

REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

REPORT OF THE REVIEW COMMITTEE

1 Planning Enforcement Plan 2019 - 2024

1.1 This item of business was referred by the Review Committee on 8 October 2019 to Full Council with a recommendation relating to approval of an updated Planning Enforcement Plan. An extract of the key elements of the report of the Assistant Director, Place & Environment to the Committee is attached at Appendix A.

1.2 In response to questions it was noted that:

- The Council's planning enforcement team consists of a team leader and a senior planner, both with full caseloads.
- Officers are confident that the proposed revised timescales for dealing with each of the enforcement case categories is achievable. Extending the timescale for dealing with Category C cases to 30 days would enable officers to triage cases more effectively.
- Having an enforcement plan in place will put the Council in a stronger position to bid for funding under the Planning Delivery Fund, which is available to support planning enforcement against unauthorised development in the greenbelt. The bid can be submitted in February 2020; priority will be given by the enforcement team, in liaison with the Assistant Director, Place & Environment to preparing this bid.
- Online reporting forms go direct to the planning enforcement team and residents are able to upload photographs and documents and are asked to state how the planning infringement affects them directly, both of which provide further opportunity to triage complaints. The online form also allows residents to input information relating to the use of the property or land over the course of 21 days. Complaints are triaged according to the nature of the complaint; a more serious planning infringement would warrant a visit by an enforcement officer earlier than a less serious one.
- A retrospective planning application has the same cost as an application for proposed development.

- Although most complaints are submitted via the online form, complaints are also received by telephone, email or in person.
- The majority of the enforcement cases currently received are category C.
- The harm assessment form used by the Council is similar to that used by other local authorities; the form allows scores to be allocated to assess its harm. In respect of the complainant, an immediate neighbour, who would be affected most by the breach, or a member of the planning department, who would have technical knowledge of the actual breach, would score higher than other complainants. In respect of the Age of the Breach section, a breach that is within 6 months of reaching the time limitation on enforcement orders being able to be served, is given a higher score. The impact of new breaches (less than 3 months old) is considered to be more harmful to the complainant and, as such, these breaches are given a higher priority.
- A flow chart to ensure residents are directed to the correct form and an FAQ section would be added to the Plan.
- When reporting breaches of planning control, complainants are made aware that their details will be kept confidential; this applies to complaints reported by telephone or email as well as online. If a complaint progresses to the court, the complainant will always be asked for their permission to disclose their details. If a complainant does not want to give their personal details in respect of a case going to court, their identity will still be protected; details of the complaint will be submitted but with any personal information redacted. The wording of the Plan would be amended to show this.
- Section 10 of the Plan 'What happens if an allegation is made against you' should include signposting to the Council's complaints procedure, should someone who has a complaint made against them not be happy with the result of the enforcement. This will be added to the draft Plan.

2 RECOMMENDATION

- 2.1 It is proposed that Council **RESOLVES** that the updated Planning Enforcement Plan, as set out in the appendix to the officer report, but subject to the amendments requested by the Review Committee above, be adopted.

If you would like this report in large print, Braille or another language please contact 01702 318111.

PLANNING ENFORCEMENT PLAN 2019 - 2024

1 PURPOSE OF REPORT

- 1.1 This report introduces an updated Planning Enforcement Plan and policy following a review of the Local Planning Authority's (LPAs) planning enforcement team function within the Council.
- 1.2 The Planning Enforcement Plan sets out the Local Planning Authority's long-term objectives, strategies and approach to dealing with alleged breaches of planning control in its administrative area. This plan is consistent with available resources, local and national planning policies and planning legislation.
- 1.3 The Enforcement Policy sets out the principles which guide the enforcement team to achieve its objectives and maximise team productivity.

2 INTRODUCTION

- 2.1 The Town and Country Planning Act 1990 (as amended), the Planning Practice Guidance (published 29 November 2016 and last updated 22 July 2019) and the National Planning Policy Framework 2019 (NPPF) (which superseded the NPPF 2012) all indicate that Local Planning Authorities have a general discretion on when to take enforcement action. LPAs take enforcement action relative to the breach of planning control to which it relates and where it is deemed expedient. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended reformed the planning system and introduced additional development types which can be carried out without requiring planning permission.
- 2.2 Paragraph 58 of the National Planning Policy Framework 2018 reads:
- 2.3 "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."
- 2.4 The proposed plan and policy have been devised in accordance with this advice. The Enforcement Plan (2019) and policy are appended to this report and will replace the policy approved in 2007 and a linked guide to the enforcement service approved in 2008.

3 PLANNING ENFORCEMENT PLAN AND POLICY

- 3.1 The Development Management Enforcement Team recognises that residents want to see the character of the District preserved and ensure that unlawful development is removed in a timely way. This is demonstrated by the nature of complaints brought to the attention of the team by both residents and elected Members as well as staff within the Council. The proposed Enforcement Plan provides guidance on the types of breaches to be investigated as per planning legislation, and the suite of powers and formal action that may be taken, where appropriate.
- 3.2 The Council's Enforcement Plan should be updated to reflect current and established practice and legislation. Working within the parameters of the out of date guidance and policy could lead to the Local Planning Authority being in a weak position with regards to defending itself against complaints which may escalate to the Local Government and Social Care Ombudsman.
- 3.3 The plan states what residents can expect from the Council as the Local Planning Authority, in relation to enforcement, and ensure that officers, Members and the general public will be aware of the approach to planning enforcement. It provides greater certainty for all parties engaged in the development process.
- 3.4 The plan explains the Council's procedure for investigating alleged breaches of planning control; when the Council will act; what enforcement powers are available; and how the Council will monitor the implementation of planning permissions. Priorities are set out to inform decisions about when it is expedient to take enforcement action and to provide greater transparency and accountability.
- 3.5 The new plan provides greater clarity on legislative guidance; charges for retrospective planning advice; and a new enforcement case category - Category D. This new category will enable officers to prioritise cases effectively in order of seriousness of the breach. Category D cases will be investigated when resources within the team allow. Reports of alleged planning breaches that may be categorised a Category D will be: development where the reported development is a Permitted Development but residents would like for this to be checked on site; or, heights of boundary fences between neighbours, where there is no harm to the wider amenity of the area. Whilst it is appreciated that to the interested parties the matter may be a priority, our resource must be directed to those breaches that are causing the most harm.
- 3.6 In order to provide a better service for our residents and community, the online reporting form has been updated. The form now allows complainants to submit photographs, plans or other documents, which can facilitate the triaging of cases and awarding the correct priority to the case.

