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# **West Berkshire Council Planning Enforcement Plan – June 2025**

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This document sets out how the Council will deal with potential planning breaches.

It provides information and guidance for residents, developers and other interested parties, on how complaints about unauthorised development are handled. It seeks to balance the concerns of local residents with the rights of owners and sets out the priorities and timescales for responding to complaints, carrying out investigations and taking appropriate enforcement action where necessary.

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# 1. Introduction

- 1.1 Planning enforcement plays a key role in upholding the integrity of the planning process and provides an important contribution to maintaining public confidence in the planning system. As the local planning authority, West Berkshire Council has a duty to investigate reports of alleged breaches of planning control, and the discretion to take formal enforcement action where appropriate. This plan sets out the way in which West Berkshire Council will investigate alleged breaches of planning control and how our decisions on enforcement action will be made. The Council aims to provide an efficient and effective planning enforcement service that is focused on protecting the district against harmful development in a way that is clear, consistent and proportionate.
- 1.2 The statutory basis for planning enforcement is contained in Part VII of the Town and Country Planning Act 1990, the Planning Act 2008 (Commencement No 8) and the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. Enforcement powers available to the Council include the service of Enforcement Warning Notices, Enforcement Notices, Breach of Condition Notices and Stop Notices, as well as the taking of legal proceedings by way of an injunction where appropriate.
- 1.3 Development without planning permission may cause frustration, upset and distress for residents, businesses and visitors to the district. However, to undertake works without first obtaining planning permission is not a criminal offence and the planning legislation specifically allows for the submission of planning applications for development already undertaken. Whilst not in any way condoning wilful breaches of planning control, the Council does not seek to punish people for undertaking works without first obtaining planning permission. There are, however, exceptions where criminal offences arise, including unauthorised works to listed buildings, unlawful advertisements, unauthorised works to trees protected by tree preservation orders, and where there is non-compliance following formal enforcement action.
- 1.4 The use of enforcement powers is guided by the National Planning Policy Framework. Paragraph 60 of the Framework outlines 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.”*
- 1.5 All complaints regarding potential breaches of planning regulations are registered on our system and depending on the severity, will be investigated by an officer who, in conjunction with the Planning Support, Enforcement & Developer Contributions Manager, and the Development Management team where appropriate, will decide what action should be taken. Decisions are based on the merits of each individual

case, and enforcement action is taken only when it is considered rational, reasonable, proportionate and expedient.

## **2. Scope of planning enforcement**

2.1 Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. 'Development' includes:

- building operations (e.g. structural alterations, construction, rebuilding, most demolition);
- material changes of use of land and buildings;
- engineering operations (e.g. groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwellinghouse for use as 2 or more separate dwelling houses

2.2 Planning permission is not required for some categories of work that do not amount to 'development'. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition but is linked to the significance of the change which is made to a building's external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

2.3 Development does not in all instances require a planning application to be made for permission to carry out the development. In some cases, development will be permitted under national permitted development rights. Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.

2.4 There may also be a locally granted planning permission in place that covers the type of development, in the form of a Local Development Order, a Neighbourhood Development Order or a Community Right to Build Order.

2.5 In all other cases it will be necessary to make a planning application to the local planning authority.

- 2.6 If development is carried out without the necessary planning permission, this may lead to enforcement action. The Council's Planning Enforcement team investigate alleged breaches of planning control and seek appropriate resolutions.
- 2.7 The Planning Enforcement team also ensure compliance with other associated legislation, including listed building consent and advertisement consent.
- 2.8 The Council's Planning Enforcement Service can investigate alleged breaches of planning control. This typically includes the following:
- Unauthorised building works or engineering works taking place without planning permission;
  - Unauthorised material changes of use of land or buildings without planning permission;
  - Developments not complying with planning permission, including any planning conditions of obligations (this does not include any covenants);
  - Unauthorised works to listed buildings – both internal and external – without listed building consent;
  - Display of unlawful advertisements without advertisement consent;
  - Listed buildings in serious disrepair; and
  - Where the condition/upkeep of buildings or land is adversely affecting the amenity of neighbouring land.
- 2.9 The Council's Planning Enforcement Service is unable to investigate matters as detailed, but not limited to the following:
- Internal works to a non-listed building, as these are not 'development';
  - Boundary wall disputes and other landownership issues as these are civil matters outside of planning legislation;
  - Party Wall Act;
  - Building Regulations compliance;
  - Legal covenants;
  - Devaluation of property;
  - Obstructions, parking, traffic enforcement and any other matters affecting the public highway\*;
  - Anti-social behaviour\*;
  - Civil neighbour disputes;
  - Dangerous structures that are not listed buildings\*;
  - Statutory nuisances, including noise, odour etc.\*;
  - Events/potential breaches that may occur in the future.
- 2.10 The Council or Partner Agencies (such as Environmental Health, Environment Agency, Police Force, Housing and Council Tax), have other powers to deal with these issues - please see Useful Contacts in Appendix A of this plan.

