

**DOVER DISTRICT**

**PLANNING**

**ENFORCEMENT PLAN**

## **AIM AND SCOPE OF THE PLAN**

**The Plan sets out how the Council's planning enforcement service will help to achieve corporate regeneration objectives, address breaches of planning control and prioritise its work. It describes the range of powers available to the Council, how the Council will decide whether or not to pursue enforcement action and the process of enforcement.**

## 1.0 Introduction

- 1.1 The Council's regeneration strategy for the District is set out in its Corporate Plan and in its Core Strategy. The Core Strategy is the Council's over-arching town planning policy document. It takes forward the Corporate Plan's ambitions in a planning context and is based on an aim, objectives and policies for the District as a whole, its individual towns and the rural area. It is supported by the Land Allocations Plan, which is not yet adopted but at an advanced stage of preparation. The Core Strategy and the Land Allocations Plan (once adopted) form the statutory Development Plan for the District.
- 1.2 Decisions on planning applications must be taken in accordance with the Development Plan unless other factors (known as material considerations) indicate otherwise. Other planning decisions should have regard to the Development Plan.
- 1.3 An important part of the planning process is to make sure that development is carried out in accordance with the terms of any approval and that unacceptable breaches of planning control are remedied. This helps to make sure that Development Plan objectives are being met. The Council has a range of enforcement powers to ensure compliance. The use of these powers is discretionary.
- 1.4 Historically the Council has used its enforcement powers in a reactive way. That is to say, it has primarily been driven by responding to complaints, as opposed to a proactive approach based upon seeking to help achieve specific Development Plan objectives. The Enforcement Plan signals a shift in operation of planning enforcement from reactive to proactive. Such a shift means that the Council's limited enforcement resources will be used in a different way. The Plan sets out how the Council will prioritise enforcement work and the level and type of service that the public can expect.
- 1.5 The Enforcement Plan has also been prepared in a way to ensure that it is complementary to the range of other enforcement powers available to the Council. It can often be the case that, to achieve an effective outcome, the Council needs to co-ordinate the use of its various enforcement powers. Such co-ordination is ensured through the Corporate Enforcement Strategy.
- 1.6 The Council's objectives in producing a Planning Enforcement Plan are consistent with the Government's National Planning Policy Framework 2012 (NPPF). The Framework states:

“Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.”

## **2 General Principles**

2.1 When carrying out enforcement action the Council must work within the statutory framework and follow best practice and procedure.

2.2 In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement plan as part of this commitment. When exercising its enforcement functions the Council will act in a way that is:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases in which action is needed

2.3 Relevant advice, guidance and legislation underpinning this strategy includes:

- The Council's overarching Enforcement Strategy
- Advice from the Crown Prosecution Service
- Home Office COPS and Guidance
- The Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigation Act 1996
- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- Town and Country Planning legislation
- The National Planning Policy Framework 2012
- Department of the Environment Circular 10/97 and accompanying Good Practice Guide

## **3 The Scope of Planning Enforcement**

3.1 Planning enforcement can only enforce planning and related legislation and, therefore, cannot resolve private disputes such as breaches of restrictive deeds or covenants, or boundary disputes that are covered by civil law.

3.2 Planning enforcement covers the areas of planning permission, advertisement consent, listed building consent, conservation area consent and tree preservation orders. National legislation allows some minor and small-scale works to be undertaken without the need for any further consent or approval. These works are known as "permitted development". Any works carried out as permitted development cannot be subject to enforcement action.

3.3 The Council must act within the provisions of national legislation and take account of relevant national policy. A summary of enforcement options and powers available as at 2013 is set out in Appendix 1. These range from requiring information to assess a case, through serving notices requiring action to be taken, to the Council taking direct action itself. In using these powers the Council must also consider Department of the Environment Circular 10/97, "Enforcing Planning Control" (July 1997), and the accompanying "Good Practice Guide" for Local Authorities, any relevant policies in the NPPF and case law.

