



# Planning Enforcement Plan

**How we investigate and pursue alleged breaches  
of planning control**

Adopted November 2016

## Introduction

The enforcement plan describes the purpose of the Council's planning enforcement service and how it will be delivered to the community. The plan aims to provide an efficient enforcement service which is focused on protecting the community against harmful development in a way that is clear, consistent and proportionate to the harm caused.

## The purpose of planning enforcement

The planning system seeks to ensure that the right development happens in the right place at the right time, to the community benefit. It plays a key role in identifying through local and neighbourhood plans what development is needed and where, what areas need to be protected or enhanced and in assessing whether proposed development is suitable.

Effective enforcement is key to protecting the public interest from unauthorised harmful development and in maintaining confidence in the planning system, by tackling those who ignore planning controls. Harmful development is that which has an unacceptable affect on public amenity or the existing use of land and buildings meriting protection in the public interest.

The objective of effective enforcement is to address any harm caused by a breach of planning control rather than to punish those involved.

The response to a suspected breach of planning control is at the discretion of the Council and should be related to the nature and degree of harm caused. Whilst in no way condoning breaches, the Council will not take enforcement action solely to regularise development which is otherwise acceptable. The key test is, if an application for planning permission had been made would it have been refused, or only granted subject to controlling conditions.

The Council will investigate alleged breaches of planning control to determine whether a breach has in fact occurred, and if it has, to choose the most appropriate course of action.

The onus is on a negotiated resolution of a breach, but where this can not be achieved or becomes protracted the Council has at its disposal a range of enforcement powers, which can remedy the harmful effects of breaches of control.

## Breaches of planning control

**It is a breach to carry out** without any necessary consent :

- Building works & changes of use #
- Works to protected trees\*
- Works to listed buildings\*
- Demolition in Conservation areas\*
- External advertisements\*#
- Works to countryside hedgerows\* .

Also

- Untidy land & buildings which seriously harm the amenities of an area
- Non compliance with conditions attached to permissions
- Departures from approved details
- To fail to comply with a High hedges remediation notice

\* these are criminal offences

# Parliament has decided that certain works and changes of use can take place as "permitted development" without requiring planning permission and that some advertisements can be displayed with a deemed consent.

You can see for yourself if consent has been granted and view the approved details and any conditions by visiting our web site.

### **What is not a breach of planning control?**

- Disputes about land ownership.
- The position of property boundaries.
- Disputes over private rights of way.
- Breaches of restrictive covenants on property deeds.
- The Party Wall Act

These are private matters between the parties involved. If they cannot be resolved through agreement, independent advice should be sought from the Citizens Advice Bureau (CAB) or a solicitor.

### **Making a complaint**

We rely to a large extent on members of the public and Town and Parish Councils bringing suspected breaches of planning control to our attention.

Anyone who suspects a breach of planning control is encouraged to visit our web site to check for themselves whether permission has been obtained, and if so, to view the approved details and conditions. Details of conservation areas, listed buildings and protected trees together with a wide range of planning information can also be accessed via the web site.

Complaints should be made using the form on our web site to ensure that the appropriate information is provided. (<http://www.aylesburyvaledc.gov.uk/report-possible-breach-planning-control>)

However, we will accept other written complaints and require the following information.

- Your name, address, telephone number and e-mail address.
- Precise description of the suspected breach and address.
- Any other relevant background information, photographs can be particularly helpful.
- The harm caused by the suspected breach.
- What action you would like to be taken

In some cases, where monitoring over a period of time is required, we may need to rely on complainants to collect information. In such cases, we will provide details of the information required in the form of diary sheets and guidance notes.

**Anonymous complaints** will only be accepted in exceptional circumstances where the information provided clearly describes the suspected breach and demonstrates that it potentially causes serious harm.

**Repeat complaints** will only be investigated where new information is submitted or it is demonstrated that a change in circumstances has occurred since the closure of the previous case.

**Confidentiality**, the identity of complainants' will not be disclosed, although in some cases the source of the complaint will be obvious. However, where a complaint leads to formal action we may ask a complainant to forgo their anonymity, and appear as a witness for the Council.

A diagram summarising the steps involved with investigating a suspected breach of planning control is attached at the end of this plan

## How we prioritise complaints

So that we can make best use of our resources, complaints are prioritised in accordance with the potential seriousness of the suspected breaches, so that those which may be causing irreversible harm or where prompt action may prevent the growth of a breach are quickly investigated. However, the priority given may be the subject of change as more information comes available on the actual seriousness of the breach.

