

PLANNING: LOCAL ENFORCEMENT PLAN

Updated October 2024

1. The council's approach to Planning Enforcement

- 1.1 This council puts great value on the quality of life and local environment that local people enjoy whether in the borough's countryside or in its towns and villages. In all of its work on planning and development the council strives to drive a 'quality agenda', recognising the importance of new development in creating economic growth and helping meet the community's changing needs, but also recognising the importance of tackling inappropriate and unauthorised development.
- 1.2 When development takes place without council permission and causes significant harmful impacts on people's lives, residents understandably expect that action should be taken.
- 1.3 This Local Enforcement Plan sets out how the council can and will respond. We follow government advice which encourages councils to try to resolve issues locally by negotiation as this is very often the quickest and most effective way to resolve planning problems. It is also the best way for the council to use its resources - taking formal enforcement action, assuming such action succeeds if it is subject of a planning appeal, can be a much longer and more involved process than people imagine and consumes considerable officer time.
- 1.4 However, where the negotiated solution approach fails, or individuals deliberately or persistently ignore planning rules and carry out development that seriously impacts on the wider community, then there should be no doubt that the council will take formal enforcement action whenever possible.
- 1.5 In a typical year around 400 potential breaches of planning control are reported to the council to investigate. A large proportion of these (around 40%) turn out to be development that is 'permitted development' as a result of supplementary planning legislation and so is outside of council planning controls and therefore no action can be taken.
- 1.6 The size of the borough and the varied mix of urban, sub-urban and rural environments that it contains means that the council strongly relies on alerts from members of the public as to potential breaches of planning control.

2. What is and what is not a breach of planning control?

- 2.1 A breach of planning control could involve such matters as the unauthorised erection of a building or extension to a building, a 'material' change of use of land, or the display of unauthorised advertisements.
- 2.2 Other examples of potential breaches of planning control are:
 - Unauthorised engineering operations, such as raising ground levels or creating earth bunds;
 - Unauthorised works to listed buildings;
 - Unauthorised works to trees that are already subject of a tree preservation order ('TPO') or are located in a conservation area;
 - Breaches of planning conditions that are attached to planning permissions/approvals;
 - Not building in accordance with approved plans;
 - Untidy land which has a significant harmful impact on the amenity of the wider area.

2.2 The following examples are NOT normally breaches of planning control:

- Some changes of use of land and buildings falling within categories that are defined by supplementary planning legislation (the 'Use Classes Order')
- Any works that are deemed to be 'permitted development' under supplementary planning legislation (for example, extensions and new construction within specified size limits set out in that legislation and certain changes of use);
- Internal works to a building that is not listed;
- Parking of commercial vehicles on the highway or on the grass verges to a highway;
- Running a business from home where the residential use remains the primary use of the land;
- Landownership disputes or trespass issues;
- Infringements of any covenants or easements in property Deeds.

3. How do I report a breach?

3.1 To help the council deal with your case as soon as possible it is important to provide as much information as you can. Below is a list of the type of information that will assist:

- The full address or an accurate description of the location where the alleged breach of planning has taken place;
- A detailed description of the activities that have taken/are taking place and how you consider they affect you and others;
- The date and times of when the alleged breach took place;
- Any other information or evidence (including photos) that may assist the council's investigation;
- Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners (where known);
- Your name and address and/or email address.

3.2 Complaints about alleged breaches can be made to us by email; letter; via the 'Report a Breach' form on the planning pages of the council's website, or by telephone (providing the caller is willing to give their name, address and contact telephone number). We will not normally investigate complaints that are made anonymously or which appear to be motivated by non-planning issues such as business competition or personal animosity.

4. The council's commitment to you

We will:

INVESTIGATE ALL ALLEGED BREACHES OF PLANNING CONTROL – refer to the 'How do I report a breach?' section 3.0 above;

KEEP YOUR PERSONAL DETAILS CONFIDENTIAL at all times, unless we are required to disclose these as part of any formal court proceedings;

QUICKLY REGISTER AND ACKNOWLEDGE YOUR CASE according to its priority level and provide you with a case reference number and a named planning enforcement officer as your point of contact;

GIVE EACH CASE A 'PRIORITY RATING' & CARRY OUT A VISIT WHERE REQUIRED as per the approach to prioritisation & timescales that is set out at section 5.0 below;

ACTIVELY PURSUE YOUR CASE providing you with updates at key stages of our investigation until the case is formally closed;
SEEK TO EITHER CLOSE OR CONFIRM A BREACH OF PLANNING CONTROL IN 80% OF ALL CASES WITHIN 12 WEEKS - Investigations into alleged breaches of planning control can be complex and time consuming but we will aim to hit this target.

