defend this at appeal, we are unable to take enforcement action simply based on the wishes of the local community. If we do not consider that there is a breach, the matter is not expedient or lesser steps should be taken, we will explain this to complainants as we cannot progress a case that would fail on appeal.

Stop Notices

In very exceptional circumstances, the Local Planning Authority may consider serving a stop notice. The purpose of a stop notice is to require relevant activity to cease before the expiry of the period for compliance specified in an enforcement notice.

In order to serve a stop notice the Local Planning Authority must justify its decision and identify why it is essential to safeguard amenity or public safety in the

neighbourhood; or to prevent serious and irreversible harm to the environment and the surrounding area. A stop notice is required to be served alongside an enforcement notice.

As an alternative to a stop notice a local planning authority can consider serving a temporary stop notice, which does not require the service of an enforcement notice. However, a temporary stop notice expires 28 days after the display of the notice on site. Again, a temporary stop notice can only be served where it is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious and irreversible harm to the environment and the surrounding area.

In both cases, consideration must be given to the economic impact of the notice as it can have a significant economic effect on businesses and individuals. It is for this reason that these notices are only used in very exceptional circumstances and the notice must be justified as being essential.

If an enforcement notice is overturned or amended on appeal or a stop notice is withdrawn the Council may be liable to compensation owing to the loss or damage the claimant has suffered.

Breaches of Planning Control – Breaches of Condition

For breaches of condition the Local Planning Authority has two options to remedy the breach one is to serve a breach of condition notice and the other an enforcement notice. It will be at the discretion of the Local Planning Authority as to the most appropriate form of action. In accordance with this policy, it is necessary to justify the decision to take enforcement action by considering the expediency of formal action.

Breaches of Planning Control – Injunctions

The most serious form of enforcement action is to serve injunction against a breach of planning control or an apprehended breach of planning control. In these cases, the Local Planning Authority must apply to the High Court or County Court for an injunction under the Town and Country Planning Act 1990. This can be a protracted and legally technical process and therefore prior to the use of injunctions other formal enforcement measures should be considered first before considering the use of an injunction.

Unauthorised Works to listed buildings

There are various formal mechanisms to deal with unauthorised works to listed buildings.

If a person undertakes certain works to a listed building, which affect its character as a building of special architectural or historic interest, without the necessary consent, it is a criminal offence under the relevant Act. Further, if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, they shall also be guilty of an offence.

Whilst it is an offence to undertake certain works to a listed building, legislation allows for remedial action to be specified within a Listed Building Enforcement Notice

in order to resolve the impact of the works. Therefore, the Local Planning Authority must make a decision as to how it will approach unauthorised works to listed buildings.

Theoretically, a punitive approach can be taken through prosecution, however this will not resolve the unauthorised works and in many cases it may be more suitable to require remedial works to be undertaken via a Listed Building Enforcement Notice. There is also the option to serve a Listed Building Stop Notice. The provisions regarding these types of notices are very similar to those outlined as breaches planning control but deal specifically with listed buildings.

Unauthorised Advertisements

It is a criminal offence to display an unauthorised advertisement. However, prosecution can only be initiated within six months of the date of the offence becoming known to the local planning authority and within three years of the offence taking place.

There are also provisions within legislation that allow removal notices to be served which require the removal of unauthorised advertisements.

However, advertisements are not considered in the same way as breaches a planning control and it is necessary to justify enforcement action taking into account the impact upon amenity and public safety.

Untidy land and poorly maintained buildings

If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under Section 215 of the Town and Country Planning Act 1990 as amended. The notice shall require such steps for remedying the condition of the land in a specified timescale. If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, they shall be guilty of an offence. In the event that the notice has not been complied with the Council also has power to enter the land and take the steps to remedy the harm and recover from the owner of the land any expenses incurred.

When the notice has been complied with a new investigation and notice will be required for any new breaches, even if they were similar to that previously encountered.

Concealment

If a breach of planning control has become immune by virtue of time, but where evidence exists that this has been concealed, the Council will consider applying to the magistrates' court for a planning enforcement order. However, this will only be considered in the case of an unauthorised dwelling which is now contrary to policy, or where other development causes significant harm when it becomes unconcealed and it is expedient to take enforcement action.

