

LOCAL ENFORCEMENT PLAN

DRAFT



Winchester
City Council

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Introduction

1.1 National Policy and Guidance

1.1.1 The Town and Country Planning Act 1990 provides the main legislative provisions regarding breaches of planning control, with policy guidance provided in the National Planning Practice Guidance (NPPG) "Enforcement and post-permission matters: Responding to suspected breaches of planning control" (March 2014 last updated July 2019).

1.1.2 Paragraph 58 of the National Planning Policy Framework (NPPF) document: February 2019 states:

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.

1.1.3 The NPPG (at para 006) explains that it is important to prepare and adopt a local enforcement plan because it:

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

1.2 Winchester City Council

1.2.1 Winchester City Council places great importance on protecting its communities, its heritage and the natural environment from unauthorised development that causes harm. An effective planning enforcement service is an important means of achieving this goal, and maintaining the integrity of the planning system.

1.2.2 As part of its commitment to the delivery of an efficient and effective planning enforcement regime, Winchester City Council has prepared this revised version of its Local Enforcement Plan (LEP) in accordance with the NPPF.

1.2.3 The plan sets out the Council's approach to planning enforcement; it explains how alleged cases of unauthorised development and/or breach of planning control will likely be investigated; the basis on which decisions may be made; and the Council's approach to pro-active monitoring.

1.3 Breaches of Planning Control

1.3.1 The majority of building works and/or changes of use need planning permission if considered to be development. The display of advertisements or works to protected (TPO) trees can also require consent. Undertaking development without first obtaining planning permission or consent, or carrying out the building work or change of use without complying with the conditions of a permission, is described as a breach of planning control.

1.3.2 Guidance as to what is, and is not, a breach of planning control is provided in Appendix 1 at the end of this document.

2. The South Downs National Park

2.1 Winchester City Council also undertakes planning enforcement (not for minerals and waste development) in the part of the District which lies within the South Downs National Park on behalf of the South Downs National Park Authority (SDNPA). For details of the approach to planning enforcement in the national park please refer to the SDNPA's Enforcement Guide: www.southdowns.gov.uk/planning/enforcement/planning-enforcement/what-is-planning-enforcement/

2.2 You can check whether a site is located within the national park by using the address search page on the SDNPA's website: www.southdowns.gov.uk/discover/communities/do-i-live-in-the-national-park/

2.3 A Map is included at the end of this document to show which parts of the district are within the national park.

3. Our Principles

3.1 Operate within the law

3.1.1 Winchester City Council recognises that carrying out unauthorised development, without first obtaining the necessary planning permission or consent, can have a harmful impact upon the district's natural environment, residents, businesses and visitors. Effective planning enforcement is important, both to retain public confidence in the planning process, and to maintain the perception of fairness for the benefit of those who follow the rules as well as those experiencing the impacts of construction and development. However, the Council must also operate within the law and remember that the legal framework is initially about assessing, and then (as appropriate) removing any harm caused by those breaching the rules.

3.2 Discretion

3.2.1 Winchester City Council will seek where appropriate to remedy all breaches of planning control that it considers are harmful using all the enforcement tools at its disposal; and where there is serious harm the Council will act swiftly and robustly in order to resolve the matter. Please note that in most cases it is **not a criminal offence** to carry out development without having first obtained planning permission (exceptions include unauthorised works to listed buildings and protected trees). However, failure to comply with an enforcement notice or similar breach notice within the time-scales specified in the notice may result in criminal prosecution being sought by the Council to ensure compliance with outstanding requirements.

3.2.2 Guidance from Central Government is that enforcement action should normally be a last resort, and that Councils are expected to give those who are responsible for apparent breaches of planning control a reasonable opportunity to put matters right or to regularise the breach, before resorting to enforcement and/or formal legal action.

3.2.3 However, the law says that Councils may issue an enforcement notice if it is considered expedient to do so, having regard to the policies in the Council's Local Plan and any other material considerations. In deciding, therefore, whether or not it is expedient to serve an enforcement notice, planning enforcement officers must consider whether the breach of planning control is actually harmful or likely to give rise to harm. It follows, therefore, that if the breach of planning control is not harmful or is unlikely to be harmful in the future, formal action is unlikely to be pursued.

3.2.4 It should be noted that planning laws and policies are designed to manage the development and use of land and buildings in the public interest. They are not intended to protect the private interests of one person against the activities of another. The Council will not become involved in neighbour disputes or other private property related issues.