5. Case prioritisation, the use of formal powers & our approach to retrospective (in whole or part) applications

5.1 In order to help allocate the planning enforcement team’s resources effectively, incoming complaints will be assigned a priority, which will then guide the timescales for dealing with the case and providing an update to the informant. A priority given at the outset may, on occasion, need to change once we have been able to visit the site and fully assess the situation. The council uses the following priorities.

(i) PRIORITY 1: – When irreversible and serious damage to the environment or public amenity would result. Examples include works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; other development where there is actual or imminent residential occupation, or development that will imminently become immune from formal enforcement action. Typically, only a very small proportion of the cases that the planning enforcement team will investigate will fall into this category.

(ii) PRIORITY 2: – This covers less immediate yet still serious breaches that give rise to severe planning harm. Examples include serious traffic safety hazards; and also non-compliance with certain planning conditions (e.g. some ‘precommencement’ type planning conditions where severe or lasting harm to amenities is likely to result from non-compliance).

(iii) PRIORITY 3: – Most breaches of control tend to fall within this category. It relates to breaches that are likely to remain stable in their planning impact and that are unlikely to give rise to any severe or lasting harm to amenities, but which are worthy of investigation and further assessment. Such breaches may include the erection of fences, development not being built in accordance with approved plans, and residential extensions.

5.2 The following timescales relate to each of the above priorities:

OUR APPROACH	Acknowledge & set up case	Site visit / contact with developer	Update informant
Priority 1	Within 1 working day	Within 1 working day	Within 2 working days
Priority 2	Within 3 working days	Within 7 working days	Within 7 working days after site visit
Priority 3	Within 3 working days	Within 15 working days	Within 15 working days after site visit

- 5.2 It is important to stress that the council's planning enforcement powers are discretionary, and that the planning system operates on the basis that such powers should only be used in the public interest to remedy an unacceptable planning harm rather than being used as a punitive measure.
- 5.3 Where the outcome of an investigation concludes that a breach of planning control has taken place, it will not necessarily follow that formal enforcement action will automatically then be taken by the council. Government guidance identifies that any council enforcement action should be 'proportionate' and appropriate to the seriousness of a breach and the degree of planning harm that is caused.
- 5.4 In many cases, unauthorised development may be of a nature that may have been approved by the council had an application been made in the first instance. Accordingly, in order to maintain public confidence in the planning system (generally) and how the council seeks to ensure adherence to 'planning rules' across the borough in order to protect the quality of the built and natural environment (specifically), the council will strongly encourage the timely submission of a valid retrospective application seeking to remedy the breach of planning control. In some instances, retrospective applications can include an element of proposed works should permission/approval be granted: for the purposes of this Plan, however, the term retrospective is used to cover applications that are retrospective either in whole or in part.
- 5.5 The role of retrospective applications is an important component of an effective local approach to planning enforcement which seeks to achieve successful planning outcomes wherever that is possible. The advantage of such applications is that they will be in the public domain and so will allow members of the public, parish councils, community groups and any technical consultees to make their views known as to the planning merits of the application. The council will then be able to take all such views into account when reaching a decision.
- 5.6 A retrospective application that is approved by the council will enable the associated investigation to be closed as a breach of planning control will no longer exist.
- 5.7 If a retrospective application involves further works or actions to be carried out post-approval then the council will continue to monitor in order to ensure compliance with the terms of the approval: only when such matters are fully resolved will an investigation be closed.
- 5.8 If a retrospective application is refused by the council then, in most cases, it is likely that formal enforcement action will follow in order to try and remedy the planning harm that the council consider exists.

6. Planning enforcement team investigations: our process

- 6.1 The chart attached as **Chart 1** illustrates the typical process for dealing with new planning enforcement cases.
- 6.2 An initial desktop study will generally be undertaken including including a check of the planning history of the site and consideration given to whether the matter falls to other organisations e.g. Kent County Council to investigate and pursue.