9. How will planning breaches be investigated and resolved?

The way in which planning breaches are investigated and resolved will be dependent on the type of planning breach that is alleged. This is because different breaches will require different styles of investigation.

Site Visits

Not all investigations will result in a visit to the site where the alleged breach has taken place. It may be the case that officers have enough information to make an informed decision without the need for visiting the site. The decision to undertake a site visit will be made on a case-by-case basis by the case officer. If it is considered that a site visit is necessary, which means entering private property where the alleged breach is occurring, this may result in a delay in the investigation and reaching a conclusion as to whether there is a planning breach.

If it has already been concluded that a breach is not taking place will not investigate further, including a site visit.

Only in exceptional circumstances will officers visit the complainant's address. Exceptional circumstances include where an officer considers that it is necessary for the case to witness the impact upon the complainant's address or where a complainant has a legitimate requirement for such a meeting to create equality of opportunity for a protected characteristic under the Equalities Act 2010. We are also not able to grant complainants entry onto land that we are investigating.

Rights of Entry

Under the Town and Country Planning Act, 1990 and Planning (Listed Buildings and Conservation Areas) Act 1990 the Enforcement Team have rights to enter land and buildings to carry out certain enforcement duties. In most cases, it will be necessary to give 24 hours' notice to exercise that right to entry to a residential property. However, if entry is refused after providing 24 hours' notice the Council may seek a warrant to enter the premises without consent from the owner.

Planning Contravention Notices and Section 16 Notices

Planning contravention notices and section 16 notices are both formal notices which require certain information to be provided to assist with a planning enforcement investigation.

These notices do not require works to cease but are simply a method to obtain information. It is an offence not to provide information, however. Therefore if you receive a Section 16 Notice or a Planning Contravention Notice it is important for you to answer these within time and accurately.

If you do not respond either in time or accurately, it is a criminal offence and we will instigate an investigation into the alleged offence and will progress the matter further.

Breach of Planning Control

Operational development and Section 215

Operational development usually involves physical works to an external part of a building or land. Where it is alleged that operational development has taken place, we will ask for photographs so that we may assess the works that have taken place. From these photographs we may be able to determine whether there has been a breach of planning control. We may also look at other evidence to determine whether there has been a breach planning control. In the absence of such information, we will arrange a site visit to see the works that have been undertaken and the harm being caused.

Sometimes the work will not have progressed enough to decide that a breach of planning control has taken place. We are unable to take enforcement action through the service of an enforcement notice where the breach has not taken place or where the harm is not evident.

There are many reasons why it is concluded that there is no breach please see [Section 5. No Breach.](#)

Landowners and developers undertake works at their own risk. We cannot insist that works stop unless the local planning authority is prepared to serve a stop notice. However, landowners may wish to stop works to reduce their risk of progressing a development which will subsequently be required to be removed. The fact that the works have been completed will not prevent enforcement action being taken if it is deemed expedient to do so.

Where there has been a breach of planning control an assessment will be made of the harm caused by the breach taking into account the local development plan and any other material considerations. It will be considered whether it is expedient to take enforcement action see [Section 6. No Further Action.](#) If it is not expedient to take enforcement action the case will be closed and the persons involved informed.

If it is considered expedient to take enforcement action, further consideration will be made as to whether works can be undertaken to mitigate the harm. In circumstances where it is it considered expedient to take enforcement action, the landowner will be advised of the conclusions and will be given an opportunity to resolve the situation. This may include resolution by mitigation; resolution by submitting a planning application for conditional permission; or resolution by removing the breach. The resolution will include an agreement as to a suitable time scale identified by the Local Planning Authority.

If this time scale is not complied with, without reasonable excuse, the Local Planning Authority will prepare a case to serve an enforcement notice to remedy the breach of planning control. It will be for the Local Planning Authority to consider if the excuse is reasonable. Please note that in many circumstances this information can be either personal and/or sensitive and therefore it may be that we cannot provide the complainant this information.

Investigations regarding untidy land and possible service of Section 215 notice will follow a similar process to that of operational development.

Material Change of Use

To determine whether there has been a material change of use, it may be necessary to compare the use of the land or building prior to the change with the current use.

It is often the case that these changes are witnessed by members of the community. As Council Officers investigating breaches of planning control cannot do this covertly (unseen) there is a reliance upon witnesses providing information. Therefore, in order to investigate a material change of use it will usually be the case that we will ask for evidence to be provided by the complainant and possibly others. Depending on the breach concerned we may require up to three months' worth of information concerning the alleged breach of planning control.

