

**ISLE OF WIGHT COUNCIL PLANNING ENFORCEMENT POLICY**

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# ISLE OF WIGHT COUNCIL PLANNING ENFORCEMENT POLICY

## SUMMARY

- The purpose of this document is to set out the planning enforcement policy that will be adopted by the Isle of Wight Council in exercising its duties and functions as Local Planning Authority.
- The policy is intended to identify clear aims, priorities and values outlined for the benefit of any member of the public how the Council will respond to an alleged breach of planning control.
- In addition, the policy will set out the Isle of Wight Council's position with regards to the level of proactive enforcement work that will be undertaken.
- The overall intention is to set out the customer service level that will be provided and also create a framework for the management and reportage of the enforcement service.
- The legislative framework that underpins enforcement action is based on the Planning Acts. Although the Acts give discretion on the exercise of powers available to control unauthorised development it is important to clarify those circumstances when it is decided to take formal action or when it is decided not to take any formal action.
- With only a few limited exceptions a breach of planning control is not a criminal offence.
- Where a breach of planning control occurs there must be a simple clear strategy to remedy the breach within a realistic timescale that will be followed in the majority of cases.
- When the breach relates to a business, due regard must be had to the impact on the business of any enforcement action. The balance which needs to be struck in deciding how to respond to a breach of planning control is that of proportionality, weighing up the conflicting aims of the breach against the adopted planning policies and the wider public interest.
- The first principle must be to consider whether a breach can be resolved through the submission of a retrospective planning application but with such a request set within a clear realistic timescale. Relocation is also an option but again must be set within a realistic timescale. Only as a last resort will the Council consider requiring the use to cease but again set within an appropriate timescale.
- Service aims should reflect those of the Local Council as expressed through the Unitary Development Plan which provides the planning framework to guide new developments throughout the Island and is used as a basis for dealing with planning applications and protecting and enhancing the environment.
- The policy will also have regard to other policy documents produced by the Isle of Wight Council including the Community Strategy and Corporate Plan and also recognise that enforcement must operate within the framework set by other national legislation relating to the Human Rights Act and the Regulation for Investigation Procedures Act.

- It is the policy of the Isle of Wight Council not to deal with anonymous complaints.
- The Council will not become involved in any disagreements between property owners in matters which fall outside the remit of its function as Local Planning Authority.
- Planning enforcement is the general term used to cover the broad spectrum of actions available to a Local Planning Authority to remedy a breach of planning control. Whatever the nature of the complaint, the Authority will follow the same basic procedure in processing that complaint.
- It is the policy of the Isle of Wight Council to deal with 80% of complaints from first notification through to an early resolution or the point where appropriate enforcement action is proposed within an eight week period.
- The policy identifies 14 steps within the processing of a complaint to assist it in meeting this target. Particular relevance are the following deadlines.
  - Site visited within ten days of receipt of complaint.
  - Property owner presented with options to remedy the confirmed breach within fifteen days of receipt of original complaint with a deadline of twenty eight days to respond.
- Although the Council will seek to meet the target dates there will be occasions when the timescale slips or where an investigation becomes protracted.
- The Council will give specific priority to complaints of a certain nature as set out in the policy with the intention of getting an Officer on site within twenty four hours.
- It is not intended to prioritise complaints based on their source but focus on the nature of the alleged breach of planning control itself.
- Prioritisation of complaints is considered to reflect the broader policy aims of the Isle of Wight Council.
- The Council has for a number of years recognised the importance of proactive enforcement work and proposes.
- The Local Planning Authority already undertakes degree of proactive enforcement work by monitoring the implementation of approved schemes.
- As a fundamental principle, the Local Planning Authority considers that the primary responsibility for ensuring full compliance with an approved scheme rests with the developer.
- It is not possible for all new developments to be fully monitored and householder proposals, such as extensions and detached buildings are not visited unless there is a specific identified reason for doing so.
- Subject to available resources the Council proposed to expand its proactive enforcement work to investigate a number of subject areas which are considered topical and highly relevant. These are approvals relating to:

Agricultural Reservoirs

Minerals and Waste Disposal Sites

Motor sports activities

Building conversions to create holiday units.

- It is proposed to review the level of work that is being achieved relating to these areas of investigation on an annual basis.
- All complaints will be monitored against the steps and performance targets set out in the policy with quarterly reports to the Development Control Committee on the level of achievements reached. This is in addition to a quarterly report outlining progress on any authorised enforcement action including an update on any proposed court action.

# **SECTION ONE**

## **FORWARD**

- 1.1 The purpose of this document is to set out the Planning Enforcement Policy that will be adopted by the Isle of Wight Council in exercising its duties and functions as Local Planning Authority when:-
- (a) Undertaking investigations into reports of unauthorised development
  - (b) Taking appropriate action following investigations
  - (c) Undertaking monitoring of any development schemes that have been approved following the submission of a planning application
- 1.2 This Policy is intended to identify clear aims, priorities and values and outline for the benefit of any member of the general public how the Council will respond to an alleged breach of planning control. In doing so it will:-
- (a) Consider the type of breaches that occur
  - (b) The procedure to be followed in an investigation
  - (c) The response times within which a remedy to that breach will be achieved.
- 1.3 In addition, the Policy will set out the Isle of Wight Council's position with regards to the level of pro-active enforcement work that will be undertaken which includes the degree of commencement checking of new development that will take place.
- 1.4 The overall intention is to set out the customer service level that would be provided and also create a framework for the management and reportage of the enforcement service.
- 1.5 This policy document is broken up into a number of sections starting with the background to enforcement and the current workload carried by the Enforcement Team. The document then moves on to the 'core' sections setting out the procedure for dealing with complaints and the timescales within which each step will be achieved. The need to respond more urgently to certain allegations is recognised in the prioritisation section whilst the level of proactive work already undertaken through commencement checking and potential work in a few limited specified areas is discussed. The final section outlines how the service will report on performance to the Development Control Committee.
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# **SECTION TWO**

## **INTRODUCTION**

- 2.1 The legislative framework that underpins enforcement action is based on the Planning Acts. Although the Acts give discretion to the Local Planning Authority on the exercise of powers available to control unauthorised development, it is important that the public is

aware of the circumstances under which the Local Planning Authority will exercise these powers to take formal action or when it decides not to take any formal action against a breach of planning control.