### **3. Principles**

- 3.1 West Berkshire Council undertake a firm but rational and reasoned approach to regulation based upon the following principles:

3.1.1 **Proportionality**

Enforcement action will be proportionate to the scale of the alleged breach and the seriousness of the harm caused. We will seek to minimise the costs of compliance by ensuring that any action we take is proportionate to the risks. When it is in the public interest to do so, we may prosecute individuals or organisations who do not comply with any formal notice served on them. When it is appropriate, we also have the option of taking direct action, having regard to the degree of harm and public safety.

3.1.2 **Consistency**

We will take the same approach in similar circumstances, where possible, to achieve results. We will investigate each matter on its own merits. We will also be consistent in how we treat customers.

3.1.3 **Transparency**

We will ensure that everyone involved with cases understands our processes and procedures, including what rights of complaint and appeal may be open to them. We may seek feedback from service users to learn and improve.

3.1.4 **Targeting of enforcement action and raising awareness**

Planning enforcement is a high volume, demand-based service. Consequently, targeted enforcement action is very important. Raising wider general awareness of planning management and enforcement will help to reduce unauthorised works and increase public confidence in our service.

3.1.5 **Accountability**

This local enforcement plan document, which has been agreed by the Planning Portfolio Holder and by the Planning Committee chairs, sets our priorities for action. The success of the policy will be monitored and reviewed regularly.

### **4. Limits on taking enforcement action**

4.1 **Timescales**

Section 171B of the Town and Country Planning Act (see also The Planning Act 2008

(Commencement No. 8) and the Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024) sets out time limits for taking enforcement action. In most cases, development becomes immune from enforcement if no action is taken:

- Within **10 years** of substantial completion for a breach of planning control consisting of operational development, where substantial completion took place on or after 25 April 2024
- Within **10 years** for an unauthorised change of use to a single dwelling house where the change of use took place on or after 25 April 2024
- Within **4 years** of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024
- Within **4 years** for an unauthorised change of use to a single dwelling house where the change of use took place before 25 April 2024
- Within **10 years** for any other breach of planning control (essentially other changes if use)

After these periods the Council cannot take action and the development becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period to regularise the situation. This involves providing evidence that proves on the balance of probability that a breach of planning control has occurred for the relevant time period.

#### 4.2 **Listed Buildings and Conservation Areas**

These are also subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990. Carrying out works that affect the special interest of a listed building and the demolition of a building in a conservation area without consent are both criminal offences. Expert heritage advice should be sought if there is any doubt as to whether consent should be obtained and, if in doubt, the council offers a formalised Pre-Application service, before work is undertaken. For listed buildings there is no time limit to taking enforcement action. It is also a criminal offence to carry out unauthorised alterations to a listed building without appropriate permission.

#### 4.3 **Scheduled Monuments**

Although scheduled monument consent is a separate regime, unauthorised works are a criminal offence under the Ancient Monuments and Archaeological Areas Act 1979.

#### 4.4 **Tree Preservation Orders/Ancient Woodland**

It is a criminal offence to cut down, lop, willfully destroy or damage a protected tree without the Council's consent. The Council can prosecute you for breaching a Tree

Preservation Order and also for damaging or destroying areas of ancient woodland. There is no time limit to taking enforcement action.

#### **4.5 Adverts**

The display of advertisements is subject to a separate consent process within the planning system. Parties who display an advertisement in contravention of the planning regulations are committing a criminal offence. For example, by displaying an advert without the necessary consent or without complying with the conditions attached to that consent.

#### **4.6 Minerals and Waste**

Minerals and Waste Enforcement can at times be considered a specialist area of planning control within the Council's development and regulation function and in conjunction with other external agencies. As such, it can sometimes require a different approach to mainstream planning enforcement depending on the circumstances. West Berkshire Council therefore employs specialist officers who should be contacted in the first instance via [Minerals@westberks.gov.uk](mailto:Minerals@westberks.gov.uk) for any help, advice and guidance on monitoring, relevant planning permissions for minerals, waste or Regulation 3 developments and legal agreements attached to minerals and waste sites'.

### **5. Making an enforcement complaint**

- 5.1 Complaints about potential breaches of planning control can only be made using the online form on the Council's website. This ensure that sufficient details are included to enable the Council to effectively categorise the complaint/allegation.

<https://www.westberks.gov.uk/planning-breach>

The following information is requested:

- An accurate description of the location or address for the site.
- A detailed description of the activities taking place including what harm the alleged breach is causing and/or how it affects you.
- Details of those persons responsible for the alleged breach or the landowners (if known).
- The date and times of when the alleged breach took place including when it first started.
- Any other information or evidence that may be able to assist, e.g. a planning application number; any previous problems/ breaches.
- Your name, address, phone number and e-mail address

- 5.2 All the questions/fields on the form should be completed and where possible photographs should be attached.



