



# **Planning Enforcement Plan**

**September 2024**

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## **1.0 INTRODUCTION**

1.1 - Gloucestershire is an historic 'shire' County covering an area of over 1,000 square miles and is home to more than 600,000 people. As well as having a strong rural character, the county is also known for its distinctive heritage environment and a dynamic, growing economy. The County requires ever improving infrastructure to uphold and improve the quality of life of its growing population, while protecting the environmental assets of those living, working and visiting the area.

1.2 - From a County Council perspective, key interests are focused on resources and public infrastructure matters – such as the working of minerals; the disposal and future use of waste; maintenance of the local road network; and the upkeep and improvement of other local public sector facilities and assets. Any conflict this might bring to local amenity is minimised through appropriately siting development and controlling operations; this is regulated through the planning system.

1.3 - Enforcing breaches of planning control are an important and necessary part of the planning system, as set out in the Government's revised National Planning Policy Framework (2023), Paragraph 59:

*“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.”*

1.4 - The Government has published further advice on planning enforcement within its [National Planning Practice Guidance](#), against which provisions this Plan is based.

1.5 - Although enforcement action is discretionary, the Council recognises the importance of upholding planning policy, planning decisions it has made, as well as addressing any breaches of planning regulations, as a means to safeguarding the County's built, natural and heritage environment, and protecting the quality of life of its residents. This approach supports the aims, objectives and priorities set out in the [Gloucestershire County Council Strategy for 2022-26](#) – 'Building Back Better in Gloucestershire'

1.6 - The purpose of this Plan is to explain how the Council does this, through providing an easily referenced document setting out the areas of work covered by the Council's Planning Monitoring and Enforcement team, its approach to enforcement, the powers available to it, and the level of service that residents, businesses and all others should expect to receive. A flowchart is provided in Appendices 5 & 6 to provide a visual explanation.

1.7 - The Council aims to provide a consistent and comprehensive approach to planning enforcement based on legislative requirements, government guidance, legal judgements, local development plans and other material considerations, operational priorities, and good practice, which through their collective interpretation shape how decisions are made.

1.8 - Definitions of some of the technical planning terms used in this document are provided in the following [glossary](#).

1.9 – This Planning Enforcement Plan supersedes all earlier versions.

## **2.0 BREACHES OF PLANNING CONTROL**

2.1 - Development carried out without planning permission is often referred to as a breach of planning control, and is defined in the [Town and Country Planning Act](#) 1990 as *'the carrying out of a development without the required planning permission, or failure to comply with any condition or limitation subject to which planning permission has been granted'*.

2.2 - Development is defined in the Town and Country Planning Act 1990 as *"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"*

2.3 - Planning functions in Gloucestershire are split between the County Council and 6 District councils. Most planning functions are the responsibility of the district councils, with the County responsible for the following broad areas:

- Minerals (as the Mineral Planning Authority – “MPA”). Mineral operations are often subject to several iterations of their original planning permission; it is rare for a quarry to be operated on a single permission for its lifetime without any changes. This can be due to a variety of legitimate reasons such as new techniques or equipment, other regulatory regimes imposing requirements, and potential unforeseen vagaries in geology etc, all causing practical issues with approved schemes which necessitate planning review.
- Waste (as the Waste Planning Authority – “WPA”), assessing planning applications for waste operations, and supporting the Environment Agency as the lead agency tackling waste crimes.
- Regulation 3 Development – planning applications determined by the County Planning Authority where the land is owned or operated by the County Council itself, is under its control, or where the Council intends to develop the land themselves or jointly with another party. Where the Council receives complaints in relation to Regulation 3 development, it will treat any investigation in the same way as it would for any other landowner, occupier or developer and expects the appropriate Council service as far as it is possible to remedy any planning complaint.

2.4 - The enforcement of planning control over all forms of development **other** than minerals and waste, and the Regulation 3 development carried out by the County Council, is the responsibility of the six district councils within Gloucestershire. The County Council Enforcement service works closely with colleagues in District Councils, and where necessary will liaise with them to identify the nature of any breach, establish under whose jurisdiction any enforcement action lies, and support each other in any ensuing investigation. A separate '[County Matters](#)' document has been produced outlining respective roles and the approach taken to joint working.

2.5 - While it is the duty of the Local Planning Authority to investigate all complaints, it is at their discretion whether any enforcement action should be taken, after considering the evidence; and whether it is expedient and in the public interest to do so. These, and other factors, are considered when deciding 'the appropriate course of action' and are explored in more detail in Section 6.0 of this Plan.

2.6 - It is important to highlight that not all works, or operations require planning permission, and may otherwise be lawful, including for the following reasons:

- They are not considered to be 'Development' - as defined by s55 of the Town and Country Planning Act 1990 (as amended).
- Some works are considered 'de minimus' where they are of insignificant impact - for example a building built 2cm above its permitted height, where it has no detrimental impact on amenity.
- Some works and uses are 'Permitted Development', as defined by the [Town and Country Planning \(General Permitted Development\) Order 2015 \(as amended\)](#). For example, some agricultural works, including excavation or deposit of materials on the land, have the benefit of permitted development rights while others may not need full planning permission but simply require 'prior approval' from the relevant planning authority.

