

1. INTRODUCTION

- 1.1 The Town & Country Planning Acts give the Council, as the Local Planning Authority (LPA), powers for the control of unauthorised development. This document sets out the Council's Strategy for planning enforcement in the Royal Borough of Greenwich and the approach that the Council will take in investigating and remedying breaches of planning control. Effective enforcement is important as a means of maintaining public confidence in the planning system.
- 1.2 The Council is firmly committed to the effective and proportionate compliance of planning control. It views breaches of planning control very seriously and has a specialist planning enforcement team within the Planning Service. Ideally, the Council would like there to be no breaches of planning control in the Borough. However, where breaches occur, planning law lays down strict requirements which the Council has to follow before it can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the Borough.
- 1.3 In accordance with paragraph 207 of the National Planning Policy Framework (NPPF), this Enforcement Strategy has been prepared to outline the approach that will be taken by the Council to remedy unauthorised development, and the procedures that will be followed.
- 1.4 In dealing with any enforcement issues, the Council takes full account of the Royal Borough of Greenwich Core Strategy 2014 which sets out the Council's Development Plan Policies, in addition to those of the London Plan 2017.

2. PLANNING ENFORCEMENT OBJECTIVES

- 2.1 The Planning Enforcement Team, which is part of the Planning Section in the Directorate of Regeneration, Employment and Skills, is the main focus for dealing with unauthorised development. The team work in partnership with other relevant teams within the Council, where appropriate, and share information where required, this includes (but is not limited to) departments such as Building Control, Community Safety and Licencing. The objectives of the Planning Enforcement Team are:
 - To remedy the undesirable effects of unauthorised development

- To strike a balance between protecting amenity and other interests of acknowledged importance throughout the Council's area, and enabling acceptable development to take place, even though it may initially have been unauthorised
- To ensure that the credibility of the planning system is not undermined
- To carry out all compliance duties in accordance with the principles of the Enforcement Concordat, particularly with respect to openness, helpfulness, proportionality and consistency
- To be both reactive and pro-active in the investigation of complaints, particularly to ensure the compliance with conditions imposed on planning permissions

Where such works are considered to be demonstrably harmful and upon first investigation are considered to be wholly unacceptable and that no amendments would make the unlawful development acceptable the Service will progress to formal action without inviting the development to be regularised either in its current form or an amended form as outlined in section 7.

3. **BREACHES OF PLANNING CONTROL**

3.1 Breaches of planning control occur in many ways, for example where:

- Building work, engineering operations, and material changes of use (such as unauthorised Places of Worship and Homes of Multiple Occupation (HMO's) for example) are carried out without planning permission
- Development has not been carried out in accordance with the approved plans
- Conditions of planning permissions or the terms of a legal agreement (for example, S106 obligations) have not been complied with
- Unauthorised demolition takes place
- Unauthorised works are carried out to a listed building which affect its character or appearance
- Removal of, or works carried out to, protected trees and hedgerows without consent being granted or proper notification given
- The display of advertisements that require express consent without such consent having been granted
- Land or buildings which are derelict, unkempt or overgrown and are adversely affecting public amenity. These are classed as 'untidy sites'.

4. HOW WILL THE PLANNING ENFORCEMENT TEAM INVESTIGATE COMPLAINTS?

- 4.1 Most investigations into breaches of planning control result from complaints from the public, community groups or Elected Members. It is requested that, where possible, complaints about unauthorised development are made in writing or by e-mail (planning-enforcement@royalgreenwich.gov.uk) as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation, and a clear line of communication back to the complainant.
- 4.2 Complaints will normally be acknowledged in writing, by telephone or via email, within 5 working days.
- 4.3 Complaints will be treated in confidence. Complainants will be treated as 'protected informants' during the investigation of a complaint and their identity will not be revealed unless with their permission or under a legal obligation, for example, where so directed by the courts. This is to ensure the safety of complainants, particularly if investigations lead to recriminations from an alleged offender.
- 4.4 Complainants will be advised that if formal action needs to be taken, the Council will be required to provide evidence of the breach and any harmful effects, so their co-operation and involvement as witnesses may be important in securing a successful outcome.
- 4.5 Anonymous or vexatious complaints will not normally be investigated, unless they allege breaches of planning control that the Council considers serious and that can be verified by an Officer.
- 4.6 Complaints that relate to planning breaches on Council owned land and the public highway, will be dealt with by the appropriate land-owning Council service. A remedy using land-ownership powers is generally achieved more quickly and efficiently than when utilising planning powers.