- 5.3 The Council will not investigate anonymous complaints. It is important that officers can understand the complaint, identify the harm and make a fair assessment. We also need to prevent malicious and vexatious complaints.
- 5.4 West Berkshire Council staff will treat all parties to a complaint with respect, and we expect the same in return. We appreciate that concerns often involve highly emotive matters, however we have a zero-tolerance policy when it comes to abuse of our staff. If we are subject to verbal abuse or any other unacceptable behaviour, we reserve the right to refuse to communicate via telephone and email and will request that all correspondence is in writing via a letter or email sent to the attention of the Planning Support, Enforcement & Developer Contributions Manager. Where a single point of contact will be allocated

We make sure that we meet the requirements of the Equality Act 2010. This includes making sure we consider adjustments for people with protected characteristics.

Some people may have difficulty expressing themselves or communicating clearly and/or appropriately. We will always consider the needs and circumstances that we have been made aware of, before deciding how best to manage the situation. This will include making reasonable adjustments. However, this does not mean we will tolerate abusive language, shouting, or other unacceptable behaviour or actions.

## 5.5 **Confidentiality**

Any details submitted to the Council in relation to an enforcement complaint will be treated with the strictest confidence.

The Council will not reveal the identity of the complaints to the owner or responsible party(s). However, sometimes complainants may be asked to provide evidence to assist further with the matter or for any legal proceedings of the investigation.

In addition, enforcement complaints may be the subject of a Freedom of Information request or if a request is made for all personal data, we hold about a person under the Data Protection Act or Environmental Information Regulations. If such a request is made, we will have to consider the matter for release.

## 6. **Priorities for planning enforcement investigation**

- 6.1 As indicated, the Planning Enforcement service is a high volume, demand-based service. Therefore, it is important that different types of breach are prioritised in a clear and transparent way. The prioritisation set out below is based upon the significance, urgency and seriousness of a reported breach. The categorisation focusses on the potential for planning harm which refers to the negative impacts that an unauthorised development may have on amenity, in the public interest. This can involve issues such as impact upon neighbouring or visual amenity, noise, loss of light, harm to highway safety, environmental harm or other safety considerations.

6.2 All investigations will be carried out thoroughly and accurately in accordance with the following priorities.

<b>Level 1 - Urgent Action (Initial Assessment within 2 working days)</b>
<p>Alleged/potential breaches of planning control where there is a risk of substantial and irreversible impacts on the environment or local community. This may include, for example:</p> <ul style="list-style-type: none"><li>• Damage or felling of TPO trees;</li><li>• Ongoing unauthorised works to a listed building or demolition in a conservation area;</li><li>• Setting up of an unauthorised caravan site where there is an imminent risk of residential occupation;</li><li>• Developments which result in significant danger to the public;</li><li>• Failure to produce, agree or comply with a construction phase emergency plan and construction works are continuing.</li></ul>
<b>Level 2 – High Priority (Initial Assessment within 15 working days)</b>
<p>Alleged/potential breaches of planning control where there is a risk of significant impacts on the environment, and/or significant public interest. These will be cases which are less immediate than Level 1, but where a prompt response is required. This may include, for example:</p> <ul style="list-style-type: none"><li>• Breaches causing significant pollution or traffic hazards;</li><li>• Potential harm to listed buildings;</li><li>• Breaches causing significant ongoing local disturbances;</li><li>• Breaches of condition on major development sites;</li><li>• Significant breaches where there is a risk of imminent immunity from enforcement action;</li><li>• Failure to produce, agree or comply with an operational phase emergency plan.</li></ul>
<b>Level 3 – Standard Priority (Initial Assessment within 40 working days)</b>
<p>Alleged/potential breaches of planning control where there is a risk of planning harm. This will be the priority level for the majority of enforcement cases, and will normally include the following:</p> <ul style="list-style-type: none"><li>• Breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities;</li><li>• Householder developments;</li><li>• Fences, walls, gates and other means of enclosure;</li><li>• Breaches of condition on non-major developments (10 or more dwellings, 1,000sqm or more of floorspace or a site area of 1ha or more);</li><li>• Unauthorised material changes of use.</li></ul>
<b>Level 4 - Low Priority (Over 40 working days or not expedient to investigate)</b>

Alleged/potential breaches of planning control which are unlikely to result in harm and/or are trivial in nature. For example:

- Satellite dishes and flues;
- Building-mounted solar panels;
- Commercial adverts (not harming public safety);
- Temporary breaches;
- Untidy sites;
- Proactive internal referrals from other services within the Council.

Initial desktop study to include previous planning application(s) and/or enforcement investigation(s), establish if Permitted Development Rights are intact and use of online imagery. The outcome will either be an escalation of priority, or closure of the investigation.