On occasions we may have to concentrate our resources on a high priority case and this may regrettably have an impact our ability to pursue lower priority cases.

<b>Category 1: High</b>	
<b>Development which could cause irreparable harm or where serious harm could be pre-empted</b>	Action and timescale
<ul style="list-style-type: none"> <li>• On going works to               <ul style="list-style-type: none"> <li>○ listed buildings</li> <li>○ protected trees</li> <li>○ protected hedgerows</li> </ul> </li> <li>• Extensive development in the countryside.</li> <li>• Works on development sites in breach of conditions which seek to protect trees, ecology, archaeology or another irreplaceable asset.</li> </ul>	<p>We will visit the site and/or contact the developer the day the complaint is received and if not possible the next working day.</p> <p>We will reach a decision on the course of action to be taken within 3 working days of receiving the complaint.</p>
<b>Category 2: Medium</b>	
<b>Development which could cause serious harm or where further work could be pre-empted</b>	Action and timescale
<ul style="list-style-type: none"> <li>• Building work in progress</li> <li>• Activities causing serious harm ( i.e. affects more than one person, creates a highway or other hazard/danger)</li> <li>• non compliance with pre-commencement conditions which cannot be addressed at a later date ( i.e. slab levels)</li> </ul>	<p>We aim to complete our initial investigation and to a reach a decision on the course of action to be taken within 10 working days of the receipt of a complaint.</p>
<b>Category 3: Low</b>	
<b>All other developments (most cases)</b>	Action and timescale
<ul style="list-style-type: none"> <li>• Building works already completed.</li> <li>• advertisements</li> <li>• All other planning related enquiries</li> </ul>	<p>We aim to complete our initial investigation and to a reach a decision on the course of action to be taken within 25 working days of the receipt of a complaint.</p>

## The investigation

Its purpose is to collect the relevant facts to establish whether a breach of planning control has occurred, and if so, the nature and degree of harm caused.

The investigation will in most instances involve an office based exercise including:

- Research of the planning history of the site.
- Identification of any special designations or constraints e.g. Listed buildings.
- Where applicable the search of other Council or publicly held information
- Speaking to the person responsible for the suspected breach or sending them a pro forma to complete.
- Liaising with other Council Services, for example in relation to information that they may hold, the effect of the breach or on the action they could take.

We will only visit a site when the information required cannot otherwise be collected or when it is needed in order to reach a planning judgement.

Officers have certain legal rights of entry onto private land and buildings when investigating breaches of planning control. Where possible the information required will be collected from a public or accessible place, however, in other cases arrangements will be made to visit the site. Sometimes in order to assess the nature or degree of harm caused, we may also need to visit the complainant's or neighbours property.

Where the required information on the nature and/or duration of a breach cannot be collected by informal means from the person suspected of the breach, we will issue a formal notice known as a planning contravention notice to require its provision.

In those cases where to allow the breach to continue could lead to irreparable or serious harm we will serve a Temporary Stop Notice to require the immediate cessation of the works or use for a 28 day period to enable the harm to be assessed and a decision to be taken on further action.

Once an enquiry has been investigated and we have collected all the relevant information we will decide on the course of action to be taken, taking into account relevant legislation, national guidance as well as local planning policies and guidance.

## Possible outcomes of an Investigation

**No breach is established** because the alleged breach has not occurred or has ceased, is permitted development or is outside planning control. Where it is considered that the matter may fall within the control of another council service such as Environmental Health (licensing, noise and pollution) or Buckinghamshire County Council (waste, minerals, highways) we will forward the enquiry to them for their attention.

**The development is immune from action** and lawful for planning purposes because it has existed for a certain period of time:

- 4 or more years:- for building works, starting from the time they were substantially completed and also the use of a building as a dwelling.
- 10 or more years:- for all other developments, including breaches of planning conditions.

Where there is any doubt the developer will be invited to apply for a formal determination through the submission of an application for a certificate of lawfulness.

Where there is evidence that a breach has deliberately been concealed an Enforcement Order can be sought from the Magistrates Court for the suspension of immunity for a 12 month period to enable enforcement action to be instigated.

It should be noted though that there is no period of immunity for breaches of listed building control.