- 3.7 The new plan proposes revisions to the timescales for dealing with each case category as follows:
- 24 hours for Category A cases;
 - 7 days for Category B cases; and
 - 30 days for Category C cases.
- 3.8 Category D cases will be visited and assessed as and when resources allow.
- 3.9 In the past year the Government has carried out consultation on how enforcement teams across the country use the powers available to them to deal with unauthorised traveller encampments. It is understood that new statutory good practice guidance will be produced to support local authorities' use of powers to deal with unauthorised encampments, and up to £1.5m of funding will be made available through the next round of the Planning Delivery Fund to support planning enforcement against all forms of unauthorised development. The adoption of an up to date enforcement policy will support a possible bid for additional resources.

4 RISK IMPLICATIONS

- 4.1 The value of the service provided by the enforcement team is dependent on up to date information. Working with an out of date guide and policy is a risk which the local planning authority would not be able to provide, if asked, reasons for operating differently to how the current plan and policy are set out. This may form a basis for challenge in planning enforcement appeals. To mitigate against this risk, the updated version sets out the function and objectives of the enforcement team and how breaches of planning control will be addressed.
- 4.2 The failure to adopt the new policy may result in an increased risk of challenge due to changes in National Planning Policy not being reflected in the approach to enforcement.

5 CRIME AND DISORDER IMPLICATIONS

- 5.1 Adoption of the plan and policy will allow a transparent framework within which enforcement of criminal issues of planning law can be addressed.

6 RESOURCE IMPLICATIONS

- 6.1 The plan and policy will be implemented within existing resources; therefore, no new funding is requested.

7 LEGAL IMPLICATIONS

- 7.1 The policy provides for transparency as to how the Council operates its enforcement in a consistent manner in line with current practices and legislation.

8 EQUALITY AND DIVERSITY IMPLICATIONS

- 8.1 An Equality Impact Assessment has been completed and found there to be no impacts (either positive or negative) on all stakeholders.

9 RECOMMENDATION

It is proposed that the Committee **RECOMMENDS to Council** that the updated Planning Enforcement Plan, as set out in Appendix 1 to the report, be adopted.



Marcus Hotten

Assistant Director, Place & Environment

Background Papers:- None.

For further information please contact Planning Enforcement on:-

Phone: 01702 318117

Email: Planning.enforcement@rochford.gov.uk

If you would like this report in large print, Braille or another language please contact 01702 318111.



ROCHFORD DISTRICT COUNCIL

PLANNING ENFORCEMENT PLAN



MAY 2019

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1. Background and Planning Enforcement Overview

1.1 This Rochford District Council Planning Enforcement Policy sets out the Council's policy and procedure for enforcing against breaches of planning control in the District. Identified within the document are local priorities for enforcement action so the Council's enforcement resources are put to best use dealing with breaches of planning control that threaten the local built and natural environment or the amenities of neighbours.

1.2 This document sets out what residents can expect from the Council as the Local Planning Authority in relation to enforcement and ensure that officers, members and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.

1.3 The fundamental aim of this document is to clarify and set out the Council's procedure for investigating alleged breaches of planning control; when the Council will take action; what enforcement powers are available and how the Council will monitor the implementation of planning permissions. The document will set out the priorities for enforcement action, which will inform decisions about when to take enforcement action and provides greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers.

1.4 The Town and Country Planning Act 1990 (as amended) along with the planning practice guidance and National Planning Policy Framework 2018 indicate that Local Planning Authorities have a general discretion on when to take enforcement action. LPAs take enforcement action relative to the breach of planning control to which it relates and where it is deemed expedient.

1.5 Paragraph 58 of the National Planning Policy Framework 2018 reads:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

This policy document has been devised in accordance with this advice.

2. Relevant Legislation and policy documents

- ✚ Town and Country Planning Act 1990 (as amended)
- ✚ The Planning and Compensation Act 1991 (as amended)
- ✚ The Planning and Compulsory Purchase Act 2004 (as amended)
- ✚ Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)
- ✚ The Localism Act 2011
- ✚ The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)
- ✚ The Town and Country Planning (General Permitted Development) Order 2015 (as amended)
- ✚ The Town and Country Planning (Use Classes) Order 1987 (as amended)
- ✚ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as Amended)
- ✚ Regulation of Investigatory Powers Act 2000 (as amended)
- ✚ Police and Criminal Evidence Act 1984 (as amended)
- ✚ European Convention on Human Rights Article 1 of the First Protocol and Article 8 and Article 14

Rochford District Council adopted policies

- ✚ National Planning Policy Framework 2018 (NPPF) – published 24th July 2018 and updated 19th February 2019
- ✚ National Planning Practice Guidance
- ✚ Rochford District Council Development Plan - The Council's Development Plan currently comprises the Rochford District Core Strategy adopted December 2011; The Development Management Plan (December 2014) and the Allocations Plan (February 2014).