- Some changes of use, operations or activities are not considered ‘material’, having little or no significant impact on amenity.
- Most planning breaches are deemed to be lawful if no action is taken after 10 years, and development becomes immune from enforcement action. Where a valid Enforcement Notice has been served, the clock stops on immunity. If there has been a deliberate attempt to conceal a breach of planning control, the Council may still be able to take enforcement action beyond the specified period by obtaining an order from the Magistrates Court.

2.7 - The above examples depend on many factors including type of operation, size, height and uses, and the rules often vary according to the different location and individual circumstances.

2.8 - Development is lawful where planning permission has been given, but only where the works or uses have been undertaken in accordance with that permission, including all conditions attached to that consent. Failure to comply with a condition may render the whole permission invalid.

2.9 - Should you wish to have a legal determination as to whether any development, use or operations, actual or proposed, are lawful then you can apply to the Council for a [Certificate of Lawfulness](#).

2.10 – Applicants are also required to provide the Council with a Commencement Notice stating the date on which development is set to commence; this should be resubmitted if the actual date is different. Failure to do so is a breach of planning control.

2.11 – Where a planning permission has been granted for development and is subject to a ‘commence within 3 years’ condition, and this condition was complied with, but the development has not been completed, then the Council can require the applicant to complete within a specified time period. Failure to do so could result in a Completion Notice being issued – see [Appendix 3](#).

### **3.0 THE COUNCIL'S MONITORING AND ENFORCEMENT SERVICE**

3.1 - This service is provided within the Council's Planning and Development Management team, and consists of 3 Full Time Officers, with some support from other team members.

3.2 - The aspirations set out in this Plan have been drawn up with regard to the availability of resources and the demands on the service. It is important that investigations are undertaken as thoroughly as required, as opposed to spreading the service too thinly and risk compromising desired outcomes. The ability to do so depends on many factors such as the number, nature and complexity of investigations and the number of formal and legal actions undertaken.

3.3 - The Monitoring and Enforcement Team will actively monitor all mineral permissions (extraction and aftercare) and selected waste sites through periodic and formal site monitoring visits, to assess how planning permissions are being implemented, and all check that all conditions are being complied with. This includes any requirements under Biodiversity Net Gain, working with the Council Ecology team. The way in which this is done is set out in the Council's [Minerals and Waste Site Monitoring Plan](#).

3.4 - Roles and responsibilities for undertaking enforcement, including prosecutions, serving Enforcement Notices, and pursuing other formal actions - and who can make these decisions - are set out in the Council's Constitution and [Scheme of Delegation](#). These are delegated further directly to Officers of the Council.

3.5 - The County Council's Monitoring and Planning Enforcement service works with a number of other Officers within the County Council, District Planning Enforcement teams, Environment Agency, and other organisations. These other Officers will assist in specialist and technical areas such as environmental health, archaeology, flood risk, waste control and ecology. In many cases, their



availability, advice, and support for any formal actions will help determine what course of action is expedient for the Council to take.

#### **4.0 REPORTING A SUSPECTED BREACH OF PLANNING**

4.1 - It is impossible for the Council to identify all possible breaches of planning control. Therefore the general public's vigilance in identifying potential breaches of planning control in their communities is welcomed and valued. All reported breaches will be investigated, as long as they are not anonymous or vexatious.

4.2 - Enquiries can be made by completing [our on-line form](#).

4.3 - You should provide as much as possible of the following information, to enable us to better understand your enquiry:

- A clear description of the alleged breach.
- Why you think this is a breach of planning.
- A description of the 'harm' being caused e.g., noise, traffic, odours.
- The date and where relevant the time the activity started, is it happening now, how long has the activity been taking place, is it getting worse?
- A specific site address (if it is a field, describe the surrounding area to help identify the exact site and if possible, an annotated map / grid reference).
- The name and contact details of the site owner/occupier/builder/hauler/other responsible person(s) where known.
- Your name and contact details – please note we may not investigate anonymous complaints. We may also need to get in contact with you to get further information.
- Any other information you think would be helpful.

4.4 - Where an allegation involves activities on land, you should not undertake surveillance, but might record and update the Council on any continuing breaches as you notice them.

4.5 - The Council will seek to respond to you as quickly and fully as possible, including making an initial assessment as to whether the matter is a planning matter, if so whether it falls to the County or District Council to determine, and if neither then identifying which Council department or other organisation might be responsible for investigating. In some cases, a joint approach might be needed. The Council will have regard to the most effective and timely powers available to seek resolution, taking into account the urgency of the matter. This initial assessment will best ensure that the issue is dealt with by the right organisation under the right powers and help avoid wasted time.