**There is a breach, but it does not cause harm.** The fact that a breach has occurred does not automatically mean that formal action will be required. Some breaches of planning control are so minor that they are of no consequence or do not cause any harm, so that 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 resources. The developer though will be advised that permission is required and that its absence may hamper any later sale of the property.

**Negotiations to find a solution,** can lead to a quicker and more advantageous resolution than the use of formal powers by securing the cooperation of the developer. Where appropriate we will investigate with the developer options to address the harm resulting from the breach, this may involve the removal of building works and uses, or lesser actions such as modifications to building works, changes to the organisation or intensity of an activity.

In cases where the developer proposes a solution that involves an alternative siting, building, or use they will be encouraged to use the Council's pre application advice service, which can be accessed on the Council's web site via the following link.

<http://www.aylesburyvaledc.gov.uk/section/step-2-you-apply>

So that negotiations do not become protracted we will request an undertaking within 14 days that the owner/occupier is willing to enter into discussions and a timescale will then be set for its conclusion, which may involve the submission of an application.

**Retrospective Planning Applications,** to seek to regularise a development are permitted by legislation. Except for those cases where it is considered that there is no prospect of permission being granted we will invite an application to seek to regularise the breach, including where applicable the imposition of conditions to address the identified harm. This allows the planning merits of the breach to be fully and openly considered, in the same way as an application for proposed development. In addition, it provides an opportunity for local residents and the Parish/Town Council to make their views known, and for those views together with any technical comments received to be taken into account in the determination of the application.

In most cases we will seek an undertaking within 14 days that an application will be submitted within a further 28 days. It is recognised that the submission of an application may take more than 28 days where there is a need to engage an agent to draft plans and supporting information and in appropriate cases we will be prepared to set a longer target date.

If an undertaking is not received, or the application is not submitted by the target date without a satisfactory explanation, we will consider the need for formal action.

**Formal Enforcement Action** will be taken where negotiation including the submission of application has been unsuccessful or where a retrospective application has been refused. In some cases where a serious or potentially irreparable breach is concerned we may take formal action straight away in order to prevent further harmful activity.

The action taken will be proportionate to the breach and the harm caused, the key question again is whether permission if sought would be refused or only granted subject to conditions to control any actual or potential harm.

There is a range of formal powers available to the Council to be used at its discretion depending on the circumstances of a particular case. In most cases there is a right of appeal either to the planning inspectorate or through the courts.

A summary of the main powers is listed below.

<b>Planning Contravention Notice</b>	Requires the submission of information on suspected unauthorised activities.
<b>Temporary Stop Notice</b>	Requires the immediate cessation of specified activities for a period of up to 28 days to enable investigations/negotiations to take place and if appropriate further action.
<b>Breach of Condition Notice</b>	To secure compliance with conditions attached to a planning permission
<b>Enforcement Notice</b>	Specifies the steps to be taken to address a breach of planning control and also breaches of listed building control
<b>Stop Notice</b>	Can be used with an enforcement notice to bring about an immediate cessation of activity.
<b>Enforcement Orders</b>	Where there is evidence that a breach has been deliberately concealed an Order can be sought from the courts for a 1 year extension of the period of immunity.
<b>Prosecutions</b>	<p>A failure to comply with one of the above notices is a criminal offence.</p> <p>The enforcement of advertisement control is secured by a prosecution of the offence of displaying an unauthorised advertisement rather than by the service of a notice.</p>
<b>Injunctions</b>	As a pre-emptive measure in exceptional circumstances to prevent unauthorised development taking place
<b>Article 4 Directions</b>	Can be used to remove permitted development rights where their exercise would cause demonstrable harm
<b>Urgent Works Notices</b>	To secure the preservation of an unoccupied listed building by securing works urgently necessary to keep it wind and weatherproof, safe from collapse, or secure from theft or vandalism.
<b>Repairs Notices</b>	To secure the preservation of a listed building by requiring works necessary to address its poor state of repair.
<b>Replanting notices</b>	To require the planting of trees or hedgerows which have been removed without consent.

The carrying out of unauthorised works to listed buildings, trees and hedgerows is a criminal offence, reflecting the fact that the harm caused is often irreparable. In addition to the Council's ability to require remedial works there is also the option of a criminal prosecution to punish persons involved in the breach.

## Compliance with formal enforcement action

Formal action usually involves a requirement to carry out certain steps to remedy a breach within a specified period of time.

