

North West Leicestershire District Council

Planning Enforcement Policy

Issue 01

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Contents

1	Introduction
2	Purpose
3	What is Planning Enforcement
4	Expediency
5	Breach of Planning Control
6	The Harm Prioritisation System
7	Service Standards
8	The Council's Key Planning Enforcement Objectives
9	Taking Formal Action
10	Reactive & Proactive Enforcement Monitoring
11	Additional Information
Appendix 1	The Enforcement Process
Appendix 2	The Enforcement Toolkit
Appendix 3	Complaints that do not relate to breaches of planning control

1 Introduction

1.1 The integrity of the planning development management function is supported by the Council's ability to take enforcement action where needed. There are two strands to planning enforcement:

- Reactive enforcement – investigating complaints made to the Council.
- Proactive enforcement – ensuring compliance with planning permissions, associated conditions and agreements.

1.2 This Planning Enforcement Policy sets a framework for how the Council will manage the complaints it receives and any subsequent investigations into breaches of planning control. It will clearly set out its objectives, the background to planning enforcement and the scope of enforcement powers. It will also set our priorities for responses to complaints and formalise how our customers will be kept up to date in relation to the work being carried out by the planning enforcement team. The Planning Enforcement Policy needs to be read in conjunction with the Council's general Enforcement Policy 2014 <https://www.nwleics.gov.uk/search?q=enforcement+policy>.

1.3 The Council's Planning and Development Team operates in connection with the Council's statutory role as a local planning authority in the regulation of the use and development of land and buildings under the Planning Acts and related legislation. NWLDC is firmly committed to the effective and proportionate enforcement of planning control. It views breaches of planning control very seriously and therefore a specialist planning enforcement team is based within the Environment Protection Team tasked with resolving planning breaches. This planning enforcement policy has been prepared to outline the approach that will be taken by the Council to remedy unacceptable development and the procedures that will be followed in order to:

- Help ensure the credibility of the planning system, and to give fairness for those who adhere to planning controls
- Protect it from the effects of unacceptable development
- Remedy the unacceptable harmful effects of unauthorised development
- Ensure the adopted planning policies applicable to NWLDC are complied with

2 Purpose

2.1 This document provides its customers with a clear understanding of the planning enforcement process. Where breaches occur planning legislation lays down strict requirements which we have to follow before we can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners, against the need to secure proper planning control in the district. Alleged breaches of planning control can be brought to the attention of the planning enforcement team in a variety of ways including from members of the public, locally elected Members, Town and Parish Council's and other departments within the Council.

2.2 Despite the legal constraints placed upon us we do understand that breaches of planning control impact on people's lives in a very direct way. Consequently, the delivery of effective planning enforcement is a very important issue for us. We will always investigate breaches of planning control swiftly and pursue appropriate action using the powers that are available to us. We will also keep interested parties informed throughout the process.

- 2.3 The Council's primary objective of the planning enforcement function is to remedy harm to public amenity resulting from unauthorised development, and to control it, making sure the integrity of the planning system is not undermined. There must be **significant harm** to public amenity for enforcement and/or legal action to be justified. Some of the issues that are not covered by planning legislation and thereby are not matters that will be investigated by the planning enforcement team are listed at Appendix 3.

3 What is Planning Enforcement

- 3.1 Planning enforcement investigates and takes action against possible breaches of planning control and is a vital part of the planning process. It is a very complex area because the Town and Country Planning Act seeks to strike a balance between the freedom of owners to use or alter their property as they wish, with the need to safeguard the amenities of an area against significant and irreparable harm. Enforcement functions should be carried out in an equitable, efficient and consistent manner, setting out standards for the level of service and performance all customers expect to receive.

The planning enforcement system is based on two important principles:

- A breach is not a criminal offence, except for unauthorised works to listed buildings, illegal advertisements, works to protected trees and hedgerows. A criminal offence also arises when a formal Notice has been served and not been complied with
 - It is at the Councils discretion whether action will be taken – many breaches may be unintentional and any action proposed must be in proportion to the alleged offence
- 3.2 We will always investigate any alleged breach of planning control reported to us and make a reasoned decision whether it merits action. However, because of the legal test of 'expediency' we should only take formal enforcement action where it is fair and reasonable to do so. In making this decision we will assess the circumstances of the case and make reference to our adopted planning policies. In addition we must also consider Central Government enforcement guidance.
- 3.3 **Legislative Framework, Guidance and Policy**
- 3.4 The Council has the responsibility for taking planning enforcement action which it deems necessary and proportionate within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council's power to take enforcement action comes from laws passed by Parliament, principally by the Town and Country Planning Act 1990, the Planning and Compensation Act 1991 and the Localism Act 2011. These laws give Councils power to take action against those responsible for breaches of planning control.
- 3.5 Not all development requires planning permission. The main source of guidance on what requires permission includes:-
- The Town & Country Planning (General Permitted development) Order;
 - The Town & Country Planning (Use Classes) Order; and
 - The Town & Country Planning (Control of Advertisement) Regulations

These documents, which are published by the Government, contain schedules which list instances where consent is not required. For example, certain structures do not need permission from the local planning authority because of their size, height, volume and location. This is called 'permitted development' and specific guidelines are given in the General Permitted Development Order. The Use Classes Order places most types of use into classes (e.g. dwelling house, retail, industrial) and in general, permission is required to change from one class to another. However changes of use that occur within the same Use Class Category do not require consent. This might involve a change from a clothes shop to a hairdresser, or a doctor's surgery to a day nursery. In addition, some changes of use from one Use Class to another do not require planning permission, such as a restaurant to an estate agent, or a solicitor's office to a shop. The Control of Advertisement Regulations set out what form of advertising does not require consent, known as 'Deemed Consent' and what type of advertisement does, known as requiring 'Express Consent', when an application needs to be made.

3.6 **The National Planning Policy Framework**

Paragraph 58 of the National Planning Policy Framework states that:-

'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.'

3.7 **Government 'Planning Practice Guidance'**

Advice from Central Government on planning enforcement is set out primarily in the 'Planning Practice Guidance' (PPG) 'Ensuring Effective Enforcement' that came into effect on 1 March 2014 update 22 February 2018. It emphasises the importance for local planning authorities to prepare and adopt local enforcement policies and plans because they:-

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers
- provides greater certainty for all parties engaged in the development process

3.8 **The PPG also states:**

'Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process; and
- help ensure that public acceptance of the decision-making process is maintained'

4 Expediency

- 4.1 When it is technically possible to take enforcement action the Council is required to decide whether such formal action would be 'expedient'; this means that formal action is discretionary and all the relevant planning circumstances must first be considered.
- 4.2 In considering "expediency" the decisive issue is whether the breach would unacceptably harm public amenity. Any enforcement action should be proportionate to the breach. This duty means that we would not be acting correctly if we enforced against every breach of planning control in the district. There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.
- 4.3 In cases where it has been established that a breach of planning control has occurred at the initial stage, the planning enforcement officer will undertake an assessment of expediency to determine which course of action should be taken. This expediency test will take account of:-
- whether the breach is in accordance with the policies of the Local Plan
 - the breach against any other material planning considerations
 - whether, had a planning permission been submitted before the development occurred, permission would have been likely to be granted
 - whether the breach unacceptably affects public amenity
 - whether the breach unacceptably affects any existing land use or buildings which merit protection in the public interest
 - whether action would be proportionate with the breach to which it relates
 - whether action would be in the public interest
- 4.4 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
- 4.5 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier. Formal action only takes place where it is expedient to do so and where other means to resolve the problem have failed. Ordinarily formal action will only be taken as a last resort and when the breach of planning control is causing significant or irreparable harm to the amenity of the area or is a breach of local planning policy. The impact of some development is more harmful than others and therefore enforcement action must always be appropriate to the seriousness of the breach of planning control.
- 4.6 The focus of our service is to remedy serious breaches of planning control not to punish those who are in breach of legislation. It is therefore acceptable that those concerned are given the opportunity to remedy any identified breach. This may be through a retrospective planning application or negotiating a solution acceptable to the Council in line with the national guidance, best practice and local planning policies. Just

because something is a breach of planning control is not, in itself, a justifiable reason to take enforcement action.

The Council whilst not condoning wilful breaches of planning control will not take disproportionate action and will not seek to 'punish' those responsible by taking action against technical breaches that cause no serious harm to public amenity.

5 Breaches of Planning Control

5.1 What is a Breach of Planning Control?

5.2 Planning law defines development as either

- Operational Development – this is anything built on, over or under land, and would include a new house, roads, sewers, embankments and some forms of demolition.
- Material Change of Use – this is any change of use of a building or land and would include for example the sub division of a single dwelling house to self-contained flats.