4.6 - For example, there is often an overlap of waste disposal and recycling enforcement activities between the WPA and Environment Agency. Some planning breaches may be a criminal offence under legislation enforced by the Environment Agency, and they will be in a stronger position to remedy harm more quickly than through powers available to the WPA. This is most likely to be the case where there is a pollution concern, where the waste activity affects a main watercourse, or is part of wider criminal activity. Some ecological breaches can be the responsibility of Natural England or the police to follow, especially where it relates directly to breaches of wildlife legislation.

## **5.0 PLANNING INVESTIGATION**

5.1 - In many cases an investigation will be necessary, undertaken by the Planning Enforcement Officer, in line with the Customer Service Standards identified in [Appendix 2](#).

5.2 - It is not possible to investigate every enquiry with equal priority and intensity. The Council will prioritise allegations that could potentially cause the greatest harm and/or need immediate attention, although the Council will endeavour to investigate, resolve, or otherwise conclude every credible allegation it receives as soon as it possibly can. Accordingly, the Council assigns relative priority to all enquiries, as set out in [Appendix 1](#) of this Enforcement Plan.

5.3 - Before considering what course of action it might take, the Council must determine the facts. This involves establishing whether a breach of planning control has taken place, the nature of any breach identified, the degree to which it is happening, and its impact.

5.4 - Investigation takes place through several methods which include researching the planning history, establishing whether there have been previous investigations on the site, or has been subject to a planning application. This normally includes undertaking a visit to the land and property, discussion with interested parties - including those who are the subject of the investigation - and ongoing monitoring of the land and property. Where necessary the Council has legal powers to make formal requests for information.

5.5 - Planning Enforcement Officers have a legal right of entry onto land under [s196A-C of the Town and Country Planning Act \(as amended\)](#) and visits will normally be undertaken without prior notice, and sometimes without the owner or occupier(s) being present. Wilful obstruction of an Officer in the course of their duties will be considered a criminal offence. The Council is committed to ensuring the safety of its Officers, and will respond to any intimidation, abuse, or assaults on its staff with appropriate legal action.

5.6 - Where investigations require monitoring outside of normal working hours (e.g., breach of condition relating to weekend, evening, or early morning operations), Officers will endeavour to work flexible hours as needed.

5.7 - Each case will be considered on its own merits and required outcomes or actions may differ in any two cases and locations, even if it appears that the same or a very similar breach has occurred.

5.8 - Where a breach of planning control has been identified, the Council's preferred approach is to work with those responsible for the breach to identify the appropriate course of action, including any options available to remedy the situation, where these are available. This can often be the quickest and most cost-effective way of achieving a satisfactory and long-lasting resolution.

However, the Council's required actions must be reasonable, and proportionate to the breach established.

## **6.0 THE APPROPRIATE COURSE OF ACTION**

6.1 - Where works or activities are lawful in planning terms and do not need planning permission, or following investigation the allegations are unproven, then the matter will be concluded with no further action.

6.2 - Where a breach of planning control has been identified, the Council will assess the harm caused, according to the nature of activities, degree to which they are taking place, and impact caused by them. On this basis, the appropriate course of action will be identified.

6.3 - The Council may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as "under enforcement". The matter will only be deemed concluded once any works or changes to activity agreed as part of negotiations with or otherwise required by the Council have been carried out.

6.4 - Sometimes a breach may be identified, but it may not be in the public interest for the Council to take further action - this is called 'expediency'. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

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

issue an Enforcement Warning Notice, setting out a timescale for the receipt of a valid application.

6.5 - Those responsible have the right to apply retrospectively for planning permission. The fact that development has already taken place does not mean that planning permission is more likely to be given, although its impacts might be more easily assessed. Any unauthorised works undertaken are at risk, and may be subject to demolition or alteration, including those continuing after those responsible have been notified of the breach of planning. The time taken to prepare and submit an application should not delay any immediate actions required by the Council. Where a retrospective permission has been given the matter will not be concluded, and could still be subject to further action, until such time as all conditions attached to the permission have been fully complied with. It is the responsibility of the applicant to ensure all other requisite consents are in place (e.g., building regulations approval, environmental waste permits).

6.6 - Where a retrospective planning application is refused, and any subsequent appeal made is refused, then the applicant will be expected to comply in full with the Council's requirements for remedying the breach of planning control.

6.7 - If the matter cannot be resolved to the Council's satisfaction, following discussion and negotiation, then as a last resort it has the powers to take formal enforcement action – as identified in [Appendix 3](#) - including the legal recourses set out in [Appendix 4](#). The Council's aim is to remedy any breach of planning control, rather than simply be punitive; however, in some circumstances this will be necessary to achieving the desired outcome.