5. PRIORITISING COMPLAINTS

5.1 The Team will use the following classification when deciding which cases will be given priority in respect of urgency and Project Investigations. These are not inflexible priorities and judgement will be exercised on receipt of the complaint and the initial assessment.

Priority 1 Complaints – Requiring Immediate Investigation

5.2 The following types of cases are regarded as Priority 1 (no particular order):

- Works to Listed Buildings
- Works to protected trees (either those covered by a Tree Preservation Order (TPO) or those within a Conservation Area) and safeguarded hedgerows
- Demolition of important unlisted buildings in Conservation Areas (non designated Heritage Assets)
- Development which may have a significant and permanent adverse impact on (or destroy) a site of nature conservation value or the natural environment. Examples of the latter could include unauthorised mineral extraction and tipping of waste near protected sites
- Development which results in concerns for public safety
- Significant unauthorised building works/structures
- Operational and building works, changes of use such as premise to HMO's, minerals/waste issues and non-compliance with conditions/obligations that significantly affect residential amenity

Priority 2 Complaints - Investigation to commence and complainant to be informed of progress within 15 working days

5.3 The following types of cases are regarded as Priority 2:

- Operational development within Conservation Areas and areas subject to Article 4 directions.
- Where the opportunity to take compliance action will shortly end due to immunity rules

Priority 3 Complaints – Investigation to commence and complainant to be informed of progress within 25 working days

5.4 The following types of cases are regarded as Category 3:

- Other changes of use
- Other building works/condition of land/compliance with conditions/Untidy Sites
- Advertisements and satellite dishes (Conservation Areas to be prioritised)

Project Investigations – will have no specific priority but will be undertaken as required.

5.5 The following types of case will be monitored proactively:

- Checking of planning conditions that have not been discharged, even where a complaint has not been received
- Specific project works targeting a type of development or breach that is apparent as regularly occurring in the Borough, such as Unauthorised Places of Worship where individual cases are then prioritised separately through the project group management in partnership with other group representatives.

6. COMPLIANCE INVESTIGATION PROCEDURES

Stage 1 – Acknowledgment

6.1 On receipt of a complaint, the priority of the case will be assessed in accordance with the details above. The complaint will be acknowledged no later than 5 working days from its receipt.

Stage 2 - Initial desktop investigation

6.2 Once the complaint is acknowledged and prioritised a desktop investigation will take place. This will involve:

- Checking the planning/compliance/building control history for the site including conditional requirements of planning permissions and Section 106 obligations
- Checking site constraints by reference to existing map and computer based records
- Identifying main planning policy considerations relevant to the alleged unauthorised development

- Checking relevant legislation (does the alleged breach constitute “development”? Could it be “permitted development”? What needs to be checked and measured on site?)

Stage 3 - Initial site visit, where necessary.

6.3 The Planning Enforcement Team will visit the site to which the alleged breach relates. This will involve:

- A considerate and sensitive approach, recognising that there may be no breach or that the breach is unintentional
- Enforcement officers will identify themselves when on site and explain the reason for the visit. (If it is suspected that an offence has been committed the investigating officer must have regard to the provisions of Section 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning suspected offenders)
- Obtaining the identity of the owner/occupier/person responsible for the activity/development taking place and interviewing them, if possible
- Recording names and addresses of all persons who have an ownership or tenancy interest in the land/property
- Taking and recording any necessary measurements and taking photographs
- Recording a brief site description including a description of the alleged unauthorised development
- Identify neighbouring properties likely to be affected by the activities/development
- If a breach of control has clearly taken place, then (depending on the nature of the breach) the owner/occupier/person responsible will be contacted straight away and advised to stop work until the matter is resolved. They will be advised that any further activity/development carried out would be entirely at their own risk and may be subject to compliance action

Stage 4 - Action following the initial site visit or investigation

6.4 Following the initial site visit or investigation the Planning Enforcement Team will:

- Advise the owner/occupier/person responsible for the alleged unauthorised development of the intended action or options available to resolve the matter, or seek further information to determine whether a breach has occurred
- Advise complainant in writing of the initial findings and proposed action (if any)
- Where appropriate, ask the complainant to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal compliance action.