5.3 A breach of planning control is therefore defined as **development** carried out without the relevant permission first being obtained (or the activity being carried out is not being done in accordance with the approved plans/specifications and/or a planning condition attached to a permission) from the Council. Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially constitute a criminal offence. However, unauthorised works to a listed building, total or substantial demolition in a conservation area, the unauthorised display of advertisements; unauthorised work to protected trees and hedgerows and non-compliance with formal Notices; do constitute a criminal offence.

5.4 In some cases the planning enforcement team may be unable to take formal action against developments that are reported for example when:-

- The works or change of use fall within the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 or the Town and Country Planning (Use Classes) Order 1987 (as amended)
- An advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Immunity from enforcement action has occurred by way of a use being established for a period of 10 years (4 for a self-contained dwelling) or building works have been completed more than 4 years ago
- The works are considered to be 'de minimus' i.e. too minor to fall under the scope of planning control

5.5 Breaches of planning control which may require action could include:-

- Unauthorised change of use of a building or land
- Unauthorised operational development
- Conditions of a planning permission not being met or discharged
- Development not built in accordance with approved plans
- Untidy land where it is considered to be harmful to the amenity of an area
- Unauthorised display of a sign or advertisement
- Unauthorised works to a listed building
- Engineering operations

- Unauthorised works to protected trees or hedgerows
- Unauthorised demolition in a conservation area beyond that permitted by any order
- Deliberate concealment of unauthorised building works or changes of use

5.6 Although some breaches of planning control are immediately apparent upon the initial site visit, other breaches may be more difficult to identify and the investigation stage may take longer. An unauthorised material change of use and a breach of condition both become lawful, and therefore immune from enforcement action, after a continuous, uninterrupted period of ten years. An exception to this ten year rule applies to the unauthorised creation of a new residential unit which becomes immune from formal enforcement action after a continuous uninterrupted period of four years. Unauthorised operational development (e.g. building works) become lawful four years after it is substantially completed. Consequently, it may be necessary to conduct detailed investigations into the history of the site if the time period involved is not initially clear.

5.7 In circumstances where the best reasonable course of action to deal with the harm being caused is outside planning controls; the planning enforcement team will refer the matter to the relevant department or statutory body for action, as more effective and efficient outcomes can sometimes be achieved by use of powers outside Town and Country Planning legislation, such as the Environmental Protection Act, the Highway Act and the Anti Social Behaviour Act.

6 The Harm Prioritisation System

6.1 The Harm Prioritisation System allows unauthorised development to be scored according to its 'Harm'. Each case will be scored following a set format in order to provide a consistent result. Scoring is based on a number of criteria including:

- Age of the breach
- Is the development worsening or stable
- Are there any safety or statutory nuisance concerns
- Who is the complainant
- Is there harm
- Is there a breach of planning conditions
- Is the development in a conservation area or affecting the setting of a listed building
- If the development needs to be controlled by conditions
- Non-compliance with local planning policy

6.2 A total must be reached via the scoring system once it has been established that a breach of planning control has occurred. Only complaints which score 5 or above will be investigated further, those with a lesser score will be informed of the breach and invited to regularise it. This scoring system is based on appropriate Government guidance and gives due consideration to all relevant legislation. In both cases the complainant is notified of our actions and in the case where no investigation is to be made a detailed explanation for the decision will be given.

6.3 All retrospective refusals of planning applications, together with complaints regarding criminal works (listed buildings, protected trees and hedgerows, advertisements and non-compliance with legal notices), where no judgement of harm is necessary, will automatically receive a full investigation.

6.4 Where there is no breach of planning control the case will be closed automatically and the complainant informed.

6.5 The local planning authority believes in firm but fair regulation. Underlying the Harm Prioritisation System are the principles of:

- Expediency
- Proportionality
- Consistency
- Transparency
- Targeting
- Openness
- Helpfulness
- Procedures

7 Service Standards

7.1 Suspected breaches of planning control reported to the Council will be:-

- Acknowledged in writing within 3 working days
- In the case of operational development a full assessment of the case will be made within 5 working days of the site visit
- In the case of an alleged material change of use of the property further site visits and in some cases monitoring, will be required and as such a full assessment of the case will be made within 5 working days of the final site visit.