3.3 Proportionality

3.3.1 Any action the Council takes must be proportionate to the degree of harm caused by the unauthorised development or use. Planning enforcement officers will not hesitate to take swift and effective enforcement action where there is serious harm. In cases where the harm is not so serious officers will first try to resolve the matter through appropriate negotiation. If this is required, the Council will seek to ensure that it is undertaken in both a cost effective and timely manner before any decision to issue an enforcement notice is taken.

3.4 Consistency and Fairness

3.4.1 The Council is committed to ensuring that all enforcement related allegations are dealt with in a consistent and fair manner. Planning enforcement officers may take into account other similar cases so far as relevant and will endeavour to adopt a consistent approach. Officers are required to give careful consideration to Human Rights and to the Council's equality duty, as well as data protection legislation (GDPR) and will do so to the extent necessary.

3.5 Transparency

3.5.1 The Enforcement Team contact telephone number is: 01962 848480.

3.5.2 Planning enforcement officers will identify themselves by name and provide their contact details in all correspondence and when meeting people on site. They will explain what is decided clearly, in plain English and try to avoid jargon where at all possible.

3.5.3 Planning enforcement officers will maintain the Council's enforcement notices register. Anyone wishing to view the register may do so by visiting the reception on the ground floor of the City Offices and by asking to speak to the Planning Technician (Enforcement). The office hours are 8.30am to 5.00pm (Monday to Thursday) and 8.30am to 4.30pm (Fridays).

3.5.4 The Team Leader – Enforcement will monitor the Planning Enforcement Team's performance and the results will be published annually in the Council's Monitoring Report.

4. How to report a suspected breach of planning control

4.1 The best way to report a suspected breach is by using the “Report a suspected breach of planning control” button on the Planning Enforcement page of the council’s website: www.winchester.gov.uk/planning-enforcement/report-a-suspected-breach-of-planning-control.

4.2 Anyone who reports a suspected breach of planning control will need to give their name, address and contact details and a description of the breach, including the address. It would also be helpful if we are provided with the following information:

- state when it began
- state who is thought to be responsible, including their name and contact details
- provide clear photos of the alleged breach
- describe the harm which is caused
- indicate how you are affected.

It may take longer to investigate if this information is not provided.

4.3 Alternatively a suspected breach of planning control can be reported:

- in writing to: Planning Enforcement Team, Winchester City Council, City Offices, Colebrook Street, Winchester, SO23 9LJ;
- by telephone: 01962 848480;
- by email to: enf@winchester.gov.uk ; or
- by visiting the City Offices and speaking to one of the Planning Enforcement Team’s officers.

4.4 The Planning Enforcement Team will not be able to accept anonymous allegations or reports, as the planning enforcement officers need the complainant’s contact details to provide updates on the investigation and/or actions that have been taken, or to request further information. The planning enforcement officers will ensure that the complainant’s identity is safeguarded within and outside the Council, though in some circumstances it may be necessary for the complainant to give evidence at an appeal or at legal proceedings. If someone does not wish to provide these details, a Ward Councillor or a Parish Councillor may assist with lodging the complaint.

The contact details for Ward Councillors can be found on the Council’s website: democracy.winchester.gov.uk/mgMemberIndex.aspx?bcr=1

The contact details for Parish clerks can also be found on the Council’s website: democracy.winchester.gov.uk/mgParishCouncilDetails.aspx?ID=178&LS=3