- 6.3 Following these initial checks, a planning enforcement officer will then conduct a site visit where necessary in accordance with the timescales that are set out in paragraph 5.2 above.
- 6.4 Under the Town and Country Planning Act ('TCPA'), council officers have statutory powers to enter land in order to investigate alleged planning breaches of planning control. Site visits will therefore ordinarily be undertaken without prior notice because of the need to obtain accurate, representative and timely evidence of how a site is being used or, in the case of alleged building works, because difficulties in contacting a site manager may significantly delay an investigation moving forward. Officers will make reasonable attempts to alert any persons at the site as to the purpose of their visit and will have council identification.
- 6.5 If access onto land is impossible without making a prior arrangement then the planning enforcement officer will make contact with the site owner/occupier in order to do so. It should be noted that where admission is refused the council can seek the issue of warrant from the Magistrates Court in order to gain access.
- 6.6 Our approach is to try and resolve any breaches of planning control through negotiation save for cases where we consider this approach would clearly be inappropriate due to the planning harm that flows from the breach. Negotiated solutions - such as through the submission of retrospective applications - take time and should such negotiations fail to secure an acceptable planning solution then formal enforcement action will need to be considered. The council will not allow negotiations on solutions to become unreasonably protracted.
- 6.7 There are various possible outcomes of our investigation process;-

(A) NO BREACH EXISTS – For example, a reported unauthorised use has since ceased or, on further investigation, development that has been carried out either proves to be 'permitted development' (and so does not require a council planning approval in order to be carried out) or is development that the council considers to be lawful under the TCPA. Typically, these type of conclusions account for around 40% of the cases that are reported and then investigated;

(B) A BREACH EXISTS AND A RETROSPECTIVE APPLICATION IS STRONGLY ENCOURAGED – In instances where a retrospective application relating to an identified breach would be clearly unacceptable as a matter of planning principle then a retrospective application will not be encouraged. Where that is not the case, a retrospective application to the council will normally be strongly encouraged within a reasonable time period: the council will not, however, give an open ended timescale for this to occur and will not send multiple reminder letters seeking engagement to resolve the breach of planning control.

Landowner/occupiers will be expected to respond to council communications in a timely fashion and identify any practical issues that might result in minor delays with meeting the timescales for submission of a retrospective application to deal with the breach of planning control that exists.

The council will be happy to discuss the content and approach to an intended submission as part of its pre-application service for which a charge is levied. Applicants for retrospective permission/approval will be strongly encouraged to take appropriate professional advice.

Should an application be made but is considered by the council to be 'invalid' then the council will expect an applicant to address any deficiencies in the application package in a timely manner so that public consultation may begin and the community and technical consultees can make their views known.

A retrospective application can be a way in which a development that has been carried out without the correct approval can be made acceptable in planning terms by the attachment of planning conditions to any approval that might be given. Likewise, obligations through s.106 agreement may have a role in making a development acceptable.

The planning enforcement team and the planning case officer will liaise as appropriate when a retrospective application is made. This might include making a joint site visit as well as discussion on the potential framing of any necessary planning conditions;

(C) FOLLOWING A RETROSPECTIVE APPLICATION, PLANNING APPROVAL IS

GRANTED BY THE COUNCIL – As per paragraphs 5.6 to 5.8 further above, the nature of a decision reached on a retrospective application will dictate what happens next.

If a permission/approval is granted, then the related enforcement investigation may be closed as a breach of control will cease to exist. Alternatively, an investigation may be kept open for a further period in order to allow compliance with the terms of the permission/approval to be monitored by the council: this would be the case if further fine details need to be approved by the council and/or further actions need to be carried out on the site to fully resolve the breach of planning control. Once the necessary monitoring period has ceased then an investigation will be closed;

(D) FOLLOWING A RETROSPECTIVE APPLICATION PLANNING APPROVAL IS REFUSED BY THE COUNCIL

– If a retrospective application is submitted but is refused by the council, then the council will normally move to take formal enforcement action as per (e) below;

(E) FORMAL ENFORCEMENT ACTION IS TAKEN – The chart attached as **Chart 2** sets out what typically happens when formal enforcement action is taken by the council. If it is clear that a breach of planning control is unacceptable, and cannot be made acceptable, then we will tell the person responsible and, normally, we will give them an opportunity to put things right within a time period which will be appropriate to the specific context of the case. If they do not, then formal enforcement action will be likely to follow.