6.8 – Some, but not all formal Notices are subject to the right of appeal. Further details are available [here](#), and will also be set out on the Notice, if the option is available. An appeal against an Enforcement Notice may not be made if a retrospective planning application has been made, refused, and unsuccessfully appealed. The Planning Inspectorate also have the right to refuse an appeal should the appellant not provide the information it requires in a timely manner.

6.9 - Public expectations about the speed with which effective investigation and action can be taken may exceed both the speed at which an assessment can be made, and formal actions to resolve a breach. However, the Council is committed to progressing its investigation, as well as formal and legal recourses, as quickly as possible, within the context of resources and external support, constraints, and considerations such as the availability of specialist assessment, availability of court dates and appeal procedures.

6.10 - The cost to the public purse in pursuing enforcement action can also be costly, so the Council will always seek to apply for costs at any prosecution, and with appeals where an appellant is deemed to be acting unreasonably. Where a breach of planning regulation results in significant financial gain for those responsible, the Council will also consider (alongside prosecution) applying for a Confiscation Order under powers given through the Proceeds of Crime Act.

6.11 - The Council will not necessarily withdraw from pursuing litigation once it has commenced proceedings, even where the breach of planning control may have been rectified before the case is heard.

## **7.0 INFORMATION MANAGEMENT AND SHARING**

7.1 - The Council will request, manage, and use its information responsibly, in line with the General Data Protection Regulations, Data Protection Act and other relevant legislation and requirements.

7.2 - All planning investigations will be recorded by the Council.

7.3 –The Council seeks to ensure the transparency of the planning enforcement service by sharing information on its work through the methods identified below:

7.4 - Copies of all Enforcement, Breach of Condition, and Stop Notices, as well as Enforcement Orders, will be sent to the District Council in which the breach of

planning falls, where they must be made available for public inspection, and details included within their Planning Enforcement Register.

7.5 - A Progress Report will be presented to each County Council Planning Committee outlining the work of the service and identifying and updating on those issues where formal enforcement action has or is being taken, as well as outlining general performance and raising any other matters of interest. Officers may also present reports to committee seeking guidance or resolution on matters where member direction is required. These reports can be found within the Planning Committee agenda and papers [here](#).

7.6 - When a Notice is issued, prosecution proceedings initiated, or other formal enforcement action undertaken, the local elected County Member(s) and Chair of Planning Committee will be notified.

7.7 - The Planning and Development Management team has its own planning [enforcement pages](#) on the Gloucestershire County Council website, providing information on the role and services provided by the team, including a copy of the latest version of this document.

7.8 - The Council will work with appropriate media to publicise its work and positive outcomes, including successful prosecutions and other actions.

## **8.0 CONCLUSION**

8.1 - This Plan sets out the way that the Council responds to reports of breaches of planning, and the standards it aspires to achieve. The time taken to determine each matter will vary depending on the nature of the allegation, the type of breach under investigation, resources and support available, as well as any actions necessary to reach the desired outcome. Decisions are made in the context of regularly changing legislation, guidance, and case law. An enforcement investigation can potentially be a lengthy and complex process.

However, the Council is committed to reaching a conclusion/outcome as soon as reasonably possible.

8.2 - This Plan will be reviewed periodically to ensure that it is 'fit for purpose' in the light of changing legislation, regulations, guidance, and good practice, as well as the operational characteristics of the County Council and any other circumstances that may affect its delivery.

8.3 - The Council welcomes feedback on our performance, and an opportunity to comment is available by contacting:

[planning.enforcement@gloucestershire.gov.uk](mailto:planning.enforcement@gloucestershire.gov.uk)



## ***APPENDIX 1 – Priorities for Action***

**PRIORITY A - Development causing, or likely to cause, irreparable harm or damage. Investigation to take place as soon as possible, and within 1 working day. This will include:**

- Development causing or likely to cause serious harm to the public, e.g., involving hazardous substances.
- Alleged breaches taking place with a Site of Special Scientific Interest (SSSI)
- Where the alleged breach is causing or has potential to cause serious harm to (the habitat of) a protected species, including trees covered by a Tree Preservation Order or within a Conservation Area.
- Works which are likely to threaten the built or natural heritage, including sites of (likely) archaeological importance, or affecting Listed Buildings or their setting, and within Conservation Areas.

**PRIORITY B - Unless prompt action is taken, there is a material risk of further harm being caused which could be reduced or prevented by early intervention. Investigation to commence within 5 working days. This will include:**

- Where the alleged breach is causing serious harm to amenity in the locality, including failure to comply with planning conditions that are integral to the acceptability of the scheme and permission given
- Any alleged breach within an Area of Outstanding Natural Beauty (AONB), Green Belt, or regionally important geological or geomorphological site.
- Development which would be immune from enforcement within six months.
- Unauthorised works under way but not substantially complete, where an early intervention could address the matter before significant extra cost and reversal are incurred or required.