5. What you can expect if you report a suspected breach of planning control

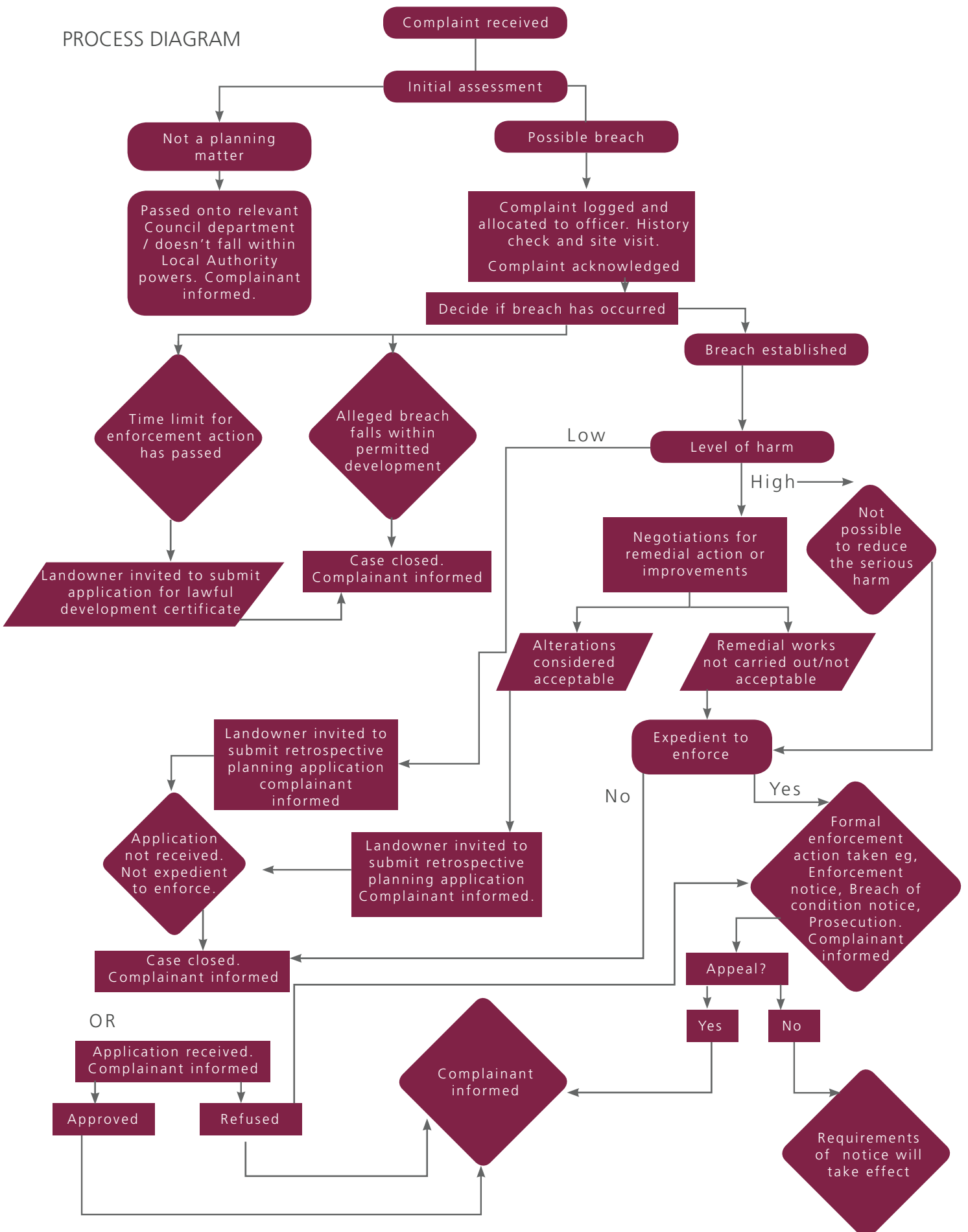
5.1 The process for how the Planning Enforcement Team will respond to an alleged breach of planning control is shown in the flow chart on the next page and as follows:

5.2 After a valid planning enforcement query has been received it will be logged and allocated with a case reference number. The case will be allocated to a planning enforcement officer to investigate. You will be sent an acknowledgement within 5 working days providing details of the reference number and the name of the case officer.

5.3 In most cases a planning enforcement officer will visit the site to identify whether planning permission or consent is required for the alleged breach. The officer will then consider whether it is likely that permission or consent will be granted.

5.4 Planning enforcement officers value greatly the assistance they receive from the Town and Parish Councils in reporting and monitoring enforcement matters. Officers undertake to keep Ward Councillors and Parish Councils regularly advised of the progress and outcome of cases within their areas.

PROCESS DIAGRAM



5.5 The time within which planning enforcement cases are resolved depends upon a number of factors, such as:

- the level of detail included in the initial complaint
- the type of breach
- the level of harm that the breach is causing
- the evidence required to prove that there is a breach
- the willingness of the developer to aid in our investigations
- the submission of a (retrospective) planning application
- whether an appeal is submitted against an enforcement notice.

5.6 The case officers will update complainants of the progress of all enforcement investigations within 5 weeks, and at key stages of the process, such as the service of an enforcement notice or the receipt of an appeal. For the priority 1 cases (see section 6), the complainant will receive an update within 4 working days.