Please note: Officers may re-prioritise cases (both up or down) after completing the initial investigation, or receiving further complaints based upon the nature of the alleged breach and its impact.

## **7. Service standards and objectives**

7.1 We recognise the importance of keeping individuals up to date with our progress. Some investigations can take longer than others, but we will deal with all cases in a rational and transparent way.

7.2 Complainants can expect:

- A written acknowledgement within two working days of the complaint being submitted via the Report a Breach online form. The case will be placed in the relevant priority. The decision on the priority rests with the Planning Support, Enforcement & Developer Contributions Manager. The assessment of priority will be made wholly objectively, irrespective of the nature or status of the party making the complaint.
- Site visits and initial assessments to be undertaken in accordance with the 'Timeline' section below.
- To be informed at key stages of the process, when necessary, e.g. the complainant(s) will be advised if a planning application is invited; when a planning application is received; whether an enforcement notice has been served etc.
- To be informed of the final outcome of their complaint.
- In some cases, we may ask a complainant for further details. If the complainant is unwilling to assist, this may result in the Council not being able to pursue the investigation due to insufficient evidence.
- There are no set timescales for the closure of an enforcement case. Investigations and action can take a long time. However, we will seek to provide an update at each significant stage. Complainants can also email the case officer who will respond in line with Service standards.

### 7.3 Owners of the land/properties that are the subject of the complaint can expect:

- Clear and open communication on the circumstances of the alleged breach including an explanation of what steps are required to resolve any breach and the possible consequences if those steps are not taken.
- A thorough, objective and impartial investigation of the complaint before a decision is made.
- To be given an opportunity to put things right, along with information on how long they have to do this and the consequences of failing to do so.
- Formal enforcement action to be taken, if necessary and appropriate, or if attempts to negotiate a remedy fail.
- To be informed in writing if the Council decides to proceed to formal enforcement action and what form that will take.
- Information on how to appeal against notices, where applicable.
- To be informed when the investigation is completed and the case is closed.

Investigating possible breaches of planning permission can be stressful for both the party making the complaint as well as the person under investigation. This is partly due to the different ways in which an investigation can progress, and the timescales involved.

To try to ease concerns and assist with the uncertainty, the enforcement officers will provide updates during an investigation if and when there is a significant change/event and when the case is closed/complete. This will normally be in an email.

## **8. Investigation and assessment of alleged breaches**

### **8.1 Receipt of the complaint**

When a complaint is received by the Council it will be subject to initial screening and assigned a priority level between 1 and 4.

The complainant will receive an acknowledgement within two working days of receipt. Planning Enforcement can only investigate breaches of planning control. Our reporting system asks questions about the breach, allows users to upload documents/photographs and can signpost enquiries to the right service or organisation if it is considered the allegation is not a planning matter.

The Council will not investigate persistent complaints which have previously been investigated and resolved or vexatious or malicious complaints.

### **8.2 Initial assessment**

The aim of the initial assessment is to establish whether there has been a breach of planning control and determine the appropriate first response. In most

circumstances, this will include a site visit by the investigating enforcement officer. Once the initial assessment/site visit has been carried out, we will notify the owner or occupier of the subject site, as to whether it falls into the category of a breach of planning control.

If no breach is discovered the case will be closed and relevant parties will be informed and provided with an explanation as to why the case was closed.

Where the nature of extent of a breach is not straightforward, consideration will be given to serving a Planning Contravention Notice (PCN) to ascertain key facts.

For serious breaches of planning control, consideration will be given to serving a Temporary Stop Notice or seeking an Injunction from the High Court.

## **9. Responses to breaches**

Enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Whilst wilful breaches of planning law are not condoned, where the balance of public interest lies will vary from case to case.

There is no statutory requirement for the Council to take enforcement action against alleged breaches of planning control. Enforcement action is based on planning merit which requires a planning judgement as to whether formal action is appropriate. In some cases, the Council may decide that enforcement action will not be taken and that an alternative approach is more appropriate (for example a retrospective application, further negotiation, no further action etc).

The following are possible outcomes of the investigation.

### **9.1 Breach causing no material planning harm**

The fact that a breach of planning control has occurred does not automatically mean that formal action will be taken. Some breaches of planning control are minor and therefore cause limited or no planning harm (i.e. if an application were to be submitted it would be unconditionally approved).

In these instances, the Council will use its discretion not to take further action as it would not serve a useful purpose or be a good use of our time and resources. We will however advise the offender of the breach of planning control advising that planning permission is required for the works undertaken and of their right to regularise the development retrospectively under Section 73A of the Town and Country Planning Act 1990.

### **9.2 Negotiation to find a solution**

Resolving breaches of planning control can take a long time, particularly when taking formal enforcement action. The amount of time it takes to resolve a breach of planning control very much depends on the severity of the breach combined with the actions and/or reactions of the landowner(s)/occupier(s). Negotiations can often lead to a quicker resolution and to a better overall outcome.

