

## APPENDIX

### SCHEDULE OF PRINCIPAL LEGISLATION WITH ENFORCEMENT PROVISIONS

Town and Country Planning Act 1990

Planning and Compensation Act 1991

Planning (Listed Buildings and Conservation Areas) Act 1990

Town and Country Planning (Control of Advertisements) Regulations 2007

Town and Country Planning (General Permitted Development) Orders 1995 and 2008

Town and Country Planning (Use Classes) Order 1987

Local Government (Miscellaneous Provisions) Act 1976

Caravan Sites and Control of Development Act 1960

Town and Country Planning (Trees) Regulations 1999

### OTHER RELATED LEGISLATION

Human Rights Act 1998

Data Protection Acts 1984 and 1998

Police and Criminal Evidence Act (PACE) 1984

Regulation of Investigatory Powers Act (RIPA) 2000

### SUMMARIES OF COURSES OF ACTION

#### 1. For information gathering

##### a) Planning Contravention Notice (PCN)

This is not formal enforcement action, but may in some cases be required to establish what is happening on a site where there are genuine grounds for concern that a breach of planning control has occurred. It may also be necessary when a site operator or owner has not complied with requests for information, or where they have already been advised that planning permission is necessary for their activities. In such cases, a PCN can be used to establish the facts of the case and

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let the operator know that the Council are seriously concerned about a site. It is intended to act as both information gathering tool and statement of intent by the Council, but it is not a charge on land and therefore is still relatively informal. However, failure to respond does carry a potential fine, and means that there are no grounds for claiming compensation in any appeal against a subsequent “stop” notice (so long as the PCN mentions this penalty and the fact that the Council considers that the breach is potentially serious enough to warrant the issue of a “stop” notice).

- b) S.16 of the Local Government (Miscellaneous Provisions) Act 1976  
S.330 of the Town and Country Planning Act 1990

These are alternative means of establishing information about land and its ownership. These are less well used than the PCN which is intended to be the main method by which information can be gathered about potentially unauthorised development.

Other sources of information may include HM Land Registry and District Council planning and building regulation records.

### 2. Where conditions imposed on a planning permission are not being complied with

- a) Breach of Condition Notice (BCN)

This procedure was introduced under the Planning and Compensation Act 1991. It allows the Council to issue a notice when a condition of a planning consent is not being complied with and is an alternative course of action to issuing an enforcement notice. There is no appeal against this notice although if the condition is considered to be invalid or unenforceable, the Breach of Condition Notice may be the subject of a High Court challenge and this may be used as a defence against a prosecution for breach of the BCN. Failure to comply with a BCN within the specified period (at least 28 days) is a criminal offence liable to a fine not exceeding £1,000.

An enforcement notice may be more appropriate than a BCN if there is any doubt about the condition which has been breached.

### 3. Where there is a continuing breach of control

- a) Enforcement Notice

An enforcement notice must:

- i) Specify the breach of planning control.
- ii) Specify the steps to be taken to remedy it.

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- iii) Specify the reasons why it is expedient to take action (must be in the interests of “amenity”).
- iv) Specify the date on which the notice comes into effect.
- v) Specify the period for compliance.
- vi) Specify the precise boundaries of the land to which the notice relates.
- vii) Be accompanied by an explanatory note about rights of appeal.

An appeal to the Secretary of State against the service of an enforcement notice suspends the notice until the appeal has been dealt with.

- b) When an enforcement notice has not been complied with.

Failure to comply with an enforcement notice within the time permitted is an offence liable to prosecution.

4. Where there is a breach of control that is causing serious harm or has the potential to cause serious or irrevocable harm to amenity

- a) Stop Notice / Temporary Stop Notice

Where an appeal has been submitted against an enforcement notice, suspending it, or where the breach of control is causing irrevocable damage to interests of acknowledged importance, the Council may consider the issue of a Stop Notice. This must be served in tandem with the enforcement notice and prohibits continuation of any or all of the activities specified in the enforcement notice.

A Stop Notice cannot prohibit any activity which has been carried out for a period of more than four years ending with the date when the notice is served.

Time limits for compliance with a Stop Notice are to be specified in the notice and should not normally be less than three days after its service, unless the Council have “special reasons for specifying an earlier date and a statement of those reasons is served with the notice”. The time limit must not exceed 28 days after its service.

The effect of a Stop Notice will cease when it is withdrawn, the related enforcement notice is withdrawn or the compliance period for the enforcement notice expires (continued breach is a criminal activity rendering the owner liable to prosecution).

A Temporary Shop Notice may be served without an enforcement notice but expires after 28 days. It is intended to enable the council to require activities to cease while further information about the activities are obtained.

- b) Where a Stop Notice is not complied with

Failure to comply with a Stop Notice is an offence rendering the person served with the notice liable to prosecution.

