



Enforcement Policy

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1. Introduction

1.1 This Policy was developed following a review of Stratford-on-Avon District Council's ('the Council') existing service-specific Enforcement policy.

Some service areas of the Council have powers, enforcement options or considerations specific to their areas of work and these are set out in the following appendices to this Policy:

- Appendix A – Food Safety, Occupational Health and Safety, Licensing
- Appendix B - Planning Enforcement (2021 version currently being reviewed)
- Appendix C – LABC Building Control

Business support organisations including the Coventry and Warwickshire Chamber of Commerce, the Federation of Small Businesses and the South Warwickshire Landlords' Steering Group have been consulted in regard to this Policy.

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, licensing, neighbourhood services, parking and private sector housing services.

The Policy sets out the approach of the Council in dealing with non-compliance with relevant legislation and a commitment to good enforcement practice, informed by the Principles of Good Regulation, which the Council has powers to oversee within the district.

The Council will exercise its regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities;
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Regulators' Code

The Regulators' Code came into statutory force in April 2014 and provides a clear framework for transparent, open and accountable regulatory delivery. A copy can be found at:

www.gov.uk/government/publications/regulators-code

The Council has had regard to the Regulators' Code in the preparation of this Policy. In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and fully documented.

Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Equalities Act 2010

All enforcement activity undertaken under this policy will have regard to the Equalities Act 2010.

The Council is committed to fulfilling its role under the Equalities Act 2010, with regard to the enforcement of legislation without discrimination in terms of race, colour, culture or ethnic origin, nationality, religion or belief, gender, disability, age, sexuality, geographical location or any other status [set out within the legislation?].

Data Protection Act 2018

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018 which includes UK General Data Protection Regulation 2018 (GDPR), and any superseding legislation.

The Code for Crown Prosecutors

When deciding whether to prosecute, the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

Evidential Test - is there sufficient evidence to provide a realistic prospect of conviction on each charge against the suspect(s)?

When deciding whether there is sufficient evidence to prosecute, the Council will consider what evidence can be used in court and whether it reliable and credible, when considering the strength of the evidence. We must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each suspect.

Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 6.1.

Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the RES Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

- 1.2 The Council is committed to avoid imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means.
- 1.3 This Enforcement Policy can be downloaded from the Council's website www.stratford.gov.uk.
- 1.4 The Council's accessibility statement requires us to maintain and update our website as necessary in plain English in terms of the W3C guidelines. We will ensure that our publications and press statements are accessible to all communities and we aim to provide information in accessible formats on request. The Council also has membership of Language Line to provide language support where required.
- 1.5 This version of the Council's Enforcement Policy is dated [tbc]. It replaces all previous versions of the Council's Enforcement Policy and their appendices.
- 1.6 In addition to the Council's Enforcement Policy, the Council provides the following guidance on its website:
 - Corporate and Service Area approaches to communication;
 - Service Areas approaches to the provision of advice;
 - Service Areas approaches to interventions;
 - Fees and Charges; and
 - How to comment, compliment or complain.

2. What is this Policy for?

- 2.1 This Policy explains to anyone affected by the Council's regulatory activities what to expect in respect to the Council's approach to dealing with non-compliance.

2.2 Authorised officers will act in accordance with the Policy. All services are subject to internal audit to ensure their actions are in accordance with the Policy and performance data will be published on the Council's website through the relevant appropriate mechanisms, such as Committee reports.

3. When does this Policy apply?

3.1 This Policy applies to the following regulatory services which are the responsibility of the Council:

- Anti-Social Behaviour
- Dog Control and Fouling
- Environmental Protection
- Food Safety
- Health and Safety
- Licensing
- Littering/Fly-tipping Enforcement
- Parking Enforcement
- Planning Enforcement
- Private Sector Housing
- Public Health
- Waste Enforcement
- Building Regulation Enforcement

As stated in section 1.1, some service areas of the Council have powers, enforcement options or considerations specific to their areas of work and these are set out in the following appendices to this Policy:

- Appendix A – Food Safety, Occupational Health and safety, Licensing
- Appendix B - Planning Enforcement
- Appendix C – LABC Building Control

In addition, there are service-specific policies which sit under this generic Policy, and these can be found on the Council's website:
www.stratford.gov.uk.

4. Our approach to dealing with non-compliance

4.1 Explanation of the Council's approach to dealing with non-compliance

The Council's approach to dealing with non-compliance will always be in accordance with the general principle of negotiation, advice, guidance, education and support to ensure maximum benefit from minimum resource input, aiming to avoid imposing unnecessary regulatory burdens. Enforcement procedures will always follow statutory requirements and guidance. Whilst court proceedings, including prosecution, will normally be directed towards those who deliberately fail to comply, there will also be occasions where proceedings are deemed to be appropriate in certain other circumstances (see Section 4.2).

We will clearly explain the non-compliance, the actions required, or decisions taken, with reasons for these.

We will provide those who are subject to enforcement action with an opportunity for dialogue in relation to the advice given, actions required, or decisions taken in relation to non-compliance.

Dialogue with the business or regulated person is available through all communication channels (face-to-face, telephone, letter, email) and access to translators is available if required.

Whilst dialogue and negotiation are encouraged, where a criminal offence is being investigated, conversations or correspondence may need to be undertaken in accordance with the requirements of the Police and Criminal Evidence Act 1984 and its associated codes.

The Council's Scheme of Delegation gives the relevant Head of Service responsibility for managing investigations and making decisions on enforcement action. The Head of Service may authorise in writing other officers to act on his/her behalf.

Where it shares or has a complementary role with other agencies, the Council will consult those agencies, including Primary Authorities, as appropriate, before taking any formal enforcement action.

The Council will manage enforcement in relation to its own establishments and activities to ensure that decisions are free from any conflict of interest. For example, Environmental Health officers are free to investigate noise nuisance arising from a Council activity under the same protocols as any other investigation.

All officers must demonstrate commitment to equality in the performance of their regulatory duties and in their professional relationships with regulated persons to ensure fair and objective enforcement. The Council's Equalities and Diversity Framework can be downloaded at: www.stratford.gov.uk/council-democracy/equality-and-diversity.cfm.

The Council will always aim to publicise successful convictions to reassure compliant businesses or regulated persons that economic competition is a 'level playing field', to maintain confidence in the regulatory system, and to impress on others the gravity with which the Council regards offences.

4.2 Explanation that the action that the Council chooses to take depends upon the particular circumstances and the approach of the business or regulated person to dealing with the breach

Enforcement action will always be proportionate and follow statutory guidance. Formal court proceedings are usually a final step in a programme of enforcement actions. Enforcement action will usually be graduated. However, the Council will deal firmly with those that deliberately or persistently fail to comply. Where an absolute offence exists (for example non-compliance with a notice, failure to obtain relevant permissions, consents or licences), prosecution may still be considered the most appropriate course of action, regardless of aggravating circumstances or a previous history of non-compliance.

The Council encourages all of those regulated to request advice and guidance from officers. Where incidents of non-compliance are revealed voluntarily and there is a willingness to resolve the issue, the Council will provide support and seek to avoid the need for formal enforcement action.

Explanation of the factors that influence the Council's response to breaches of the rules

The Council fully supports the principles in the Regulators' Code which sets out obligations in relation to enforcement. It sets out the need to consider a range of matters including economic progress, accountability, and risk assessment.

Where applicable, the Council will take note of the views of the Primary Authority on responses to breaches.

The Council's approach to checking that any non-compliance which was dealt with by providing advice or guidance has been rectified will generally be through the next scheduled visit. However, where significant improvement is required, a revisit may be appropriate.

Where the Council considers that breaches should be investigated by another enforcement body, the details will be shared with that organisation in accordance with the Data Protection Act 2018.

4.3 Explanation of the Council's approach to complaints of non-compliance

The Council will prioritise all complaints of non-compliance and take action as appropriate. Any follow-up action will be dependent on the circumstances of each complaint and the requirements of the relevant legislation.

5. Conduct of investigations

5.1 Explanation of the processes for investigating alleged breaches

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Attorney General's Guidelines on Disclosure
- the Protection of Freedoms Act 2012
- The Building Act 1984.

These Acts and the associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. Most of this legislation provides the officers with powers of entry at all reasonable times, with the associated offence of obstruction if entry is refused.

Where a business is allegedly in breach of relevant legislation and has a partnership agreement with a Primary Authority, early communication will take place with that authority.

When exercising its statutory power to seize items during an investigation, the Council will follow the relevant legal process. If there is reason to believe access will be denied, the Council will apply to the Magistrates' Court for a warrant to execute this process.

Any person suspected of committing an offence may be invited to attend an interview under caution in accordance with the Police and Criminal Evidence Act 1984 at the Council offices or another appropriate location and will be given the opportunity to be legally represented at the interview. Interview questions may also be presented in writing and answers required within an identified timescale in accordance with the Police and Criminal Evidence Act 1984. The Council will always endeavour to expedite investigations into non-compliance and in any case ensure that statutory time limits for investigations are achieved.

Formal proceedings will only be initiated where relevant evidential and public interest test have been met to the satisfaction of Council's relevant authorised officers and representatives.

5.2 A commitment to keep all parties informed on progress

The Council will, where possible, aim to keep alleged offenders, complainants and witnesses informed on the progress of investigations. As some enforcement matters may be ongoing for months or even years, progress updates will only be provided when appropriate.

6. Decisions on enforcement action

- 6.1 The range of actions that are available to the Council are set out in legislation and include:

Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. In accepting these voluntary undertakings, the Council will expect that these are completed within agreed timescales.

The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Statutory (Legal) Notices

In respect of many breaches, the Council has powers to issue statutory notices. These include but are not restricted to: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', 'Improvement Notices', 'Planning Enforcement Notices' and 'Remedial Action Notices'.

Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out by the Council of work in default. In some cases, charges can be levied for the service of a statutory notice. Where applicable, this is outlined on the Council's website: www.stratford.gov.uk.