5.7 The Council aims to resolve most cases within 12 weeks of the date of receipt depending on the factors above. In some cases this will be longer, when the case officer is for example negotiating with a developer about the most effective way to resolve the breach or if an appeal is made. In any event, the case officer will advise on when each enforcement investigation is closed which will include an explanation of the reasons. In some cases it may have been decided to take no further action.

6. Our priorities

6.1.1 Outside of the South Downs National Park, the Council typically receives complaints in excess of 300 alleged breaches of planning control each year. Some of these relate to developments which would not require planning permission. The complainant will be advised quickly if that is the position, and will be given an explanation why it is not possible to pursue any further action. Otherwise, with the aim of providing an efficient service, the Council has adopted a priority system for alleged breaches on the basis of the likely degree of harm.

Priority 1

6.2.1 Reported breaches of planning control that may result in immediate, substantial or irreversible harm will be given the highest priority and a planning enforcement officer will carry out a site visit within one working day of receipt of the report. For example:

- Unauthorised works to listed buildings or ancient monuments
- (substantial) demolition works in a conservation area
- Works to protected trees
- Substantive breaches of a Construction Management Plan.

Priority 2

6.3.1 The Council unfortunately does not have sufficient resources to be able to investigate all alleged breaches immediately. Potentially serious breaches, therefore, will be investigated as soon as possible but normally within 10 working days. Examples of these include:

- Unauthorised residential or commercial development
- Stationing a new residential caravan in the countryside (including gypsy sites and travelling showpeople sites)
- Works not in accordance with a planning permission
- Commencement of development (following the grant of planning permission) without discharging 'pre-commencement' conditions
- Building / engineering works that are causing harm or are likely to cause harm to the landscape, a conservation area, a scheduled ancient monument or a Site of Special Scientific Interest
- Development which is likely to give rise to a serious risk of harm to public safety or compromise highway safety.

Priority 3

6.4.1 For other, less serious alleged breaches, a planning enforcement officer will normally investigate within 15 working days:

- All other breaches of conditions
- Changes of use not covered by Priority 1 or 2
- Earthworks and changes to land levels
- Display of advertisements
- Agricultural developments
- Equestrian related developments
- Gates, walls, fences
- Satellite dishes
- Untidy land

6.5.1 The planning enforcement officers will, when necessary, collaborate with other departments and public bodies, including the Police, Environment Agency, Hampshire County Council, and our Town and Parish Councils, in order to secure resolutions effectively and efficiently.

7. The contravener – what to expect

7.1 The contravener will be told what needs to be done, and by when, to resolve the problem. If the problem persists and is harmful the Council may decide to take enforcement action. If the problem can be resolved with conditions attached to a planning permission, then the contravener will be advised to submit a retrospective planning application. However, it must not be assumed that planning permission will be granted retrospectively.

7.2 If the contravener does not provide the necessary information required to establish whether a breach of planning control has occurred, or the extent of the development, then a Planning Contravention Notice may be served which requires the provision of specific information.

7.3 If enforcement action is taken, information relating to any right of appeal will be provided with the notice served.

8. The decision/action

8.1 The Council has a wide variety of enforcement “tools” that can be used if the decision is made to take enforcement action. These can be viewed at www.gov.uk/guidance/ensuring-effective-enforcement.

8.2 When an enforcement notice is issued it will include the reasons for taking enforcement action, state clearly what must be done to remedy the breach of planning control, and specify the time in which those works must be completed.

8.3 Many cases do not result in enforcement action being taken. Enforcement investigations can be closed for several reasons, such as:

- there is no breach of planning control
- the breach is rectified
- planning permission has been granted retrospectively
- planning permission is not required
- the development has become lawful (due to time elapsed)
- it is “permitted development” authorised by law (e.g. General Permitted Development Order)
- it is not expedient to pursue enforcement action

8.4 Even if a breach of planning control is found to have occurred it is not always expedient to take enforcement action because, for example, the works may be so minor that they do not cause harm. This is a matter of judgement for the Council, and is often referred to as a technical breach of planning control. The Council decides the degree of harm and whether the breach is minor or serious in each case.

8.5 If it is found that the alleged breach is not a planning matter but is nevertheless serious, the Planning Enforcement Team will endeavour to forward it as soon as possible to the relevant team or organisation, and information on who is dealing with it will be provided.