7.2 Complaints in regard to unauthorised works to listed buildings, protected trees and hedgerows will be investigated, where possible, at the time the complaint is received.

7.3 All investigations where a breach of planning control is confirmed will, except when relating to criminal offences, be scored under the Harm Prioritisation System referred to above. Those which score under 5 will be considered to relate to breaches of a minor or insignificant nature or where the development is acceptable in planning terms. In circumstances where the breach relates to operational development the owners/occupiers will be notified of the breach and invited to apply for retrospective planning permission or a Certificate of Lawfulness. However, should they choose not to pursue these options they will be notified that no further action will be taken, the file on the case closed.

7.4 Where investigations establish that works or use are 'permitted development' the owner/occupier can submit an application for a Certificate of Lawfulness, although it is important to note that this type of application is not a requirement but does provide consideration from the Council that the development described in the application is lawful and does not require planning permission.

7.5 Those investigations scoring 5 and above will be considered to require further investigation which may involve additional site inspections, further research, involvement from other service or agencies or further information from the complainant(s), site owner and/or occupier, or any other parties.

7.6 In certain cases, the Council may request the person(s) reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the complainant(s) is

unwilling to assist they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence.

7.7 Enquiries can be made online via the Council's website, by email, phone, letter or in person at the Council Offices. So that they can be dealt with efficiently it is important that as much of the following information as possible is provided:-

- Exact location of the site
- A full description of what has happened or is taking place
- What the concerns are i.e. what harm has been/is being caused
- Names and contact details of any owners, occupiers or landowners if known
- Evidence of the development or activities if appropriate
- Dates and timeframes of when the development took place or use commenced

If the information initially provided is insufficient we will ask for additional information before investigating the breach.

7.8 In accordance with the General Data Protection Regulation (and Data Protection Act 2018), Freedom of Information Act 2000 and Environmental Information Regulations 2004, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have informed the Council.

7.9 The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 (as amended) when interviewing persons suspected of a criminal offence (in so far as it applies to those being investigated by a non police agency) and with the Criminal Procedures and Investigation Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions

7.10 The Council recognises that delays can be a source of considerable frustration for complainants and although it is not always possible to anticipate the timescale for resolution of a case, affected parties will be kept informed of significant developments throughout the course of an investigation.

8 The Council's Key Planning Enforcement Objectives

8.1 The Council's primary objective of the planning enforcement function is to remedy harm to public amenity resulting from unauthorised development, and to control it, making sure the integrity of the planning system is not undermined. In order to meet these objectives the Council will:-

- Investigate all complaints pertaining to breaches of planning control in respect of district matters
- Investigate and seek to resolve breaches of planning control caused by unauthorised developments
- Keep complainants informed of progress throughout the process of the investigation
- Only take formal enforcement action, or require remedial action, which is proportionate to the breach
- Set reasonable but firm deadlines for actions required to resolve breaches of planning control; and make these clear to all parties concerned

- Only invite a retrospective application (without prejudice) to regularise a breach where there is a reasonable prospect that planning permission would be granted (notwithstanding the rights of an alleged offender to submit such an application)
- Facilitate appropriate development that conforms to local planning policy, and to try to secure the best possible development retrospectively where suitable
- Work and co-operate with other regulating authorities and agencies to resolve breaches of planning control
- Not normally investigate anonymous, vexatious and repetitive complaints unless they relate to potential criminal acts or present potential harm.

9.0 Taking Formal Action

9.1 Except in cases where unauthorised works or uses are causing immediate serious harm, formal enforcement action is taken only when attempts to amicably resolve the breach have been tried and failed. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where appropriate we will always use the tools available to us to seek a remedy to a planning breach, details of which are given at Appendix 2. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale it will consider whether or not it is expedient to take formal enforcement action.

9.2 For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the council and/or Central Government.

For more serious offences, where the nature of the offence points towards prosecution or simple caution, the recommendation to take enforcement action will normally be made by the Environmental Protection Team Manager or Public Protection Team Leader. The decision will be made in accordance with the Council's officer scheme of delegation arrangements. Equally, decisions not to take enforcement action will be made under officer delegation arrangements and reasons for this decision will be recorded in writing as part of the investigation process.