3. The purpose of planning enforcement

The integrity of the planning service depends on the council's readiness to take enforcement action when appropriate. The council is committed to providing an effective planning enforcement service. Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another. In order to undertake effective investigations, it is essential that there is co-operation between the LPA and other departments such as Council Tax, Housing, Business Rates and Environmental Health and other external agencies, such as the Police, Environment Agency, Essex County Council, Neighbouring Authorities and Parish/Town Councils. The council will continue to develop these relationships in the future in order to make best use of all our available resources. The council will not condone wilful breaches of planning control and will exercise discretion to take

enforcement action if it is considered expedient to do so. The council will investigate alleged breaches of planning control, to determine whether a breach has, as a matter of fact occurred, and if it has, determine the most appropriate course of action.

4. What is a breach of planning control?

4.1 Section 171(A) of the Town and Country Planning Act 1990 (as amended) defines a breach of planning control as *“the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.”*

4.2 This could involve such matters as the unauthorised erection of a building or extension to a building, material change of use of land/building, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:

- ✚ Unauthorised works to Listed Buildings;
- ✚ Unauthorised demolition within conservation areas;
- ✚ Breaches of conditions attached to planning permissions;
- ✚ Not building in accordance with the approved plans of planning permissions;
- ✚ Untidy land where it affects the amenity of the area;
- ✚ Unauthorised engineering operations, such as the raising of ground levels or earth bunds;
- ✚ Failure to comply with a Section 106 agreement
- ✚ Deliberate concealment of unauthorised building works or changes of use

4.3 The majority of the land within the Councils' administrative area is designated Green Belt. This is a special designation protecting the land from most forms of development. The Council's Development Plan and the National Planning Policy Framework expressly recognises the need to protect the character and openness of the Green Belt from certain forms of development. Central government's written ministerial statement, *'Green Belt Protection and Intentional Unauthorised Development HLWS404'* dated 31st August 2015 and confirmed 29th October 2018, confirms that intentionally carrying out development without first obtaining the necessary consent will be a material consideration in the determination of any enforcement appeal.

5. Matters that are not breaches of planning control

5.1 The planning enforcement team often receives complaints and enquiries about matters that are not a breach of planning control examples being:

- ✚ Internal works to a non-listed building;
- ✚ Obstruction of a highway or public right of way (PROW)
- ✚ Parking of commercial vehicles on the highway or on grass verges;
- ✚ Parking caravans on residential driveways or within the curtilage of domestic properties provided they are incidental to the enjoyment of the property;
- ✚ Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity such as having employees attending the premises, erecting buildings solely for business use, acceptance of business-related deliveries and collections, noise and disturbance (this list is not exhaustive)
- ✚ Neighbour nuisance, boundary issues and access and land ownership disputes – these are not planning matters and advice should be obtained from a solicitor, surveyor or the Citizens Advice Bureau.
- ✚ Covenants imposed on property Deed
- ✚ Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and or substituted. Many of the complaints received relate to enquiries regarding permitted development which is not a breach of planning control.
- ✚ Advertisements that are either excepted from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- ✚ Dangerous structures or other health and safety issues;
- ✚ High hedge disputes – these are dealt with by the Development Management team but under Part 8 of the Anti-Social Behaviour Act 2003
- ✚ Untidy rear gardens unless they are adjacent to a public highway
- ✚ Monitoring of mud on the road which is covered by the Essex Highways Authority unless there is a specific planning condition on an approved scheme relating to wheel washing.

6. Reporting breaches of planning control

6.1 The Council relies on the public to bring to our attention the majority of breaches of planning control. Complainants can be assured their details will always be kept confidential. The only time complainants' details may have to be disclosed would be if ordered to do so by a Judge in a Court of Law.

6.2 In order that your complaint can be dealt with as soon as possible it is important to provide us with as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint: -

- ✚ An accurate description of the location or address for the site;

- ✚ A detailed description of the activities taking place that are cause for concern (on occasion we will send you diary sheets for completion);
- ✚ Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners if known
- ✚ The date and times of when the alleged breach took place;
- ✚ Any other information or evidence that may be able to assist;
- ✚ Your name and address

6.3 Complaints about alleged breaches of planning control will be accepted by either:-

1. By sending an e-mail to planning.enforcement@rochford.gov.uk
2. In writing and sending letter addressed to:
Planning Enforcement Team
Council Offices
South Street
Rochford
Essex
SS4 1BW
3. Calling the Council's main number at 01702 546366
4. In person by visiting the Council offices on South Street and reporting the matter at the reception desk. (possibility of seeing an officer is dependent on officer availability) – opening hours are 8:30 – 17:00 Monday to Thursday, 8:30- 4:30 Friday. Reception is not open on Bank Holidays or weekends.
5. Completing an achieve form on the Council's website via: https://rochford-self.achieveservice.com/service/Breach_of_planning_control_report_form

Anonymous complaints will not usually be investigated unless relating to a matter of public safety. The council determines whether the alleged breach merits investigation. Complainants who do not wish to give their personal details will be advised to contact either their Local Ward Member or their parish council who may then raise their concerns on their behalf.

Vexatious or malicious complaints that do not have any substantive planning reasons for the complaint will not be investigated.

The local authority cannot use its resources effectively if there is not sufficient evidence available to clearly demonstrate a breach of planning control has occurred.

6.4 Once your complaint is received we will:-

- ✚ Keep your personal details confidential at all times, unless required to disclose as part of court proceedings (we will seek your consent first);
- ✚ Register your complaint, providing you with an acknowledgement letter with the case reference number and details of a named officer as the point of contact;

6.5 While we try to deal with complaints quickly, we need to prioritise cases and so some complaints may take longer to deal with than others.

6.6 The Council will endeavour to respond to enquires in relation to specific enforcement cases. Routine updates on reports of a potential breach of planning control will not be provided during the course of an investigation; however contact can be made with the relevant case officer once an enquiry has been assigned. It is important to note that planning enforcement can be a lengthy and legally complex process and the time taken to reach a satisfactory resolution can vary considerably between investigations.