The following are considered to be key parts of any Enforcement Policy:

1. Consistency
2. Fairness
3. Proportionality
4. Openness
5. Accurate record keeping

2.2 The general approach to enforcement will be governed by the guidance outlined in Planning Policy Guidance Note 18. This identifies the following issues for consideration.

1. The decision whether to pursue enforcement action rests with the Local Planning Authority.
2. The Authority should be able to justify, if required, any decision not to take action.
3. The decisive issue in considering the severity of a breach of planning control is whether the activity has an unacceptable effect on public amenity that merits protection in the public interest.
4. The remedy should always be commensurate to the scale of the breach to which it relates.
5. Any attempt to negotiate a voluntary remedy should be set within a clear timescale with particular regard to statutory time limits for taking such action.

2.3 With only a few limited exceptions, which are unauthorised works to a Listed Building, the display of an unauthorised advertisement and damage to trees covered by a Preservation Order, a breach of planning control is not a criminal offence but simply creates a situation whereby a development is unauthorised. This is recognised in legislation and consequently the ability to seek retrospective planning consent is an accepted practice and one tool through which a remedy to a breach of planning control can be resolved.

2.4 In certain circumstances, such a breach can be a genuine inadvertent action. The lack of clarity in the legislation can create misunderstandings resulting in minor developments taking place, particularly with regards to householder proposals. In other cases a clear wilful breach of control may have occurred. Nevertheless, however a situation has arisen, a breach of planning control invariably exhibits a physical change on the ground or the commencement of some use. Any unauthorised development can diminish public confidence in the planning system, undermining those actions of people who have followed the correct procedure and can, under certain circumstances, give the impression of inaction by the Local Planning Authority. Accordingly, where a breach occurs there must be a simple clear strategy to remedy the breach within a realistic timescale that will be followed in the majority of cases.

2.5 Where a breach of planning control relates to a business, due regard must be had to the impact on the business of any enforcement action. The balance which needs to be struck in deciding how to respond to a breach of planning control is that of proportionality, weighing up the conflicting aims of the breach against the adopted

planning policies and the wider public interest.

- 2.6 In accordance with guidance, the first principle must be to consider whether it is possible to resolve any breach through the submission of a planning application but with such a request set within a clear and realistic time scale. Alternatively, the relocation of the development may also be an option set within a realistic timescale. Only as a last resort will the Council consider the total cessation of the activity but again set within an appropriate timescale.
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## **SECTION THREE**

### **BACKGROUND**

#### **(i) Policy Context**

- 3.1.1 Service aims should reflect those of the Local Council as expressed through the Unitary Development Plan but they should also be strongly influenced by national legislation and guidance.
- 3.1.2 With regards to national policy, this includes the Town and Country Planning Act 1990, Planning (Listed Building and Conservation Areas) Act 1990, Planning and Compensation Act 1991, General Permitted Development Order and other legislation including Planning Policy Guidance Note 18.
- 3.1.3 With regards to the local policies, the Isle of Wight Unitary Development Plan (UDP) was adopted in May 2001 and provides “the planning framework to guide new development throughout the Island and is used as a basis for dealing with planning applications and protecting and enhancing the environment”.
- 3.1.4 In addition to the UDP the Isle of Wight has embarked on a family of other documents including the Community Strategy 2002 – 2012 which sets out seven themes of which an effective enforcement policy can make a positive contribution to the achievements of the strategy outlined in the plan. Appendix A identifies those items most closely associated with an effective enforcement policy.
- 3.1.5 The Isle of Wight Council Corporate Plan 2002-2005 sets out a strategic framework for the Council’s activities consisting of six key goals. Of specific reference to any effective enforcement service are the goals of ‘protecting the Island’s natural environment’ and ‘encouraging job creation and economic prosperity’.
- 3.1.6 Any contemporary enforcement policy must also operate within the framework set by the Human Rights legislation and those governing investigation work (Regulations for Investigations Procedures Act).
- 3.1.7 The overall aim of the Enforcement Policy is to protect the quality of the natural and built environment of the Isle of Wight through effective enforcement of planning control.

#### **(ii) Current Resources Allocated to Enforcement**

- 3.2.1 The Enforcement Team consists of five members, a Team Leader, two Enforcement Officers, who deal with complaints on roughly an East/West split, one Enforcement

Officer who deals specifically with checks on commencements of new developments and an Enforcement Assistant who provides administrative support and undertakes both some investigation work and commencement checking.

- 3.2.2 A list of the post holders and contact telephone numbers during normal office hours is attached as Appendix B.
- 3.2.3 The telephone number to contact the enforcement service out of normal office hours is 821105.
- 3.2.4 Outside normal working hours a complaint will be assessed to determine if an immediate response is required or it can wait until the office opens. The procedure for initiating an out of hours call out when an alleged breach of planning is reported is outlined in Appendix C.

**(iii) Current Workload**

- 3.3.1 In 2002 456 complaints were received. These can be broken down into the following categories:-

- Operational Development (i.e. new building works) – 48%
- Changes of Use – 21%
- Breaches of Condition (e.g. operating hours of takeaways) – 10%
- Adverts – 5%
- Untidy land – 5%
- Unauthorised works to Listed Buildings – 2%
- Other – 9%

- 3.3.2 The nature of complaints received encapsulates the full range of development proposals including, household developments, business operations, changes of use and compliance with conditions such as the opening hours for takeaway facilities.
- 3.3.3 Of the 456 complaints, approximately one third (158) generated planning applications whilst 28 Enforcement Notices were served. These figures indicate that most breaches were remedied by one of the following measures:-

- (a) The matter was not an issue covered by planning legislation or control.
- (b) Development was involved but did not require the formal consent of the Local Planning Authority, i.e. it fell within householder permitted development rights.
- (c) The proposal was development for which planning permission had already been approved.
- (d) The proposal was development for which planning permission was subsequently approved. (Appendix D outlines the benefits of the retrospective application procedure.)
- (e) The operator ceased the use or removed the unauthorised structure.

The table attached as Appendix E shows the enforcement statistics for the past seven years.