(F) THERE IS A BREACH OF PLANNING CONTROL BUT NO RETROSPECTIVE APPLICATION HAS BEEN FORTHCOMING AND A DECISION HAS TO BE TAKEN AS TO WHETHER IT IS 'EXPEDIENT' TO PURSUE A BREACH ANY FURTHER – As per (b) above, we will strongly encourage the submission of applications to deal with a breach of planning control. However, in some cases despite such encouragement no such application will be made to the council. In these circumstances, the council will need to reach a decision as to whether it is expedient to pursue an investigation any further.

It is important to note that just because a breach of control exists it does not automatically mean that formal action will be taken by the council. It is a common misconception that a breach of planning control constitutes a criminal offence and should therefore automatically attract formal enforcement action: this is not the case. Government guidance to local planning authorities in the National Planning Policy Framework clearly sets out that enforcement powers are discretionary.

Minor technical breaches of planning control that have been reviewed and concluded as having only a limited impact may not warrant the council's time and expense in pursuing formal enforcement action if a retrospective application has not been submitted. In these circumstances, the council will conclude its position and advise you whether an investigation either will be moved forward to formal enforcement action, or, alternatively, that it is not considered expedient for the council to pursue matters any further and the investigation will be closed.

7. Forms of formal enforcement action

7.1 On average between 5-10% of cases that the council receive result in formal enforcement action being taken. There are a range of formal powers that the council can use to remedy breaches of planning control. The more common forms are listed in the table below:

Type of enforcement action	Purpose
Planning Contravention Notice	Investigation tool. Requires persons to provide information in respect of land and activities. Often undertaken to determine if there is a breach of control and to help decide the appropriate course of action.
Enforcement Notice	Requires particular steps to be taken to remedy the situation - there is a right of appeal.
Stop Notice / Temporary Stop Notice	Requires the unauthorised activities to cease either immediately or for a period of up to 56 days. Only used in exceptional cases.
Breach of Condition Notice	Secures compliance with conditions specified within a planning permission.
Section 215 Notice (untidy land)	Secures the proper maintenance of land and buildings to protect public amenity.
Discontinuance or Removal Notice (advertisements)	Requires an unlawful advertisement to be removed.
Remedial notice (high hedges)	Requires an over-height hedge to be reduced.
Prosecution	Failure to comply with a notice that is in force is a criminal offence. To secure compliance with any formal enforcement notice and / or to bring the offence before the court.
Direct Action	The council may enter land to take the necessary steps to secure compliance with an Enforcement Notice. This is at the council's cost although these are recoverable from the landowner.
Injunctions	To prevent unauthorised development and only used in a very limited number of specific circumstances.