For example, if an allegation is made of a business at a residential premises it may be necessary to ask for information relating to deliveries, employees and other people visiting the premises. This is because we are comparing the use at present with what would be expected in a household in the area.

In addition to this, it is likely that we will serve a planning contravention notice on the landowner or those persons with a material interest in the land. This will ask a number of questions about the use of the land.

From all of this information, including if necessary a site visit, it will then be determined whether there has been a breach planning control.

It may be the case that by reducing the activity the breach of planning control is resolved or maybe deemed to be suitable and not require action. Alternatively, a planning application with conditions may be a suitable resolution to the situation. If a material change of use has been identified there will be a discussion with the landowner as to whether there is a need to reduce the activity/use, submit a planning application with suitable conditions or change the use back to its lawful use in order for it to be suitable. This will be subject to a time scale. If the use has not reduced, an application submitted, or the use is not reverted back to the lawful use to that agreed within the time scales provided enforcement action will be recommended, subject to consideration of expediency.

Breach of conditions

There are different types of conditions that can be breached. These can include non-compliance with approved plans, breaches relating to times of construction, or breaches of physical details. Breaches that involve non-compliance with plans or other physical details will be treated in a very similar way to that of breaches of planning control involving [operational development](#). Breaches of conditions that involve matters such as opening times and construction times will be treated similar to that of [material changes of use](#) and may require the provision of evidence from the community in the area.

There may be circumstances where it is deemed not expedient take enforcement action if there is a breach or an alternative solution is negotiated that overcomes concerns raised by the Council. However, if it is identified that there is a breach that requires to be remedied and this is not undertaken in the time scale specified then enforcement action will be recommended. If an application is submitted to vary or

remove a condition as a result of the investigation, the matter will be considered on a case-by-case prior to progressing enforcement action.

Verification of Information/ Evidence

Officers will make all reasonable attempts to verify information provided by complainants, including asking other parties to corroborate allegations. If the Officer through the investigation identifies that the information provided is incorrect or misleading or if a breach is not found, the case will be closed.

Corroboration may include serving a planning contravention notice relating to all relevant breaches of planning control. A planning contravention notice is a document served on landowners and other relevant parties requesting information in relation to that breach.

In circumstances where alleged breaches cannot be proven/ corroborated independently the contravener's response in the planning contravention notice will be given significant weight. Please note planning contravention notices can only be used for alleged breaches of planning control.

Why Does the Local Planning Authority Use Informal Negotiations

In relation to breaches of planning control, we can only seek remedial measures. It is also necessary to ensure that the measures are proportionate and take into account the circumstances of the situation. Legislation does not provide us the powers to punish breaches of planning control, and we can only resolve breaches where it is expedient to do so. Therefore we seek where possible to conduct negotiations in order to resolve breaches of planning control and in particular any harm that is being caused by the breach planning control. It is generally a quicker and more cost-effective way of dealing with the situation. However it must be associated with time scales. This allows us to progress to formal enforcement action if deemed necessary.

When are Informal negotiations used

Informal negotiations are used in planning breaches where there is no significant irreversible harm caused. In circumstances where significant irreversible harm is taking place we will identify this with the landowner/ interest parties and explain that we are preparing to take formal enforcement action without negotiation. Negotiation will also not be undertaken where there is a reasonable prospect of immunity being reached by the development, in circumstances where it is considered expedient take enforcement action. Negotiation will also not be used where the landowner or other relevant persons are not engaging with the Planning Enforcement Team and it is expedient to take enforcement action. This includes non-response to communications including but not limited to planning contravention notices. Where written responses are not received, we will endeavour to provide alternative opportunities to communicate with the officer to ensure equality of access.

It will be for the Local Planning Authority to determine what is significant irreversible harm taking into account the circumstances of the case but will include the

consideration of the actual impact upon amenity of those persons affected by the breach.

Untidy land and poorly maintained buildings will be treated in the same way as breaches of planning control.