Stage 5 - Further investigation/obtaining information

6.5 Depending upon the outcome of Stage 4, it may be necessary for the Planning Enforcement Team to:

- Monitor activity on site to collect further information or evidence about the alleged breach
- Carry out covert surveillance strictly in accordance with the provisions of the Regulation of Investigatory Powers Act (RIPA)
- Serve a Planning Contravention Notice (PCN) or a requisition for information under Section 330 of T&CP Act or Section 16 of the Local Government (Miscellaneous provisions) Act 1976. These require the recipient to provide information relating to the alleged breach and who has an interest in the site within 21 days
- Carry out a Land Registry search to establish ownership of the land (if registered)
- Carry out a search of the Council Tax and/or the Business Rates databases to establish who the responsible person or company may be (if registered)
- Carry out a search of the Companies House database to establish who the directors of the company are
- Consult the Council Ward Members, neighbouring residents and other agencies
- Consult neighbours, if appropriate
- Liaise with other Council services and external agencies

Stage 6 – Action following investigation

6.6 Once the investigative stages are complete the Council will follow one of the following courses of action and will advise the complainant of the decision: If a complaint relates to a non-planning matter, no action will be

taken. Such non-planning matters include disputes over land ownership and boundaries; restrictive covenants and easements; moral and ethical concerns; and competition and private interests

- In cases where a non-planning related complaint can be dealt with by another Council service or another agency, then relevant information will be passed to the appropriate organisation
- If a complaint relates to an activity, building or operational works that constitutes 'permitted development' or is lawful, no further action can be taken
- If the complaint relates to a very minor breach and formal action would not be justified, then no further action will be taken
- If investigations indicate that a material breach of planning control has occurred then the Council will either invite a planning application to regularise the development (and impose appropriate planning conditions) or commence formal compliance action.

7. ENFORCEMENT DECISION MAKING

7.1 When it is clear that there is a breach of planning control, the Planning Enforcement Team will draw this to the attention of the person responsible and advise them of the most appropriate course of action. This may be:

- If the breach is minor with no significant effects – that no formal compliance action will be taken
- If the development is in line with the relevant Development Plan policies and other material considerations but needs to have conditions imposed to control its impact either now or in the future, the Council will seek to regularise the unauthorised development by asking for a “retrospective” application for planning permission or advertisement consent
- If the breach is immune from enforcement action due to the passage of time and has not been deliberately concealed [see paras. 9.4 and 9.5], an application for a Certificate of Lawful Development may be invited. Such an application would need to be supported by appropriate documentary evidence to prove immunity.
- If permission is unlikely to be granted - the Planning Enforcement Team will ask for the use to cease, or the unauthorised development to be removed. Depending upon the nature of the breach, the Planning Enforcement Team will follow one of the following options:
 - a) Set a timescale for the person in breach to voluntarily comply.

This will not exceed 2 months

- b) Serve a formal Notice (such as Enforcement, Section 215 or Breach of Condition) setting a period for compliance
- c) Serve a Stop Notice or Temporary Stop Notice in the most serious cases requiring the work/use to stop immediately
- d) Serve an injunction

7.2 The decision to serve a formal Notice and the taking of further legal action is discretionary and is made on a case-by-case basis. This decision must be taken only after proper consideration of the relevant facts and the planning merits of the case. The Council must be able to justify taking formal action, and be sure that the steps specified in the Notice and the period for compliance within each step is reasonable. Where necessary, the Council can serve a notice to require any relevant activity to cease, either temporarily (a Temporary Stop Notice) to prevent damage occurring whilst the situation is investigated and resolved, or permanently (a Stop Notice). The requirements of both types of Stop Notice should “*prohibit only what it is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area*”. Stop Notices are particularly useful if the continuation of unauthorised works will result in the further loss of environmental features. There is also provision, if the circumstances warrant it, to obtain a planning compliance injunction to restrain an actual or anticipated breach of planning control.

8. COMPLIANCE ACTION

8.1 The Town and Country Planning Act 1990 (as amended) defines taking enforcement action as either the issue of an Enforcement Notice or the service of a Breach of Condition Notice.