9. The appeals process

9.1 There is a right of appeal to the Secretary of State against an enforcement notice, a listed building enforcement notice and an advertisement discontinuance notice within a specified time frame.

9.2 If an appeal is lodged with the Secretary of State, further enforcement action by the Council regarding this notice is suspended until the appeal decision is issued.

9.3 For information on how to make an appeal against a planning enforcement notice or how to submit comments on an appeal of an enforcement notice please visit: www.gov.uk/appeal-enforcement-notice.

9.4 There is a right of appeal to the Magistrate's Court for Section 215 (untidy land) notices. Further enforcement action will be suspended if an appeal is lodged to the Magistrate's Court, pending a decision.

9.5 There is no right of appeal for a temporary stop notice, a stop notice, Section 224 advertisement notice or a breach of condition notice.

9.6 With every notice served, details of any right of appeal will be provided.

10. Where an offence is committed

10.1 Prosecution

10.1.1 It is a criminal offence to carry out works that require listed building consent without getting consent first, or to carry out works to protected trees without prior notification and/or consent. It is also an offence to display some advertisements, or undertake substantial demolition within a conservation area without prior permission. In most other cases a criminal offence only arises when an enforcement notice has been issued, has taken effect and its requirements have not been complied with by the specified date. The planning enforcement officers will apply the two key tests set down in the Code for Crown Prosecutors in deciding whether prosecution is justified: www.cps.gov.uk/publication/code-crown-prosecutors.

These tests are:

- is there sufficient evidence against the defendant
- is it in the public interest to bring the case to court?

10.1.2 The Council will always try to use its officers as witnesses in Court. However, there will be some cases where it will be necessary to rely on evidence provided by witnesses from outside the

Council. In such cases the case officer will advise the witness of the possible need to attend court and to provide a written witness statement.

10.1.3 The Council will always look to recover costs from the offender where evidence suggests offenders have profited from the illegal works, as a deterrent and to remedy the breach. A charge may be placed on the land to aid future recovery or steps may be taken to seek confiscation under the Proceeds of Crime Act 2002.

10.2 Direct Action

10.2.1 The Council will also consider taking direct action to get the breach resolved. This means that the Council will carry out the works and recover the costs from the offender. The Council might need to apply for a Court injunction, for instance to prevent access when works are in progress or unauthorised development or use is anticipated.

10.3 Injunction

10.3.1 The Council will also consider injunctive action where a breach of planning control is severe, or there is a threat of it becoming severe, and which can be halted by the successful application to the High Court (or County Court) for an Injunction.

10.3.2 The Council may also consider injunctive action for longstanding cases where the offender has failed to comply with an enforcement notice and the harm is ongoing and now needs to be brought to an end.

10.3.3 The Council may apply for a prohibitive injunction to prevent some action or the continuation of some action or it can also apply for a mandatory injunction to require positive action to be taken.

11. Proactive enforcement and compliance

11.1 It is the responsibility of individual developers to comply with the conditions imposed on a planning permission. Failure to comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission in the first instance.

11.2 The Council has chosen to carry out proactive compliance monitoring to encourage developers to implement developments in accordance with the approved plans and to comply with conditions, so that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. By carrying out proactive compliance monitoring the Council aims to reduce the number of retrospective enforcement complaints received.

11.3 In order to be proactive, but recognising that resources are limited, the Council will operate a risk-based approach in deciding which cases are to be investigated or monitored. This allows the available resources to be deployed in a targeted and focused way. Priority may therefore be given to monitoring the following developments:

- All developments involving 10 or more dwellings or residential development greater than 1 hectare in area
- All commercial developments over 1000sq metres floor area or 0.5 hectares in area.
- All developments subject to a planning agreement (Section 106)
- Particular problematic sites such as those involving significant level changes or contamination.

Any other developments may be inspected on a random basis at any time in order to ensure

compliance.

11.4 Planning enforcement officers also proactively enforce planning decisions in a variety of ways including:

- investigating licensing applications and providing comments
- providing comments on applications for licences for caravan sites, HGV operations, etc.

12. **Communication**

12.1 In Section 5 it is explained how reports of potential breaches of planning control will be acknowledged, and how the complainant will be advised of progress and of the eventual closure of the case.