- 3.3.4 Just as the number of new planning applications being determined continues to rise, so too does the number of developments taking place on the ground. The significant



reduction in the commencements monitored, shown on the table, for the year 2002 is a reflection of a recognition at that time that monitoring all sites was unnecessary and an inefficient use of limited resources. Accordingly, a revised procedure for commencement checking was initiated giving priority to major development sites. Notwithstanding this review in the 10 months of March to December 2002 a total of 335 site visits were undertaken as part of this aspect of the enforcement service.

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## SECTION FOUR

### SOURCES OF COMPLAINTS

- 4.1 The Local Planning Authority currently receives complaints from a wide range of sources including:-
- (a) The general public
  - (b) Members of the Isle of Wight Council
  - (c) Town Councils and Parish Councils
  - (d) From other Officers within Environment Services and from other Directorates within the Council.
  - (e) Public amenity groups and societies
- 4.2 The complaints have been made by:
- (a) Letter
  - (b) Telephone
  - (c) Visitors to the Seaclose offices reporting alleged breaches verbally to the reception staff
  - (d) E-mail
- 4.3 The degree of information that accompanies the individual complaint can vary from the briefest note about the nature of the activity or the exact location, to a detailed report. Where appropriate, the Local Planning Authority will seek to clarify from any complainant the following information:-
- (a) Precise site location
  - (b) Exact nature of alleged breach
  - (c) Date when breach occurred
  - (d) Information on operator (if known)
  - (e) Request to clarify harm caused to them as a result of the breach
- 4.4 The Authority continues to receive a level of complaints from individuals who fail to give their name or contact details. When a complaint is investigated the identity of a complainant is kept confidential and not disclosed. Under these circumstances, there is no need or justification for someone withholding their name or contact details. In some cases anonymous complaints are either malicious or based around ongoing neighbour disputes unrelated to planning matters. Accordingly, it is the policy of the Isle of Wight Council not to deal with anonymous complaints.
- 4.5 Because of the nature of the service some individuals seek to involve the Authority in neighbour disputes. Whilst the Council has a duty to investigate any complaint it will not become involved in any disagreements between property owners in matters which fall

outside the remit of its function as Local Planning Authority.

- 4.6 The Isle of Wight Council will continue to accept complaints in the four formats outlined above from identifiable parties.
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## **SECTION FIVE**

### **PROCEDURE FOR DEALING WITH COMPLAINTS**

- 5.1 Planning enforcement is the general term used to cover the broad spectrum of actions available to a Local Planning Authority to remedy a breach of planning control. Whatever the nature of the complaint the Authority will follow the same basic procedure (subject to the relevant legislation). Section Seven of the policy outlines other areas of enforcement action but the most frequently recognised relates to allegations of unauthorised development which can lead up to the possible service of an Enforcement Notice. This section will follow the route for such a complaint as typical of the investigation procedure.
- 5.2 A complaint can range from a simple query to an allegation requiring a detailed examination of planning case law with the possible need to take legal advice. In the event that the operator exercises the opportunities which are built into the procedure to challenge any action by the Council, then the investigation can be protracted into months or years with the latter stages involving possible court action or even direct action by the Authority. Notwithstanding, it is possible to identify the more significant stages within any investigation. A simplified flow chart showing the process for dealing with an alleged breach of planning control is incorporated into the main text. Attached as Appendix F is a more detailed copy of a flow chart showing the more significant stages within any investigation.
- 5.3 Within this context it is the policy of the Isle of Wight Council to deal with 80% of complaints from first notification through to an early resolution or the point where appropriate enforcement action is proposed within an eight-week period.

This target shall be achieved by adopting the following procedure:-

- Step 1 On receipt, the complaint will be registered on the enforcement computer database and the complainant advised by letter of the Officer dealing with the investigation, the degree of contact to be kept with the complainant and the intention to resolve the matter within an eight-week period.
- Step 2 An Officer will visit the site (if necessary) within ten working days of receipt of the complaint.
- Step 3 If the complaint is resolved after further clarification following the site visit but without the need to enter the property itself, then the owner of the site concerned will not be alerted unless it becomes necessary to obtain from them further information or arrange a more detailed visit.

- Step 4 If an Officer enters a site which is occupied by a dwelling, or a building, then a card will be left to alert the property owner that a Council employee has been on the land, giving a name and contact number for further enquiries to be made.
- Step 5 In the event that a breach of planning control is found, the land owner will be presented with one of the following options by letter within 15 working days of receipt of the original complaint:-
- (a) Invited to make a retrospective planning application (without prejudice to final decision)
  - (b) Encouraged to re-locate
  - (c) Requested to cease use

The Local Planning Authority will expect the property owner to respond to this request within twenty-eight days.

- Step 6 The complainant will be advised at the time of writing to the property owner the preferred option that is being put forward, and the timescale within which the landowner is required to respond.

In the event that a planning application is made we will normally suspend enforcement proceedings whilst considering a valid retrospective planning application unless there are good reasons not to do so.

- Step 7 At the end of the prescribed period if the use has not ceased and a retrospective planning application has not been made, then consideration will be given to whether formal enforcement action should be taken.

If a minor technical breach has been observed such as a matter relating to a slight variation in excess of permitted development rights, then the Local Planning Authority will exercise its judgement in deciding whether it is expedient to proceed with enforcement action or not. Such an action is consistent with the advice outlined in PPG18.

- Step 8 Should the Authority decide to resolve the matter by the service of an Enforcement Notice, then the developer and the complainant will be advised of this decision. The Local Planning Authority will then liaise with the Council's legal section with regards to the procedure leading up to and including the service of the Enforcement Notice working within the timescale set out in the recently approved protocol. This seeks to serve a notice on a person in 80% of cases within six weeks of the instruction and papers being sent to the legal section.

- Step 9 Where the Authority decides that enforcement action is the most appropriate way to resolve a breach and begins the process towards the service of such a notice, even if an uninvited retrospective planning application is submitted the enforcement action will continue but the Notice will not be issued until the retrospective application is determined unless there are good reasons for doing so.