Where appropriate we will seek to negotiate with the owner/occupier and will consider options to address the planning harm resulting from the breach. The negotiation process may involve voluntary remedial works to remove any unauthorised development, the cessation of any unauthorised uses, or steps to limit any breach to a level where there is no planning harm.

### **9.3 Invite a Retrospective Planning Application**

Upon investigating a breach of planning control, officers will consider the likelihood of planning permission being granted for the development upon application. Where appropriate, we will invite the submission of a planning application in an attempt to regularise the breach of planning control. In determining the application, the council could impose conditions on the planning permission to address the harm being caused by the unauthorised development and/or in order for the council to retain control of the development. This approach allows the planning merits of the development to be fully and openly considered.

Applications for retrospective planning permission are considered in the same way as those for proposed development. Although the Council may invite an application, it cannot be assumed that permission will be granted, and then in doing so the Council does not fetter its discretion prior to the determination of any application for planning permission.

The Council may, where it is appropriate and reasonable to do so, suspend any formal enforcement action whilst a retrospective planning application is being considered. However, where appropriate, the council will not allow the application process to unreasonably delay enforcement proceedings. The Council will consider issuing an Enforcement Warning Notice at this stage.

### **9.4 Formal Enforcement Action**

Almost all formal enforcement action is based on planning merits and can therefore only be taken where the development fails to comply with national and local planning policies. In some cases, it will be necessary for the Council to take formal enforcement action against a breach of planning control. Formal enforcement action will be taken where it is reasonable and justified to do so. Such scenarios may include:

- where negotiation has failed within a reasonable timeframe to resolve the breach of planning control occurring
- where a breach of planning control has a serious harmful impact that it requires formal action

When assessing whether formal action should be taken, the Council will ensure that the action is reasonable, proportionate and is in the public interest in order to achieve a satisfactory result. The Council will consider what the effect of formal action will be and if it will have a meaningful outcome. The term expedient or expediency in planning enforcement relates to the 'planning balance' for taking action. It is a decision taken in accordance with planning policies and material planning considerations, not convenience.

All enforcement action follows an investigation and will be taken in accordance with the scheme of delegation.

The full planning enforcement toolkit is described here:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

## **9.5 Appeal / Court Challenges**

Many forms of formal enforcement action are subject to appeal processes and challenge in the courts. Where necessary, the Council will follow due process to defend its actions and pursue the appropriate remedy of breaches of planning control.

The procedure to be followed in the event of an appeal against a notice, or a court challenge is dictated by the relevant authority (The Planning Inspectorate or the Courts). The Council will endeavour to defend its actions in such cases and, where appropriate, recover any incurred costs resulting from unreasonable behaviour on the part of the appellant through the appeal process.

## **10. Compliance**

Once a notice has become effective, the Council will note the compliance date requirement in their systems. A site visit appointment will be carried out to check compliance shortly after the compliance period ends. If at the site visit compliance with a notice is apparent, a letter will be sent to explain that compliance with the notice has been noted on file and the case will be closed.

Where the owner occupier or developer has not fully complied with the requirements of the notice, the Council will proceed with the next stages of the investigation. This will include the consideration of the following options to resolve this breach:

### **10.1.1 Prosecution**

We will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any enforcement notice, or Breach of Condition Notice where the date for compliance has passed and the requirements have not been complied with. Prior to commencing with any legal proceedings, we will need to be satisfied that they are in the public interest and that there is enough evidence to offer a realistic prospect of conviction.

Unauthorised adverts and unauthorised works to any tree the subject of a Tree Preservation Order are offences, and we can initiate prosecution without the need to issue a notice.

### **10.1.2 Removal Notices (advertisements)**

We will seek removal of any structure used to display an advertisement. Where the notice is not complied with, we may undertake the works and recover the expenses for doing so.