9.3 Formal action can consist of:

- Service of a legal notice
- Prosecution
- Formal caution
- Direct action

10 Reactive & Proactive Enforcement Monitoring

10.1 What if a complaint is made about your property or development?

If a complaint is received about your property or development then the Council has a duty to investigate the complaint in order to establish whether or not there has been a breach of planning control. It is often the case that breaches of planning control are not intentional and may arise from the person involved being unaware of the requirement to obtain planning permission.

10.2 Your responsibilities

If you receive a letter or a visit from a planning enforcement officer then we would encourage you to respond quickly, positively and to provide any required information so that the matter can be resolved quickly to the benefit of all parties. The Council will not reveal the details or identity of the complainant(s) to you. Whilst on site, officers may ask questions of any present occupiers and may take photographs or measurements. The investigating officer will confirm to you as soon as practicable whether or not it is considered that there has been a breach of planning control, and in cases where there has been no breach the matter will usually be resolved quickly. In cases where a resolution may be negotiated, the planning enforcement officer will be happy to enter into discussions; however we will not accept undue delays to required actions or responses during these negotiations and will expect you to respond within stated timeframes. In some cases the unauthorised development or activities will not be considered acceptable and you will be requested to cease/remove the works in order to avoid formal enforcement and/or legal action being taken.

10.3 The investigation

In carrying out its planning enforcement investigations the Council will make efficient use of its own records and other sources. Close links are established with other sections of the Council to improve and enhance investigations. Information relevant to planning enforcement investigations is held in a variety of locations. Sources outside the Council include HM Land Registry, national and local amenity groups, national bodies (e.g. Environment Agency, Health and Safety Executive, DVLA, Historic England). Within the Council, housing benefits records, electoral roll and council tax records and all examples of areas where information relevant to the investigation can be located.

10.4 Consequences of unauthorised development

Property owners should be aware that development that does not benefit from the necessary planning permission is unauthorised. Any unauthorised development could delay or potentially prevent a future sale or re-mortgage of the property if the relevant permissions do not show up on Local Land Charge Searches. Additionally any formal enforcement notices served will be registered on the Council's Local Land Charges Register and will appear during any searches on the property. Consequently it is in the owner's interest to have all necessary planning permissions in place and any enforcement issues resolved.

10.5 Power to enter land

Upon receipt of a complaint the planning enforcement officer will usually contact you to arrange a mutually convenient site visit, however the site may be visited or monitored without advanced warning being given. The site visit may be unaccompanied and the land owner or developer does not have to be present. Should the land owner or occupier not have been present at the time of the initial site visit and it was not possible to gain access, or should it be necessary to contact the land owner or occupier after establishing that there is a breach of planning control on the site, then a letter will be sent to the owner/occupier. The letter will request contact to be made with the planning enforcement officer and in some cases requiring specific actions taken within a specified timeframe.

10.6 Council planning enforcement officers are authorised under Section 196A of the Town and Country Planning Act 1990 to enter, at any reasonable hour and when it is reasonably necessary, any land to ascertain whether there is or has been a breach of planning control, without the need to obtain a warrant of entry. If it is necessary to enter your house (and not just the garden) then you are entitled to 24 hour's notice. Denying access to the investigating officer is an offence and although the officer will seek the co-operation of the owner/occupier of the premises through discussion or service of a Notice of Intended Entry; the Council may apply to the Magistrates Court for a Warrant under Section 196B of the Town and Country Planning Act 1990.

10.7 **Development Monitoring**

Within the Planning Enforcement Team sits the Compliance Officer function. This role carries out proactive monitoring of developments within the district. Their main responsibilities and duties are:-

- Monitor and inspect on-going and completed development sites to ensure compliance with approved plans and planning conditions
- Develop relationships with key developers in the district to ensure consistency and efficient delivery of development in the district

This role will work closely with the Development Management Team and the planning enforcement officers to ensure compliance with planning control. This will include taking initial action to resolve non compliance.

11 **Additional Information**

11.1 **Performance Indicators**

The Council will monitor the enforcement service using performance indicators which focus on the number of enforcement cases, time taken to investigate, and the outcome. The performance will be reviewed monthly and reported to the Council's relevant Portfolio Holders.

11.2 **Confidentiality**

The name and address of those informing the Council of a possible breach of planning control will be kept confidential. However, requests for total confidentiality with regard to the information supplied limits the ability of the Council to take action and cannot be guaranteed if the case were to be considered in the Courts. The complainant will be advised at the outset or at the appropriate time.