- Step 10 In those circumstances where a retrospective planning application is refused and the operator appeals that decision or indicates he proposes to appeal, where the Authority considers the breach should be remedied by the service of an Enforcement Notice, then the Notice will be served with the intention that any appeal can deal with all aspects of the case at one time. This will close the loophole of an operator appealing on two separate occasions often months apart protracting the whole situation.
- Step 11 A person served with an enforcement notice has the right to appeal against it to the Secretary of State providing the appeal is lodged before the effective date as set out in the notice. An appeal has the effect of stopping the clock on the timetable prescribed in the notice until the appeal is determined.
- Step 12 When the Inspector's decision letter is issued and received by the Local Planning Authority, providing the notice is upheld (even if it is varied) and not quashed (cancelled) then the date of the decision letter becomes the new effective date for the purposes of the notice.
- Step 13 In the event that the Enforcement Notice is not complied with, discussions with the Council's Legal Section on pursuing the matter through the Courts by means of a prosecution will be undertaken. Even if a prosecution is successful it will only result in a monetary fine and may not achieve a remedy to the matter specified in the Enforcement Notice. Whilst further prosecutions are a consideration together with seeking an injunction in the High Court, the Local Planning Authority has the power to enter the land and undertake direct action to achieve compliance with the notice and recover those expenses reasonably incurred.
- Step 14 Once compliance with the terms of the Enforcement Notice are achieved then the relevant parties can be notified and the case closed.

#### **5.4 How Long Can the Process Take?**

Although the Council will seek to meet the target dates outlined above, there will be occasions where the timescale slips or where an investigation becomes protracted. Among the factors that can result in apparently slow progress are:

- a) The need to gather sufficient information in order to make an assessment whether a breach of planning has occurred.
- b) Continued negotiations with an operator seeking to remedy the breach through the submission of a formal application or relocation.
- c) The length of time taken to determine a retrospective planning application.
- d) Awaiting the determination of an appeal against an Enforcement Notice.
- e) The difficulties arising from the present legislative procedure which can allow an operator to make a planning application even if one is not invited and the problems associated with dealing with appeals against an Enforcement Notice and a planning application where the two are out of synchronisation.

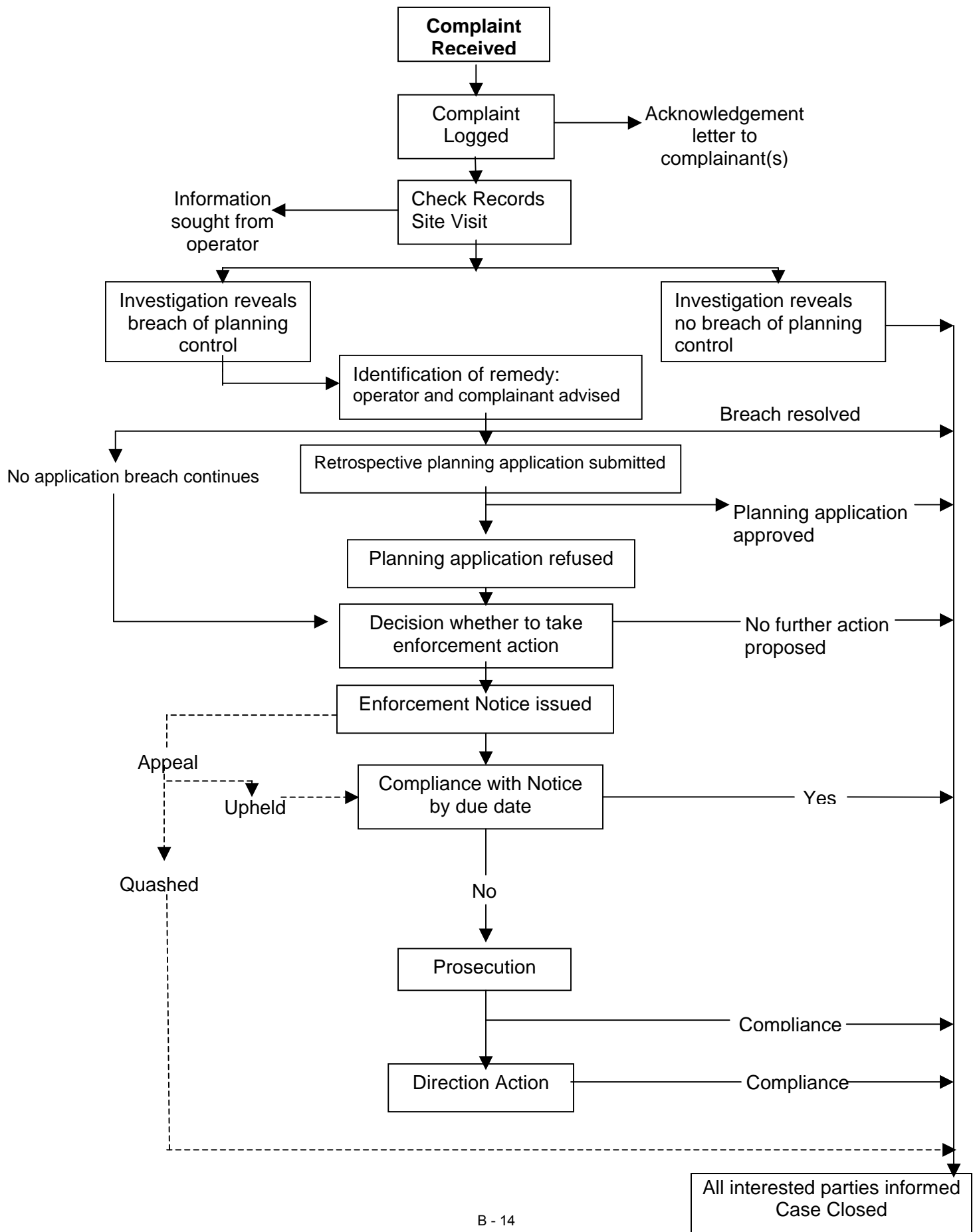
**5.5** It is the policy of this Council to ensure that all appropriate steps have been taken on enforcement matters. Failure to do so may invalidate any formal enforcement action.