Enforcement Notice

8.2 The Notice shall:

- State the nature of the alleged breach as either development without planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted
- Identify the land to which the notice relates
- Clearly state the matters that appear to constitute a breach of planning control

- State the Council’s reasons for issuing the Notice, including any relevant policy of the Development Plan
- Specify the calendar date on which the notice will take effect (not less than 28 days after service to allow for an appeal)
- Specify the steps which the Council requires to be taken or the activities which the Council requires to cease in order to remedy the breach or any injury to amenity it has caused
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the impact of the breach (where appropriate different periods may be given for each step)

8.3 The steps to be taken will be expressed in plain language so that anyone required to implement them will understand. This will also make checking for compliance easier and ensure a successful prosecution if the Notice is not complied with. The Enforcement Notice may require the restoration of the land to its condition before the unlawful development took place; the demolition or alteration of any building or works; the discontinuance of the use of the land; or the carrying out of any building works or other operations. The purpose of these requirements will be to:

- a) Remedy the breach by making the development comply with the terms (including any conditions or limitations) of any planning permission granted in respect of the land (whether that permission has been granted by the Council following a planning application, or by the General Permitted Development Order under “permitted development rights”); or
- b) Remedy the breach by discontinuing any unauthorised use of the land, or by restoring the land to its condition before the breach took place; or
- c) Remedy any injury to amenity that has been caused by the breach.

Breach of Condition Notice

8.4 The Breach of Condition Notice (BCN) is an alternative to an Enforcement Notice for remedying a breach of planning control arising from failure to comply with any condition or limitation subject to which planning permission has been granted. There is no right of appeal, and the threat of prosecution may be sufficient in itself to secure compliance with the condition or limitation. The BCN may be served alone or in addition to an Enforcement Notice.

8.5 A BCN will not be appropriate in all cases where a condition (or conditions) has not been complied with. In deciding whether to serve a BCN, the Council will consider whether prosecution is likely to secure compliance with the condition(s) in the particular circumstances of the case. If not, then an Enforcement Notice may be preferable. The BCN shall:

- Specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). Thus the BCN may be mandatory (requiring something to be done) or propitiatory (requiring something to stop). It can only seek to secure full compliance with the condition(s)
- Specify a period for compliance, which will not be less than 28 days

Other types of enforcement action are as follows:

Listed Buildings

8.6 The Council attaches particular importance to ensuring that any alterations to Listed Buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.

8.7 It is an outright offence under Section 9 of the Act to carry out unauthorised works to a Listed Building that would affect its character. The owner of a Listed Building, those who have an interest in the property or who have carried out the works, may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine and/or a term of imprisonment of up to two years. There is no time limit upon the Council to pursue Listed Building compliance action. There is government guidance issued by DCLG, however on the appropriateness of prosecuting on older Listed Building matters.

8.8 A Listed Building Enforcement Notice may be served requiring remedial works to the building within a certain time period. There is a right of appeal to the Secretary of State, but failure to comply with the Notice is an offence, which is liable to a fine.

Advertisements

- 8.9 The display of advertisements/signs is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). They are divided into three main groups:
- Those that are 'expressly' excluded from planning control
 - Those which have 'deemed consent' whereby the Council's consent is not required provided the advertisement falls within certain categories: and
 - Those for which the Council's consent is always needed
- 8.10 The Advertisement Regulations are complicated and seek to control, amongst other things the height, size and illumination of advertisements.
- 8.11 Anyone who displays an advertisement, without the necessary consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Council may not initially consider it necessary to prosecute. Instead, it may invite the advertiser to apply for the consent needed, and, if refused, there will be a right of appeal to the Secretary of State. Displays of an advertisement after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution. The fine on conviction shall not exceed level 4 on the standard scale and in the case of a continuing offence one-tenth of level 4 for each day during which the offence continues after conviction.
- 8.12 Any form of flyposting (that is, displaying an advertisement without the landowner's consent) is an offence, which is immediately open to prosecution or to the removal or obliteration if the Council decides to take such action. If the advertisement identifies the advertiser the Council must give 2 days' notice before obliteration or removal takes place. These powers of obliteration and removal were extended by the Localism Act 2011.

Trees

- 8.13 Under Section 198 of the Town and Country Planning Act 1990, the Council has the right to make provision for the preservation of trees in its area by issuing a Tree Preservation Order.

Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. The offence is liable, on summary conviction, to a fine of up to £20,000 and on indictment to a further fine. Most established trees in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act and the same penalties for offences apply.