6.7 Your complaint will be: -

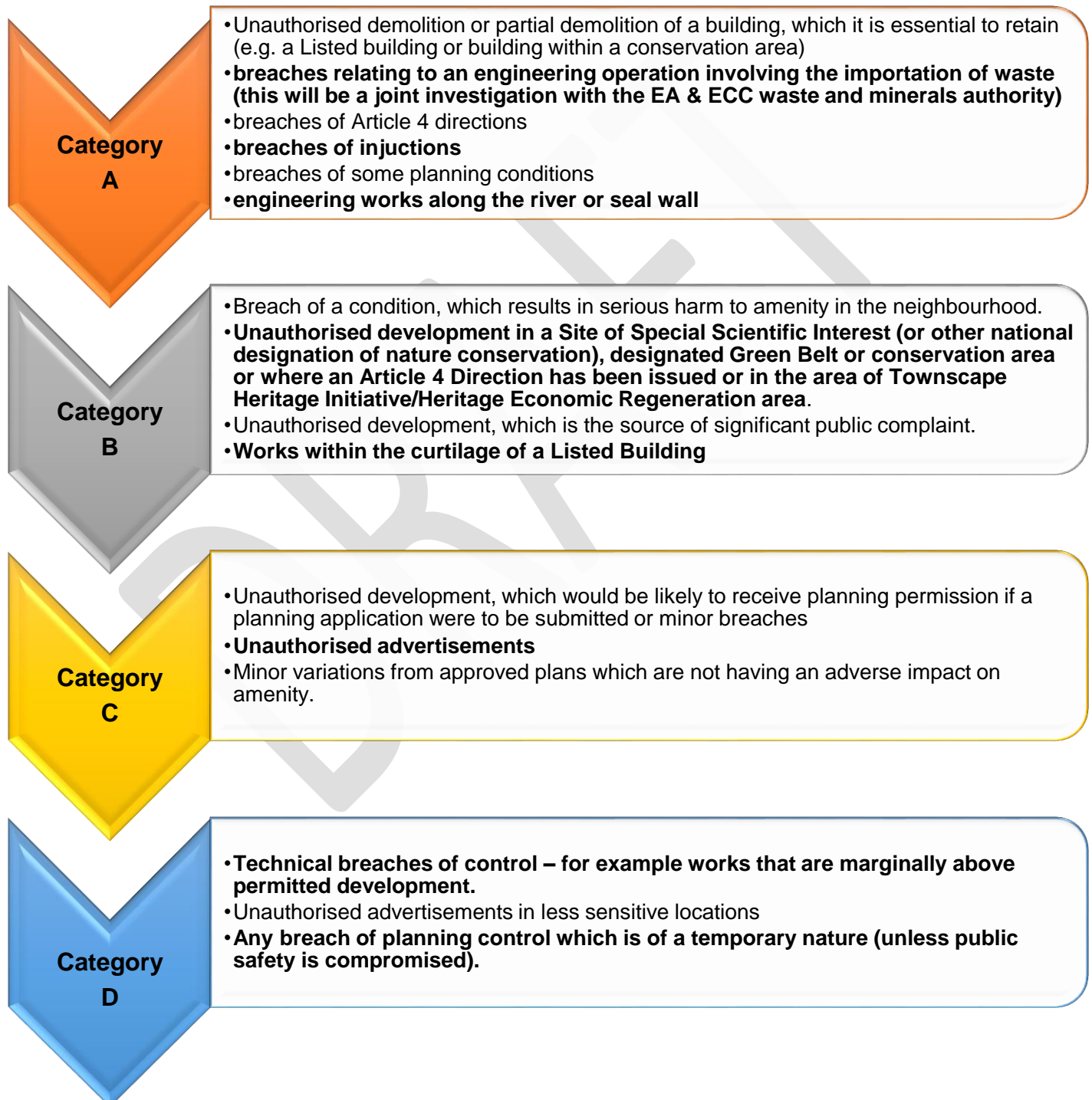
- ✚ Given a priority based on the councils published priority table which is contained in this document; (see section 7)
- ✚ Investigated and a site inspection undertaken in line with the published timescales
- ✚ Pursued until such a time that the matter is satisfactorily resolved by either reparation or the breach is regularised or found to be lawful or the decision is taken that it is not expedient to pursue any further;
- ✚ In the event that a formal notice is served and not complied with, this becomes a criminal offence. The case will then be escalated to the Council's legal team to initiate prosecution proceedings

7. Priorities

7.1 It is important to note that just because there may be a breach of planning control, this in itself, is not sufficient reason to take enforcement action. The council must firstly decide, having given regard to policies contained within the Rochford District Council development Plan, guidance contained in the National Planning Policy Framework (NPPF) and all other material planning considerations whether or not it is '**expedient**' to take formal action.

Expediency is a test of whether the unauthorised activities are causing harm to the environment or amenity of the area. Therefore, enforcement action is **discretionary**, and each case must be assessed on its own merits. **This means that the council may not take formal enforcement action in all cases where there has been a breach of planning control identified.**

7.2 Prioritising cases



7.3 Time scales

- | | |
|-------------------|---|
| Category A | A site visit will take place, wherever possible, on the same day or failing that the day after receipt |
| Category B | We aim to visit the site within 7 days of the enforcement case being opened. |
| Category C | We aim to visit the site within 30 days of the enforcement case being opened. |
| Category D | We aim to visit the site as and when resource will allow. |

8. How will the council investigate the reported matter?

- 8.1 The first stage of any investigation is to determine whether or not there has, in fact, been a breach of planning control. The investigation can be concluded with no further action being necessary if there is no breach of planning control.
- 8.2 **Where there is no breach of planning control** – the case will be closed and the Council will confirm in writing to the complainant and the transgressor. Examples of reasons cases are closed where no breach of planning control is identified are:
- a. Development is considered to be permitted development
 - b. There is insufficient evidence to confirm the alleged breach of planning control
 - c. The development already has planning permission.
- 8.3 Where there is a breach of planning control identified – the first step in the vast majority of cases would be to negotiate a resolution and/or the Council may take one of the following courses of action:

a) Inviting a retrospective planning application

Where it is considered that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm being caused or prevent harm in the future, a retrospective planning application will be invited.