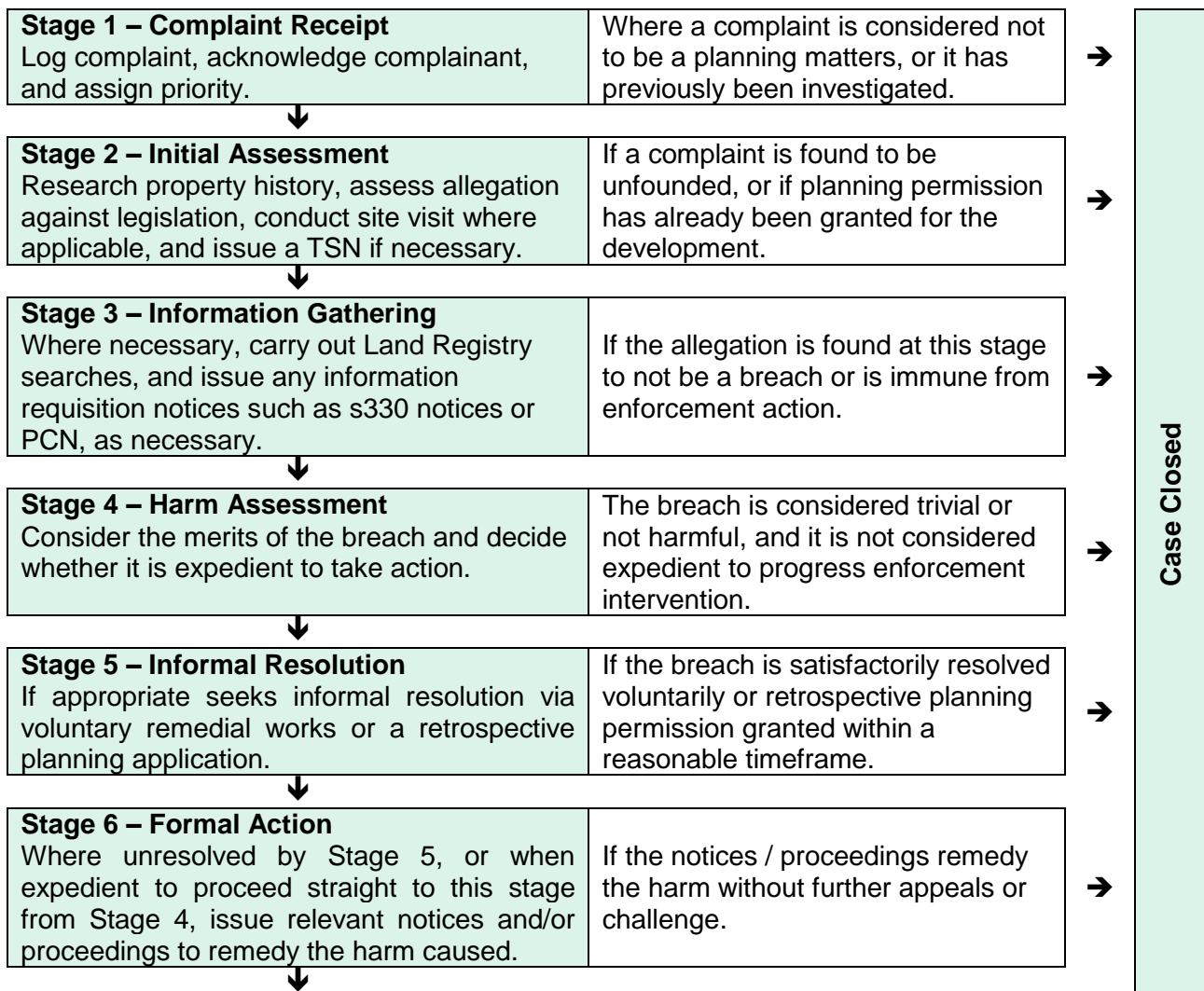
### 10.1.3 Replacement Notices (trees)

It is open to the Council to issue tree replacement notices, requiring trees to be replanted.