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c) Injunction

Where a Local Planning Authority consider it necessary or expedient for any actual or intended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise their other powers.

The scope for obtaining an injunction is wider than for serving an enforcement notice as it may refer to an “apprehended breach” and it is “personal” in that it relates to the activities of a person or persons rather than a use of land (although it is possible for it to be served on “persons unknown”).

The injunction may be sought at any stage of the enforcement process, but is most frequently used when an operator is ignoring an enforcement notice, or where the Local Planning Authority are reluctant to issue a Stop Notice.

d) Where an injunction has not been complied with

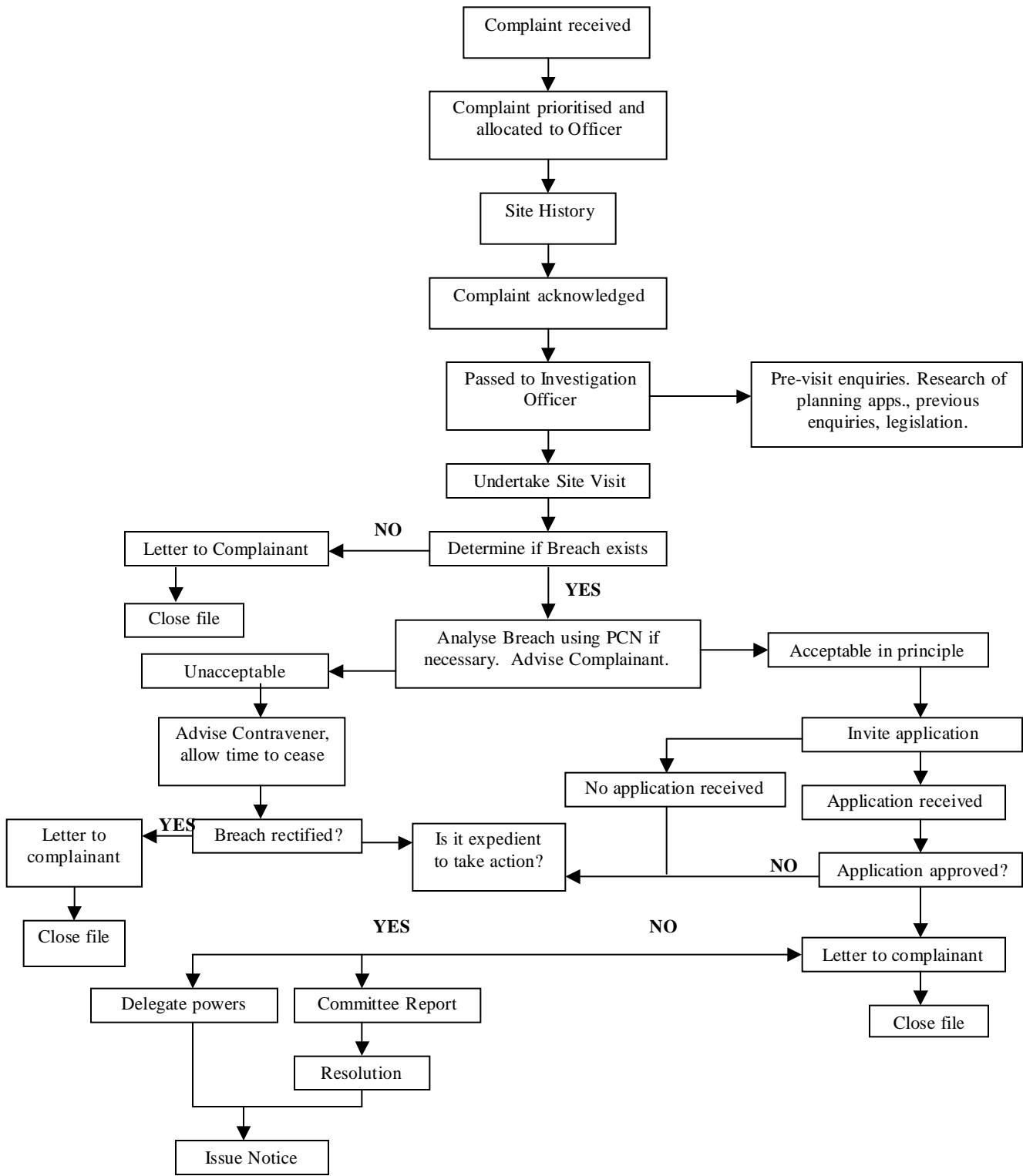
Failure to comply with an injunction constitutes a contempt of court and can lead to imprisonment.

5. Where all of the above have not been successful

a) Direct action and recovery of costs

The Council can consider taking “default” action to secure compliance with the terms of an enforcement notice by carrying out the “steps” required in the notice and then taking action to recover the costs from the owner of the land.

ENFORCEMENT DIAGRAM STAGE ONE



ENFORCEMENT DIAGRAM STAGE TWO