A statutory notice will clearly set out actions which must be taken and the timescales within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

Works in Default

Where statutory provision exists, the Council will consider carrying out works in default to remedy non-compliance. In such cases, the Council's reasonable costs are recoverable from the offender.

Financial Penalties

The Council has powers to issue civil/fixed penalty notices in respect of some breaches. A civil/fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a civil/fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the original breach.

If a civil/fixed penalty is paid within the specified timescale in respect of a breach, the Council will not take any further enforcement action in respect of that breach. Payment of a civil/fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a civil/fixed penalty is not paid within the specified timescale in respect of a breach, the Council will consider taking further enforcement action in respect of that breach.

The Council is only able to issue civil/fixed penalty notices where it has specific powers to do so. If civil/fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a civil/fixed penalty notice.

Injunctive Actions, Enforcement Orders etc.

In some circumstances, the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

Simple Caution

The Council may consider Simple Cautions (previously known as 'Formal Cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the Simple Caution. Where a Simple Caution is offered and declined, the Council will give consideration to prosecution.

A Simple Caution has the same standing as a previous conviction and forms part of the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Simple Caution is issued to an individual (rather than a corporation), it may have consequences if that individual seeks certain types of employment.

Simple Caution details are held in accordance with Data Protection and GDPR provisions under the law and any Government guidance.

Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction on each charge against the proposed defendant(s).

When deciding whether there is sufficient evidence to prosecute, the Council will consider what evidence can be used in court and whether it is reliable and credible, when considering the strength of the evidence.

We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each proposed defendant.

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) How serious is the offence committed?
- b) What are the circumstances of, and the harm caused to the victim(s)?
- c) Is prosecution a proportionate response?

A successful prosecution will result in a criminal record. The court may impose a range of sentences depending upon the nature of the offence and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach (i.e. use Proceeds of Crime Act 2002 (as amended) proceedings to recover financial gain arising from criminal activity) or a compensation order in favour of the victims of the offence.

Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or from holding a licence/permit or consent.

Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account. A person convicted of a relevant offence may be judged to be no longer a 'fit and proper person' and their application refused. Further details with regard to this area of work can be found on the Licences and Permissions pages on the Council's website: [Licences & Permissions | Stratford-on-Avon District Council](#).

6.2 Explanation of how decisions are made on enforcement action

The Council follows the principles set out in the Macrory Review, which expects policies to:

- a) Aim to change the behaviour of the offender;
- b) Aim to eliminate any financial gain or benefit from non-compliance;

- c) Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- d) Be proportionate to the nature of the offence and the harm caused;
- e) Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- f) Aim to deter future non-compliance.

The Council will consider risk at every stage of its decision-making process, choosing the most appropriate type of enforcement action at each stage, including taking note of the compliance record of those being regulated.

The Council recognises the statutory requirement under the Primary Authority Statutory Guidance to notify primary authorities of proposed enforcement action.

The Council will keep under review the effectiveness of its chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

6.3 Explanation of how decisions are communicated to those affected

Where a right of appeal exists to any regulatory action, the Council will include full details of the appeal process at the time of taking the action. Regulated persons will be advised of their rights to representation at the time of being invited to any formal interview or hearing.

7. Review of this Policy

7.1 Details of when and how the Policy will be reviewed

This Policy will be reviewed following the issuing of any new or updated Government guidance or as a result of feedback received from local businesses or regulated persons as appropriate. It will be refreshed as a minimum every 2 years.

8. Comments and Complaints

8.1 Details of processes for complaints and appeals

An appeal against a regulatory decision can in the first instance be directed to the relevant Head of Service. If the action is subject to a formal appeal process (e.g. through the Magistrates' Court), the appellant should be aware of the statutory deadlines and may wish to proceed immediately with this approach.

Complaints about the conduct of local authority staff can be made through the Council's website, by email or by post to:

Stratford-on-Avon District Council
Elizabeth House
Church Street
Stratford-upon-Avon
Warwickshire
CV37 6HX.

<https://www.stratford.gov.uk/council-democracy/how-to-complain.cfm>
Email: info@stratford-dc.gov.uk

8.2 Contact details for comments or complaints about the Policy

Any comments or complaints about this Policy should be sent to Head of Law and Governance, Stratford-on-Avon District Council, Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX.

APPENDIX A

Food Safety, Occupational Safety and Health and Licensing Revision 4 (2025)

1. Introduction

- 1.1 This Regulatory Service Appendix is intended to be read in conjunction with the Council's published Enforcement Policy. It provides specific details that relate to the enforcement of matters with respect to food safety, occupational safety and health, and licensing.

2. Background

- 2.1 As a **food authority** under the Food Safety Act 1990, the Council has a duty to enforce food safety legislation, and a responsibility to follow associated Codes of Practice under the Act. It is required to enforce the legislation in pursuit of the particular interests of consumers within the Council's area including members of the public, employees and business owners by:
- protecting public health, and
 - ensuring a fair trading environment for local businesses.
- 2.2 Hygiene inspections are targeted in accordance with the risk assessment parameters set by the Food Standards Agency and the corresponding inspection frequencies.
- 2.3 The Council has a shared enforcement role with Warwickshire County Council in respect of food labelling requirements. This situation is managed by case-by-case communication between the two authorities and by regular meetings of the Warwickshire & Coventry Food Liaison Group.
- 2.4 Food safety and quality is determined on inspection or sampling and by the investigation of complaints made to the Food Safety Team.
- 2.5 Local authorities have statutory responsibilities to make adequate arrangements for the enforcement of **health and safety** law in relation to work activities at non-domestic premises such as offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises as specified in The Health and Safety (Enforcing Authority) Regulations 1998. Health and Safety Executive (HSE) inspectors also enforce health and safety law in workplaces allocated to the HSE.
- 2.6. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the National Enforcement Code, and the need to maintain a balance between enforcement and other activities, including inspection.

- 2.7 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. The decision-making process which inspectors will follow when deciding on enforcement action will be set down in writing and made publicly available. The judgements will be made in accordance with the principles of Philip Hampton's report: 'Reducing administrative burdens: Effective Inspection and Enforcement'.
- 2.8 The **Licensing** function of the Council Team covers the following areas: -
- Licensing Act 2003
 - Gambling Act 2006
 - Sexual Entertainment Venues
 - Private Hire driver, vehicle and operator's licences
 - Hackney Carriage driver and vehicle licences
 - Street Trading Consents (WDC) & Licences (SDC)
 - Small lotteries
 - Street Collections
 - House to House Collections
 - Scrap Metal Dealers
 - Animal Licensing
 - Pavement Licences
- 2.9 This policy should be read in conjunction with codes of practice and guidance issued by the following: - Food Safety Act 1990 Code of Practice; Approved Codes of Practice (ACOPs); HSE and HELA guidance; Home Office, Institute of Licensing, National Association of Licensing Officers and Gambling Commission.
- 2.10 All actions will be taken only by duly authorised officers in accordance with the Council's Scheme of Delegation. Under the Scheme of Delegation, the Head of Service may authorise in writing other officers to act on his/her behalf.

3. Enforcement Options

- 3.1 In making a choice of action, the appropriate subject guidance below will be followed: - Food Safety Act 1990 Code of Practice; Approved Codes of Practice (ACOPs); HSE and HSE's Enforcement Management Model (EMM) and HELA guidance; Home Office, Institute of Licensing, National Association of Licensing Officers and Gambling Commission.
- 3.2 Any significant choice of action which might be considered to be inconsistent with such guidance, advice or views will be made in consultation with the Warwickshire & Coventry Food, Safety and Licensing Liaison Group, the Food Standards Agency, the HSE and the Primary Authority. It is recognised, however, that only the Courts can make decisions on matters of legal judgement.

3.3 In most instances no action will be taken where the offending circumstance has been occasioned by inadvertence and is proactively in the process of being remedied, however, each case will be considered individually.

4. Informal Action

4.1 Informal action is the issue of verbal advice (always confirmed in writing on the visit report or by letter), written advice with no date for action requested, written advice with a date specified for completion, and written warnings that future offences may result in prosecution.

4.2 Recommendations are necessary in order to assist the duty holder in taking all reasonable precautions and exercising all due diligence to avoid offences. Such recommendations will be clearly differentiated from legal requirements which will be identified by statute and regulation or section number.

4.3 Action Plans, including timescales for completion, are required to be agreed by all parties including where necessary, the Licence Holder, Designated Premises Supervisor and other relevant Responsible Authorities (e.g. Police, SDC Environmental Health Officers and Planning Officers). The Council will seek agreement from the relevant parties to Action Plans. More formal action may be considered if an Action Plan cannot be agreed.

5. Statutory Notices

5.1 **Food - Hygiene Improvement Notices** will be served by authorised Officers in circumstances related to risk to health, in accord with Code of Practice guidance, in one or more of the following circumstances:

- a) There are such significant contraventions of the legislation that it is anticipated that a prosecution would be successful in the Magistrates' Court if the evidence were placed before them.
- b) There is a justifiable lack of confidence in the food business operator to respond to an informal approach.
- c) There is a history of non-compliance with informal action.
- d) Standards are generally poor with little duty holder awareness of statutory requirements.
- e) The consequences of non-compliance could have negative implications for public health or fair trading.
- f) Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy continuing contraventions.

5.2.1 The time limit for compliance with the requirements of the notice will be made clear verbally with the food business operator or appropriately negotiated. Regard will be had in the negotiations to consistency and feasibility. The food business operator will be advised that any unforeseen circumstances which arise in the time period, which may cause it to overrun, must be drawn immediately to the attention of the relevant authorised officer.

On written application, the investigating officer will have regard to the following criteria in granting an extension of the time period, or otherwise:

- a) The risk to public health associated with the fault if an extension was granted;
- b) The reason for the request;
- c) The remedy involved;
- d) The past record of compliance of the food business operator; and
- e) Any temporary action which the food business operator proposes to take to remedy the defect.