Regularisation

If it is considered not expedient to take enforcement action, officers will not invite a retrospective application before closing the case. The case will be closed, but the contravener will be advised they may apply for planning permission

If harm is identified and it is considered that, potentially, conditional permission would be granted then officers can invite an application and await the outcome prior to considering enforcement action. The case will be closed when the application has been submitted and determined. Unless a condition is directly breached at that time, the case will be closed on approval. If the application is refused, then consideration will be required as to whether it is expedient to pursue enforcement action.

If harm is identified and it is considered that planning permission will not be granted and it is considered that it would be expedient to take action an application will not be invited and remediation will be identified with a timescale. The contraveners will be asked their intention and a suitable timescale for remediation identified.

A retrospective planning application has been submitted – will this stop formal enforcement action?

There may be circumstances where a landowner applies for planning permission for the development, which has been deemed to be unacceptable in planning terms by the enforcement officer. Alternatively, a landowner may apply for permission for an alternative scheme.

Urgency of action in these circumstances will generally be dependent on the level of harm. If the harm is significant and on-going then formal enforcement action should be taken. However, if a decision is taken on a planning application within 8 weeks (or if determined by committee longer) and the harm is not urgent there will be discretion to await the outcome of the application. However, unless there are overriding circumstances, if the planning application is refused enforcement action will not be deferred for an appeal to be lodged and determined. If it is considered expedient to take action, and there is a prospect of the development becoming immune then formal enforcement action will not be deferred.

A Lawful Development Certificate/ Planning Application for an alternative scheme has been submitted – will this stop formal enforcement action?

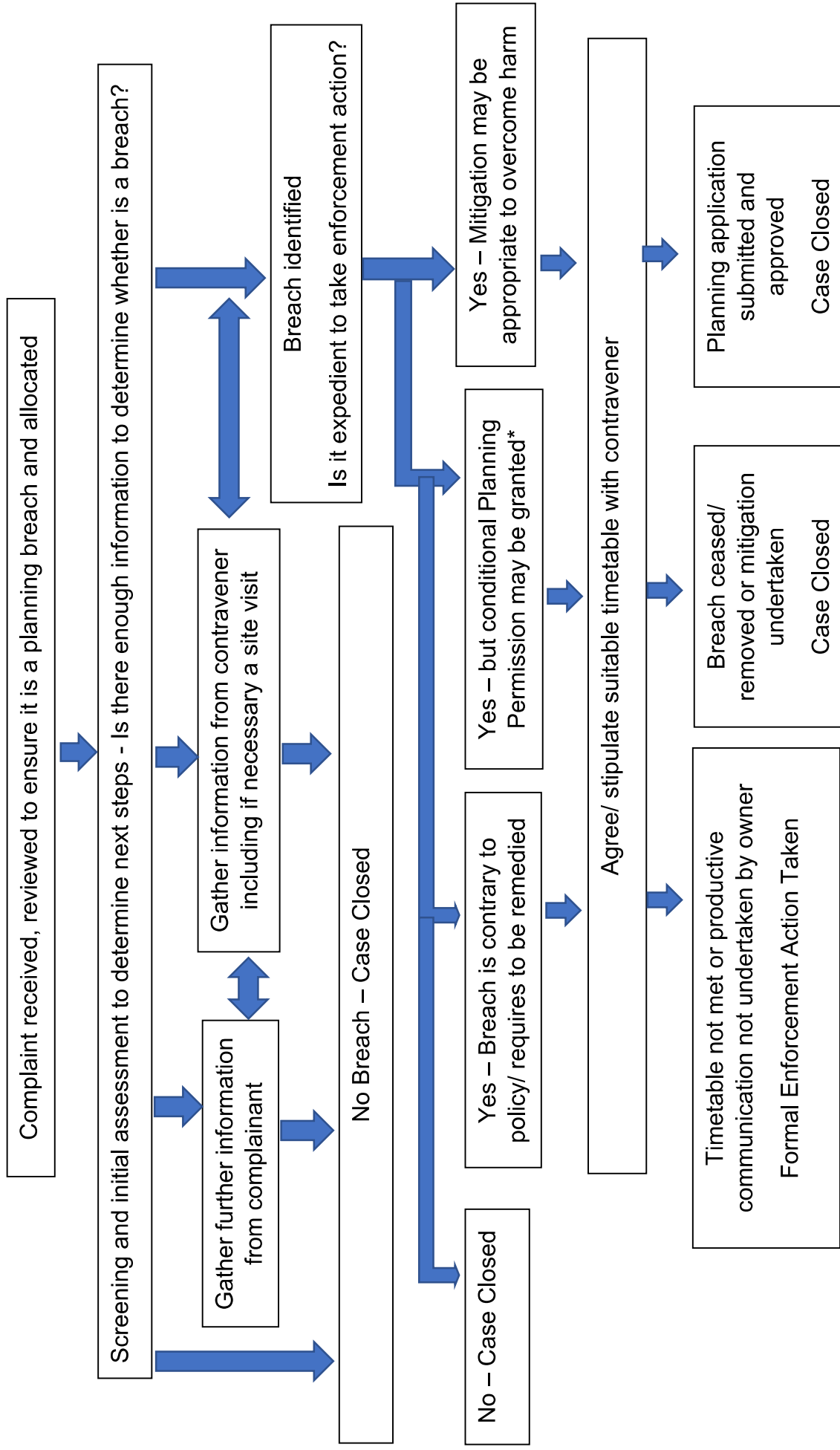
If an application is submitted for an alternative solution, which the Local Planning Authority considers has a reasonable prospect of being approved, further discussions should be undertaken. This would include discussing a reasonable timescale for submission of an application and works to meet the terms of the application. If neither of those timescales are met then enforcement action should be taken. It may also be necessary to serve an enforcement notice if the original