If any person contravenes the provisions of a tree preservation order [tree preservation regulations] otherwise than as mentioned above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

8.14 Consent is not required for the following works to trees that are the subject of a Tree Preservation Order:

- Works to trees that are dead or have become dangerous
- Works to trees authorised by the grant of planning permission
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade

However, the Council encourages all owners of trees covered by a Preservation Order to consult the Council before undertaking works on the tree(s).

Hedgerows

8.15 Section 97 of the Environment Act 1997 and section 5 of The Hedgerows Regulations 1997 makes the removal of certain Hedgerows without the Council's consent an offence (subject to a number of exceptions).

Land Adversely Affecting the Amenity of the Neighbourhood – Untidy Sites

8.16 Under Section 215 of the Town and Country Planning Act 1990, the Council may take steps to require land to be tidied up when its condition adversely affects the amenity of the area. The Council may serve a Notice on the owner and occupier of the land requiring steps to be taken within a specified period. The Notice becomes effective after 28 days.

8.17 There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the Notice has no effect pending the outcome of

the appeal, but once the Notice does take effect it is an offence not to carry out the steps required. If the Notice is not complied with, the Council may prosecute the owner for the offence of non-compliance, or enter the land to carry out the required works and recover all associated costs from the owner. If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. The Council also has powers under Environmental Health and Anti-Social Behaviour legislation to resolve untidy site problems. The Planning Enforcement Team will liaise with other Council services to ensure that the most appropriate and effective remedy is sought.

9. **APPEALS**

- 9.1 Section 174 of the Town & Country Planning Act 1990 (as amended) provides a right of appeal to the Secretary of State against an Enforcement Notice. The appeal needs to be lodged before the Notice takes effect. Details of how to appeal will be included with the Enforcement Notice. There are a number of possible grounds of appeal, including legal grounds, concerning the validity of the Notice, grounds relating to over-compliance (for example, that the time for compliance is too short or the works to be undertaken are more than is necessary) and relating to the “deemed” application (i.e. that permission ought to be granted for the development that has already been carried out). There is a fee payable for Enforcement Notice appeals which relate to a ‘deemed application’. Further advice is available at the Directgov website. www.direct.gov.uk/en/HomeAndCommunity/Planning/PlanningPermission and the Planning Portal web site at www.planningportal.gov.uk.
- 9.2 Since 6 April 2012, it is no longer possible to make an appeal against an enforcement notice on ground (a) (that planning permission should have been granted) after a planning application has been submitted and refused for the same development.
- 9.3 A local planning authority may decline to determine an application for planning permission for the development of a parcel of the land if that land, or any part of it, is the subject of an existing enforcement notice which relates, to the matters specified in the enforcement notice as constituting a breach of planning control.

- 9.4 Furthermore, once a planning enforcement notice has been issued the land owner or other interested party cannot appeal a previous decision of the LPA to refuse planning permission for the same development. Any appeal must then be made against the Enforcement Notice. This prevents landowners having two bites of the cherry or extending the life of an unauthorised development.
- 9.5 There is no right of appeal to the Secretary of State against a BCN. The applicant can submit an appeal against a planning condition when the planning permission is first issued, or can submit a subsequent application to remove or vary the condition.

10. PROSECUTION

- 10.1 In most cases, the Council cannot take prosecution proceedings until it has taken formal enforcement action through the issue of a legal notice. Prosecution does not bring about the remedy of the breach; rather it can be seen as the court “punishing” the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect.
- 10.2 In certain circumstances, the Council can immediately instigate prosecution proceedings, without first having to serve a Notice. These instances include:
- Unauthorised display of an advertisement
 - Unauthorised works to a Listed Building
 - Damage to a tree covered by a Tree Preservation Order or within a Conservation Area
 - Damage to safeguarded hedgerows