5.3 As a rule, prosecution will be considered where there has been a failure to comply with a Hygiene Improvement Notice. Only unavoidable circumstances or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation to this rule.

5.4 **Food - Hygiene Emergency Prohibition Notices** will be served by authorised Officers in one or more of the following circumstances:

- a) S/he/They is satisfied that there is an imminent risk of injury to health.
- b) Not taking immediate and decisive action to protect public health is unjustifiable.
- c) There is no confidence in the integrity of an offer made by a food business operator to close the premises voluntarily and to keep the premises closed until the risk is removed.

The Appendix for food should include all available enforcement action as per the additions below.

5.5 **Voluntary Closure Arrangements** to remove a health risk condition may be used at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists i.e. there is an imminent risk of injury to health. An officer may suggest this option but only when the conditions for the service of a Hygiene Emergency Prohibition Notice could apply. The officer must advise the food business operator to take independent legal advice concerning any offer to voluntarily close their food establishment. The officer will explain that by making the offer to close any right to compensation is lost. Any voluntary closure must be confirmed in writing by the food business operator or manager and the authorised officer. Such confirmation shall include an undertaking that the establishment will not re-open without the officer's prior approval. If the manager of a food business offers to close voluntarily, the officer should confirm that the manager has the authority of the food business operator to agree to such action.

In advising the food business operator, the authorised officer will appreciate that there is a risk that the establishment could be re-opened without the Competent Authority's knowledge or agreement and recognise that there is no separate legal sanction against a food business operator who reopens (although enforcement action for the actual breaches remains available).

- 5.6 **The Voluntary Surrender of Foods** to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption. A receipt must be issued for food that is voluntarily surrendered to the Competent Authority for destruction. The receipt must indicate that the food has been voluntarily surrendered to the Competent Authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively. The receipt must include space for recording the time, place, and method of destruction of the food, and these details must be recorded on the office copy by the authorised officer in due course and retained by the Competent Authority. The Competent Authority will secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal as necessary. A charge is made for this service set at a level to recover actual costs. In dealing with a voluntary surrender of food, the authorised officer will ensure the total destruction of the food by incineration or some other appropriate method. If total destruction is not possible, the officer will ensure such a degree of disfigurement that the food could never re-enter the food chain, e.g., by flattening tin cans for disposal in a suitably licensed landfill site, having regard to the requirements of relevant waste disposal legislation. A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.
- 5.7 **Remedial Action/Detention Notices (for approved establishments)** Remedial Action Notices may be used in respect of establishments subject to approval under Regulation 853/2004. They are used if any of the hygiene requirements are breached or an inspection under the "Hygiene Regulations" is being hampered. More specifically this provision provides for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions, upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or stopped completely. Remedial Action Notices will only be signed by Officers who have achieved appropriate competency levels which are detailed in the Food Standards Agency Code of Practice. Also note the powers to suspend or withdraw the approval or conditional approval of an establishment. Detention Notices provide for the detention of any food, including the taking of samples for examination. Detention Notices will be signed only by Officers who have achieved the appropriate competency levels which are detailed in the Food Standards Agency Code of Practice.
- 5.8 **The Seizure, Detention or Rejection of food** Detention and seizure can be used to deal with foods that fail to meet food safety requirements. Food does not comply when:
- It is unfit for human consumption; or
 - It has been rendered injurious to health; or

- It is so contaminated (by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state.

Detention notices served under Regulation 10 of the Food Safety and Hygiene (England) Regulations 2013 have no provision for compensation, whereas compensation is payable for any depreciation in value of the food if the notice is withdrawn (if the food is found to be compliant). An authorised officer will seize food products (with or without prior detention) if adequate arrangements can be made to immediately transport and store the goods until a Justice of the Peace can deal with them. If food is condemned by the Justice of the Peace, it must be destroyed. This must be witnessed by an authorised officer.

5.9 **Occupational Safety and Health – Improvement Notices**

- a) Paragraphs 5.1 and 5.2, apply.
- b) As a rule, failure to comply with a Health and Safety Improvement Notice will be reported for prosecution. Only unavoidable circumstances or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation to this rule.

5.10 **Occupational Safety and Health – Prohibition Notices** will be served by authorised Officers when there is a requirement to stop work to prevent a serious risk of personal injury.

- a) Prohibition Notices will be issued to have immediate or deferred effect.
- b) There does not have to be a breach of any statutory requirements before a prohibition notice is issued, but an officer who thinks there has been will specify it in the Prohibition Notice.

5.11 Primary Authorities will be notified of any statutory notices served.

6. Prosecution

- 6.1 The initial decision to prosecute rests with the Council and/or Duly Appointed Inspector (in the case of Health & Safety cases) and is delegated to the Head of Environmental and Neighbourhood Services in consultation with the appropriate elected Member. The Head of Law and Governance and Monitoring Officer also has delegated powers to pursue prosecution in relation to these matters, where required. See SDC's Scheme of Delegation.
- 6.2 The recommendation to prosecute, based on the available evidence and professional judgement, comes from the Team Leader and Section Manager by way of formal report to the Head of Service and in consultation with a Solicitor within Legal Services (Law and Governance).
- 6.3 Prosecutions will be related to risk/necessity and will not be used as a punitive response to minor breaches of legislation.

- 6.4 The objectives of any prosecution must be:
- a) To concentrate the mind of the duty holder/food business operator/Licence holder on the necessity to be duly diligent and to take all reasonable precautions to ensure food safety and hygiene/health and safety and public safety (licensing);
 - b) To demonstrate to the public that their interests are being protected;
 - c) To demonstrate to other duty holders/licence holders/food business operators that the law is being evenly applied; and
 - d) To enable the Courts to decide the appropriate punishment.
- 6.5 **Before deciding whether a prosecution should be taken one or more of the following factors will be considered:**
- a) The seriousness of the alleged offence.
 - b) Whether death or personal injury resulted from the alleged offence.
 - c) The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
 - d) The previous history of the party concerned.
 - e) The likelihood of the defendant being able to establish a statutory defence e.g. 'due diligence' or 'so far as is reasonably practicable defence'.
 - f) The availability of any important witnesses and their willingness to cooperate.
 - g) The willingness of the party to prevent a recurrence of the problem.
 - h) The probable public benefit of a prosecution, the importance of the case (e.g. whether it might establish a legal precedent) and satisfaction of the tests in the Code for Crown Prosecutors.
 - i) Whether other action, such as issuing a simple caution in accordance with Guidance - Ministry of Justice - Simple Caution for Adult Offenders – 13 April 2015 or a Hygiene Improvement Notice (H.I.N.), Improvement Notice (I.N.) or imposing a prohibition, would be more appropriate or effective.
 - j) Any explanation offered by the affected company.
 - k) False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a significant risk.
 - l) Inspectors have been intentionally obstructed in the lawful course of their duties.

These considerations will be detailed in all reports recommending prosecution.

- 6.6 Before a decision is made to prosecute, the duty holder/food business operator/Licence holder will be invited to an interview under the Police and Criminal Evidence Act 1984 in order to make representations before a decision is made as to the appropriate course of action to be taken. The duty holder/food business operator/Licence holder will have an opportunity to be accompanied by a legal representative at the interview. This is the duty holder/food business operator/Licence holder's opportunity to present any facts or views he considers pertinent to the decision-making process.
- 6.7 The circumstances where prosecution is warranted are one or more of the following:
- a) The offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk, or fair trading is prejudiced.
 - b) The offence involves a failure to correct an identified serious potential risk to safety having been given a reasonable opportunity to comply with requirements.
 - c) The offence involves a failure to comply with a statutory notice.
 - d) There is a history of similar offences.
- 6.8 If it is then considered by the Team Leader and Service Manager that prosecution is appropriate, the file of evidence will be presented to the Head of Service with a report by the relevant Service Manager recommending prosecution. If the Head of Service agrees with the recommendation in the report, it will be presented to the Council's Solicitor for review, and, if the evidence is considered sufficient for there to be a realistic prospect of conviction, and the public interest test is satisfied, then legal proceedings will normally be instigated.
- 6.9 Where there is a risk of injury to health, the Solicitor will in the course of the hearing, draw the Court's attention to its duty to impose a Prohibition Order.
- 6.10 Primary, Home and Originating authorities (as defined below) will be notified of the results of prosecutions:
- Primary Authority: This is the lead authority, providing a means for businesses to receive assured and tailored advice on meeting regulatory standards through a single point of contact.
 - Home Authority: the authority where the relevant decision-making base of a business is located.
 - Originating Authority: The local authority within whose boundary a business which manufactures a food product is located.

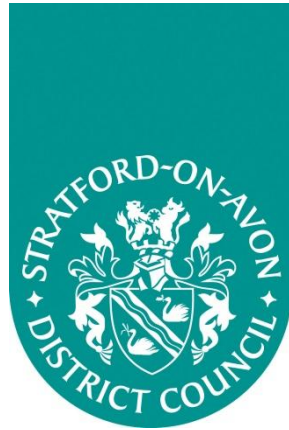
7. Simple Cautions

- 7.1 Simple Cautions in accordance with Guidance - Ministry of Justice - Simple Caution for Adult Offenders - 13 April 2015 will only be issued in the following circumstances:
- a) There is evidence sufficient to give a realistic prospect of conviction;

- b) The duty holder/food business operator/Licence holder admits the offence; and
 - c) The duty holder/food business operator/Licence holder understands the significance of the simple caution and gives informed consent.
- 7.2 If a duty holder/food business operator/Licence holder refuses the offer of a Simple Caution then a prosecution will be instituted.
- 7.3 Primary, Home and Originating authorities will be notified of Simple Cautions issued. The Caution will be cited in any subsequent proceedings as a previous offence.