## **4 Authority to Undertake Action**

The Council has delegated its planning enforcement powers to the Head of Regeneration and Development. These powers have been further delegated to the Principal Enforcement Officer and to the Principal Planning Officers.

## **5 Deciding When to take Enforcement Action**

5.1 There is a common misconception that breaches of planning control are a criminal offence and should automatically attract enforcement action. The quote from the NPPF in paragraph 1.6 clearly sets out that enforcement action is a discretionary power. It is for each local planning authority to decide the amount of resource to put into enforcement, how to determine when action is necessary and the type of action that is appropriate. In making these decisions the authority should be mindful of maintaining public confidence in the planning system.

5.2 Notwithstanding the above, it should be noted that unauthorised works to a listed building and demolition in a conservation area are open to prosecution, see Appendix 1.

### **Pro-active Enforcement Action**

5.3 The basis for taking pro-active enforcement action will be the assistance that it can provide in helping to realise area based proposals set out in the Development Plan. For example, the Core Strategy sets out that the appearance and quality of the public realm in Dover's central area must be improved as part of the objective of transforming the town. A pro-active approach may also be appropriate in conservation areas, designated wildlife areas and the Area of Outstanding Natural Beauty.

5.4 Consideration of the need for action will normally be initiated by the Council rather than a specific complaint from the public.

5.5 In deciding if action should be initiated the Council will take the following considerations into account:

- Alignment with the policies, proposals and objectives of the Development Plan and other material planning considerations
- Whether action would complement enforcement action being considered or undertaken by other parts of the Council and/or external agencies
- Whether the action would complement any management initiatives designed to improve the appearance, quality or functioning of an area

5.6 When the Council decides that action should be initiated it will use whatever powers are most appropriate but, by the very nature of this type of action, it is more likely to include the use of Section 215 notices, work in default powers and discontinuance notices, see Appendix 1. Default powers require the Council to carry out works direct at its expense and to recover the expenditure afterwards. The resultant time lag means that the Council has to forward fund the works but it will take action to recoup the expenditure through the courts or by placing a charge on the land.

## **Reactive Enforcement Action**

- 5.7 Most breaches of planning control are reported to the Council directly by members of the public. The procedure outlined below is a guide to how we will respond to these reports.
- 5.8 Reports about possible breaches of planning control should, whenever possible, be made in writing or, failing that, in person. Anonymous reports will not be investigated unless they concern a statutorily listed building or a protected tree as there is the possibility of irreparable damage. Allegations of non-compliance with planning conditions should specify the particular conditions in question and the reasons why non-compliance is suspected. Further details on how to draw possible breaches of planning control to the Council's attention are given in Appendix 2.
- 5.9 If, after investigation, it is established that breach of planning control has taken place it is not, as explained above, mandatory for the Council to take enforcement action. The decisive issue for the Council to consider is whether or not it is expedient to take enforcement action. When deciding expediency the Council will consider the following factors:
- whether there is sufficient evidence to indicate that the breach has become lawful through the passage of time and thereby immune to enforcement action
  - whether the breach of planning control is significant enough to unacceptably affect public amenity or the existing use and enjoyment of land or buildings, having regard to the severity and persistence of the breach and any other relevant matters
  - whether the breach involves development that is not in accordance with the Development Plan and other material planning considerations and, if so, the degree of variance
  - any other material factors that are specific to the case
  - taking account of all relevant factors, the likelihood of permission being granted if an application was to be submitted and, if it was, whether conditions would be imposed (see Appendix 3 paragraphs A3.4 to A3.6)
- 5.10 In assessing whether it is expedient to take enforcement action the Council will also need to take into account the level of enforcement resource at its disposal, which can vary from time to time. Public confidence will not be maintained if it becomes apparent that the Council starts enforcement proceedings but is unable to follow them through. The Council will pursue enforcement action in those cases where there are clear and substantial reasons for doing so and there is a strong likelihood of a successful conclusion.
- 5.11 The Council will also need to ensure that there is a generally consistent approach in terms of consistency between decisions on whether to pursue enforcement action and also consistency between enforcement decisions and decisions on applications.