11.3 **Anonymous Complaints**

Anonymous complaints are difficult to investigate, particularly where extra information is required. They also prevent us from being able to provide feedback on the outcome of any investigation. For these reasons, complaints will only be investigated where required contact details are provided unless the complaint relates to potential criminal acts.

11.4 **Contact Us**

If you wish to discuss an alleged breach of planning control or require information please contact a member of the planning enforcement officer at

environmental.protection@nwleicestershire.gov.uk or visit the Council's website www.nwleics.gov.uk

11.5 Enforcement Register

In accordance with section 188 of the Town and Country Planning Act 1990, the Council holds a register of all enforcement notices, stop notices and breach of condition notices served in the district. This is available at https://www.nwleics.gov.uk/pages/development_control_enforcement

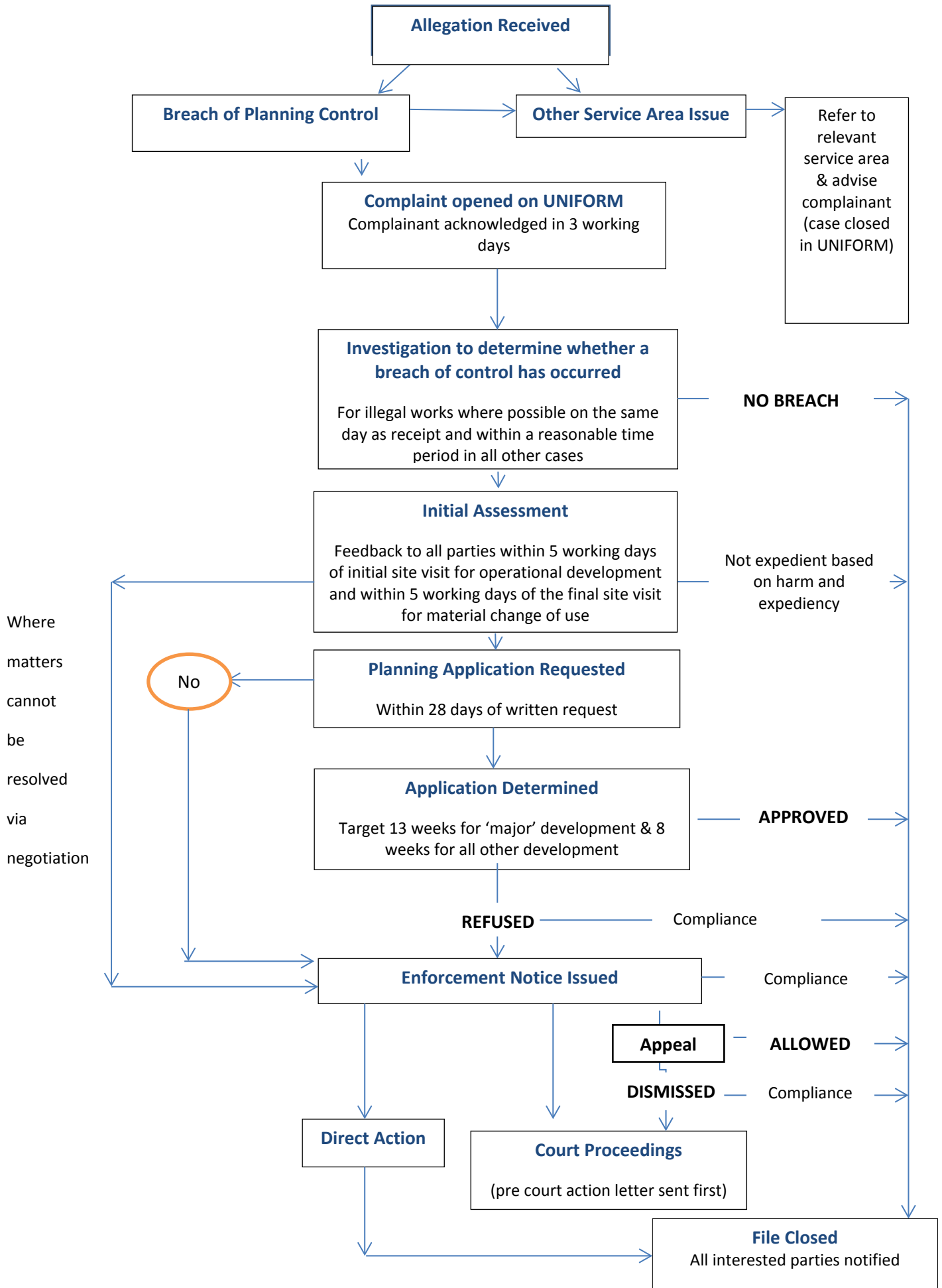
11.6 Comments, Complaints and Compliments