12.2 Lists of new enforcement complaints received will be sent on a regular basis to Ward Councillors and Parish Councils, whose assistance in reporting and monitoring enforcement matters is invaluable. Also, Ward Councillors and Parish Councils will be advised regularly of the progress and outcome of cases within their areas.

13. **Complaints about the Council's Planning Enforcement Service**

13.1 For those who are unhappy about the level of service received from the Planning Enforcement Team or how the process has been managed, then in the first instance the concerns should be discussed with the Team Leader – Enforcement. If this does not resolve the matter, the concerns can be taken further through the Council's Corporate Complaints www.winchester.gov.uk/about/contact-us/complaints.

13.2 If still dissatisfied by the Council's response, then the Local Government Ombudsman can be contacted in writing who will determine if the concerns will be investigated. Please note that the Local Government Ombudsman will only investigate if the Council's complaints process has been completed, and will only be concerned that the correct procedures have been followed. The Ombudsman has no power to reverse the Council's decision.

14. **Monitoring and Review**

14.1 The Team Leader – Enforcement will continually monitor the Enforcement Team's performance in dealing with enforcement matters and will report on a quarterly basis:

- the number of new cases received
- the number of cases closed
- current workload (a running total of live cases)
- the percentage of complaints acknowledged within the time limit
- the percentage of cases closed within the suggested time limit (depending on the priority ascribed to the case)
- a detailed progress report on the longest running cases.

14.2 The Winchester Local Enforcement Plan will be reviewed every two years or more frequently if there is new legislation or Government advice relating to planning enforcement.

Contact Details

Planning Enforcement Team,
Winchester City Council,
City Offices,
Colebrook Street,
Winchester,
Hampshire,
SO23 9LJ
Phone: 01962 848480
Email: enf@winchester.gov.uk

Other Useful Links

www.winchester.gov.uk/planning/

www.southdowns.gov.uk/planning/enforcement/planning-enforcement/

www.gov.uk/planning-permission-england-wales/when-you-dont-need-it

www.gov.uk/guidance/ensuring-effective-enforcement

www.winchester.gov.uk/planning/planning-enforcement/hedges/

www.winchester.gov.uk/planning/landscape---countryside/hedgerows/

www3.hants.gov.uk/archives/hals-collections/hedgerows.htm

www3.hants.gov.uk/roads/apply-droppedkerb.htm

www.hants.gov.uk/landplanningandenvironment/strategic-planning/planning-breach

www.gov.uk/government/organisations/environment-agency

www.gov.uk/government/organisations/land-registry

www.legislation.gov.uk/ukpga/1990/8/contents

www.gov.uk/government/publications/national-planning-policy-framework--2

www.gov.uk/government/collections/planning-practice-guidance

Appendix 1

What is a breach of planning control?

A breach of planning control occurs when operational development (building or other works) or a material change of use of land or a building takes place without planning permission. Examples of breaches of planning control are:

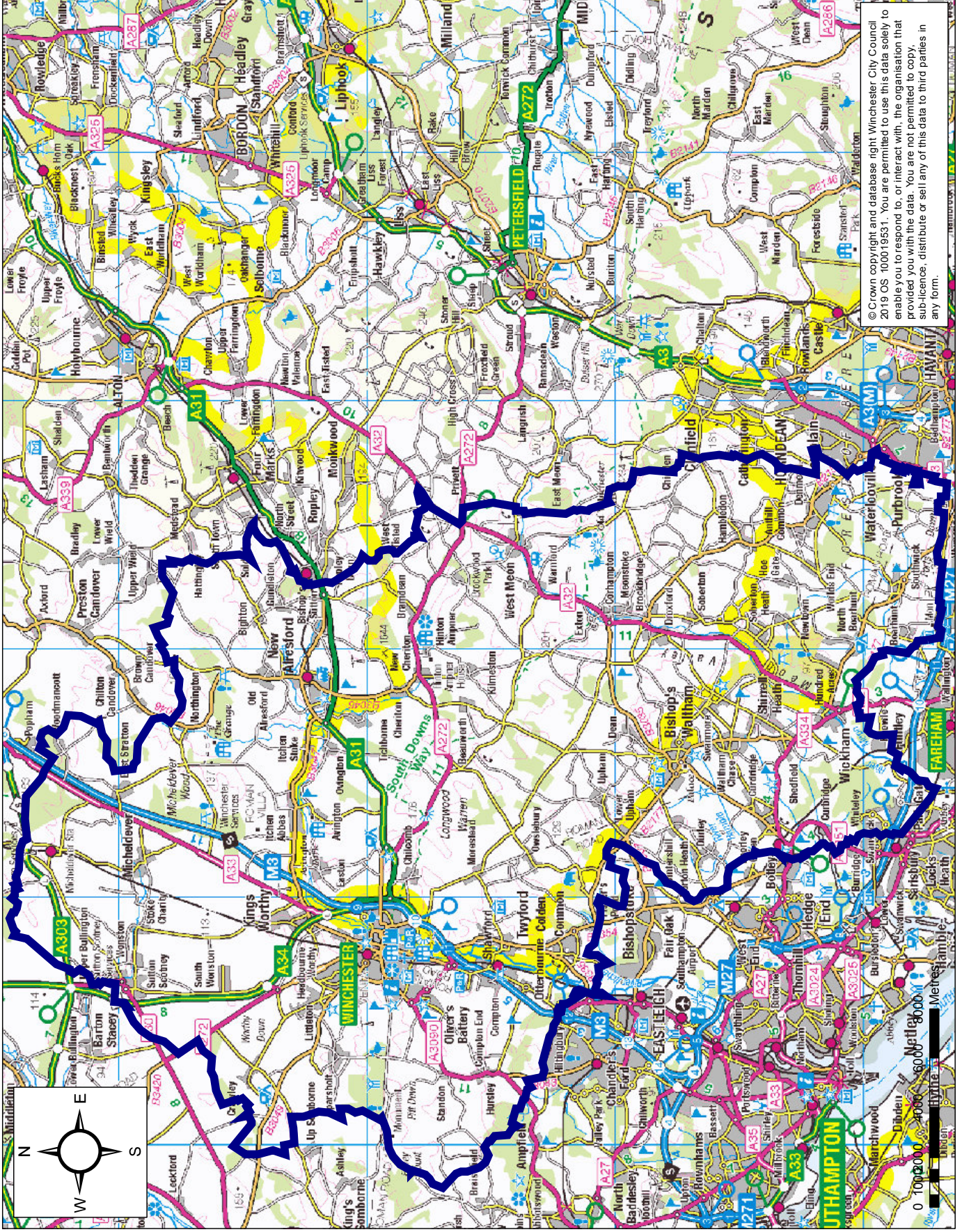
- Not building in accordance with approved plans (following the grant of planning permission);
- Failing to comply with conditions attached to a planning permission;
- Carrying out development which is not permitted because an Article 4 Direction has been made;
- Unauthorised works to listed buildings;
- Unauthorised demolition within a conservation area;
- Unauthorised works to trees subject of a Tree Preservation Order or in a conservation area;
- Engineering operations, such as the raising or lowering of ground levels and the formation of earth bunds, carried out without the benefit of any necessary planning permission;
- Display of an advertisement without the benefit of any necessary advertisement consent;
- Failure to properly maintain land so that it affects the amenity of the area;
- Failure to comply with a S106 legal agreement/undertaking;
- Unauthorised building works or changes of use of buildings or land;
- The formation of a new access or the alteration of an existing access on to a trunk road or a classified road (an A, B or C class road).

Matters that are not breaches of planning control

Examples include:

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way;
- Parking commercial vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property;
- Operating a business from home, where the residential use remains the primary use of the property and there is no significant impact on residential amenity or the character of the area;
- Boundary or land ownership disputes – these are a civil matter and cannot be controlled by planning legislation;
- Covenants imposed on property Deeds;
- Any development that is deemed to be 'permitted development' under the Town and Country Planning legislation
- The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road;
- Clearing land of overgrowth, bushes or trees (provided the trees are not subject to a Tree Preservation Order or within a conservation area);
- Advertisements that are either excepted from deemed or express consent under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (as amended)
- Dangerous structures – these are dealt with by the Council's Building Control Division
- High hedge disputes - these are dealt with by the Planning Enforcement Team under Part 8 of the Anti-Social Behaviour Act 2003;
- The removal of countryside hedgerows – these are dealt with by the Council's Landscape and Open Space Team under The Hedgerows Regulations 1997

WCC boundary edged blue and SDNP boundary edged yellow



Date: 23/08/2019

Scale: 1:155,000

Author: Winchester City Council

Map Notes

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Winchester
City Council