development is nearing immunity or where other circumstances require a notice to be served.

I have submitted an appeal to a retrospective planning application – will this stop enforcement action?

Unless there are overriding circumstances, if the application is refused enforcement action will not be deferred for an appeal to take place and enforcement action should be taken swiftly.

Figure One: Enforcement Process Breaches of Planning Control and Section 215



Unauthorised works to listed buildings

Unlike breaches of planning control unauthorised works to listed buildings are a criminal offence, but like breaches of planning control they can be remedied through the service of a formal notice.

Each investigation relating to unauthorised works to a listed building therefore will need to be treated as an investigation into an offence. However, we do appreciate that prosecuting an offence will not necessarily remedy the situation.

We will first determine whether unauthorised works to a listed building requires listed building consent. If it is the case, we will consider whether it is expedient to take action. If it is considered expedient to take action we will initially consider whether works can be undertaken to remedy the harm or resolve the breach. If it is the case that harm can be remedied, we will provide an opportunity to the relevant person to undertake those works to an agreed timescale. However, if works are not undertaken, and/ or productive communication does not take place enforcement action through a notice will be sought.

In addition to this, the Council may also consider whether the [evidential test and the public interest test](#) has been met to also pursue a prosecution.

However, if works are being undertaken to a listed building which in the opinion of the Council cannot be remedied, or if unauthorised works to a listed building is undertaken in the knowledge that it is a breach and permission is not obtained prior to undertaking the works then the Council will consider whether the [evidential test and the public interest test](#) has been met to prosecute the relevant parties.

Unauthorised Advertisements

Similar to unauthorised works to listed buildings, the display of advertisements without consent is a criminal offence but with legislation allowing for formal action to remedy the harm. However, unlike listed buildings there is a statutory time limit for prosecuting advertisements.