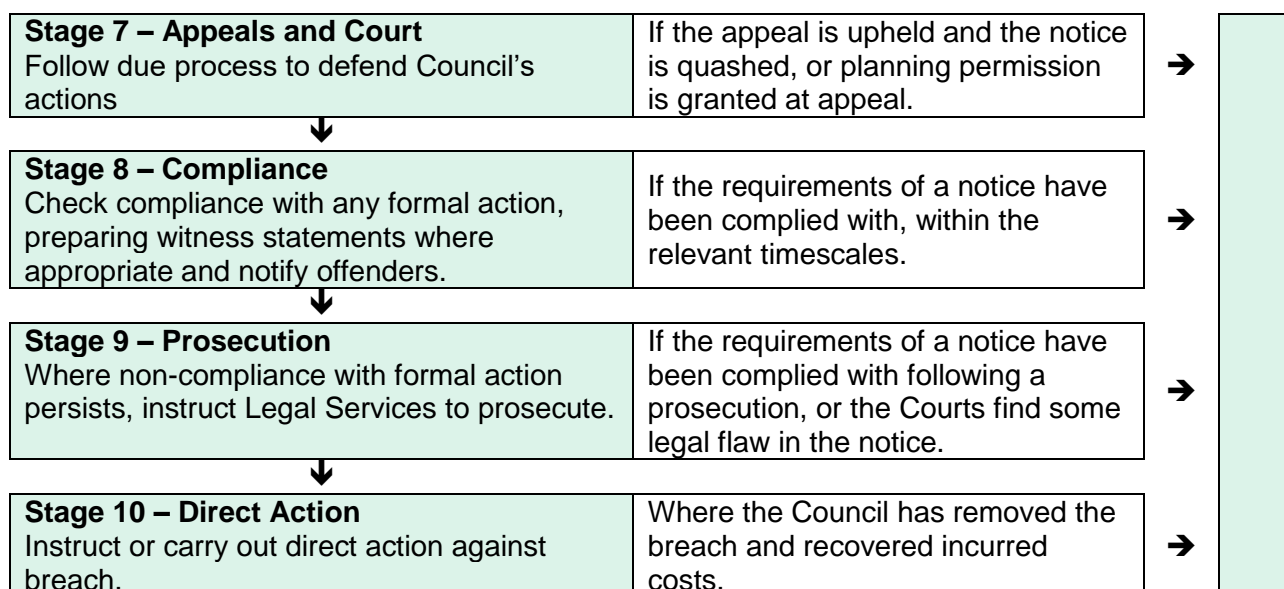
### 10.1.4 Direct Action

Where the terms of an Enforcement Notice or Section 215 notice have not been met within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers to enter the land and take steps to remedy harm. We would seek to recover from the person who is the owner of the land any expenses reasonably incurred by us in doing so.

## 10.2 The Enforcement Process







### 10.3 Proactive Monitoring of Planning Permission

Whilst the responsibility to adhere to planning permissions and comply with associated conditions lies with those undertaking the development, the planning service recognise the importance of addressing harmful breaches of planning control. As a result, where possible and where resources allow, the department may use its own resources and promote cross department liaison to identify breaches of planning control and monitor compliance with conditions imposed on planning permissions, Community Infrastructure Levy (CIL), and Planning Obligations (S106) monitoring.

Local land charges are generally financial charges or restrictions on the use of land which are governmental in character and imposed by public authorities under statutory powers. WBC uses this power to enforce things such as: conditions imposed in a planning permission (these form most charges); Listed Buildings, Conservation Areas; Tree Preservation Orders, Planning and Enforcement Notices. The charge will affect the land rather than the person and if registered correctly, will show up on any search carried out by a person on the land it is registered against.

### 10.4 Equality

As required as part of the Equality Act 2010 Section 149, in the drafting of this plan due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between different groups and foster good relations between different groups. It is not considered that the Enforcement Plan would conflict with the requirements of the Equality Act 2010 or the Council's policy on equality.

## 11. What to do if you are dissatisfied with the Council's decision

There is no third-party right of appeal within the planning system. Enforcement action is therefore taken at the sole discretion of the Council. An investigation will not normally be re-opened, unless significant further information or evidence is provided, showing compelling reason to review a previous decision. To make a request of this nature you should contact the planning enforcement team in the normal manner, providing any new information you think should be considered.

If you think the Council hasn't followed the correct procedures in coming to their decision, then a complaint about the process can be made using the Council's Corporate Complaints Procedure, which can be found here: <https://westberks.gov.uk/complaints>

The subjects of any formal action will have their rights of appeal set out in any enforcement notice they receive.

## 12. Review of Planning Enforcement Plan

Regular reviews of this enforcement plan will be necessary to ensure it remains current with the most up to date government legislation and guidance. Reviews will therefore be carried out when legislation and guidance changes are introduced or if a high number of enquiries are received about a particular part of the plan from customers. We welcome comments on this Planning Enforcement Plan and any other matter relating to the Enforcement Service.

Please contact:

Planning Support, Enforcement & Developer Contributions Manager  
Council Offices, Market Street  
Newbury, RG14 5LD

**Main Number** (01635) 551111

**Email** [planningenforcement@westberks.gov.uk](mailto:planningenforcement@westberks.gov.uk)

*Specific enquiries relating to a particular case should be referred to the case officer or their immediate line-manager.*