## **6 Enforcement Action Process**

- 6.1 This section provides a summary of the enforcement action process. A fuller description is provided in Appendix 3.

- 6.2 Reports of suspected breaches of planning control are logged into the development management monitoring system. Desktop research is carried out to establish the planning history and whether other parts of the Council, such as Building Control and Environmental Health hold relevant information.
- 6.3 A site inspection will be carried out by a member of the Enforcement Team. This will normally be unannounced. Should the owner or occupier of the premises to be visited be unwilling to allow the inspection the Council will seek to arrange a mutually convenient time or, failing that, arrange to use its powers of entry.
- 6.4 If, for any reason, it is not possible from the site inspection to collect all the information necessary to reach a conclusion, the Council can serve a Planning Contravention Notice requiring specified information to be provided.
- 6.5 Once sufficient evidence has been obtained the Council will determine whether a breach of planning control has occurred. If it has not, the case will be closed and the person reporting the suspected breach and the owner/occupier will be informed in writing.
- 6.6 If the Council considers that a breach has occurred it will then check to see if it is immune from action due to the passage of time. If it is considered that there is sufficient evidence to show that it is immune the case will, again, be closed. The owner will have the option of applying to the Council for a Lawful Development Certificate to formally establish the situation.
- 6.7 If, on the other hand, the Council considers that the evidence shows that a breach has occurred it will consider whether it is expedient to pursue enforcement action having regard to the factors set out in paragraph 5.9. If it is not considered expedient, the case will be closed and the person who reported the breach and the owner/occupier will be informed in writing.
- 6.8 In cases where the Council considers that it is expedient to take enforcement action the Council will select the type of action that is considered most appropriate from the range of powers set out in Appendix 1. This will be determined by the type of breach, severity of the impacts, urgency of the situation and the financial implications (for example, where compensation may be payable or direct action involved) and governed by the principle that enforcement action should be proportionate to the breach and its impacts.
- 6.9 Although most breaches of planning control can be brought under control and the previous situation restored, on occasion such contraventions as harm to Listed Buildings or felling of trees the subject of Tree Preservation Orders can cause irreparable harm. In such cases it is appropriate to use the most powerful tools to prevent or control permanent and irreparable damage.
- 6.10 In certain cases where very serious harm is likely to result, the Council has the ability to seek the assistance of the Courts in restraining an anticipated breach of planning control. In such cases the Council would need to convince the Court that the breach is indeed likely to take place, will cause serious harm to interests of planning importance, and that all material planning considerations, including Human Rights issues, have been taken into account.

## 7 **Monitoring**

- 7.1 The Council has developed a performance indicator for planning enforcement. This relates to the number of enforcement interventions that have led to an improved situation. This could be achieved through discussion that has resulted in voluntary action to rectify a breach of planning control or through the formal use of enforcement powers. This is monitored through the Council's Corporate Performance Plan.
  
- 7.2 It is also intended to track the overall amount of reactive and proactive enforcement cases through the Council's Annual Monitoring Report of planning activity and to provide occasional enforcement updates to the Planning Committee.



# APPENDIX 1

## Enforcement Options

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| <p>Take no action</p> <p>Ongoing Review</p>                                   | <p>Appropriate when it is concluded either that there is no breach of planning control or that there is a breach but its impacts are not sufficient to make it expedient for the Council to take enforcement action.</p> <p>Take no action, but monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord</p>  |
| <p>Allow Time to Remedy</p>   | <p>Time may be given to remedy the breach or justify its retention. Such cases may include situations where there is no demonstrable harm and is not so serious as to warrant immediate action or where it may be justifiable by some other benefit. However, because formal enforcement action takes some time in any event, any informal opportunity to resolve the breach will not be allowed to delay formal action.</p>   |
| <p>Planning Contravention Notice</p>  | <p>This can give an opportunity to formally regularize the position or to persuade the Council that further action is inappropriate. Such a Notice requires the recipient to provide information when there is some evidence or suspicion that a breach of planning control has occurred. Non-compliance with any requirement of a PCN is subject to a maximum penalty on summary conviction of level 3 on the standard scale (£1,000 at 2013)</p>   |
| <p>Enforcement Notice and Enforcement Notice against breach of conditions</p> | <p>This is the normal means of remedying unacceptable development where the Council's enquiries meet with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice, which can be upheld, quashed or amended. The Council may choose to "under-enforce" to remedy a specific problem. In such circumstances the remaining building or use will be deemed to have planning permission when the Enforcement Notice has been complied with sufficiently. The penalty for non-compliance is up to £20,000 but there is no upper limit in the Crown Court</p> |
| <p>Breach of Condition Notice</p>   | <p>This can be used in addition or as an alternative to an enforcement notice where the unauthorized activity is in breach of a condition attached to a planning permission. As there is no right of appeal against a BCN and as it can only be used to secure complete compliance with a planning condition, "under-enforcement" is not an option.</p>  |