Submission of retrospective planning applications is not a guarantee that the Council cannot refuse the application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise planning permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant.

An application would not be encouraged if it was felt the development was unacceptable

b) Harm assessment

Planning Enforcement also investigates many minor or 'technical breaches' of planning control. Common examples of these include the construction of a fence or the construction of an out-building in a residential curtilage slightly higher than allowed under permitted development regulations. In these cases, it would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without requiring submission of a planning application. As such the harm assessment will be carried out.

This is a score-based system. Under the scheme a case begins with a site visit for every complaint, to assess the harm of the development. The scheme recognises that it is not possible to prioritise complaints until the site has been visited and what is happening has been seen. This allows an Enforcement Officer to assess the visual harm of the development. The visual harm that is caused is assessed using a scoring system. The final score (the harm score) indicates importance of the issue and therefore what priority should be given to the complaint. In this way it is not the type of breach, or person who has complained, that determines the priority of the complaint, and action is taken against the most harmful cases promptly.

If the score is 5 or more it is considered harmful enough for an enforcement case to be pursued. If the score is less than 5, the person is invited to make a planning application, but the case is closed, and the complainant advised accordingly.

Appendix 1 provides a copy of the harm assessment form

c) There is a breach of planning control but not considered expedient to pursue

In cases where there may be a technical breach of planning control, but the harm caused is insufficient to warrant formal action the Council will notify complainants of the reason for not taking formal action and subsequently close the case. Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be considered de minimis for example too minor to warrant the time and expense in pursuing.

d) Negotiation

Where it is considered that the breach of planning control is unacceptable, attempts to negotiate a solution without recourse to formal enforcement action will be made, unless of course the breach is continuing to cause irreparable harm to amenity. If the latter, then the Council will revise its position by serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

We can sort out many breaches in planning controls, or the effects of them, by negotiating with the person or organisation that owns or uses the building. In most cases, we will only take enforcement action if we are unable to successfully negotiate in this way. However, there are times where immediate formal action is required.








e) Formal enforcement action (see section 9 for further information)

The Council will consider the full range of powers to ensure the most appropriate, proportionate and expedient resolution including whether any other public authority is better able to take remedial action. The full range of powers available is explored in more detail below. The use of these powers can vary depending on the nature of the breach and the level of harm being caused. There is 'no one size fits all' approach; action would be dependent on the circumstances and detail of each case.

f) The development is lawful and immune from enforcement action - This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the council. There are certain time limits involved in relation to operational development and changes of use, however for further details please contact the Enforcement Team who will be happy to advise you if you think this may apply to you. **OR** you can read Section 171B of the Town and Country Planning Act (as amended) which sets out time limits for taking enforcement action. After these stipulated timescales the Council cannot take action and the use becomes lawful. A landowner can then apply for a Certificate of Lawful Existing Use or development (CLEUD) if they can satisfy with evidence 'on balance of probability' the use is lawful.