8. Revocation of Approvals/Licenses/Permits/Consents and Registrations

- 8.1 Premises, people and vehicles can be approved and/or licensed by the Council. The Council will exercise its power of revocation, suspension or refusal to grant in the circumstances dictated by the appropriate regulations, and where it has not been possible to secure compliance by less draconian means.



PLANNING ENFORCEMENT LOCAL ENFORCEMENT PLAN

Revised April 2026

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1. Introduction

This policy document will describe the purpose of the Planning enforcement service and how the council will deliver the service to the community.

The Council is committed to providing an efficient and effective planning enforcement service that is transparent, consistent, proportionate, and fair. Effective enforcement is essential in establishing effective controls over unauthorised development and conserving the natural and built environment whilst safeguarding the quality of people's lives. A strong enforcement function is fundamental to maintaining public trust in the Council's decision-making and reflects its commitment to applying planning controls fairly and consistently.

This plan will enable proactive management of enforcement activities and ensure our approach reflects local priorities; clearly explaining how planning permissions will be monitored, alleged breaches investigated, and enforcement action taken where it is justified and necessary. The Council has access to a wide and comprehensive range of statutory enforcement powers and will use these where it is appropriate and expedient to do so. These powers enable the Council to respond effectively to breaches of planning control, including serious or persistent non-compliance. The Council will use its full range of enforcement powers to secure the aims of this plan, and serious or persistent breaches of planning control will be addressed through the most robust formal enforcement action.

Where criminal activity has occurred, the Council will not hesitate in involving other agencies as appropriate.

Government policy reinforces the importance of planning enforcement in maintaining confidence in the planning system and the Council is committed to responding decisively and proportionately to suspected breaches of planning control in line with that guidance.

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.

(paragraph 60 of National Planning Policy Framework)

Timely enforcement action can prevent a breach of planning control from becoming well established and bring sustained environmental harm to an end. Enforcement action however is not a means to punish an individual or organisation for breaching planning control, regardless of whether the breach was carried out deliberately or in ignorance. It cannot be used to control the activities of errant or unpopular developers, to rectify minor or insignificant technical breaches of planning control, nor as a means of furthering the interests of one party over another in neighbour or commercial disputes.

This Local Enforcement Plan identifies the priorities for enforcement action and the types of alleged breaches of planning control that will be investigated. This enables the Council's enforcement resources to be put to the best use in dealing with breaches of planning control and to ensure that enforcement action is focused on the most serious breaches which are causing greater harm. It also seeks to provide transparency and accountability about how the local planning authority will decide if it is expedient to exercise its range of powers.

2. Key stages of investigation

The key stages are summarised below and the time taken for each stage will vary depending on the nature and complexity of the alleged breach of planning control:

- Receipt of report of breach
- Decision whether reported matter should be investigated
- Categorise Breach
- Site visit and officer investigation
- Initial assessment – whether to invite application, seek agreement from Ward Member to close, whether negotiations are appropriate.
- Invitation of application (where appropriate)
- Formal action, or decision to close
- Potential further action if any formal Notice is not complied with.

3. Priorities

The Enforcement team receives over 600 reports of planning breaches per year.

To make the most effective use of resources, new reports of alleged breaches will be categorised for prioritisation based upon an initial assessment of seriousness. The assessment of seriousness will be undertaken by Enforcement Officers, and a Prioritisation Category will be assigned for each breach. Enforcement investigations and action will be focused on the most serious breaches.

There are three levels of enforcement priority as set out in the following table.

Prioritisation	Type of reported breach
Urgent (potentially criminal) (An initial site visit will be carried out 1 working day of receipt)	Where irreversible harm is likely to be caused if the Council does not act immediately
	Ongoing or recent works to listed buildings or structures without the relevant Listed Building Consent
	Ongoing or recent works to trees in conservation areas or protected by a tree preservation order
	Unauthorised removal of hedgerow contrary to Hedgerow Regulations (where works are being carried out)

<p>Level 1</p> <p>(An initial site visit will be carried out within 10 working days of receipt)</p>	<p>Where there is significant or immediate harm (and not falling under Urgent category)</p>
	<p>Where there is significant immediate harm caused to highway safety, residential amenity, SSSI, setting of heritage assets or Assets of Community Value (ACV)</p>
	<p>Where an application for planning permission would not be supported in principle for the development or where planning permission has been refused</p>
	<p>Breaches of conditions relating to live sites where condition relates to the following</p> <ol style="list-style-type: none"> 1. Tree protection 2. Highway conditions
	<p>Where development is at risk of becoming immune from enforcement action and breach is causing significant level of harm</p>
	<p>Failure to comply with formal Notice issued by the Local Planning Authority and where breach of Notice is causing significant level of harm</p>
	<p>Complaints regarding the appearance or condition of land or building where the site is within a Conservation Area or affects the setting of a Listed Building and there is a significant level of harm or public interest.</p>

<p>Level 2</p> <p>(An initial site visit will be carried out within 20 working days of receipt)</p>	<p>Smaller scale breaches which do not result in significant immediate or irreversible harm but do have unacceptable planning impact</p>
	<p>Development not in accordance with approved plans where the changes are considered to have an unacceptable adverse impact on residential amenity or the character of the area</p>
	<p>Breaches of conditions which are necessary to adequately protect the amenity of neighbours</p>
	<p>Operational Development or changes of use which have an unacceptable adverse impact on residential amenity, the landscape or heritage assets</p>
	<p>Commencement of Development without complying with pre-commencement conditions that go to the heart of the permission</p>

Officers may review the assigned Prioritisation Category for a breach from time to time in accordance with the Flowchart. For reported breaches that fall under the Urgent category the case will be reassessed after the initial site investigation to identify the level of harm and priority to be given to any potential criminal investigations.

4. Reasons for not investigating cases or for closing cases

Planning Enforcement officers will only investigate planning breaches (see Matters that are not Breaches of Planning Control section below). Equally, anonymous and/or vexatious complaints will not be investigated. Repeat complaints concerning matters which have previously been concluded will also not be investigated unless a significant change has occurred.

An enforcement case will not be raised if the information submitted with the initial report is insufficient for Officers to confirm that there is a breach of planning control or if no (or very limited) planning harm is identified.

If an alleged breach of planning control does not fall within one of the categories in the Prioritisation Table, the enforcement team will Decline to Investigate the matter.

Reasons for closing enforcement cases:

Enforcement investigations can be closed for several reasons, such as:

- there is no breach of planning control
- planning permission is not required
- it is permitted development
- the breach is rectified (by negotiation)
- planning permission has been granted retrospectively
- the development is lawful or immune from enforcement action (due to time elapsed)
- it is a trivial or minor technical breach which causes no material harm and does not warrant formal action
- the matters do not fall within one of the categories in the Prioritisation Table
- the development is acceptable on its planning merits and it is not expedient to take action).

Where a breach has been identified but it is not considered expedient to take formal action, the case will be closed in accordance with the Scheme of Delegation.

5. Negotiations/Inviting applications

In accordance with Government guidance the Council will initially try to resolve a breach of planning control by giving the contravener fair warning and by seeking to resolve the issue by negotiation, and have them remove the unauthorised development, cease the activity voluntarily or comply with the planning permission or conditions attached to any consent.

Addressing breaches of planning without formal action can often be the quickest and most effective way of achieving a satisfactory and lasting remedy.

In some instances, it may be appropriate to invite a retrospective application to regularise a development or to make a development acceptable by imposing planning conditions.

A retrospective application will only be invited where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions.

Applications will generally not be invited for breaches relating to householder development or other minor breaches of planning control where the development is considered acceptable in planning terms and there is no need to control the development further by the imposition of conditions.

Where an application is invited and then submitted, the enforcement case will remain open pending the outcome of the planning application.

Only where negotiations fail to secure a satisfactory solution will formal action be considered. The Council will try to avoid the negotiations becoming protracted where there is a requirement to make the development acceptable or for a use to cease.

Where an application is received that has not been invited, The Council may continue with formal action at its own discretion. In the event that an enforcement notice has already been served, then the council may decline to determine any retrospective planning application which seeks to regularise any or all of the breaches of planning control that are referred to in the enforcement notice.

Retrospective applications will not normally be invited for listed building consent or for tree works where the works have already been carried out. For these cases an assessment will be made after the initial site visit as to whether to take any formal action. These cases will also be dealt with as a criminal investigation, so will not follow the same process set out for planning breaches.

6. Expediency (Decision Making)

Whilst the Council does not condone breaches of planning control, it is not obliged to take action against an identified breach. Even when unauthorised development has been identified not all breaches will be materially harmful and it will not always be expedient for the Council to pursue formal action.

Breaches of planning control can be deliberate, accidental, carried out in ignorance or on the basis of poor or inaccurate advice. Neither the explanation of how the breach came to occur nor the identity of the person responsible can have any bearing on the approach the Council takes.

Once a breach of planning control has been established and no application has been received to regularise the development a decision will be made on whether it is considered expedient to take formal action. The Council's decision on expediency, is informed by a number of considerations that may include:

- Has a criminal offence been committed – this applies to works to listed buildings, works to protected trees and hedgerows and failure to comply with formal notices issued
- Is the development contrary to national and/or local planning policy? (including National Planning Policy Framework, Core Strategy and Neighbourhood Development Plan policies)
- Is the development acceptable in respect of all other material considerations?
- If an application was submitted for the development, prior to it being carried out, is it likely to have been granted?
- Is the breach causing unacceptable planning harm

- Is the breach unacceptably affecting existing land, use or buildings which merit protection in the public interest?
- Is the breach at risk of becoming immune from enforcement action

Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.

Where there is a risk of immunity for a breach of planning control the level of harm must be significant to warrant formal enforcement action. The period for immunity will also vary depending on the nature of the breach and when the breach first occurred.