## **5.6 Why Action May Not Be Taken?**

Notwithstanding the assessment whether to take action with regard to the policies contained in the Unitary Development Plan, the Local Planning Authority must also consider that there are time limits set within the legislation beyond which an activity or use becomes immune from formal enforcement action. These are commonly known as the four and ten year rule. The four-year rule relates to the use of a building as a dwelling house and the construction of a building. The ten-year rule applies to changes of use and also to the enforcement of any planning condition.

The Local Planning Authority would also have to consider whether the alleged breach was only occasional or sporadic in its nature. For example, in the event that a take-away operated beyond its opening hours on one or two days spread throughout a year then it would be inappropriate to take formal action on that basis alone.

**SIMPLIFIED FLOW CHART OF PROCESS FOR DEALING  
WITH BREACH OF PLANNING CONTROL**



## **SECTION SIX**

### **PRIORITISATION OF COMPLAINTS**

- 6.1 Once received a complaint alleging a breach of planning control will be assessed to determine the degree of urgency that should be given to the matter. As a basic principle, all sites will be visited within ten working days. However, prioritisation will be given to complaints relating to:
- a risk to life or limb
  - allegations relating to irreparable damage to a Listed Building
  - works to a tree (relating to matters not covered by the Countryside Section)
  - development causing irreparable damage to a national or internationally designated site of nature conservation value.
- Under these circumstances, based on the judgement of the Enforcement Team Leader, it is proposed to get an Officer on site within 24 hours.
- 6.2 It is not intended to prioritise complaints based on their source but focus on the nature of the alleged breach of planning control itself.
- 6.3 This prioritisation is considered to reflect the broader policy aims of the Isle of Wight Council as set out in Unitary Development Plan, Community Strategy and the Corporate Plan.
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## **SECTION SEVEN**

### **OTHER PLANNING ENFORCEMENT POWERS**

- 7.1 Certain breaches of planning control are the subject of separate legislative codes. These include:-
- Listed Buildings
  - Advertisements
  - Trees
- 7.2 The Local Planning Authority shall deal with complaints relating to these matters in the same way as set out in the procedure for dealing with complaints.
- 7.3 Unauthorised works to Listed Buildings is a criminal offence and accordingly the approach to an investigation needs to recognise this in any contacts with the relevant parties. Where appropriate a joint investigation will be run with colleagues in the Conservation Section.
- 7.4 The display of an advertisement without the formal consent of the Local Planning Authority or where the sign exceeds the limitations set out within the deemed consent criteria within the Advertisement Regulations is also a criminal offence. The Local Planning Authority has been seeking to curb the excesses of unauthorised advertisements including fly posting and will continue to address this matter within the resources available.

- 7.5 Works to a tree which is located within a Conservation Area or covered by a Preservation Order without having sought or obtained the necessary consent is an offence. Unless the tree is within an active development site reports of unauthorised work will be dealt with by the Countryside Section.
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## **SECTION EIGHT**

### **COMMENCEMENT CHECKING ON NEW DEVELOPMENT**

- 8.1 One area of proactive enforcement work undertaken by the Local Planning Authority relates to monitoring the implementation of approved schemes.
- 8.2 Having resolved to approve a development proposal, it is appropriate to put a procedure in place to ensure that a development is carried out in accordance with the approved plans and in compliance with the agreed conditions. However, as a fundamental principle, the Local Planning Authority considers that the primary responsibility to ensure full compliance rests with the developer.
- 8.3 With one specific Officer allocated to this role and given the number of proposals that are being approved, it is not possible for all applications to be fully monitored. Householder proposals (such as extensions and detached outbuildings) are not visited unless there is a specific identified reason for doing so.
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## **SECTION NINE**

### **SPECIAL PLANNING ENFORCEMENT ISSUES**

- 9.1 In the document Enforcing Planning Control: Good Practice Guide for Local Planning Authorities Councils are encouraged to consider whether in addition to their general enforcement work there are any issues that justify specific attention.
- 9.2 In addition to the standard work of responding to complaints the Council has for a number of years recognised the importance of proactive enforcement by the designation of one of the Enforcement Officers as a Commencements Checking Officer.
- 9.3 The Council will investigate the following subject areas which are considered topical and highly relevant to the planning policies on the Isle of Wight and would also contribute towards the broader aims of the Council.

1. Agricultural Reservoirs

To initiate a check on those schemes relating to the provision of agricultural irrigation reservoirs, to ascertain whether any landscaping conditions were imposed and if so, whether these have been followed up with the submission of a landscaping scheme, its agreement and implementation.



Over the past ten years a number of irrigation reservoirs have been approved and whilst constructed it is believed that any landscaping proposals associated with these facilities have not materialised. The protection and enhancement of the countryside is a fundamental principle of the UDP policies and accordingly this specific area is considered worthy of attention.

## 2. Minerals and Waste Disposal Sites

To develop a formalised procedure for checking on minerals and waste disposal sites.

The Island has a limited number of active mineral and waste sites where the development proceeds for a number of years. The nature of such proposals require periodic visits to ensure that the extraction/depositing of material and the general operations on site accord with the approved plans and conditions imposed.

## 3. Motorsports Activities

There are a number of sites holding consents for ongoing motor sports activities (Tapnell Farm, Smallbrook, Knighton, Chillerton and Arreton). They are all governed by planning conditions for as long as they operate and should be checked for compliance on a regular basis.

These sites may hold permanent or temporary approvals. The nature of the operation requires periodic visits to ensure that the operations of the site accord with the approved plans and conditions.

## 4. Building Conversions to Create Holiday Units

The Council has approved a number of building conversions in rural areas to create holiday units. Checks will be made on compliance with the conditions stipulating

- (a) holiday use only
- (b) limiting time / period of occupancy.

Tourism is considered to be fundamental to the Isle of Wight economy and with self-catering as a growth area it is important that any available accommodation is confined to that market and not used as permanent accommodation.

9.4 The level of resources available to this work is unclear. Members are asked to consider if they wish to put these areas of investigation into any priority order or delete/add new topics to the list.

9.5 It is proposed to review the level of work that has been achieved relating to these areas of investigation on an annual basis adding or deleting items accordingly.