**PRIORITY C – All other complaints not falling in any of the above categories. Investigation to commence within 10 working days.**

## **APPENDIX 2 – Customer Service Standards**

These standards apply to those making a complaint, those the subject of a complaint and any others involved as part of an investigation into an alleged planning breach and should be read in conjunction with sections 4 and 5 of this Plan.

- We will treat all people equally and in a fair and courteous manner, providing information and advice as appropriate, and responding to any particular needs where possible e.g., translation.
- We will consider all credible allegations of breaches of planning control and acknowledge receipt within 5 working days. Your details will be kept confidential and not released to anyone else without your permission.
- We will make an initial assessment of your allegation according to the timescales set out in [Appendix 1](#), which in all cases should be no more than 10 working days.
- We will update you on the progress of the investigation, on request.
- We recognise the anxiety that can be caused by finding out someone has made an enquiry about alleged development or activity on your land or property. Accordingly, we will treat you fairly, not pre-judge any allegation made against you, and give you the opportunity to explain and respond.
- We will advise you as soon as possible whether we consider a breach of planning control has taken place, and if so, what the breach is, and what our requirements and your options are.
- Unless the matter requires immediate action, we will give you reasonable time and opportunity for the matter to be resolved, including negotiation to seek an outcome suitable for all parties. Should you not respond, decide not to work with us, provide us with misleading information, fail to co-operate with the Council's requirements, or unreasonably and unnecessarily delay discussions or any agreed or requisite actions then we will consider the use of formal powers.
- If you dispute that a breach has or is taking place, you have the right to apply for a Lawful Development Certificate to determine the matter, but this should not delay any immediate or urgent actions required.
- You have the right to make a retrospective planning application to seek permission for the unauthorised works or activity, although there is no guarantee that planning permission will be given, and even where it is, conditions will normally be attached, the requirements of which would have to be met.
- Should we decide to undertake formal enforcement actions (as set out in Appendices 3 and 4 of this Plan) we will advise you of any rights of appeal that are available to you.

- We will inform all interested parties of the outcome of the investigation, with reasons, on request.
- The Council expects all customers – those who contact us or are affected by anything we do – to display acceptable behaviour to all its Officers.
- The Council is committed to providing an effective and efficient planning enforcement service. However, should you not be satisfied with the handling of your enquiry, in the first instance please contact the Council's Planning Development Manager – <mailto:planningdc@gloucestershire.gov.uk>. If you remain dissatisfied, there is a formal complaints procedure which can be found on the council's website.

## **APPENDIX 3 – Formal Powers**

### **Right to Enter Land**

All Planning Officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land (except residential properties) to ascertain whether there has been a breach of planning control ([s196A & B](#) of the Town and Country Planning Act, as amended). An owner, occupier, or anyone with an interest in the land does not have to be present for the Enforcement Officer to enter onto land and undertake a site visit.

Where they are present, the Officer will normally make themselves known to the landowner/occupier when they enter the site, and where requested should be able to display a warrant card identifying their right of access. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

Any person that wilfully obstructs an authorised person in carrying out these duties will be committing an offence, punishable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale.

### **Requisition for Information**

Where the Council considers it has sufficient information regarding activities on land, but requires further details on ownership, a Requisition for Information may be issued ([s330](#) of the Town and Country Planning Act, as amended).

There is a legal requirement to respond to a request made under s330 of the Town and Country Planning Act within 21 days unless a longer period of time is specified. Non-compliance with the requirements of a s330 Notice is an offence punishable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. Wilfully providing false or misleading information in response to a Requisition is an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 2 years, or both.

### **Planning Contravention Notice**

A Planning Contravention Notice (PCN) may be issued in order to ask specific questions in relation to an alleged breach in planning control ([s171C](#) of the Town and Country Planning Act, as amended). This enables an assessment to be made regarding whether a breach in planning regulations has occurred, to what degree, and helps inform whether formal enforcement action is necessary or should be taken.

There is a legal requirement to respond to a PCN within 21 days unless a longer period of time is specified in the Notice. Non-compliance with completing the requirements of a PCN is an offence punishable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. Wilfully providing false or

misleading information in response to a PCN, is an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Commencement Enforcement Notice**

The Council can issue a Commencement Enforcement Notice where it suspects that development has begun prior to a Commencement Notice being provided.

The Commencement Enforcement Notice will specify the information required, and must be provided within 21 days, or an offence will be deemed to have been committed.

Commencement Enforcement Notices will appear on the relevant District Council's Planning Enforcement Register, and Local Land Charges Register, until such time as its requirements are met.

### **Enforcement Warning Notice**

The Council can issue an Enforcement Warning Notice where there has been an identified breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted, subject to conditions ([s172](#) of the Town and Country Planning Act, as amended)

The Enforcement Warning Notice will set a date before which a valid application for planning permission must be made, or further enforcement action may be taken.

Enforcement Notices will appear on the relevant District Council's Planning Enforcement Register, and Local Land Charges Register, until such time as its requirements are met.