The Council may not take formal enforcement action in all cases where a breach of planning control has been identified. It is part of the normal duties/responsibilities of the investigating Officer and the Enforcement Team Leader to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the Local Enforcement Plan

7. Tools for Enforcement

The Council has a broad and significant suite of enforcement powers available to address breaches of planning control. These powers will be applied proportionately but decisively where required, and include measures ranging from formal notices through to prosecution and injunctive relief by the courts. The type of formal action taken will vary depending on the circumstances of the particular case.

The most common types of formal action are listed below (list is not exhaustive)

- Breach of Condition Notice
- Enforcement Notice
- Listed Building Enforcement Notice
- Temporary Stop Notice
- Section 215 Notice
- Prosecution
- Injunction

These measures range from requiring remedial action to the immediate cessation of unauthorised works, and, where necessary, action through the courts.

In addition, at the early stages of an investigation, the Council may serve a Planning Contravention Notice or Section 330 Notice to formally require the provision of information relevant to an alleged breach of planning control. A Section 215 Notice may be served where the condition of land or buildings adversely affects the amenity of the area. The Council will use these powers where it affects listed building or conservation areas and, by exception on a case-by-case basis in other areas where the effects are particularly acute or widespread and action is clearly in the public interest. These powers enable

the Council to require remedial works to improve appearance and address neglect. Non-compliance is an offence and may lead to prosecution or works being carried out by the Council and costs recovered.

Further information regarding planning enforcement and the enforcement tools available to Councils can be found on the government website <https://www.gov.uk/guidance/ensuring-effective-enforcement>.

The majority of types of formal action can be taken under delegated powers without the need for the formal agreement from the relevant Ward Member. For those cases where agreement is required and the Ward Member does not agree to action, the decision will be made in accordance with the Scheme of Delegation as set out in the Council's Constitution.

A copy of the Constitution can be viewed on the Council's website.

For prosecution proceedings relating to any criminal investigations the Council must be satisfied that the evidential test is passed and also the public interest test is met.

8. Keeping parties informed

The Council will acknowledge reports of alleged breaches where the planning harm has been identified and where sufficient information has been received to identify the breach. Thereafter, it will update complainants on the progress of its investigation on a case by case basis.

As a minimum the Council will advise complainants of all key decisions that it takes such as inviting an application, recommending formal enforcement action or closing a case.

9. Matters that are not Breaches of Planning Control

The following are Matters that are not Breaches of Planning Control and will not be investigated by the Council's Planning Enforcement service:

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way (PROW)
- Parking of 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;
- Dangerous Structures
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Land ownership disputes or trespass issues;
- Issues relating to covenants imposed on property Deeds

- Issues relating to noise and disturbance; smell nuisance and light pollution which are investigated by our Environmental Health Team
- Issues relating to anti-social behaviour or Graffiti (unless in relation to high hedges)
- Matters relating to site security
- Sewers, soakaways and most other drainage matters
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 as amended and or substituted;
- Advertisements that are either excepted from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

10. Monitoring

There is currently limited proactive monitoring of conditions so the Council relies on breaches of conditions being reported to the Enforcement team. However, an enforcement case will only be raised if there is clear evidence of the breach of condition and where planning harm arising from the breach has also been identified.

The Council is currently reviewing its systems to enable future monitoring of specific types of conditions where expediency and resources allow.

The enforcement team will investigate reports of failure to comply with clauses contained within Section 106 agreements linked to planning permissions. Two temporary dedicated officers will also deal with monitoring Section 106 agreements relating to open space provision on major development sites in the District. These types of cases will be dealt with in consultation with the Councils Solicitors.

Where there is evidence of failure to comply with the terms of a Section 106 agreement the formal action route is through injunction proceedings in the Courts. For these types of cases officers will seek to negotiate compliance in the first instance. It is only when compliance or mitigation measure cannot be secured through negotiations that formal legal proceedings will be considered.

These cases will therefore not follow the same process set out for planning breaches in the Flowchart at the end of this Policy.

The enforcement team will also assist with the monitoring of compliance with CIL Stop Notices issued under the Community Infrastructure Levy Regulations.

11. Review

To ensure that the enforcement function is appropriately focussed the key elements of this Local Enforcement Plan will be reviewed.

12. How to report a breach of planning control

Guidance on how to report a breach of planning control is available on the Council's website. The Council will not investigate reports where insufficient information has been supplied to substantiate the alleged breach.

The complainant will be advised if insufficient information has been supplied and given the opportunity to provide more evidence to substantiate the allegation or the seriousness of the alleged breach.

The Council encourages those wishing to report a planning breach to use the Breach form on the Council's website. This ensures that all the relevant information is provided to enable the enforcement team to identify if there is sufficient evidence of a breach and the level of prioritisation to be applied.

The number of reports of a breach does not alter the priority given to investigating the enforcement case.

13. Privacy Statement:

The Council has published its Privacy Notice which sets out how data will be handled and made available to the public. A copy of the latest version of the Privacy Notice can be viewed on the Council's website.

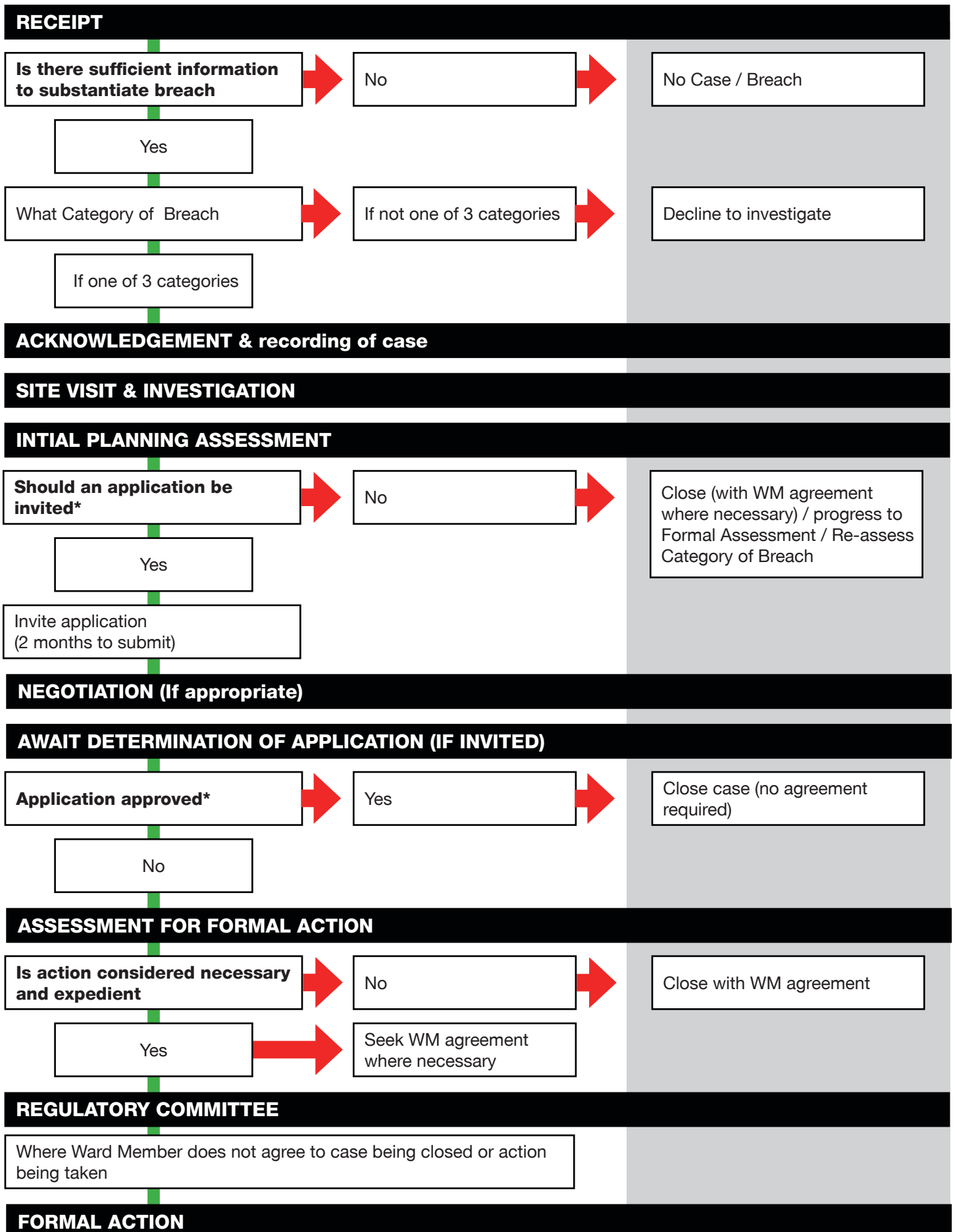
Complaints about the handling of an enforcement case will be investigated in accordance with the Council's complaints procedure. This process will only consider how the case is or has been investigated. It is not a process to review the decision made on an enforcement case.

14. Flow chart

The flowchart shows the key stages involved in the enforcement process. The time taken for each stage will vary depending on the nature/complexity of the reported breach and the degree of planning harm arising from the reported unauthorised development.



Planning Enforcement Typical Process



* Where breach is more severe cases may move directly to formal action



LABC Enforcement Policy England and Wales. (V2)

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Version Detail			
	Author/Reviewer	Checker	Approver
Name Date	JA V1 April 2024 (including amendments by way of the Building Safety Act 2022 and the Building Regulations 2010 as amended October 2023).	Tech Team	JA
Name Date	JA V2, April 2025. (Updated to include The Building (Registered Building Control Approvers etc.) (England and Wales) Regulations 2024 and clarification on the enforcement timescales in England and Wales.	WT	JA

Introduction

Building control has adopted this policy to ensure that individuals, businesses, and others can understand what to expect from our Building control Inspectors whilst seeking to improve compliance in terms of the Building Regulations where necessary. There are many good designers and contractors and so where work is carried out in accordance with the regulations there may be no need to refer to this enforcement policy.