## **SECTION TEN**

### **MONITORING THE FUTURE EFFECTIVENESS OF THE ENFORCEMENT SERVICE**

- 10.1 All complaints will be monitored against the steps and performance target set out in Section 5 of this policy document with quarterly reports to the Development Control Committee on the level of achievements reached.
  - 10.2 The Committee will also be presented on a quarterly basis with a report outlining the progress on any authorised enforcement actions, including an update on any proposed court cases.
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### EXTRACT FROM COMMUNITY STRATEGY 2002 – 2012

#### THEMES

1. **Guaranteeing our quality of life and sustainability.**
2. Improving access to services.
3. Promoting equality.
4. **Supporting jobs in the local economy.**
5. Developing, learning and skills.
6. **Developing tourism.**
7. **A quality built environment.**

(Those themes most closely associated with an effective enforcement policy are outlined in bold)

**DAYTIME CONTACT LIST ENFORCEMENT OFFICERS****General Address**

Directorate of Environment Services, Seaclose, Fairlee Road, Newport, Isle of Wight, PO30 2QS

<b>Name</b>	<b>Position</b>	<b>Telephone Number</b>
Stephen Cornwell	Enforcement Team Leader	(01983) 823592
Peter Barker	Enforcement Officer (West)	(01983) 823573
Lionel Harper	Enforcement Officer (East)	(01983) 823569
Sarah Gooch	Enforcement Officer (Commencements)	(01983) 823573
Hayley Byrne	Enforcement Assistant	(01983) 823569

Officers can be reached on these numbers during normal office hours, i.e. 0830 hours to 1700 hours Monday to Thursday and 0830 to 1630 hours on Friday.

The out of hours telephone number to report an alleged breach of planning control is (01983) 821105.

### PROCEDURE FOR INITIATING AN OUT OF HOURS CALL WITH REGARD TO AN ALLEGED BREACH OF PLANNING CONTROL

The following steps will be followed in making an assessment to determine if an immediate response is required or whether the matter can wait until the office opens during normal working hours.

1. Telephone call and information received by Wightcare.
2. Wightcare contact the following parties in descending order to pass on the information:-
  - Development Control Manager
  - Enforcement Team Leader
  - West Team Leader
  - East Team Leader
3. Based on the information provided the Officer determines whether circumstances justify an immediate response. In making this determination the Officer will rely on the prioritisation criteria outlined in this policy.

### RETROSPECTIVE PLANNING APPLICATIONS

Despite concerns over the processing of retrospective applications they do remain an important tool in the resolution of breaches of planning control. Accordingly, their use should be supported as an active way of remedying a breach.

Of particular concern to the credibility of the planning system are the circumstances where an invitation to apply is declined and the Local Planning Authority must then decide whether circumstances justify the service of an Enforcement Notice or if appropriate some form of under-enforcement action.

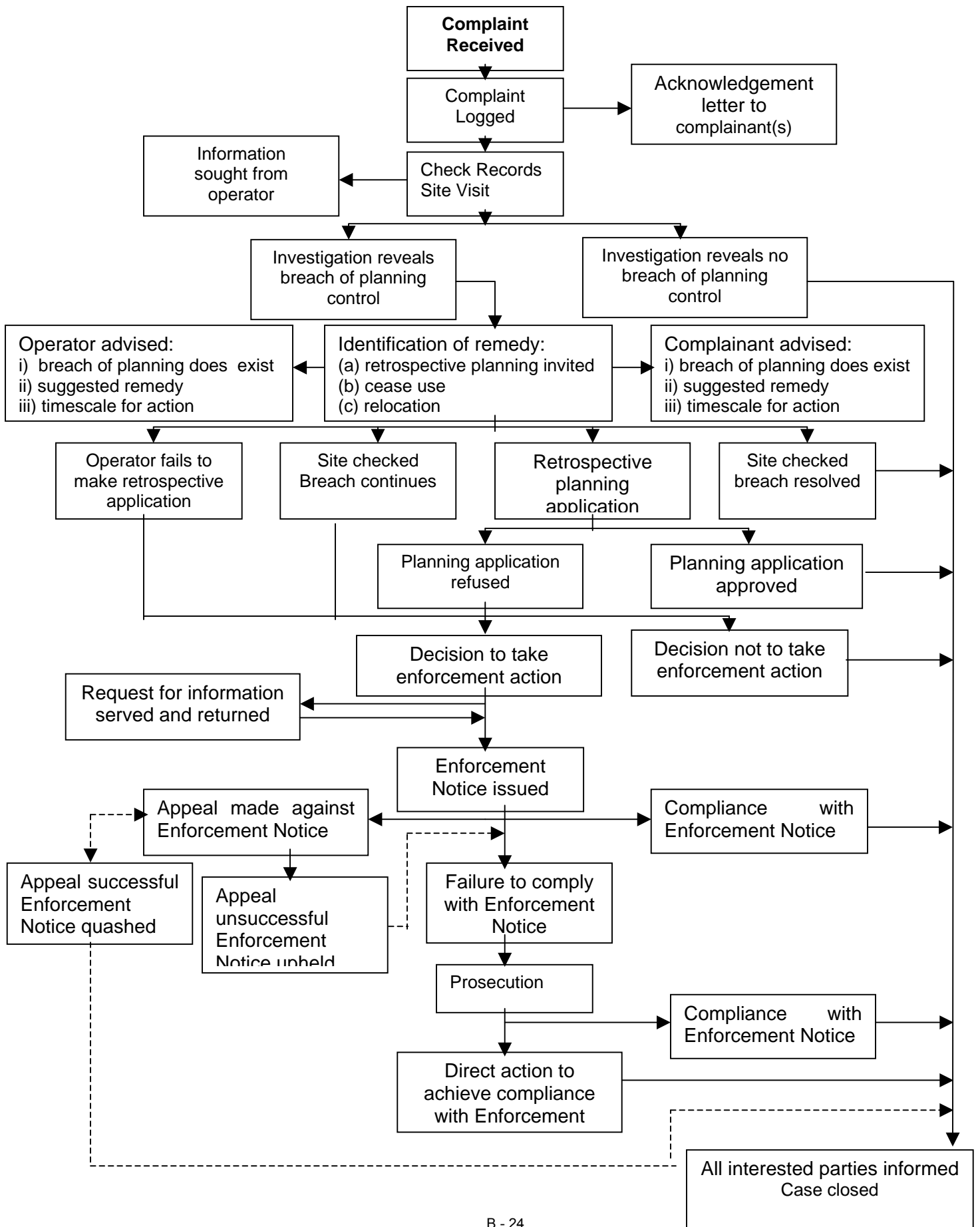
The guidance is quite specific when it states that enforcement action should not be taken merely to regularise a situation where a planning application has not been submitted. Whilst this is a logical position from a legal perspective it does undermine the credibility of the planning system.