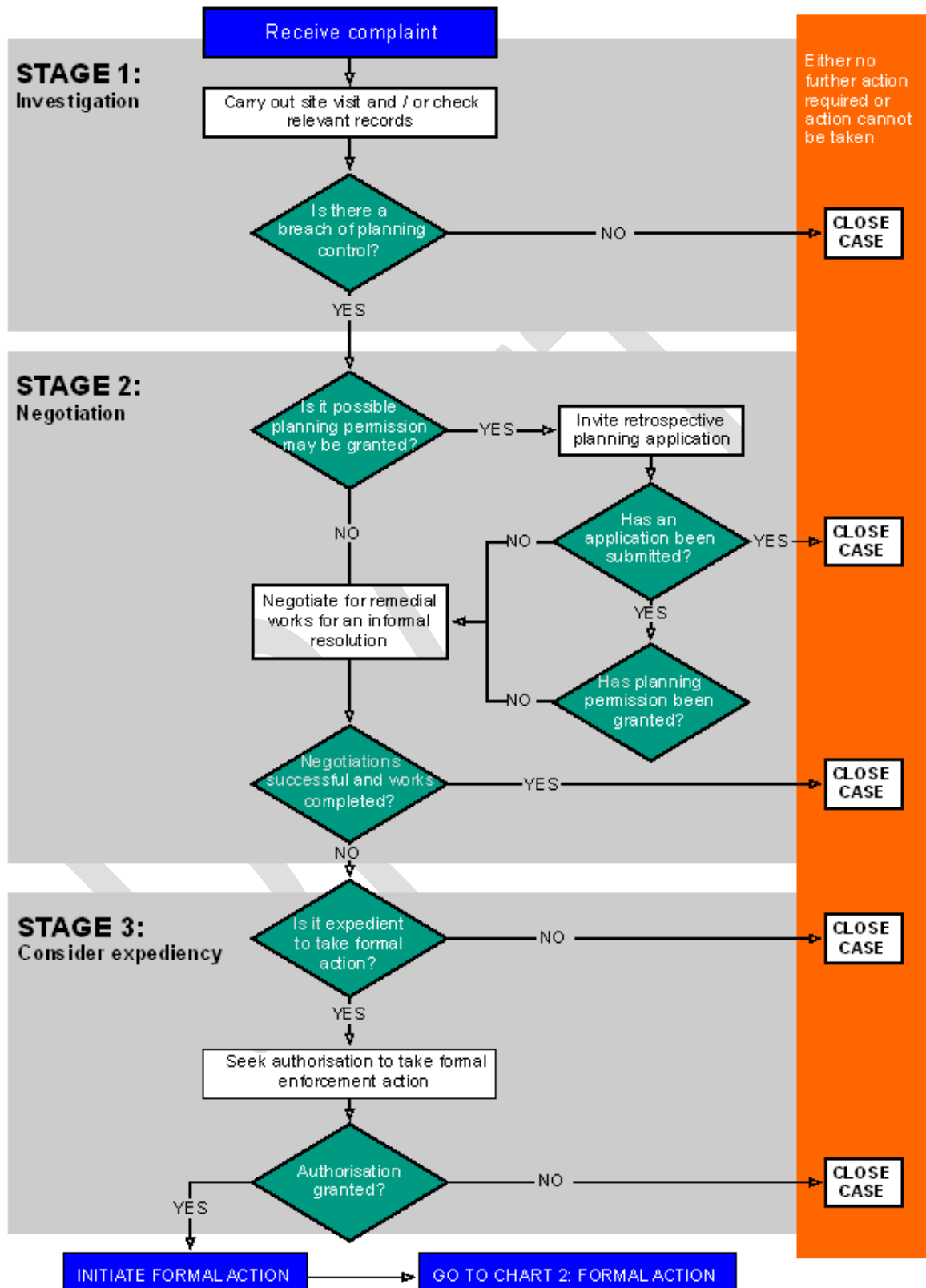
8.4 Persistent contraveners

Persistent contraveners of planning control are not tolerated, and an appropriate level of resource will be allocated to tackle the problems they cause. It is important to note that the prioritisation of enforcement action can also depend on:

-  Time limits for enforcement action to be taken.
-  Previous case/site history.
-  The availability of any witnesses and their willingness to co-operate.
-  Blatant disregard of the law involved in the breach or if it was a genuine misunderstanding.
-  Willingness of the contravener to put right the breach.
-  Likelihood of the offence being repeated.
-  The overall probable public benefit of formal action.

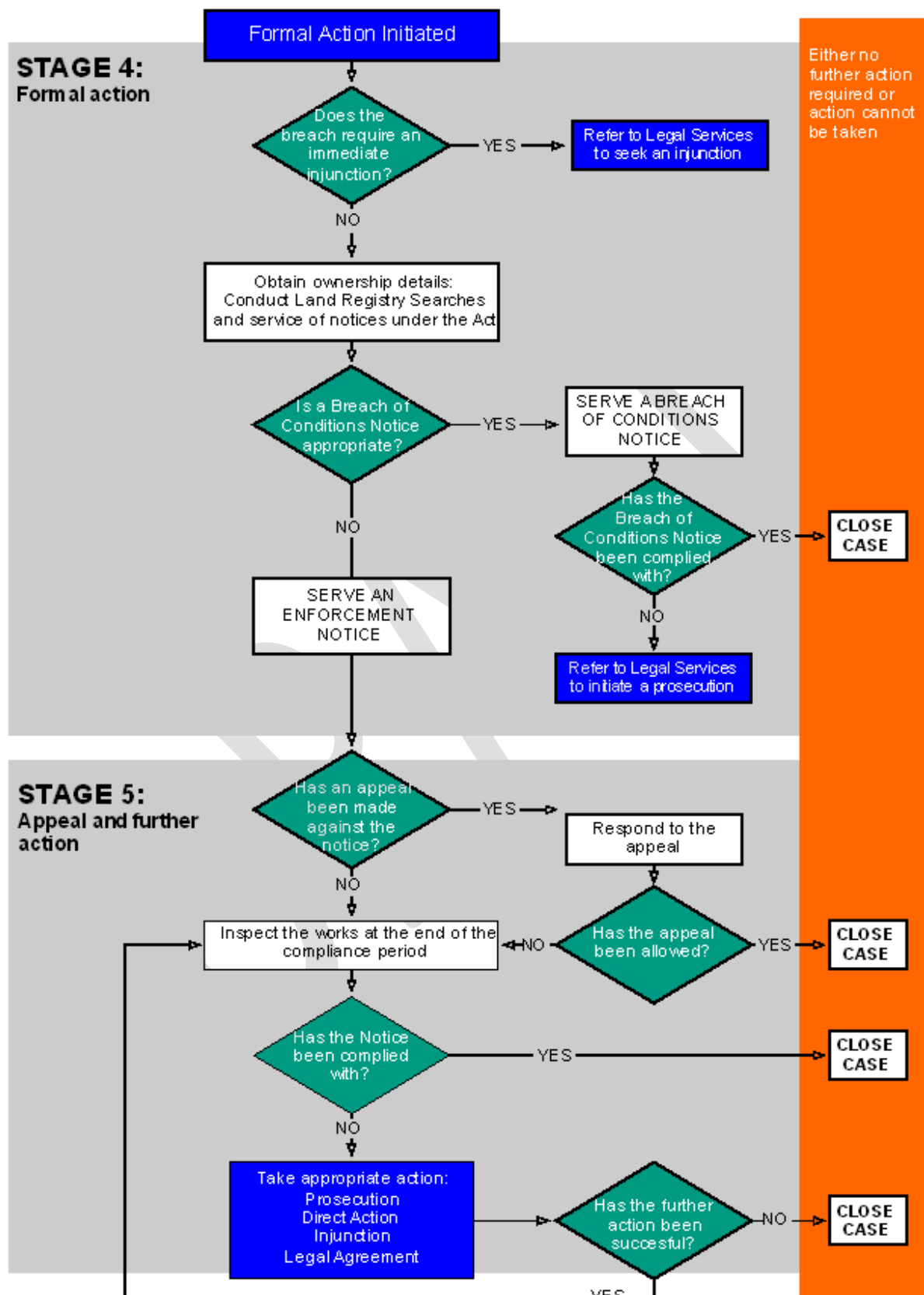
8.4 The process

Enforcement Procedure Chart 1: Investigation and negotiation



Infographic adopted from Carmarthenshire County Council planning enforcement policy and protocols report 2013/14