We will monitor compliance with notices and will contact the developer 28 days before the expiry of the period for compliance to draw it to their attention, together with the penalties for non compliance and asking them to let us know if there are any reasons why they will be unable to comply.

An extension of time for compliance with the notice will only be given where we are satisfied that there are genuine reasons why compliance has not been achieved such as weather conditions, personal circumstances or other matters outside of their control. Where an extension of time is given we will agree a phased timetable for compliance which will be closely monitored.

Once the period for compliance has expired (and not exceeding 7 days of the expiry of the date for compliance) we will visit the site to establish whether the terms of the notice have been met. If they have been met we will confirm this in writing to the developer and to any complainants. Conversely, where compliance has not been achieved and we have not given an extension of time, an assessment will be given within 28 days to the following courses of action

- 1 A prosecution in the Magistrates Court in relation to the criminal offence of failing to comply with the terms of the notice.
- 2 Taking direct action, we can enter the land and carry out the steps set out in the notice.
- 3 The obtaining of a Court injunction to require compliance.

In most cases we will pursue option 1 and the developer will be invited to attend a taped interview under a formal caution to enable them to tell us any reasons for their failure to comply and which they may want to rely on should the matter go to court.

## Prosecutions-

The criminal process is an important component of the enforcement process and can be used to secure a punishment for some breaches of planning control and/or to require compliance with a planning notice. The Council will use its discretion in deciding whether to prosecute and will have regard to the "Code for Prosecutors" used by the Crown Prosecution Service. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest.

The following will be taken into account in arriving at a decision whether to instigate a prosecution.

- Is there enough evidence to provide a realistic prospect of conviction against each defendant on each charge and is a conviction likely to result in a significant sentence
- The seriousness of the offence and of the harm caused, including whether any feature altered or destroyed can be replaced or replicated.
- Whether the offence is a result of a deliberate, reckless or negligent act or alternatively was the result of a genuine mistake or misunderstanding.
- Has the alleged offender offered or taken appropriate remedial action.
- Are there grounds to believe that the offence is likely to be continued or repeated, for example a history of breaches
- The offence although not serious in itself is widespread in the area where it is committed and cumulatively causes serious harm, and it is appropriate in the circumstances to draw attention to the need to comply with the law.

- Where appropriate the age and evidence of the state of health of the alleged offender.
- In the instance of breaches of advertisement control - has permission been refused or would be refused if sought.

In support of a prosecution the Council will seek an order to recover its costs to minimise the cost to the residents of the Vale.

Where there is evidence that the defendant has accrued significant financial benefit from the breach of planning control, the Council in conjunction with a prosecution will also give consideration to making an application to the Court under the Proceeds of Crime Act 2002 for the recovery of this gain.

## Proactive Compliance

In addition to reacting to complaints concerning suspected breaches of planning control, it is recognised that a proactive approach can prevent some breaches from occurring or lead to their early detection before they have become fully established.

The Council recognises the importance of compliance with planning permissions and other consents, where failure to accord with the approved details and/or the conditions imposed can undermine the very reasons for granting permission or imposing the condition, leading to harm to planning interests.

106 agreements (legal undertakings) which are concluded as part of the grant of planning permission and require positive action on behalf of the developer for example the provision of affordable homes or financial contributions to off site leisure provisions are separately monitored and managed.

In terms of compliance with conditions and approved plans there is no formal requirement for a developer to notify us when various stages of the development are carried out or for any associated planning checks.

Whilst the onus for compliance is on the developer, proactive action will encourage and enable compliance and ensure that the development remains acceptable, and should lead to a reduction in the number of reactive or retrospective complaints.

In order to be proactive the Council must operate a risk based approach in deciding where resources are to be targeted to ensure that they have the maximum effect.

Priority will be given to the following

- Monitoring and compliance with 106 Agreements.
- Where significant works to listed buildings are involved
- Conditions which seek to protect trees, ecology, archaeology or another irreplaceable asset.
- Where there has been a history of non compliance
- Sites with specific difficulties such as contamination or significant level changes.
- Retrospective planning permissions which require a modification of a development as built.
- Planning permissions for a replacement building/dwelling which are conditioned to require the demolition of an existing building/dwelling
- Temporary period planning permissions

How will we monitor and secure compliance

- On decision notices we will identify those conditions which need to be met, prior to commencement, and those that require action before or on completion and/or occupation.