There are clear benefits to an individual property owner in making a retrospective application, as this will avoid any potential complication arising with regard to a solicitor's search if the premises are subsequently sold on.

## ENFORCEMENT STATISTICS (CALENDAR YEAR)

	1996	1997	1998	1999	2000	2001	2002
Enforcement Notices issued	6	21	22	23	12	25	28
Breach of Condition Notices issued	13	22	31	24	12	22	21
Planning Contravention Notices issued	31	35	72	21	18	19	14
Section 215 Notices issued	5	3	5	3	0	3	1
Commencements monitored	562	625	622	704	650	630	335
Complaints Investigated	384 (East 163 West 221)	454 (East 243 West 221)	538 (East 331 West 207)	500 (East 280 West 220)	523	495	456
Applications generated by team	158	163	182	177		120	158

**SIMPLIFIED FLOW CHART OF PROCESS FOR DEALING WITH BREACH OF PLANNING CONTROL**





### WORKING WITH OTHER DEPARTMENTS

Planning enforcement requires close liaison with other Departments within the Council. This can be both passing on a complaint which is found to relate to the remit of another section or working closely on resolving a planning breach. Such an example would be working with the Environmental Health Section to clarify if premises were exceeding a noise limit or extraction facilities were exceeding the specified output. We will develop closer ties with the Environmental Health Section and by setting up a programme of formal liaison meetings.

There are opportunities to liaise closer with the Licensing Section and this will also be developed over the coming year.

The Enforcement Section already contributes towards the Joint Working Team which draws on Officers from Planning, Fire Safety and Housing on the inspection of houses in multiple occupancy. Through this partnership the inspection of all high risk premises has been completed with attention now focussed on the medium-high and medium risk premises.

Where a developer decides to use the Council's Building Control Section to monitor a site regarding compliance with Building Regulations then an Officer from that section will make periodic visits to that site. This presents an opportunity to co-ordinate some of the work of the Commencement Checking service. The degree of joint assistance that can be provided will be investigated over the coming year.

Of all sections, contacts with the Council's Legal Section are most active in terms of seeking legal opinions, working on issues relating to Enforcement Notices and if necessary preparation of formal statements for Court action. Regular meetings have now been set up to discuss specific cases. A protocol has recently been agreed setting out response times in the procedure for issuing Enforcement Notices and in the preparation of prosecution statements. It is the aim to achieve these time limits in 85% of cases.

### **RANGE OF NOTICES AVAILABLE TO LOCAL PLANNING AUTHORITY TO OBTAIN FURTHER INFORMATION OR REMEDY A BREACH OF PLANNING CONTROL**

#### **1. Planning Contravention Notice (PCN)**

Power to issue a PCN is contained in Section 171C of the Town and Country Planning Act 1990. Such a Notice can be served where the Local Authority wishes to ascertain if there has been a breach of planning control but requires certain information to clarify whether this is the case. An example would be asking someone to clarify their circumstances with regards to compliance with an agricultural occupancy condition. The Notice itself does not require the alleged breach of planning control to be rectified; it is simply an information gathering tool. There is a twenty one day deadline to submit the response. Failure to satisfactorily respond to a PCN renders the recipient guilty of an offence. Equally, to give false or misleading information is also an offence.

#### **2. Breach of Condition Notice (BCN)**

Power to serve a BCN are contained in Section 187A of the Town and Country Planning Act 1990. A Notice can be issued where a condition attached to a planning permission has not been complied with whether during the development stage or during the life of the development. An example of the former would be the failure to provide fencing to protect trees whilst a development is underway. An example of the latter would be failing to comply with a condition limiting opening hours at a takeaway. The Notice does give the recipient 28 days within which to respond. There is no right of appeal against BCN and failing to comply with the requirement is an offence that can be prosecuted in the Magistrate's Court. In certain circumstances such as the failure to comply with an agricultural occupancy condition the Authority will pursue the matter through the service of an Enforcement Notice rather than a BCN as the matter does relate to someone's accommodation and it is felt appropriate to allow the recipient to test the Authority's case if they so chose through the appeal process. A simplified flow chart for dealing with a breach of planning condition is attached.

#### **3. Enforcement Notice**

Powers to issue an Enforcement Notice are granted by Section 172 of the Town and Country Planning Act 1990. An Enforcement Notice is the most widely used power available to remedy a breach of planning control that relates to unauthorised building works, a change of use or possibly a breach of condition. The Notice must clearly state:-

- (a) The alleged breach of Planning Control
- (b) What is required to remedy the Breach of Planning Control
- (c) The time available to comply with the requirements (compliance period)

The Notice has to be served on anyone having an interest in the land.

There is a right of appeal to the Secretary of State for the Environment. The appeal

form identifies the following grounds:-

- (a) That planning permission should be granted for what is alleged in the notice.
- (b) That the breach of control alleged in the Enforcement Notice has not occurred as a matter of fact.
- (c) That there has not been a breach of planning control.
- (d) That, the time the Enforcement Notice was issued it was too late to take enforcement action against the matters stated in the notice.
- (e) The notice was not properly served on everyone with an interest in the land.
- (f) The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections.
- (g) That the time given to comply with the notice is too short.

An Enforcement Notice takes effect when the time limit available for lodging an appeal (at least 28 days) after service has expired. In the event that an appeal is lodged the Enforcement Notice is suspended pending the outcome. An Inspector can uphold the Notice in its entirety, vary a Notice (providing it is only a minor change) or he can quash the Notice in total. In the event the Notice is upheld (changed or unchanged) then the effective date which now runs from the date of the Inspector's decision letter starts the clock for the lead up to the compliance deadline.