### **Enforcement Notice**

The Council can issue an Enforcement Notice where there has been an identified breach of planning control and where it is considered expedient to do so ([s172](#) of the Town and Country Planning Act, as amended). The Notice should define the breach and set out steps required for compliance, with specific timescales, to remedy the breach.

An Enforcement Notice can be served in respect of unauthorised operational development, or an unauthorised material change of use of land, including those cases where certain 'permitted development' allowances have been exceeded. The Notice must be served on the owners, occupiers, and all other parties with an interest in the land, including all those with a financial interest. An Enforcement Notice must come into effect not less than 28 days after its date of issue. There is a right to appeal to the Secretary of State, and such an appeal must be made before the Notice comes into effect. Where an appeal is submitted, the requirements of the Notice are held in abeyance until the appeal has been decided by the Planning Inspectorate.

Failure to comply with the requirements of an Enforcement Notice is a criminal offence which is liable on summary conviction to an unlimited fine for each offence.

Compliance with an Enforcement Notice will not discharge it; its provisions will remain in force and will be valid should the unauthorised use or specified development re-occur. Enforcement Notices will appear on the relevant District Council's Planning Enforcement Register, and Local Land Charges Register, until such time as its requirements are met.

### **Breach of Condition Notice**

The Council can issue a Breach of Condition Notice where a condition attached to an extant planning permission is not being complied with, where a limitation or condition of 'permitted development' is being exceeded, or not met ([s187A](#) of the Town and Country Planning Act, as amended). The Breach of Condition Notice should define the breach and set out steps required for compliance, with specific timescales, to comply with the condition or limitation.

Where the condition is integral to the whole planning permission, an Enforcement Notice may instead be served requiring more wide-ranging remedial actions than simply compliance with the condition or limitation. Failure to comply with such a condition might render the whole permission invalid.

A Breach of Condition Notice can be served only on that party responsible for causing, allowing, or not rectifying the breach. The Notice must come into effect not less than 28 days after its date of issue. There is no right of appeal, although it can be challenged by way of applying to the High Court for a judicial review. Failure to comply with the requirements of a Breach of Condition Notice is a criminal offence which is liable on summary conviction to an unlimited fine for each offence.

### **Stop Notice**

A Stop Notice can be issued with or following an Enforcement Notice in order to require a particularly harmful activity to cease before the Enforcement Notice comes into effect.

There is no right of appeal, but the Council may have to pay compensation if the associated Enforcement Notice is, on appeal, quashed on legal or planning grounds.

Non-compliance with the requirements of a Stop Notice is an offence, punishable by, on summary conviction, an unlimited fine.

### **Temporary Stop Notice**

Where a breach of planning control is causing significant and irreversible harm to public amenity and/or the built, natural or heritage environment, and where immediate action is required to stop this harm, a Temporary Stop Notice (TSN) can be served. This requires the unauthorised activity to cease immediately for a period of no more than 56 days.

This allows a period (up to the maximum of 56 days) for the local planning authority to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.

There is no right of appeal against a TSN, but it can be challenged by way of applying to the High Court for a judicial review. As a TSN prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the Notice has not been served properly or should not have been served at all.

There is risk of immediate prosecution for failing to comply with a TSN, for which an unlimited fine is payable.

## **Enforcement Order**

Where a Local Planning Authority believes there has been a ‘concealed’ breach that would otherwise be immune from enforcement action due to the passage of time, it may apply for an Enforcement Order ([s171BB](#) of the Town and Country Planning Act, as amended). The Order will set out the steps required to remedy the breach, and the timescale in which to do so.

## **Direct Action (Works in Default)**

Where a Notice has not been complied with, and in some other cases where immediate works are required to protect further damage occurring, the Council has powers to undertake the requisite works, where the responsible part(ies) are unwilling or unable to do so ([s178](#) of the Town and Country Planning Act, as amended)

The cost of undertaking these works, including a fee for Officer and project management time, would be placed as a charge against the land until such time as fully paid. The Council would give the owner of the land an opportunity to undertake works themselves before exercising this option. Removing the breach does not preclude the Council from prosecuting those responsible, where it is appropriate to do so. Further, the Council will consider continuing proceedings even when a matter has been resolved prior to court attendance.

## **Completion Notices**

This applies where a planning permission has been granted for development and is subject to a ‘commencement within 3 years’ condition, and this condition was complied with, but the development has not been completed.

If the Council are of the opinion that the development will not be completed within a reasonable time period, then they may serve a Completion Notice, stating that the planning permission will cease to have effect at a specified time.

The Completion Notice must be served on the owner of the land, the occupier of the land and any person with an interest in the land, and can be appealed.