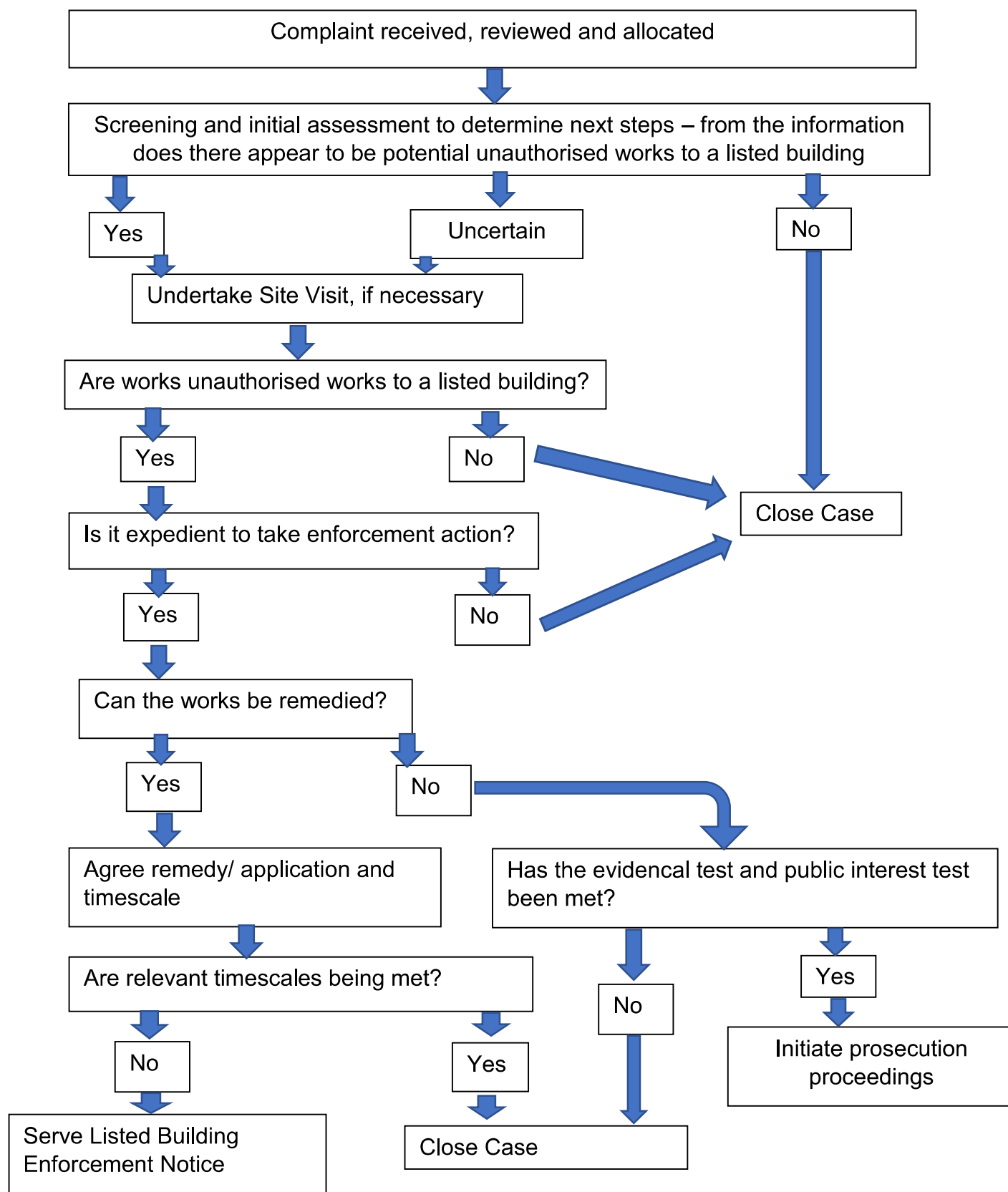
If advertisements are outside the statutory time frame for prosecution the Council will consider whether it is expedient to take action and, if justified, allow time for remedial works to take place. If the works do not take place the service of a relevant notice will be recommended. If advertisements are within the statutory timeframe, we will still consider whether it is expedient to take action, liaise with the landowner but if there is no response or compliance prosecution will take place subject to the [evidential test and the public interest test](#). If the Council becomes aware that unauthorised advertisements are being erected in the knowledge that permission is required but not obtained, subject to the [evidential test and the public interest test](#) prosecution proceedings will be initiated.

When are Informal negotiations used

In circumstances where there is unauthorised works to a listed building or an unauthorised advertisement, consideration will be given to the level of harm being caused. If it is considered there is a wilful breach in these circumstances and/ or the

level of harm is significant negotiations will not be progressed and criminal investigation and prosecution will be undertaken where the evidential and public interest tests are met. In circumstances where it is considered that the unauthorised works to a listed building and unauthorised advertisement can be remedied our preferred approach will be through informal negotiations.

Figure Two: Unauthorised Works to a Listed Building



Breaches of extant notices and other investigations into a criminal offence

A breach of an extant notice will be treated differently to other types of breaches. As a remedy has already been sought, the Council will not seek to negotiate a solution but proceed to criminal investigation and if the [evidential test and the public interest test](#) are met a prosecution will be initiated.