The Building Safety Act 2022 (BSA22) provides powers for the Building Safety Regulator (BSR) to:

- oversee the safety and standards of all buildings.
- help and encourage the built environment industry and building control professionals to improve their competence, which must be validated.
- lead implementation of the new regulatory framework for high-rise buildings.

The Role of the Building Safety Regulator

The Building Safety Regulator (BSR) have a series of escalating sanctions and enforcement measures to maintain standards and deal with poor performance in terms of the regulation of the building control profession. This sets out how the BSR will conduct investigations into the building control profession. The BSR also publish findings on the performance of Building Control Bodies (BCBs) as they are a regulated profession.¹

This approach to building control oversight will help BCBs across the profession, efficiently plan and deliver their functions to consistently high standards:

- The BSR clarifies roles and responsibilities, including those of duty holders, to ensure that buildings are safe and compliant.
- The BSR set out a risk-based approach to building control functions that BCBs and their professionals will be expected to adopt. This also reflects the risk-based approach the BSR will take as the building control authority for higher-risk buildings.
 - You can also expect that those who regulate have a code of conduct for Registered Building Inspectors (RBIs)¹ in [England](#) and [Wales](#) and professional conduct rules for Registered Building Control Approvers (RBCAs)¹ in [England](#) and [Wales](#).

These standards set out how the BSR regulates BCBs:

- Operational Standards Rules ² for BCBs in [England](#) and [Wales](#).
- Key performance indicators (KPIs).
- Data reporting requirements and frequency.

The enforcement approach from the BSR will:

- exercise its powers in line with regulatory best practice.
- take a consistent and proportionate approach.
- target enforcement activity in cases where action is needed.
- work closely with existing regulators such as local authorities and fire and rescue authorities.

1 RBIs and RBCAs are new titles. From 6th April 2024, RBIs are surveyors employed by either an LA in the public sector, or by an RBCA in the private sector, Als are then known as RBCAs.

2 LAs in the devolved administration for Wales reports the Operational Standards to the Welsh Ministers.

Note: At the time of writing the Welsh Government are consulting on the [new building control regime for higher-risk buildings and wider changes to the building regulations in Wales](#) and this and this policy will be updated accordingly once those regulations are laid.

The BSR is, by virtue of the Building Act 1984 (BA84) S 91ZA/B, the building control authority for higher-risk buildings in England, whereas, in Wales², S 91ZD refers to the relevant Local Authority.

HRBs are buildings with seven or more storeys or that are eighteen metres or higher, and either:

- Have at least two residential units (in Wales this is one dwelling).
- Are hospitals or care homes (during design and construction).

They assess whether duty holders are considering both building safety and regulatory compliance.

The BSR has a range of enforcement powers throughout the design and construction of an HRB development, and the enforcement powers under the BSA22 and the BA84 will be a matter for the BSR. Any building work to an HRB (new build or existing) will mean an application to the BSR before commencing any work, and they are the building control authority in England. (as outlined above).

The LA will then have the formal enforcement powers for all other types of buildings/building work, covered under the Building Regulations 2010 (as amended) and the BA84.

Note all the remaining sections in this policy relate to non HRB buildings with the exception of Dangerous structures/dilapidated buildings.

What is local authority enforcement?

The work of building control includes:

- Processing Building Regulations applications and checking plans for compliance.
- Inspecting work under construction.
- Controlling building demolition, dealing with dangerous structures, and securing empty properties.
- The preparation and enforcement of general and special safety certificates and the enforcement of fire safety standards for sports stadia and certificated stands in sporting venues.
- Street naming and numbering.

Building Control is responsible for using a wide range of Acts of Parliament and Statute Laws.

“Enforcement” means action carried out in the exercise of, or against the background of, these Acts and Laws. This includes studying documents and reviewing drawings and making inspections of premises to check compliance with legislation. Local Authority Building Control teams can also take formal enforcement action that may escalate through a staged process that involves more formal correspondence and /or the issue of legal notices and ultimately prosecution.

How do we decide when to take enforcement action?

Building Control inspectors work in line with the requirements of the **Regulators code** and will consider several factors before deciding when to act:

- The seriousness of the breach. This may involve a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order either immediately (if necessary) or within a reasonable period.
- Where there is obstruction of an Inspector or where an Inspector is given false or misleading information.
- The history of non-compliance or a history of similar offences.
- The continued risk to health, safety, or the environment.
- The effects of non-compliance.
- The effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.
- The consideration of the Crown prosecution code meeting the evidential and public interest test.

We recognise that most people want to comply with the law. We will, therefore, take care to help them meet their legal duties but will take firm but fair action against those who act illegally or behave irresponsibly.

The stages of enforcement action

Stage 1 (Intervention) - Informal Action

Best efforts should be taken to resolve any issues where the law may have been broken without issuing formal notices or referring the matter to the courts. This is the first option when the circumstances indicate that a minor offence may have been committed and there is confidence that appropriate corrective action will be taken. The situation should be in writing in a clear manner with an explanation as to why any remedial work is necessary and over what timescale it should be completed. When writing to residents and businesses it is important that legal requirements are clearly distinguished from recommendations.

Where the breach is not considered to meet the public interest test and the history of compliance and competency of the person carrying out the work is good, and where non-compliance will not pose a significant risk to public health, safety, or welfare then we may consider informal action. This will result in verbal and/or written advice or warnings by letter or e-mail.

Stage 2 - Written Notice of the impending service of a Notice

Where there are breaches of legislation, a history of non-compliance, poor demonstration of competency, or a lack of confidence in management, then we will inform all relevant parties of the breach and a time scale for resolution. We will, where necessary, serve a statutory notice. We will give an opportunity to discuss the issues unless immediate action is needed. (See pages 8 to 10 for details of these notices). The time limit on notices will be realistic and we will tell recipients of their rights. In the event of a summons then the legal process will be explained under the terms of the Magistrates Court Act 1986.

Any contravention will be communicated to the applicant / designer and / or contractor and client advising on the breach. Building Control as a regulator cannot design the solution therefore the person carrying out the work will need to refer to their own competent designer/contractor in terms of the design element. Building Control will indicate what action will be taken if contraventions are not removed within a given period of time.

Stage 3 - The service of a legal notice

The legislation that Building Control enforces provides for the service of formal notices on individuals, businesses or other organisations requiring them to meet specific legal requirements.

Where a formal notice is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time.

In most situations, before formal action is taken, Building Control will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not always be possible where immediate action is considered necessary, e.g., in the interests of health and safety, or to prevent an imminent risk to health, or to protect the environment.

Stages 4 & 5 – Caution or Prosecution

Where the circumstances warrant it, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. This formal prosecution action will be, in the first instance, to seek conviction in the Magistrates' Court, or Crown Court, following which formal prosecution action may be commenced to seek an injunction in a higher Court if necessary. As an alternative a caution alone may be administered by the courts.

How can I appeal against enforcement action?

Those affected by enforcement decisions have a right of appeal to the Regulator, Tribunal or Court.

Appeals must be made within a certain time. We will set out these rights in writing at the same time that we act or serve notice.

You can also ask to discuss the matter with the Building Control Inspector or their Team Leader and /or, the Building Control Manager, or you can make a formal complaint against the service.

Competency and duty holders

The Building Regulations etc. (Amendment) (England Regulations 2023. (Applies to England and Wales in Law for jurisdiction purposes, but only to England for practical purposes at the time of writing) consider in Part 2A: chapters 1 to 5 and Regulation 11A to 11O provides details on the subject of duty holders and competence.

A lack of demonstrable competence is therefore a breach of the Building Regulations. The **circular letter** by the then Department of Levelling up, Housing & Communities (DLUHC) (Note this was originally issued on the 31st October 2023, however the link goes to the amended letter of the 1st of February 2024) , clarifies the connection between competency and compliance as follows:

“Anyone undertaking design work or building work will need to plan, manage, and monitor the work to ensure that it complies with all relevant requirements. When carrying out design work the designer or the principal designer, will be required to take all reasonable steps to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would comply with all relevant requirements, and when carrying out building work, the contractor or principal contractor, will need to ensure the building work they carry out is in compliance with all relevant requirements.

As such there is not an expectation that proactive inspections of the duty holder and competence regime will be necessary when the work is compliant. However, when there is a failure to comply with the building regulations the duty holder and competence regulations will enable the building control authority (BCA) to track back through the design and building process for the project for each of the relevant duty holders and take appropriate action for non-compliance as appropriate.”

Building Control will consider the following factors when deciding whether to prosecute:

- The role of the client, (domestic or otherwise) Principal designer and /or Principal contractor both before work starts and as work progresses.
- The seriousness and effect of the offence.
- The foreseeability of the offence, or the circumstances leading to it.
- The intent of the offender.
- The skills, knowledge, and experience of the person(s) carrying out the work where there is a suspicion of failing or evidence of non-compliance with the building regulations.
- The history of offending.
- The deterrent effect of a prosecution, on the offender and others.
- Whether there is enough evidence to prove the offence.