- In our dealing with developers and their agents we will work proactively to ensure compliance with approved details and conditions. In particular, when determining applications to discharge conditions and/or non material amendments we will remind developer's of any conditions which remain outstanding.
- We will liaise across other Council services, in particular those relating to Building Regulations, street numbering and council tax concerning the information they hold on the commencement, completion and occupation of developments.
- On selected cases, we will compare the approved planning details with those submitted with the subsequent building regulation application to ascertain consistency.
- We will visit identified sites to confirm compliance with approved details and conditions and where necessary, liaise with Building Control Officers, on selected cases to gain the benefit of their periodic site inspections as a development progresses.
- In the case of conditions which cannot be retrospectively met such as those relating to archaeology, ecology, trees or slab levels we will actively use Temporary Stop Notices to prohibit further activity, unless immediate appropriate remedial action is taken by the developer.
- If a negotiated resolution cannot be reached we will make use of breach of condition notices and/or enforcement notices where necessary to secure compliance with planning conditions and approved details.

## What you can expect from the Planning Enforcement Service

### General

- Everyone (complainants and persons suspected of a breach) will receive the same standard of courteous and impartial professional service at all times.
- We will deal with breaches of planning control in a manner reflecting the degree of harm caused.
- Proven breaches which cause harm will be vigorously pursued, and where necessary, we will take formal action appropriate and commensurate to the breach and follow this through to conclusion.

### Complainants

- We will hold your personal details in the strictest confidence.
- Complaints/enquiries will be acknowledged in writing within 3 working days of receipt, giving the name and email address of the investigating officer.
- If we cannot deal with a complaint we will if appropriate pass it on to the relevant service in this Council, or County Council, or advise you of the body you should contact.
- We will work closely with other parts of the Council and the County Council to share information and to ensure that best use is made of the available powers.
- We aim within 5 weeks to reach a decision on whether a breach of planning control has occurred, and if so, to decide on the course of action to be taken.
- We will update complainants in writing at key stages/events for example;- the decision on action, submission of a retrospective application, authorisation of enforcement action and issue of notices.
- If we conclude that there is no breach or decide not to take action we will clearly explain the reason.
- We will not allow the voluntary resolution of a breach to become unreasonably protracted, and will set and monitor timescales for action.

## Persons suspected of a breach

- Where we identify a breach of planning control we will write to the owner/occupier and state clearly the alleged breach that has occurred, the options and timescale available to resolve it and what will happen if matters are not put right.
- We will give the owner/occupier an initial opportunity to resolve matters through negotiation, unless the breach is causing such harm that immediate formal action is required.
- Where we invite an application and it is submitted within the timescale set, we will usually suspend enforcement action pending its determination.
- We will advise the owner/occupier in writing when a decision is taken to authorise formal action.
- We will be open to meaningful negotiations to remedy a breach even after formal action has been commenced.

We hope you will be satisfied with the service we provide to you. If you wish to make a suggestion as to how we can improve our service please use our [comments](#), [compliments](#) or [complaints service](#). We are committed to improving our service and dealing promptly with any shortcomings.

## Review of the Local Enforcement Plan

The Council will review the plan, at least every 3 years in response to changes in legislation, enforcement guidance and the Council's procedures taking into account experience and feedback on its performance.

This document is not the subject of formal public consultation. However, comments on this document are welcome and will be considered as part of the review process and should be emailed to [planningenforcement@aylesburyvaldc.gov.uk](mailto:planningenforcement@aylesburyvaldc.gov.uk).

## Further Information

### AVDC

On the Council's website <http://www.aylesburyvaldc.gov.uk> there is information on enforcement notices and appeals and copies of enforcement leaflets. In addition there is extensive information on other aspects of planning including how to make a planning application, details of planning applications and the implications of owning a listed building.

You can also carry out a property search to find for your self; the planning history of site, whether it is a listed building or in a conservation area and if any trees are protected by a tree preservation order by the following link <http://www.aylesburyvaldc.gov.uk/quick-map-search>

The website in addition includes information on other Council services and how the Council operates, including details of the constitution of the Council, Councillors, requests for information and the Council's comments, compliments or complaints process.