The following procedure will take place for a breach of extant notice and any other relevant criminal investigations:

- **Receive complaint that an offence has taken place.**
- **Where possible seek to verify the offence. If the verification rests with the complainant, then a witness statement needs to be taken. Even if a witness statement is not taken the information provided must be kept and potentially disclosed.**
- **Arrange site visit. In most cases a site visit is important.**
- **Any covert surveillance to be undertaken in accordance with Regulation of Investigatory Powers Act (RIPA) where appropriate.**
- **Undertake necessary investigation.**
- **Invite suspect to interview on disk and under caution (Police and Criminal Evidence Act – (PACE) compliance) or undertake a written interview.**
- **Compile all evidence and if necessary ask further questions of clarification of suspect.**
- **When all the information is gathered, consider both the evidential test and the public interest test and seek agreement as to whether the matter is passed to the prosecutor.**
- **Update suspected offender.**
- **Prosecutor to further consider case under the public interest test.**
- **Prosecution proceedings instigated or not, depending on the outcomes of consideration.**

10. Customer Service

The Enforcement Team have a variety of customers with different interests. These include:

- The complainant;
- The local community
- The contravener;
- Third parties involved in the contravention but not an interested party; and
- The Planning Agent/ or other Professional representative.

Each customer has certain expectations and in enforcement cases it is often the case that these expectations conflict. In some cases, customers will seek prioritisation without knowledge of other cases with greater priority. Therefore, it is necessary to prioritise competing demands based on the harm being caused by the breach that is being alleged. As the Enforcement Team is the only body aware of the types of breaches being dealt with at any one time and it will be for the Team to prioritise cases. This means we may have to say that your case is not a priority at this time. This does not mean that we will not investigate your complaint, but it may mean that there may be other cases where our urgent intervention is necessary at that time to prevent serious and irreversible harm.

In addition to this, owing to the mechanisms in place the planning enforcement system is relatively long and protracted. Planning enforcement is subject to a number of steps along the way to resolution. Each step can take time and may, in certain circumstances, be out of the control of the Planning Enforcement Team. As a result, a complex planning enforcement case can take time to resolve. That is why we seek to resolve cases through negotiation where possible.

Priorities

Cases will be investigated, taking into account the following priorities.

Level 1 Priority - Significant live works to listed buildings; breaches of Construction Environment Management Plan (CEMP)/ Demolition Environment Management Plan (DEMP) where there is immediate harm such as potential highway safety breaches, breaches of conditions which require works to meet the Equalities Act 2010 or where equality of opportunity for a protected characteristic under the Equalities Act 2010 is alleged to be prejudiced, and other breaches where there is immediate harm to human health or irreparable harm to the environment, especially sensitive designated sites.

Level 2 Priority – Operational development, material changes of use and breaches of conditions and breaches of notices that are currently taking place and have a proven impact upon amenity of occupants or adjoining neighbours. Works to listed buildings that are currently taking place or have taken place in the past but are causing harm to the fabric of the building.

Level 3 Priority - Operational development, material changes of use and breaches of conditions that are currently taking place.

Level 4 Priority – Historic breaches, including works to listed buildings

Level 5 Priority – Advertisements and Section 215 untidy land and buildings

Investigations Non- Criminal Planning Breaches

We aim that:

- All complaints will be acknowledged, and an officer allocated within 3 days of receipt;
- All complaints will be subject of a desk-top initial assessment within 10 days, unless it is considered that a more urgent assessment is required as it is a Level 1 Priority, and an update provided to the complainant within 15 days. In this update the complainant will be made aware when it is anticipated the next contact will be made. In normal circumstances this will be within 8 weeks, however there may be circumstances where this will be a longer period, for example where we have asked for further information, and this will be explained to the complainant.
- It may be the case that additional updates will be provided, and this will be arranged between the officer and complainant.
- However, in addition to the above, at a minimum the complainant will be contacted:
 - Within 7 days after a case is closed;
 - After an Enforcement Notice, Breach of Condition Notice or Section 215 Notice is served;
 - If a timescale for compliance is agreed between the Council and contravener.
- The contravener will be contacted:
 - Prior to a report for an Enforcement Notice, Breach of Condition Notice or Section 215 Notice being finalised;
 - Within 5 days after a case is closed (if they have been made aware of the complaint).

In circumstances where an initial complaint is made, and then further allegations are made this may delay both the initial update and the subsequent 8 week update. All references to days (and weeks) relate to working days and do not include weekends and public holidays.