Table 1. Enforcement Powers for Building Control Authorities in England (BSR and LA's)

Offence	Scope of Power	Maximum Penalty	Reference
Providing false or misleading information to BSR.	Criminal Offence. Triable as an either way offence.	Unlimited fine, 1 year imprisonment (Magistrates) or 2 years imprisonment. (Crown)	Section 24 BSA22.
Contravention of building regulations.	Criminal offence, triable as an either way offence, no time limit to prosecute in England.	Unlimited fine and a fine for each day the contravention continues. (Currently £200) 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35 BA84. Section 35(4) BA84.
Contravention of the building regulations.	Criminal offence, the Compliance notice, must be served within 12 months of the offence. (relevant date)	Unlimited fine, 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35B BA84.
Contravention of the building regulations.	Stop notice.	If a stop notice is ignored then an unlimited fine, 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35C BA84.
Failure to comply with compliance and stop notice.	Criminal offence.	Unlimited fine, 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35B & C BA84.
Removal of offending work.	Time limit S36 (4), 10 years in England.	Notice to remove contravening work and the LA may also consider proceedings for a fine in respect of the contravention by S35.	Section 36 BA84.
Transitional Provisions from October 2023.	Provisions to which S35 applies.	Time limit for projects that are not subject to the transitional provisions, No 993 (C.59) Regulation 7.	
Note see link for transitional provisions and the time scales are further explained below. *(see transitional provisions 2023 No.993 (C.59) Regulation 7.	All provisions with the exception of those shown in Reg 47A of the Building Regulations 2010 (as amended)	S35 is unlimited by amendment to BA84 by S39 (2) of the BSA2022 (in England). S36 for notices requiring removal or alteration of non-compliant work is 10 years by amendment to the BA84 by 39 (3) of the BSA2022 (in England).	

Table 1A. Enforcement powers for Building Control Authorities in Wales (LA's)

Offence	Scope of Power	Penalty	Reference
Contravention of building regulations.	Summary offence, within the period of two years beginning with the day on which the offence was committed, and within the period of six months beginning with the relevant date.	Unlimited fine and a fine not exceeding level 5 on the standard scale and a further fine not exceeding £50 for each day on which the default continues after he is convicted. (Magistrates)	Section 35 BA84 Section 35A BA84. Section 35 (4) BA84
Removal of offending work.	Civil enforcement action.	Notice to remove contravening work and the LA may also consider proceedings for a fine in respect of the contravention by S35.	Section 36 BA84.

Note; At the time of writing the Welsh Government are consulting on the [new building control regime for higher-risk buildings and wider changes to the building regulations in Wales](#) and this and this policy will be updated accordingly once those regulations are laid.

Amended Timescales in England.

The amendments by virtue of the BSA 22 and the BA84 have changed the original time limits for S35 and S36 as above, in England (note see [annex A on page 14](#) of this document for a table relating to timescales for previous amendments to the Building Regulations and related legislation from 2008 to 2023). There are also the timescales to consider for compliance and stop notices in table 1.

The previous timescale, prior to the 1st of October 2023, for serving papers for a summary offence was 6 months from the relevant date. (“the relevant date” means the date on which evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings.)

As noted in table 1, the offences are now indictable and triable either way and therefore the advice of the LA legal teams will need to be sought on the timing of the laying of papers for those types of offences in either the Magistrates or Crown Courts.

The HSE have provided this general advice; “There is no time limit for commencing proceedings for an indictable offence (including an either way offence). However, in all cases, this should be done as soon as possible, as the courts have discretion to dismiss a summons on the grounds of abuse of process where there has been unjustified delay. Normally, it would also be necessary for the court to be satisfied that the defence has been so prejudiced by the delay that a fair trial cannot take place. Cases where a court would "stay proceedings" in the absence of any fault on the part of the prosecutor would be for the LA to decide if a case is answerable. “

Section 35 Breach of Building Regulations and related Compliance and Stop Notices (England).

Any breach that has had information laid before a magistrate’s court prior to the 1st of October 2023 (S35) or a notice served under (S36) will have to abide by the powers and time limits applicable at that time.

Transitional provisions, No 993 (C.59) Regulation 7.

On the 28th of March 2024 in [additional Q&A](#): relating to changes to the building control process for higher-risk

buildings and wider changes to procedural building regulations applying to buildings in England, DLUHC clarified that;

"Compliance notice powers became available on 1 October 2023 for all projects, including those that started under the pre-1 October system. For a compliance notice to be issued there needs to be a contravention (or the likely contravention) of a relevant provision of building regulations or a requirement imposed by the regulations.

From the 1 October 2023, if there is a contravention on site, then a compliance notice can be given. A compliance notice can also be issued for a contravention that occurred pre-1 October as long as the contravention is ongoing at the point the notice is issued. When the breach occurred is irrelevant (unless the contravention occurred more than 12 months ago, in which case a compliance notice may not be issued), the building control authority just needs to be satisfied at the point of issue that a person appears to have contravened a relevant provision and that they want it to be rectified."

Retroactive use of S35 and S36 (England).

As part of that Q&A it was confirmed by **DLUHC in part 4.3** that:

"The new powers are retroactive. Whilst all the new powers became available on 1 October 2023 for all projects (The date of the offence is applicable from the 1st of October 2023 and would include building work that started under the pre-1 October 2023 system).

So long as the contravention of building regulations is ongoing at the point of action being taken (and for the issue of section 36 notices is within the specified time limit), the new provisions can be applied to any project, irrespective of the start date.

However, any prosecutions under section 35/35A already before a court on the 1st of October 2023, or section 36 notices served before that date, remain subject to the previous provisions.

Stop notices in relation to section 35C(1)(b), the contravention of a compliance notice, can only be issued for breaches that occur post 1 October 2023 (as compliance notices are a new power). Whether the contravention started pre or post 1 October is irrelevant. For example, a compliance notice could be issued on or after 1 October for a contravention that occurred before that date (so long as the contravention is ongoing at the point of issue). If the recipient fails to take the required action in the specified time period, then a stop notice can be issued. A stop notice under section 35C(1)(c) can be issued on or after 1 October 2023 for building work which breaches this condition, irrespective of when the breach started – as long the issue giving rise to a risk of serious harm is ongoing at the point of the stop notice is issued."

Not only does the BA84 consider S 35- 35C in terms of breaches, the Building Regulations 2010 (as amended) also contain **regulation 47 to 47H as follows:**

- Regulations 47 and 47A, provisions that **do not apply** to S35 and are excluded from Compliance Notices.
- Regulation 47 B- Compliance Notices: contents.
- Regulation 47C- Stop Notices: contents.
- Regulation 47D - Compliance and stop notices: giving of notices and notification to others.
- Regulation 47E Compliance and Stop Notices: withdrawal by BCA.
- Regulation 47F- Appeal to the First tier Tribunal¹ in relation to a compliance notice or stop notice.
- Regulation 47G- Application to the First-tier Tribunal in relation to extension of the specified period in compliance notice.
- Regulation 47H- Application to the First-tier Tribunal for direction in relation to a stop notice.

¹Note: in Wales, the application/appeal will be to the magistrates' court and not the first-tier tribunal once those regulations are laid.

Compliance Notices and Stop Notices (England).

The BSA 22 enables local authorities to issue compliance and stop notices where building regulations have been breached. Compliance notices will require specified remedial action by a set date.

Stop notices can only be issued in certain situations. These are:

- that carrying out work would contravene certain prescribed building regulations.
- an existing compliance notice has not been complied with, or
- works carried out that contravene regulations and could potentially cause a risk of serious harm.

The stop notice will require work to be stopped altogether until remedial action has been taken.

A compliance notice or stop notice must relate to no more than one contravention or likely contravention of building regulations, or a requirement imposed under building regulations. This is to ensure clarity for the duty holder to show the exact nature of the contravention and what law has considered to have been breached.

Separate notices will apply to specific contraventions relating to the relevant building regulation, and, as such, will require bespoke remedies and compliance periods. This approach provides clarity about what is required from the developer and allows flexibility in managing the construction of complex sites.

The BCA will also take all reasonable steps to notify:

- The client, Principal Contractor (or sole contractor), Principal Designer (or sole lead designer).
- The enforcing authority, where the contravention relates to Part B and the building is one to which the Regulatory Reform Fire Safety Order 2005 applies.
- If the client is a private registered provider of social housing or, in relation to refurbishment work, is either a private or public registered provider of social housing, the regulator for Social Housing.
- Where the client is a landlord in relation to any dwelling contained in the building, the local housing authority for the area in which the building is located.

There are separate types of notice under each section as follows:

- **S35B2A - Compliance Notice;** a notice requiring the recipient to take specified steps within a specified period or;
- **S35B2B – Compliance Notice;** a notice requiring the recipient to remedy the contravention or the matters giving rise to it within a specified period without describing what must be done to remedy the work or to avoid the contravention occurring.
- **S35C1A- Stop Notice;** the carrying out of the work would contravene a provision of building regulations prescribed (currently applies to HRBs by way of The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, S61.
- **S35C1B- Stop Notice;** a compliance notice relating to the work has been contravened or
- **S35C1C- Stop Notice;** the work contravenes a provision of building regulations, or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met, in that the use of the building in question, without the contravention having been remedied, would be likely to present a risk of serious harm to people in or about the building. (N.B can be used if the criteria is met on/after 1st October 2023 for any building work (regardless of when it started).

There are also powers relating to S35B and 35C where an injunction can be considered by the authority on application to the court in S36 (6) of the BA84.

Application of Section 36 BA84.

Where the solution is to alter or remove a contravention then the specified time limit will run from when the contravention occurred. As such, to remove a Building Regulation contravention, by way of the service of an enforcement notice by the application of S36 of the BA84, this is 10 years in the BA84 as inserted by S39 of the BSA 2022 in England.

Previous case law suggests that having served a S36 notice within the required time period, (i.e. 12 months at that time) that the Council has an infinite period of time in which to enforce the notice (*Bello v London Borough of Lewisham* [2003] EWCA Civ 353).

As such it was held that there was no time limit by which a Local Authority must use its powers under S36 of the BA84. In the case in question the Council enforced the removal of a contravention some 12 years after the service of the original notice.

Any action by the LA will need to be considered within a reasonable time scale, particularly in relation to the relevant date, albeit that the time scales have been extended in England.

The LA will also consider their obligations in the following sections of the BA84:

- **Section 35**, Penalty for contravening building regulations/Offence of contravening building regulations
- **Section 94**, Service of documents.
- **Section 106**, Compensation for damage.
- **Section 114**, Action by the court for continuing offences.

The Council will then make all reasonable attempts to require the owner to remove the contravention themselves.