In accordance with the Council's complaints and compliments procedure any person wishing to make a complaint or comment about the service they received or how their case was dealt with, they should contact the Council via https://www.nwleics.gov.uk/pages/complaints_comments_and_compliments or call 01530 454545.

11.7 Physical and Verbal Abuse Towards Officers

The Council will not tolerate any physical or verbal abuse towards its officers and where necessary will use legal action to prevent abuse, harassment or assaults.

APPENDIX 1 - The Enforcement Process



APPENDIX 2 – The Enforcement Toolkit

There are a number of powers granted to the Council as the Local Planning Authority that allow various types of notices to be served. Failure to comply with these notices is an offence

Planning Contravention Notice (PCN)

Where it appears as though there may have been a breach of planning control in respect of any land, the local planning authority may serve a PCN requiring information about activities on the land. There is no right of appeal against a PCN.

Section 330 Notice

To enable a Council to exercise other powers under the provisions of the Town and Country Planning Act 1990, the local planning authority may serve a S330 Notice requiring information as to interests in land, including ownership and occupation details. There is no right of appeal against a Section 330 Notice.

Enforcement Notice

If it is expedient to do so, an enforcement notice may be served where the local planning authority believe there has been a breach of planning control involving an unauthorised material change of use, operational development or breach of a condition. The enforcement notice will state the reasons for action being taken and specify the steps which the local planning authority requires to be taken in order to remedy the breach. There is a right of appeal by recipients of the notice to the Planning Inspectorate

Stop Notice

In certain cases, a stop notice can be served in order to cease an unauthorised activity on the land. A stop notice can only be served at the same time as, or after, the service of an enforcement notice. There is no right of appeal against a stop notice, only the enforcement notice to which it is attached. The local planning authority will be at risk of compensation if it is used in inappropriate cases.

Temporary Stop Notice (TSN)

In certain cases a TSN can be served before an enforcement notice has been served in order to immediately cease unauthorised activity (a use and/or a building operation) on the land. These notices remain in effect only for a maximum of 28 days.

Breach of Condition Notice (BCN)

A BCN may be served where a condition attached to a planning permission is not being complied with. The BCN will specify the steps which the local planning authority requires to be taken in order to secure compliance with the condition as is specified in the notice. There is no right of appeal against a BCN to the Planning Inspectorate however recipients of such notices can appeal the notice in the Magistrates Court.

Section 215 Notice (Untidy Land Notice)

A local authority has the power to issue a notice under Section 215 of the Town and Country Planning Act 1990 if the amenity of part of its area is adversely affected by the condition of a property or area of land. The notice requires such steps as may be specified for remedying

the condition of the land (includes buildings). There is no right of appeal although before the notice takes effect an appeal may be made to the Magistrates Court.

Discontinuance Notice

The Town and Country (Control of Advertisements) (England) Regulation 2007 allows the local planning authority to serve a discontinuance notice against any advertisement, or the use of any advertisement site, which normally has the benefit of deemed or express consent, to remedy a substantial injury to the amenity of the locality or if it is considered to be a danger to members of the public. An appeal can be made to the Planning Inspectorate against this notice

Tree Replacement Notice

A Tree Replacement Notice can be served by the local planning authority where a protected tree has been unlawfully removed, uprooted, or destroyed without prior consent, requiring, within a specified period, the replanting of a tree of a specified size and species. An appeal can be made to the Planning Inspectorate against this notice

Hedge Replacement Notice

A local planning authority may issue a Hedgerow Replacement Notice requiring the owner to replant a hedgerow of an appropriate size and species if a hedgerow has been removed in contravention of the Hedgerows Regulations 1997. An appeal can be made to the Planning Inspectorate against this notice

Community Protection Notice

The purpose of the Community Protection Notice is to stop a business, organisation or person over the age of 16 committing anti-social behaviour which spoils the community's quality of life. It can be used to deal with particular on-going problems or nuisances which negatively impact on or affect the community, by targeting those responsible. It can cover a wide range of anti-social behaviours and can be used against a wide range of perpetrators. A Community Protection Notice can include a requirement to stop doing something, to start doing something, or to take reasonable steps to avoid further anti-social behaviour.