### Planning Portal

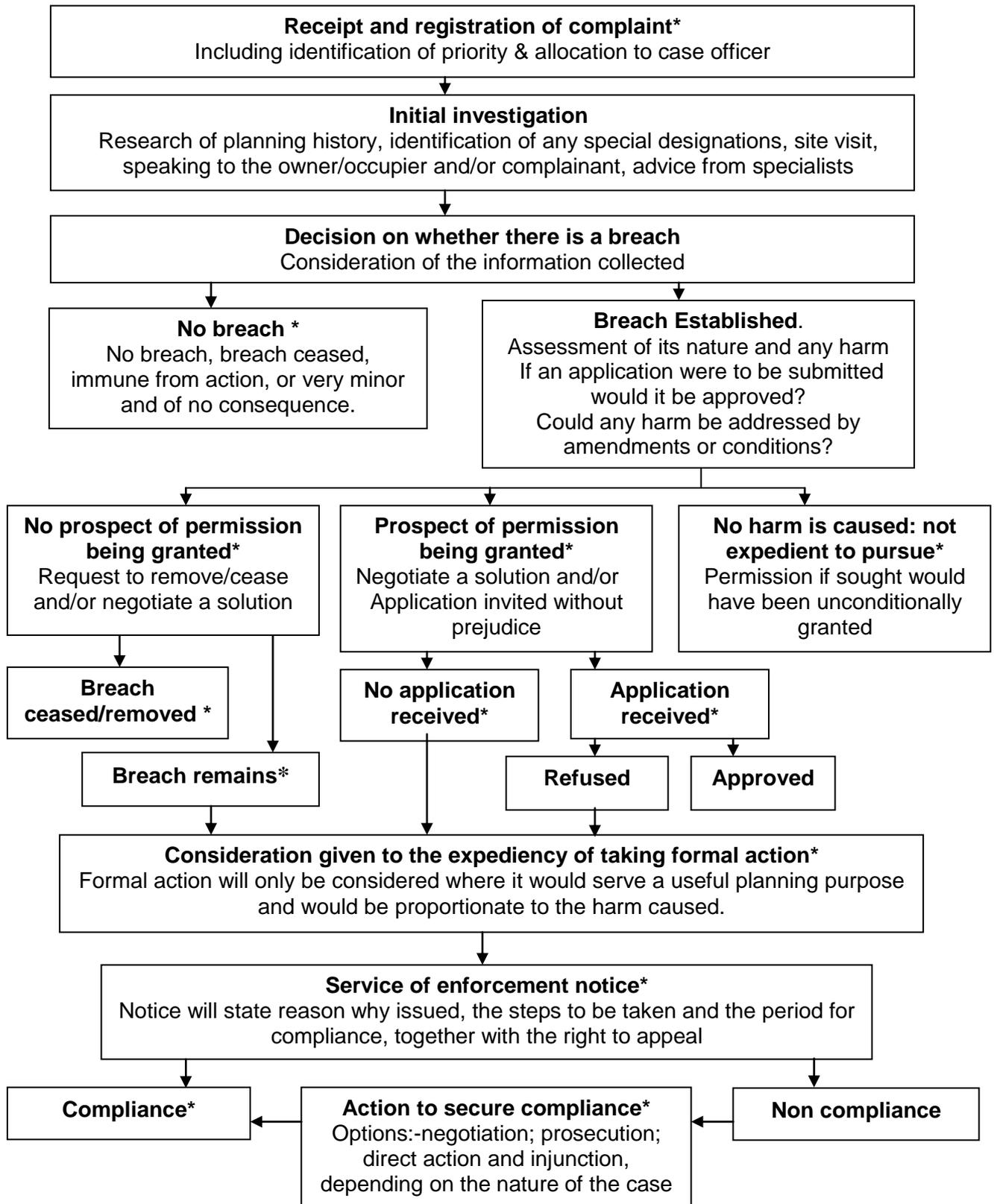
A national online planning resource where you can learn about the planning system and research latest government policy, with links to other related web sites. <http://www.planningportal.gov.uk>

### The Royal Town Planning Institute

The professional body for Town Planners. The web site provides planning guidance, information on planning consultants and on the Institute's Planning Aid service and provides links to a number of related sites. <http://www.rtpi.org.uk/>

# What happens to an enforcement complaint?

The following provides a simplified explanation of the steps involved with investigating a suspected breach of planning control



In the majority of cases we should be able to determine within 5 weeks whether a breach of planning control has occurred. Where a breach has occurred the time taken to reach a final resolution is dependant on the circumstances of the case and the particular course of action followed. \* letter/e-mail to complainant