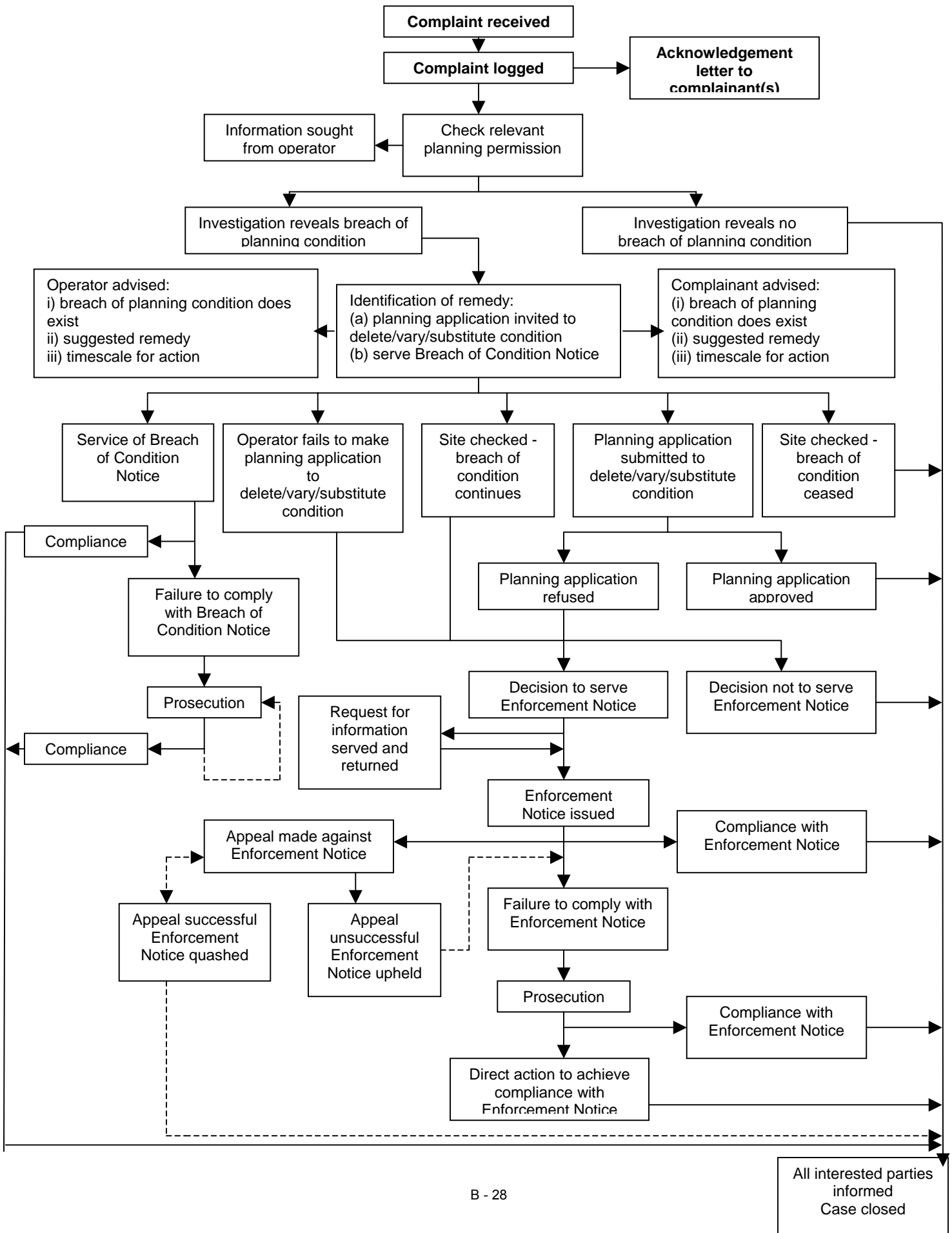
#### **4. Stop Notice**

Powers to issue a Stop Notice is granted by Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an Enforcement Notice and has the general effect of requiring a Breach of Planning Control to cease almost immediately. Compensation is payable in some cases if the Enforcement Notice to which the Stop Notice relates is quashed on appeal and accordingly they are only to be used in exceptional circumstances.

#### **5. Notice under Section 215**

The Council can serve a notice on the owner/occupier of any land or buildings which is in a condition which is assessed as adversely affecting the amenities of the locality. The notice requires the relevant party to remedy the matter by undertaking steps specified in the Notice. Such notices are suitable to remedy the appearance of a building or for example clearing derelict cars but are not particularly suited to remedying problems with regard to untidy garden areas of domestic properties. The reason for this is because the problem may simply reappear as the vegetation grows back. A failure to comply with the Notice can result in legal proceedings in the Magistrates Court.

**SIMPLIFIED FLOW CHART OF PROCESS FOR DEALING  
WITH BREACH OF PLANNING CONDITION**



## APPENDIX I

### GENERAL PUBLICITY AND EDUCATION

There are clear benefits from keeping people generally (not just complainants) informed about the process and results. Highly visible positive action can act as a deterrent to dissuade other people from breaching the regulations.

In addition to generating a summary of the planning enforcement policy, it is also proposed to write two separate leaflets, one looking at the complainant's perspective with the second looking at the operator's perspective. It is also proposed to write an enforcement leaflet addressing the most frequently asked questions.

Use of the Council's own publication (Wight Insight) will be investigated with the intention of generating at least one article for the magazine within the next year. As the Council's Web Site is developed it is intended to utilise this as another means of communicating with the wider public.

1. Summary of Enforcement Policy.
2. Planning Enforcement . How Investigations are Handled A Guide for Complainants.
3. Planning Enforcement . How Investigations are Handled A Guide for Land and Property Owners.
4. Planning Enforcement . Most Frequently Asked Questions.

**Bibliography**

The Town and Country Planning Act 1990

Planning (Listed Building and Conservation Areas) Act 1990

Planning and Compensation Act 1991

The Town and Country Planning (General Permitted Development Order) 1995

The Town and Country Planning (Control of Advertisements) Regulations 1992

Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements (July 1997) (DETR)

Circular 11/95 The Use of Planning Conditions in Planning Permissions

Planning Policy Guidance Note 18 Enforcing Planning Control December 1991

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Enforcing Planning Control . Good Practice Guide for Local Planning Authorities 1997 (DETR)