Contact will usually be made in writing, but adaptations will be made to ensure equal opportunity of access to the service for both complainants and contraveners.

Resolution of Breaches

We are unable to provide a timeframe by which a case will be resolved. However, we will monitor the timescales of resolution of the priority levels. Our aim overall is to:

- Confirm if there is a breach of planning control, involving operational development, breach of conditions, breach of advertisement regulations, unauthorised works to listed buildings for 90% of cases within 8 weeks of a complaint being allocated.

- Confirm if there is a breach of planning control, involving a material change of use, within for 90% of cases within 16 weeks of a complaint being allocated.
- Resolve 50% of breaches of planning control involving operational development, breach of conditions, breach of advertisement regulations, unauthorised works to listed buildings within 12 weeks from a complaint being allocated (this does not include the submission of a planning application or listed building consent where appropriate).

Investigations into Criminal Planning Breaches

We aim that:

- All complaints will be acknowledged and an officer allocated within 3 days of receipt;
- All complaints will be subject of an initial desk-top assessment within 10 days and an update provided to the complainant within the 15 days. In this update the complainant will be made aware that a criminal investigation is taking place and when it is anticipated the next stage of contact will be made.
- It may be the case that additional updates will be provided and this will be arranged between the officer and complainant.
- However, in addition to the above, at a minimum the complainant will be contacted:
 - Within 10 days after a decision is made to refer the case to the legal team or a decision is made not to prosecute the case;

In circumstances where an initial complaint is made, and then further allegations are made this may delay both the initial update and the subsequent update. All references to days (and weeks) relate to working days and do not include weekends and public holidays.

- The alleged offender will be contacted:
 - Prior to a report to refer the case to the legal team has been written;
 - Within 5 days after a decision is made to refer the case to the legal team or a decision is made not to prosecute the case;

Whilst we do appreciate that complainants wish to be kept up to date, we will only inform the complainants after the contravener has been served a notice or a suspected offender has been made aware of a Council decision to prosecute. In addition to this we will not release sensitive and personal information about the alleged contravener/ offender to the complainant.

Contact will usually be made in writing, but adaptations will be made to ensure equal opportunity of access to the service for both complainants and alleged suspects.

Customer Satisfaction

The Council will, from time to time, seek feedback on customer service. However, this will only take place after a live enforcement case is closed and not during the

investigation. We will not request feedback on the outcome of the case but on the customer experience.

Equalities

The Enforcement Policy has been subject of an Equalities Impact Assessment and amendments made to meet the provisions of the Equalities Act 2010 and Council policy.

To create equality of access, accessible content will be created to provide an explanation of Planning Enforcement for introductory purposes

Personal data will be collected from complainants and other customers for the purposes of equalities monitoring. This will feed back into future iterations of the enforcement policy and service provision.

Reporting

Information concerning the performance of the Enforcement Service will be reported to the Planning Committee through the Development Management Performance & Development Quarterly Report.

11. Paid for Services

In addition to investigating complaints the Planning Enforcement Team deal with enquires concerning:

- Confirmation of compliance with notices;
- Requests for withdrawing notices; and
- Confirmation of compliance with conditions.

These are services to be paid for on request.

Compliance with Notices

The Enforcement Register holds information on all of the notices served on properties within the city, excluding planning contravention notices. When a notice is complied with the date of compliance is added to the register. However, this is compliance at one point in time and for most notices, the notice remains with the land.

On enquiry regarding compliance with a notice, we will look up the notice on the register and if available electronic records and let you know what we have on file. However, any investigation with regards current compliance will require a site visit and will be subject of a fee.

Withdrawing Notices

The Council will only withdraw an enforcement notice, breach of condition notice, listed building enforcement notice and stop notice in certain circumstances prior to the notice taking effect. After the notice has taken effect if the landowner or other interested party wishes to have a notice withdrawn it will need to be subject of consideration. This will involve applying to the Council to have the notice withdrawn stating reasons why it should be withdrawn with an associated fee. The Council will then consider if the Notice should be withdrawn.

Compliance with conditions

If an owner or other interested part wishes for a letter from the Council confirming that conditions have been complied with, it will be necessary for an application to be made. This will state the relevant conditions with an appropriate fee.

Timescales and Fees

The timescales for considering the above, with associated fee, will be advertised on the Council's website.