Should powers of persuasion fail then the Council could remove or alter the work and recover those reasonable expenses in doing so, by reference to **S36(3)** of the BA84. Albeit the person to whom a S36 notice has been served can obtain a report challenging the notice by way of **S37** of the BA84.

An appeal against the service of a S36 notice can also be made as reference to **S40** of the BA84.

An appeal to the court¹ or tribunal is considered by **S102** of the BA84.

There are also powers, where an injunction can be considered by the authority on application to the court, in **S 36 (6)** of the BA84.

¹Note: in Wales, the application/appeal will be to the Magistrates' court and not the first-tier tribunal once those regulations are laid.

Section 95 Inspection of premises and powers of entry

As a part of its normal routine, evidence will normally be gathered through the process of notified inspections for Building Regulations matters.

Where a matter is by way of complaint, inspectors will make all reasonable attempts to gain entry to a property to carry out an inspection by way of invitation by the owner/occupier. However, where the matter is considered to be serious or access is being unreasonably withheld, inspectors have the authority to enter premises (other than premises used wholly or mainly as a private dwelling, where a warrant is required. (N.B. Applies to England not Wales at this time) at reasonable hours – unless the matter relates to a dangerous building and/or emergency measures are necessary outside normal working hours.

S95 BA84, Failure to allow entry to an authorised Inspector will result in a warrant being obtained from a Magistrate and the warrant will be used and entry gained – by force if necessary and accompanied by the Police.

Building Control Inspectors should carry photographic identification badges, which will be displayed on request.

Building Control will, in the application of gathering evidence and inspecting any allegation of an offence or dangerous and dilapidated building, have regard to and apply the principles set out in the Home Office publication: Code of Practice – **Powers of Entry (December 2014)**.

Evidence gathering Witness Statements and PACE

Where serious breaches of the building regulations are found then LAs will seek advice from legal teams. They will help advise on matters such as the Criminal Procedure Rules 2020 and witness statements, gathering technical and procedural evidence, the use of **PACE (S67 {9})** to interview and evidence the case, the disclosure of evidence and the use of the Code for Crown prosecutors.

RBCA Compliance

The private sector also has a key role in terms of compliance. Whilst they do not have formal enforcement powers, they identify non-compliance and will seek to resolve these as far as practicably possible. The RBCA may serve a notice of contravention on the client, under **Regulation 21** (of the RBCA England Regulations 2024) or **Regulation 16** (of the RBCA Wales Regulations 2024, which may specify the areas of non-compliance.

There are cases where Initial Notices might be reverted to a LA for enforcement action.

If a plans certificate has been issued to the LA then that considers the limitations of powers where work has been carried out in accordance with that plan certificate as outlined in **Regulation 12** of the Building (Registered Building Control Approvers etc.) (England) Regulations 2024 or **Regulation 11** of The Building (Registered Building Control Approvers etc.) (Wales) Regulations 2024.

If a project has had a final certificate issued to the LA and the LA becomes aware of non-compliance post completion, then there are few powers available under S57 of the BA84.

The timescales for a Local Authority to take formal enforcement action, if it has the power to do so because of a cancellation, starts from the date that the IN ceased to be in force.

Action by a Local Authority post completion

Clearly once the completion is given by the LA then it is evidence but not conclusive evidence of compliance So, the LA could investigate any report of a non-compliance in terms of S35 (open ended in England and 2 years in Wales)) and S36,(10 years in England and 12 months in Wales)) and if not, under s36(6) (open ended in England and Wales) , default powers as to be able warrant injunction.

Service of Building Control enforcement notices (England and Wales)

All Building Control enforcement notices will, except notices in relation to actions carried out to deal with emergency measures for a dangerous building – by virtue of **S78** of the BA84, include information regarding rights of appeal and appropriate time limits to make any such appeal. Reference is also made to **S78 (5) & (6)** in terms of the correct use of the emergency powers and the consideration of related expenses.

In most cases notices will be served on the owner as identified by reference to the most up-to-date records held by the Land Registry, or where an owner cannot be identified notices will be served by addressing them to – “The Owner(s) and/or Occupier(s)” and posted or affixed to the property in question.

Where the owner is a business, the notice will be addressed to the Company Secretary.

The council will, as far as it is practical to do so, make reasonable enquiries about the name and address of the owner and address any notice accordingly.

Notices will, in most cases, be delivered by Inspectors to the owner’s address – where this is within the authority boundary. In some cases, recorded or registered mail will be used.

Where notices etc. are delivered by hand these will be confirmed by reference to a certificate of service, signed by the Inspector concerned and, where possible, accompanied by a dated photograph of the place where the notice etc. was addressed, e.g.: house number and post/letter box.

Dangerous or dilapidated buildings (England and Wales)– S77, S78 and S79, BA84 {Note in London refer to S61, S62 and S69 of the London Building Acts (as amended 1939)}

In some instances, there might not be the time available to make enquiries about ownership where the nature of an incident, such as a severely dangerous building occurs. In these cases, simple enquiries about ownership will still be made but, if these come to no avail, Inspectors are authorised to take appropriate action under **S78** of the BA84 to remove any immediate danger.

Following any action under **S78** full enquiries will be undertaken as soon as it is practical to do so and a notice then served on the owner as indicated on the Land Registry records.

Where a danger constitutes, for example a loose balustrade, a non-complaint cladding system, an extended travel distance in an existing/new or extended building the use of **S77** of the BA84, by application to the court, can also be considered.

A LA also has powers in regard to **S79** of the BA84. Where buildings are dilapidated and causing serious detriment to the amenities of the neighbourhood, the LA may by notice require the owner to make good the amenity. A notice requiring work to be carried out under the above sections can be appealed by reference to **S102** of the BA84.

Recovery of reasonable costs incurred to enforce a notice. (England and Wales)

Where the council incurs any costs or charges to enforce a notice in default, related to sections **35B,35C**, of the BA84 (England) and sections **36,76,78 & 79** of the BA84 (England and Wales) this will be recovered from the owner or placed as a specific financial charge on the Land Charges register.

Charges not paid in good time may accrue compound interest and it is in the interest of property owners to resolve any outstanding debt(s) made against the property, as quickly as possible.

Anyone purchasing a property after a notice has been served, and after costs have been incurred for the enforcement of a notice, may become responsible for the debt and noncompliance.

Debts left unpaid for any length of time may result in the council seeking a County Court Judgment or even seizing the property and selling it at auction, as an enforced sale, under the Law of Property Act 1985, to recover all or part of the debt.

Examples of costs might include (the list is not exhaustive):

- Council staff time in dealing with the matter.
- Contractor charges – labour, materials, plant & equipment.
- Professional advisor(s) charges.
- Legal charges.
- Court costs.

You can find more information or receive a copy of the Policy from the Local Authority Building Control Team.

Note. LABC teams in England and Wales should refer to the relevant LABC QMS for process maps and letter templates on **Building Control Approval with full plans, Building Notices, site inspections Enforcement, Transfer of Initial notices, Regularisations and Dangerous Structures.**

Accountability

When delivering this enforcement policy, we will remain independent in our decision making and accountable for our actions. We will strive to provide effective consultation and remain cooperative in our relationships with people when undertaking enforcement.

Alternative formats

If you would like a copy of this Policy to be provided in another format (for example large type, Braille, or audio recording) please contact your LABC team.

Where can I complain about this Policy?

If your concern is with the way in which the Council has handled your case, you can complain using the Council's complaints system in the first instance.

If your complaint is that you have suffered injustice as a result of maladministration, you can ask for your case to be investigated by the Local Government Ombudsman. The Ombudsman is independent from the Council. Whilst they cannot set aside a decision of the Council, they can make recommendations and can, where they find that it is appropriate, recommend that the Council pays compensation where they determine that the complaint is justified. The Ombudsman will expect you to have used the Council's own complaints system before they will investigate a complaint.

The Building Safety Regulator also has a complaints procedure relating to registered building inspectors and registered building control approvers and local authority building control teams in England. **The Welsh Ministers** also regulate the profession in Wales.

Annex A.

Table 2 timescales of offences prior to the 1st of October 2023 in England and Wales.

The table below provides all the provisions on this topic from 2008 onwards. **S35A** was initially introduced by the Climate Change and Sustainable Energy Act 2006 - for Part L and came in on the 21st August 2006.

The extension of the prosecutions time limits to all provisions of the Building Regulations, was provided for in the Housing and Regeneration Bill which became law on 22nd July 2008, with the publication of the **Housing and Regeneration Act 2008 (c17)** (H&RA08). Within the H&RA08 **S317** amended **S35A** of the Building Act to allow any contravention of Building Regulations to enjoy the same time limit freedoms as those introduced for energy conservation offences.

However, S317 of the H&RA08 did not come into force automatically and was, by virtue of **S325**, to be introduced on such a day appointed by the Secretary of State.

On 9th September 2008, in a circular letter (**CL/43/19/1**) to all Building Control Bodies throughout England and Wales, the Secretary of State confirmed – thereby appointing – the date when S317 of the H&RA08 was to come into force – this being 22 September 2008.

Date of offence under section 35	Provisions to which section 35 applies breached	Time limit for bringing prosecution
Before 6 April 2008	All provisions.	Six months.
6 April 2008 to 21 September 2008.	Provisions designated by regulation 22A.	Two years, subject to a maximum of 6 months from the date of obtaining sufficient evidence to bring prosecution.
6 April 2008 to 21 September 2008.	Provisions not designated by regulation 22A.	Six months.
From 22 September 2008 to 30 th September 2023.	All provisions (as introduced by S317 of the H&RA08 above).	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring prosecution.

LABC is a membership organisation, providing assistance and support to its member local authorities around England and Wales. As the enforcing authority, the local authority is required to apply the regulations as they consider appropriate. The enforcement policy is a guide to the current regulations only.



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LABC is the trading name of District Surveyors Association Ltd. Company No. 08336677.