Enforcement Procedure Chart 2: Formal action and remedying the breach



Infographic adopted from Carmarthenshire County Council planning enforcement policy and protocols report 2013/14

9. Courses of action (formal action)

9.1 The council has a range of formal powers under the Town and Country Planning Act that it can use to remedy breaches of planning control. The more common forms of enforcement action are listed below:

- ✚ The service of a **Planning Contravention Notice** (PCN) – Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected. There is no right of appeal against a PCN and failure to respond within the required timescale is an offence.
- ✚ The service of a Request for Information under section 330 of the TCPA ‘**Power to require information as to interests in land.**’. There is no right of appeal against a Section 330 Notice and failure to respond within the required timescale is an offence.
- ✚ The service of an **Enforcement Notice** – Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy the breach of planning control
- ✚ The service of a **Breach of Condition Notice** (BCN) – Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission
- ✚ The service of a **Stop Notice or a Temporary Stop Notice** - Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above.
- ✚ The service of a **Section 215 Notice** – this enables the service of a notice requiring the proper maintenance of land and buildings.

9.2 In addition to the above; further action is available by way of the service of **injunctions** as set out at section 187B of the Town and Country Planning Act; the taking of **direct action** to remedy a breach or to instigate prosecution proceedings for noncompliance where it is deemed necessary to do so. The council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence when carrying out prosecutions.

9.3 Proportionality

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. Government guidance advises that there is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action needs to be taken, the Council will have regard to the potential impact on the health, housing needs and welfare of those

affected by the proposed action, as well as those who are affected by the breach of planning control.

Planning enforcement powers are discretionary, and it is not considered to be a good use of limited public resources to pursue enforcement action against any development where planning permission would normally be granted, except where the imposition of conditions would allow appropriate controls to be secured. It is important to be aware that enforcement is not intended to be a punishment for those who have breached planning control, but a necessary function to protect the environment.

Where a development is considered likely to be granted planning permission, or where the imposition of conditions would enable appropriate control, the Council will encourage the submission of a retrospective planning application. This enables affected neighbours and interested parties to have their say. Where the Council considers that there is no prospect of planning permission being granted, and there is an adverse impact on the built environment, the Council will proceed to formal enforcement action where negotiations to resolve the matter informally are unsuccessful.

10. What happens if an allegation is made against you?

10.1 If a complaint is received that affects you then the first thing that will happen is either you will be contacted (where your details are known to the council) or the site in question will be visited by an enforcement officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary take measurements and photographs of the development or activity taking place.

10.2 This site inspection may be undertaken without any prior notification. Officers have the power of entry to enter land as per the provisions of:

- ✚ Sections 196; 214; 302 (schedule 15, para. 14) and 324 of the Town and Country Planning Act 1990 (as amended). section 2 of the Planning (consequential provisions) Act 1990;
- ✚ Section 2 of the Planning (Consequential Provisions) Act 1990;
- ✚ Section 88 of the Town and Country Planning (Listed Buildings and Conservation Area) Act 1990 as amended and section 36 of the Planning Hazardous Substances 1990 (as amended);
- ✚ Section 36 of the Planning Hazardous Substances) Act 1990 (as amended)

- 10.3 The power to enter land and/ or premises is exercised at all reasonable hours. Officers need access to the site in order to undertake his/her official duties. Wilful obstruction of a person exercising a right of entry is an offence.
- 10.4 The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the legislations unless twenty-four hours' notice prior notice of the intended entry has been given to the occupier of the building.
- 10.5 If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. Pre - application advice for retrospective development (where development has already taken place prior to pre-application advice) will be provided to people who want advice on submitting an application as a result of a planning enforcement investigation. You can expect a meeting with a planning and planning enforcement officer and a written response providing guidance on if planning permission is likely to be granted regarding the enforcement investigation or what amendments are likely to be required for the Council to support the proposal. This pre-application advice service will be charged at a rate of 120% of the standard fees available on the Council's website at <https://www.rochford.gov.uk/pre-application-advice> .
- 10.6 You will be given a reasonable period (subject to the nature of the breach) to resolve any breach of planning control.
- 10.7 If compliance is not secured through amicable negotiations or the submission of a retrospective planning application formal action may be instigated.

Appendix



Planning Services Enforcement – Harm Assessment Form

Case Ref:

To be completed by an officer who has inspected the development

Anonymous complaints will not usually be investigated although if considered to be potentially seriously damaging etc., will be subject to this scoring.