8. Compliance & final resolution

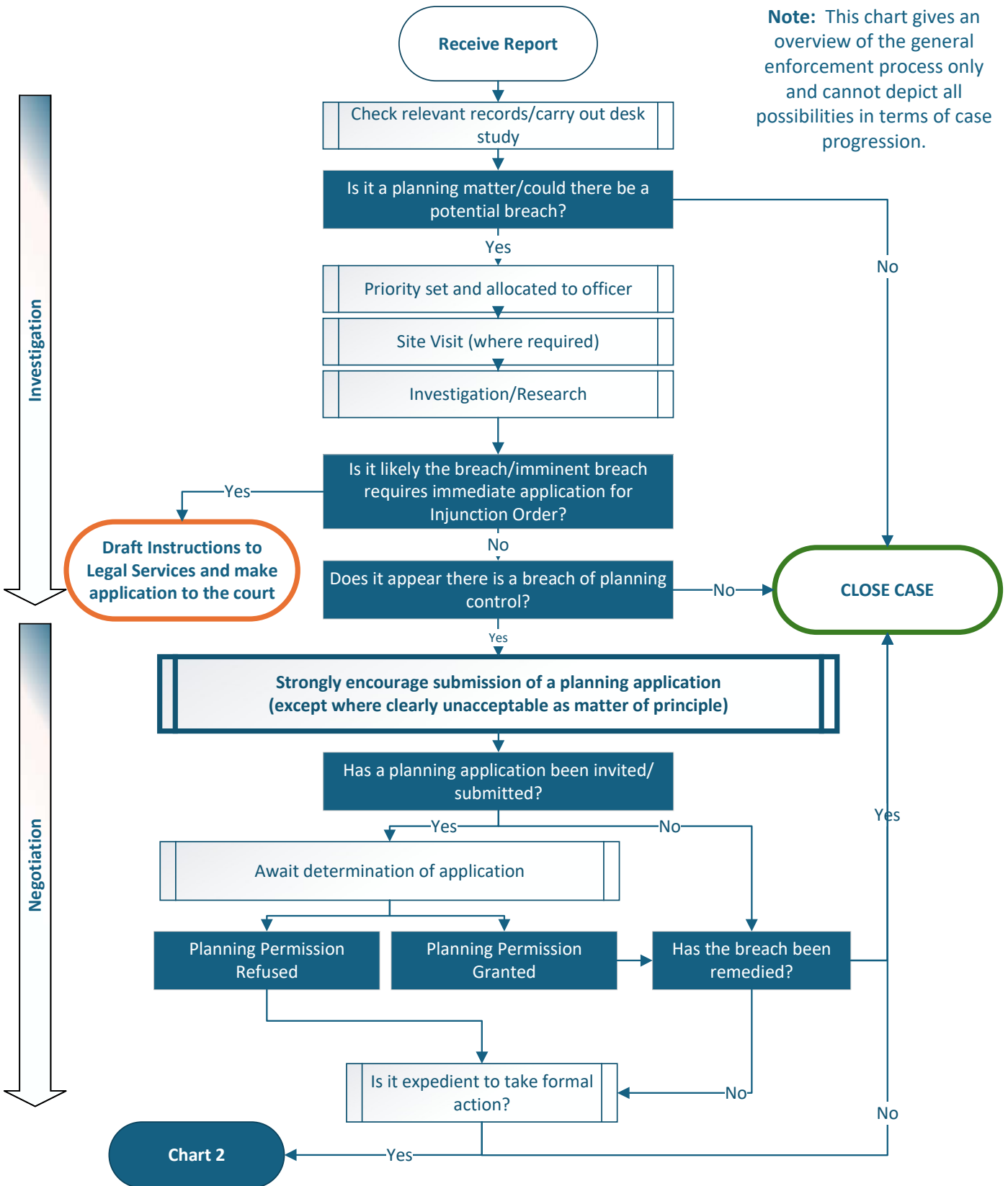
- 8.1 The council is obliged to follow the planning enforcement process as set out in legislation, and, despite our best efforts, it can sometimes take a long time for a case to be resolved. This is especially the case where there are continuing and active negotiations, planning appeals are made to the Planning Inspectorate, or where enforcement notices are not voluntarily complied with and court action then becomes necessary.
- 8.2 The council has the legal power to extend the period for compliance that is given in an enforcement notice. We will normally only do this where a request is made in good time, and where the responsible party has genuinely been unable to comply within the set time period for reasons that are outside of their control.
- 8.3 The council can decline to determine retrospective planning applications where an enforcement notice has already been issued against any part of the development that is being applied for. When such an application is made, the council will consider in each case whether:
- The application appears to be part of a sincere effort to engage with the council to amend a proposal and remedy the breach of planning control;
 - The application addresses unacceptable elements of the development (as identified in the reasons for issuing the enforcement notice), and is generally in accordance with planning policy;
 - The application would not have the effect of delaying compliance with the enforcement notice by frustrating a council prosecution or planned direct action proceedings, whether these have already begun or not;
 - The application has been submitted only just before the compliance period in the enforcement notice expires or after it has expired.
- 8.4 Preparing court prosecution for non-compliance with the requirements of an enforcement notice that is in force is resource intensive. The council will prioritise the most egregious and/or persistent cases. The council will not normally withdraw summonses once they have been issued, even if the enforcement notice is subsequently complied with. Where a prosecution is undertaken, the council will seek to recover its costs in the courts. It will also pursue confiscation orders under the Proceeds of Crime Act where it is appropriate to retrieve monies gained unlawfully, both to help cover the costs of enforcement action and to ensure an effective disincentive to non-compliance.
- 8.5 Direct action may be undertaken at the council's discretion and will take into account the complexity of the works required and the likely upfront costs to the council. The costs of direct action can be recovered from the landowner in accordance with planning legislation.

Local Enforcement Plan: Chart 1 – New Cases

Planning Enforcement

Jan 2025

Note: This chart gives an overview of the general enforcement process only and cannot depict all possibilities in terms of case progression.



Local Enforcement Plan: Chart 2 – Formal Action

Planning Enforcement

Jan 2025

Note: This chart gives an overview of the general enforcement process only and cannot depict all possibilities in terms of case progression.