Notice of Intention to Inspect

This notice is formal confirmation of the local planning authority's intention to enter land without a warrant. If entry to the land (or any part of it) is refused, that person obstructing the officers will be committing an offence and the local planning authority will obtain a warrant to gain entry. There is no right of appeal against a notice of intended entry.

Prosecution

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of the notices referred to above. The Council will also consider commencing a prosecution in the Courts where illegal works have been carried out to protected trees and hedgerows, unauthorised works to listed buildings, demolition in a Conservation Area and illegal advertisements. Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. Where a criminal offence has occurred, and the Defendant(s) has been found guilty, the local planning authority may request that the Court make a Confiscation Order under the Proceeds of Crime Act 2001. The Confiscation Order will relate to any financial benefit arising from a criminal activity.

Confiscation

Where a defendant is convicted, the Council can apply for the case to be transferred to the Crown Court prior to sentencing for a confiscation order to be considered under the Proceeds of Crime Act 2002. A confiscation order is an order for the defendant to pay the amount of his benefit arising from crime to the State.

Injunction

Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause exceptional harm. Injunctions can also be applied for if the Council is made aware of a potential serious breach of planning control and where it can provide evidential information to support its case.

Direct Action

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a Section 215 (Untidy Land) notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Sections 178 and 219 of the Town and Country Planning Act 1990 (as amended) to: -

- enter the land and take the required steps; and
- recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

Planning Enforcement Order

This is a new provision introduced in the Localism Act 2011 which came into force in England and Wales in 2012. This measure is used where a breach of planning control has been concealed, and where the Local Planning Authority can show 'deliberate concealment' of a breach of planning control. The local planning authority may apply to the Magistrates Court for a planning enforcement order.

APPENDIX 3 – Complaints that do not relate to breaches of planning control

Boundary disputes and other land ownership disputes

We do not keep records of land ownership details and do not become involved in land ownership disputes. Land ownership is a civil matter between neighbours and should be pursued by other means, and any queries relating to land ownership directed to the Land Registry.

Breaches of property deeds or covenants

The planning department does not investigate issues arising out of property deed issues or covenants relating to a property and have no power in ensuring that they are upheld. Any complaints regarding deeds or covenants being breached are civil matters and complainants should seek legal advice.

Dangerous structures or damage to property

Concerns over dangerous structures are not a planning matter, but can be investigated by the Council's building control section. Alleged damage to property is a civil matter between the parties concerned.

Highway obstructions or breaches occurring within the public highway

Any vehicles causing an obstruction on the highway, commercial vehicles parking on grass verges or in residential areas and any other matters on the public highway are matters for the highways authority or the police.

Noise, disturbances, general pollution and enviro crime

Smell, noise disturbances and any other pollution complaints are dealt with by the Council's Public Protection Team

Health and safety and site security

Concerns over site security and general health and safety issues are civil matters or could possibly be looked into by the Health and Safety Executive.

Blocking of a designated right of way

The blocking of a right of way (where no development has occurred) or any other issues concerning a right of way should be directed to the Public Rights of Way Officer at Leicestershire County Council. Telephone: 0116 2323232.

Party Wall Act

The local planning authority cannot get involved in matters relating to the Party Wall Act. Any issues in relation to this are a civil matter and you should seek legal advice. Further information can be found at www.planningportal.gov.uk

Trespass

The local planning authority cannot investigate complaints concerning alleged trespass. You should contact the police or seek legal advice in this instance.

Loss of property value and/or loss of view

As planning enforcement operates to protect the public interest and not the interest of specific individuals these matters are not planning issues and will not be taken into account

Internal works to a non-listed building

Structural works may be subject to building control regulations and should be directed to the Councils' building control team

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

- Parking a caravan within the residential boundary of a property, provided that its use is incidental or ancillary to the main dwelling
- Clearing land of vegetation unless it is subject to planning protection through a planning condition
- Operating a business from home where the residential use remains the main use and there is no serious harmful impact on neighbours amenity
- Vexatious and/or malicious complaints which have no planning grounds or evidence to substantiate them.