- All complaints concerning 'untidy sites', advertisements and all refusals of retrospective planning permissions will automatically receive a full investigation – do not complete form.
- Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based.
- Where there is no breach of planning control found, the file will be closed accordingly.

| Points Allocation | | | | Score |
|----------------------------------|---|--|-------------------|-------|
| 1. | Is the breach: | Worsening/ongoing Stable | (1) (0) | |
| 2. | Highway safety issue: | Yes No | (2) (0) | |
| 3. | Other safety issues: | Yes No | (2) (0) | |
| 4. | Causing a statutory or serious environmental nuisance: | Yes No | (1) (0) | |
| 5. | Complainant: | Immediate neighbour/staff Other/Parish Council | (2) (1) | |
| 6. | Age of breach: | Less within 6 months of immunity Less than 3 months old More than 3 months old | (2) (1) (0) | |
| 7. | Major Plan Policy breach e.g. contrary to MGB policy: | Yes No | (1) (0) | |
| 8. | Is there harm: | Widespread Local None | (2) (1) (0) | |
| 9. | Irreversible harm: | Yes No | (2) (0) | |
| 10. | Flood risk: | Zone 3 Zone 1-2 NFR | (2) (1) (0) | |
| 11. | Breach of a planning condition or Article 4 Direction: | Yes No | (1) (0) | |
| 12. | Conservation Area (or adjacent to): | Yes No | (1) (0) | |
| 13. | Listed Building (or affecting the character or setting of): | Yes No | (1) (0) | |
| 14. | Special exercise (please provide details): | Yes No | (1) (0) | |
| 15. | Particularly sensitive site e.g. SSSI, Wildlife sites, Scheduled monument, Nature Reserves, Archaeological importance | Yes No | (1) (0) | |
| 16. | Undesirable precedent (please provide details): | Yes No | (1) (0) | |
| Total Points (Harm Score) | | | | |

- Only complaints which score (5) or above will be further investigated. Those with a lesser score will be informed of the breach/likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of the action taken.

Glossary

Amenity This is not defined in legislation but in planning terms is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as types of land uses, the quality of the buildings, setting and position of the buildings; the provision of open land and trees and the interrelationship between the different elements in the environment

Appeals Procedure Where an appeal is lodged with the Planning Inspectorate against any notice issued by the Council, the complainants, the applicable Ward Councillors and the Town/Parish Council will be notified in writing and advised on how they may contribute to the appeal process, should they wish to do so. Any enforcement notice subject to an appeal with the Planning Inspectorate will be held in abeyance until such time as the outcome of the appeal is known.

Breach of Condition Notice A Breach of Condition Notice can be issued where a condition on a planning permission is not being complied with. A copy of the Breach of Condition Notice is not served on the land, but instead on anyone with an interest in the land and requires compliance with condition within a specified timescale. There is no right of appeal, but the validity of a breach of condition notice and the appropriateness of the local planning authority's decision to serve it may be challenged by application to the High Court for judicial review. Summary prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice. The maximum penalty on conviction is a fine, currently not exceeding £1,000. A Breach of Condition Notice does not apply to breaches of listed building or conservation area control, hazardous substances control or the control for protected trees.

Direct Action The Council has powers to enter land to carry out works and to ensure that an Enforcement Notice or a Section 215 Notice is complied with by carrying out the required steps themselves. The Local Planning Authority may also recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so, either by direct billing or by registering a charge on the property with the Land Registry. Direct Action is costly and will only be considered when the level of harm being caused is enough to justify the use of limited resources.

Enforcement Notice An Enforcement Notice can be issued where development is being carried out without planning permission or where

a condition is not being complied with. The notice will set out the steps to be taken to rectify the breach of planning control within a specified timescale. A copy of the notice is served on the land and on anyone with an interest in the land. Once the notice has been served, there is a further minimum period of 28 days before the notice becomes effective. Any person in receipt of a copy of the notice has the right of appeal to the Planning Inspectorate during this period before the notice comes into effect. Failure to comply with an enforcement notice is a criminal offence tried in the Magistrates' or the Crown Court. The maximum penalty in the Magistrates' Court is a fine not exceeding £20,000 but there is no limit on the fine that the Crown Court may impose.

Enforcement Policy Rochford District Council enforcement policy is available at https://www.rochford.gov.uk/sites/default/files/planning_enforcement_policy.pdf

Enforcement Register Allows you to view the Planning Enforcement Register, which provides details of all enforcement and other notices issued by the Local Planning Authority. The registers are broken down on a year by year basis and each contains an index of cases. You can view the registers via - <https://www.rochford.gov.uk/enforcement-registers> The full register is available to view in the reception in Rochford. To save callers time at our reception, it would assist if at least a day's notice could be given to allow the appropriate records to be retrieved.

Expediency Planning enforcement is discretionary. The Council does not have to take enforcement action even if it identifies a breach of planning control. In deciding whether to take action the Council will balance the seriousness of a breach of planning control; the level of harm that it causes and the likely chances of success in pursuing enforcement action. Having weighed up all these factors the Council will make a decision as to whether we will take action. i.e. if it is expedient to take action.

Injunction This is an order of the High Court or the County Court, which can be used to restrain an actual or anticipated breach of planning or listed building control. This power is used where nothing short of an injunction would be effective to restrain breaches. There are compensation implications for the LPA to consider. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Listed building Enforcement Notice A Listed Building Enforcement Notice is like an Enforcement Notice but used where works have been carried

out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such a consent. The notice can require the removal of the unauthorised works and restoration

Prosecution Where a formal enforcement notice has not been complied within the specified time period, the Council can commence prosecution proceedings. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal notices, e.g. unauthorised works to a listed building or an unauthorised advertisement.

Section 215 Notices Where the condition of land or buildings negatively affects the amenity of an area, a Section 215 Notice can be served. This requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. Recipients of a Section 215 Notice have the right of appeal to a Magistrates' court. Failure to comply with the notice is an offence.

Stop Notice A Stop Notice can only be served with an Enforcement Notice, or following service of an Enforcement Notice, if it is considered that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. It requires that activities cease to safeguard local amenity or public safety and to prevent serious or irreversible harm to the environment. There is a minimum three-day period before it comes into effect. There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the appropriateness of the local planning authority's decision to issue a notice, may be challenged by application to the High Court for judicial review. Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn, compensation may be payable in certain circumstances and subject to various limitations.

Temporary Stop Notice A Temporary Stop Notice can be served where it is considered that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice, however, it is only valid for a period of 28 days. There is no right of appeal when a Temporary Stop Notice is served, but a judicial review can challenge the validity and propriety of our decision.