## **APPENDIX 4 – Legal Powers**

### **Injunction**

Where the Council deems it expedient to restrain any actual or anticipated breach of planning control it may apply to either the High Court or the County Court for an injunction ([s187B](#) of the Town and Country Planning Act, as amended). This sanction is immediate and is aimed at avoiding serious breaches before any (further) harm is done and/or addressing those breaches of control where other powers have not been effective, or where persistent breaches arise.

Failure to comply with the terms of an injunction may be considered as a contempt of court. The court has the discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

### **Prosecution**

There are a number of planning offences for which the Council would consider prosecution, subject to there being sufficient evidence to prosecute and that any such prosecution meets the public interest test:

- Committing a breach of planning regulations is not usually an offence in itself; however, failure to comply with any of the Notices identified in [Appendix 3](#) is. Proceedings may continue even if the Notice is complied with, to deter others from taking this approach. The Council will apply for costs from the defendant in all successful court proceedings.
- Wilful obstruction of, or other offences against Council Officer or appointed representative in the course of his/her duties.
- False or misleading information provided by the recipient of a s330 Notice or a Planning Contravention Notice.

### **Simple Caution**

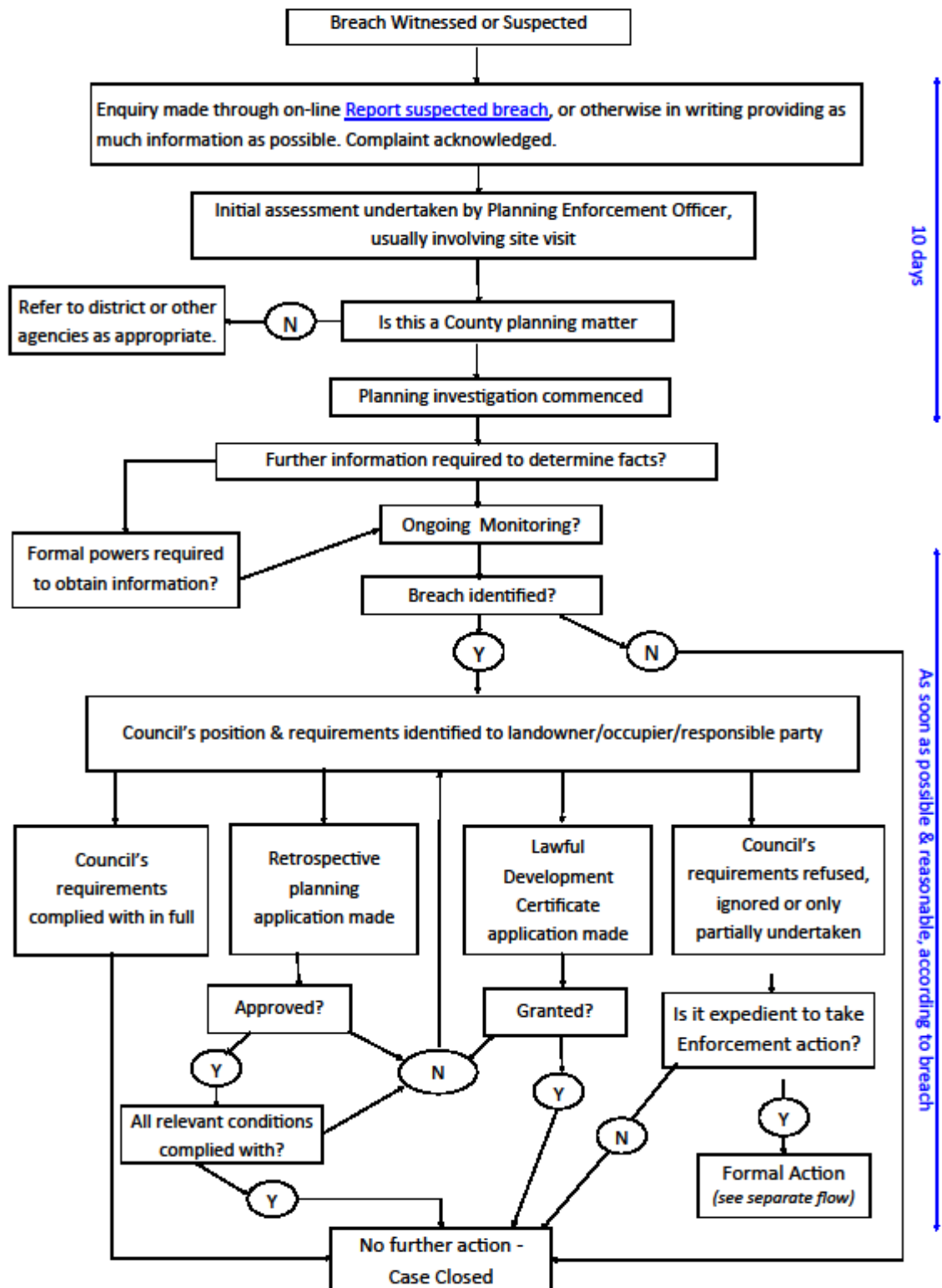
For some offences, the Council may offer a ‘simple caution’ to the responsible party(ies). However, should the caution not be accepted, the Council reserves the right to prosecute. Cautions will not normally be offered to repeat offenders.