## Appendix A – Useful Contacts

Department	Contact Information
<b>Report a Breach</b> The link to our online report a breach form, where all details can be logged securely and photographs, documents can be uploaded.	<a href="#">planningservices</a> – Report a Breach
<b>Do I Need Planning Permission</b> The link to find out if proposed development can be considered as Permitted Development.	<a href="#">planningservices</a> . Find out if you need Planning Permission
<b>Building Control</b> The main purpose of Building Control is to ensure that all building work complies with the Building Regulations. Building Control also investigate buildings and other structures which may be dangerous.	Email: <a href="mailto:help@BCSolutions.org.uk">help@BCSolutions.org.uk</a>
<b>Environmental Health</b> The team regulate a wide range of activities, and operate to a clear enforcement policy of their own. Public Protection Services consists of those matters enforced by the Trading Standards, Environmental Health and Licensing Services	Email: <a href="mailto:ehadvice@westberks.gov.uk">ehadvice@westberks.gov.uk</a>
<b>Empty Homes Team</b> The main purpose of the empty properties team is to help homeowners, potential investors and neighbours to ensure empty properties are returned to use.	Email: <a href="mailto:EmptyHomes@WestBerkshire.gov.uk">EmptyHomes@WestBerkshire.gov.uk</a>
<b>Highways</b> The highways team co-ordinates and monitors public highways in the District.	Visit <a href="https://www.westberks.gov.uk/roadtransportandparking">https://www.westberks.gov.uk/roadtransportandparking</a> for a list of all the areas the highways team cover
<b>Housing</b> The housing team covers all housing which is not owned by the Council	visit <a href="https://www.westberks.gov.uk/housing">https://www.westberks.gov.uk/housing</a> for a list of services and ways to contact the team specific to your complaint
<b>Partnership for Action against Wildlife Crime (PAW)</b> If you witness a suspected wildlife crime in action call 999 immediately and ask for the police.	For all other enquires call 101. For further information on reporting, or visit <a href="https://www.gov.uk/government/groups/partnership-for-action-against-wildlife-crime">https://www.gov.uk/government/groups/partnership-for-action-against-wildlife-crime</a>
<b>Trees</b> The arboricultural service deals with most tree-related issues	Visit <a href="https://www.westberks.gov.uk/treesandhedgerows">https://www.westberks.gov.uk/treesandhedgerows</a> for further information. Email: <a href="mailto:trees@westberks.gov.uk">trees@westberks.gov.uk</a>

## Appendices B – Enforcement Glossary

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This glossary provides the enforcement options available to the local planning authority.

### 1. Breach of Condition Notice (BCN)

A breach of conditions notice under Section 187A of the Town and Country Planning Act 1990 requires its recipient to secure compliance with the terms of a planning condition or conditions specified by the Local Planning Authority in the notice. There is no right to appeal against this notice and prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice.

### 2. Deault Powers

The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases and when resources allow. The Council will seek to recover all costs associated with carrying out the works in default.

### 3. Discontinuance Notice

Where a person has displayed an advertisement with deemed consent that the authority is satisfied causes a substantial injury to the amenity of the area or is a danger to members of the public, a discontinuance notice can be served under Regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 seeking the removal of the advert.

A local planning authority may take discontinuance action if it is satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. As "substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity, local planning authorities will need to justify this in their statement of reasons.

### 4. Enforcement Warning Notice

An enforcement warning notice formalises the process for a local planning authority to invite a retrospective planning application.

Under section 172ZA of the Town and Country Planning Act 1990, where a local planning authority considers that unauthorised development has a reasonable prospect of being acceptable in planning terms, it can issue an enforcement warning notice. The notice will set out the matters that appear to be a breach of planning control and state that, unless an application is made by a specified date, further enforcement action may

be taken.

The issue of an enforcement warning notice constitutes taking enforcement action for the purposes of section 171B of the Town and Country Planning Act 1990.

## **5. Injunction**

This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

## **6. Listed Building Enforcement Notice**

A Listed Building enforcement notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 will require the recipient to secure compliance with the terms of the notice. Works to listed buildings without consent is a criminal offence and prosecution may occur alongside the enforcement notice, subject to severity/context. There is a right of appeal of this notice

## **7. Negotiation**

Negotiation is encouraged in all but the most serious cases as the best way to resolve a breach and in some cases can be more expedient than issuing an enforcement notice.

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

This is a notice which allows the Council to collect evidence which will help to determine if a breach is taking place and the next steps. The owner and/or person responsible have 21 days to respond and failure to do this may result in prosecution

## **9. Planning Enforcement Order**

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A planning enforcement order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

## **10. Prosecution**

It is a criminal offence not to comply with the requirements of a statutory notice, to display an advertisement without consent or undertake works to a listed building without consent. The Council can prosecute or formally caution.

## **11. Section 172 Enforcement Notices**

The enforcement notice allows the Council to formally require a breach of planning control to be remedied. Government guidance states that

enforcement notices should only be served when expedient to do so. Failure to comply within the specified timeframe is a criminal offence which can lead to prosecution proceedings. Enforcement notices can be appealed, and the Planning Inspectorate can decide to uphold the notice, amend it or have it quashed.

## **12. Section 215 Notices**

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The Council has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the costs from the owner.

## **13. Stop Notice**

This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where stop notices are issued the Council may be liable to pay compensation if it is later decided that the stop notice was not appropriate. For these reasons, serious consideration needs to be given to the appropriateness of serving a stop notice.

## **14. Temporary Stop Notice**

These are similar to stop notices but take effect immediately from the moment they are displayed on a site and last for up to 28 days. A temporary stop notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment or public safety. It may be issued even when planning permission has been granted for development, for example, in a case where the developer is not complying with conditions attached to the permission.

## **15. Urgent Works Notice**

This is a notice under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that applies to unoccupied listed buildings in serious disrepair. It enables the Council to order urgent works to preserve the building, for example to make it weather tight and secure. If the notice is not complied with the Council may carry out the works in default and recover the costs from the owner.