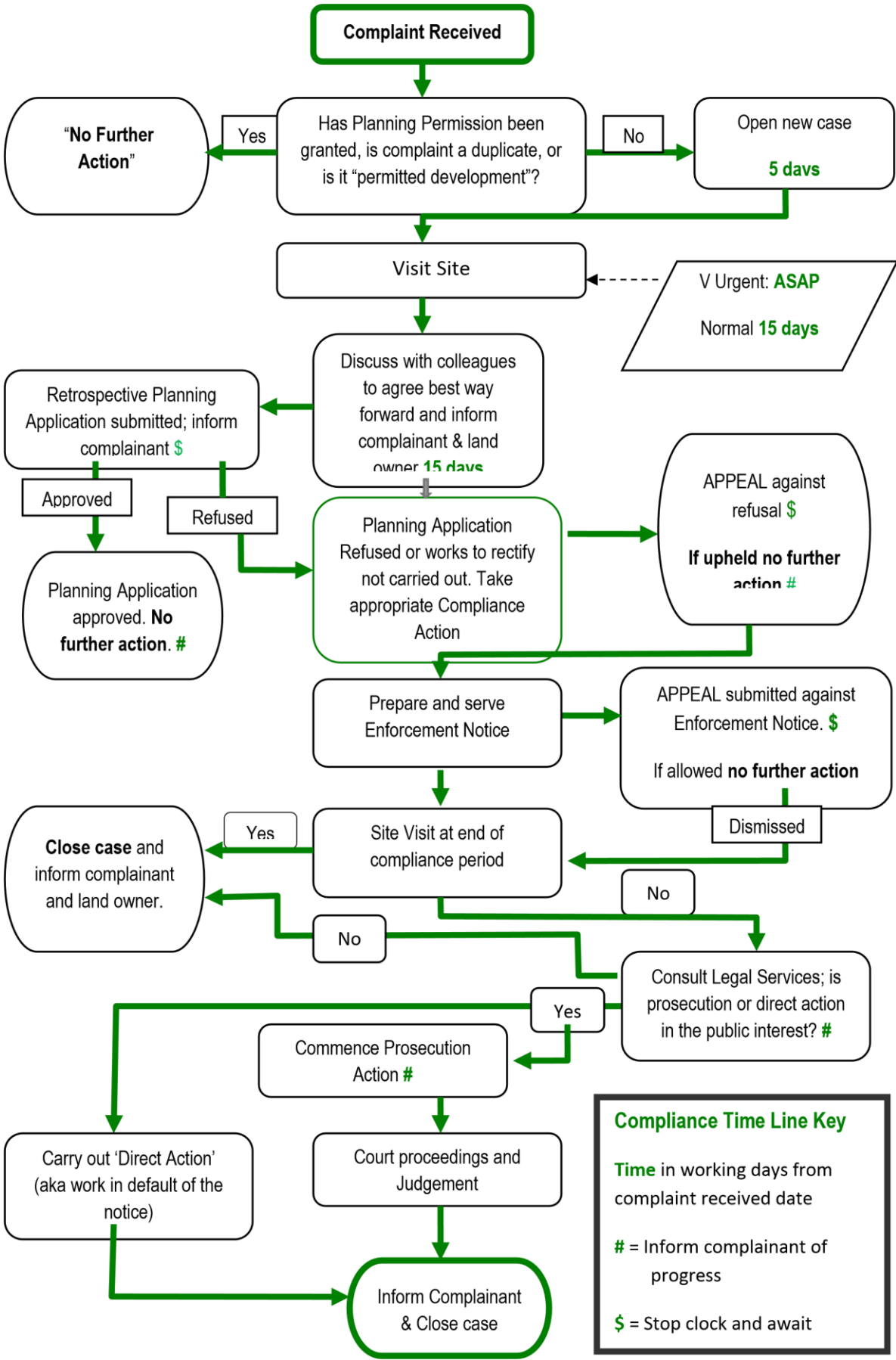
11. PLANNING ENFORCEMENT PERFORMANCE STANDARDS

- 11.1 The Planning Enforcement Team have the following local performance indicators:
- 80% of enforcement complaints acknowledged within 5 working days
 - 80% of enforcement complaints visited within 7 working days of acknowledgement
 - 80% of cases closed within 12 weeks if no breach found.
- 11.2 In order to achieve the above performance targets the Council’s Planning Enforcement Team will:
- Adhere to this Planning Enforcement Plan

- Pro-actively sample planning permissions to ensure that the development fully complies with the approval

11.3 The above performance targets will be monitored in accordance with the requirement to provide an Annual Appeal and Enforcement report.

Compliance Timeline Flowchart



Compliance Time Line Key

Time in working days from complaint received date

= Inform complainant of progress

\$ = Stop clock and await