### **Confiscation of assets**

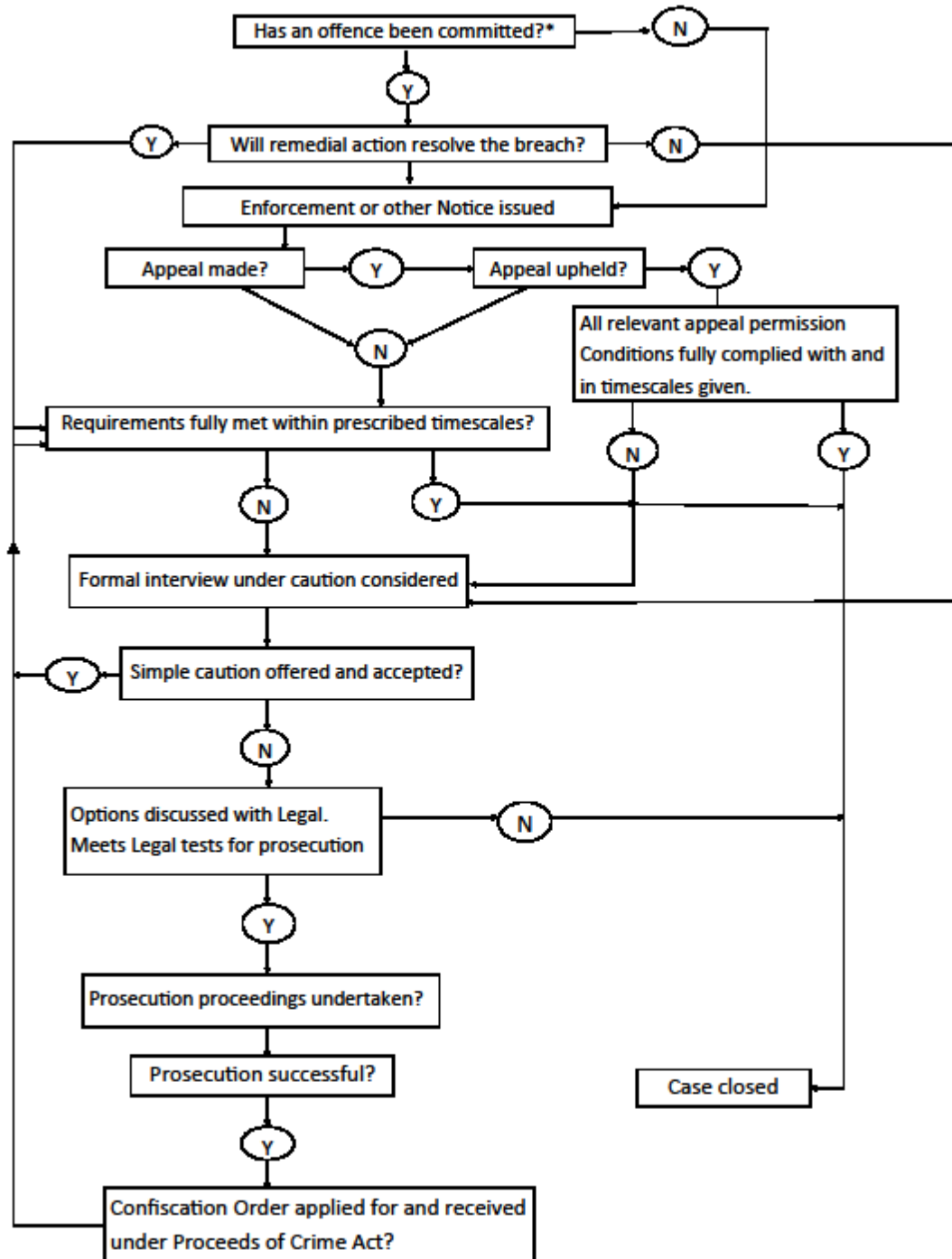
Asset recovery should be considered in every case in which a defendant has benefitted from criminal conduct, as a result of a breach of planning regulations. Where it is appropriate to do so, the Council may apply to the Court for a Compensation Order, as part of prosecution proceedings. If granted, the Council would then work with a Financial Investigator to identify assets and use powers available to recover these, under the Proceeds of Crime Act 2002.



## Appendix 5—HOW ENFORCEMENT ENQUIRIES ARE HANDLED



## Appendix 6—ENFORCEMENT - FORMAL ACTION DECIDED



\* A breach of planning control is not a criminal offence, however failure to comply with an Enforcement Notice is. Some actions, eg damage to a listed building are criminal offences without need to serve a Notice—see Appendix 4 of the Planning Enforcement Plan.