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|   | Also, as there are no powers for the Council to enter the land and carry out works, prosecution is the only means of enforcement. Therefore the use of a BCN may not always be appropriate. The maximum penalty on conviction is level 3   |
| Listed Building and Conservation Area Enforcement Notices | A Listed Building Enforcement Notice can be served against unauthorized works that damage the character of a listed building. There is no four or ten year rule limiting time in which such an enforcement notice can be served. A Conservation Area Enforcement Notice can be served against unauthorized demolition in a Conservation Area   |
| Listed Building and Conservation Area Prosecution         | A person who is found to carry out unauthorized works that affect the special architectural character or historic interest of a statutorily listed building or demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000 or, on conviction by indictment, to an unlimited fine   |
| Temporary Stop Notice                                     | A temporary stop notice can be issued to seek immediate cessation of the breach of control. Unlike a Stop Notice, it does not require an enforcement notice to be served first. It is only valid for a period of 28 days, by which time the Local Planning Authority can decide whether or not to serve an enforcement notice. There is no right of appeal against a Temporary Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000. Compensation may be payable if the LPA later issues a lawful development certificate  |
| Stop Notice   | The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development during the appeal period. It can only be served if an enforcement notice has first been served. There is no right of appeal against a Stop Notice and it is an offence to contravene such a Notice, with the maximum fine, on summary conviction, of up to £20,000. However, a Stop Notice should only be served when the effects of the unauthorized activity are seriously detrimental to the amenities of occupiers of affected property. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. |
| Court Injunction  | This may be taken in the most serious cases where irreparable harm is being incurred and where other actions have failed. There are significant costs involved in bringing such action and it can only be justified in extreme cases.  |

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|   | Defendants risk imprisonment if they do not comply with a court order.  |
| "Works in Default" Powers                 | The Council may enter land to take the necessary steps to secure compliance when an Enforcement Notice has not been complied with. This is at the Council's cost although these are recoverable from the landowner.   |
| Section 215 Notice                        | Such a Notice requires steps to be taken to remedy the condition of land or buildings that is considered to be adversely affecting the amenity of the surrounding area. Non-compliance is subject to a maximum penalty of level 3. Non compliance after conviction attracts further fines |
| Section 225A Notice                       | Such a Notice requires an unauthorized advertisement to be removed  |
| Discontinuance Notice                     | Such a Notice requires the removal of an advertisement displayed with the benefit of 'deemed advertisement consent', i.e. an advertisement that would not normally require consent from the Council to be displayed   |
| Community Infrastructure Levy Stop Notice | The power to issue this stop notice will become available once the Council has adopted and implemented a CIL charge. The Notice can be issued to require development works to cease where development has commenced and the required charge has not been paid.                            |

## APPENDIX 2

### HOW TO REPORT A POSSIBLE BREACH OF PLANNING CONTROL

Reports of suspected breaches of planning control should, whenever possible, be made in writing. This enables the Council to have a written record of the need for initiating investigation and possible action. When this is not possible reports should be made in person, for example, by telephone and Council officers will make a written record. Anonymous reports will not be investigated unless they concern a statutory listed building or a protected tree.

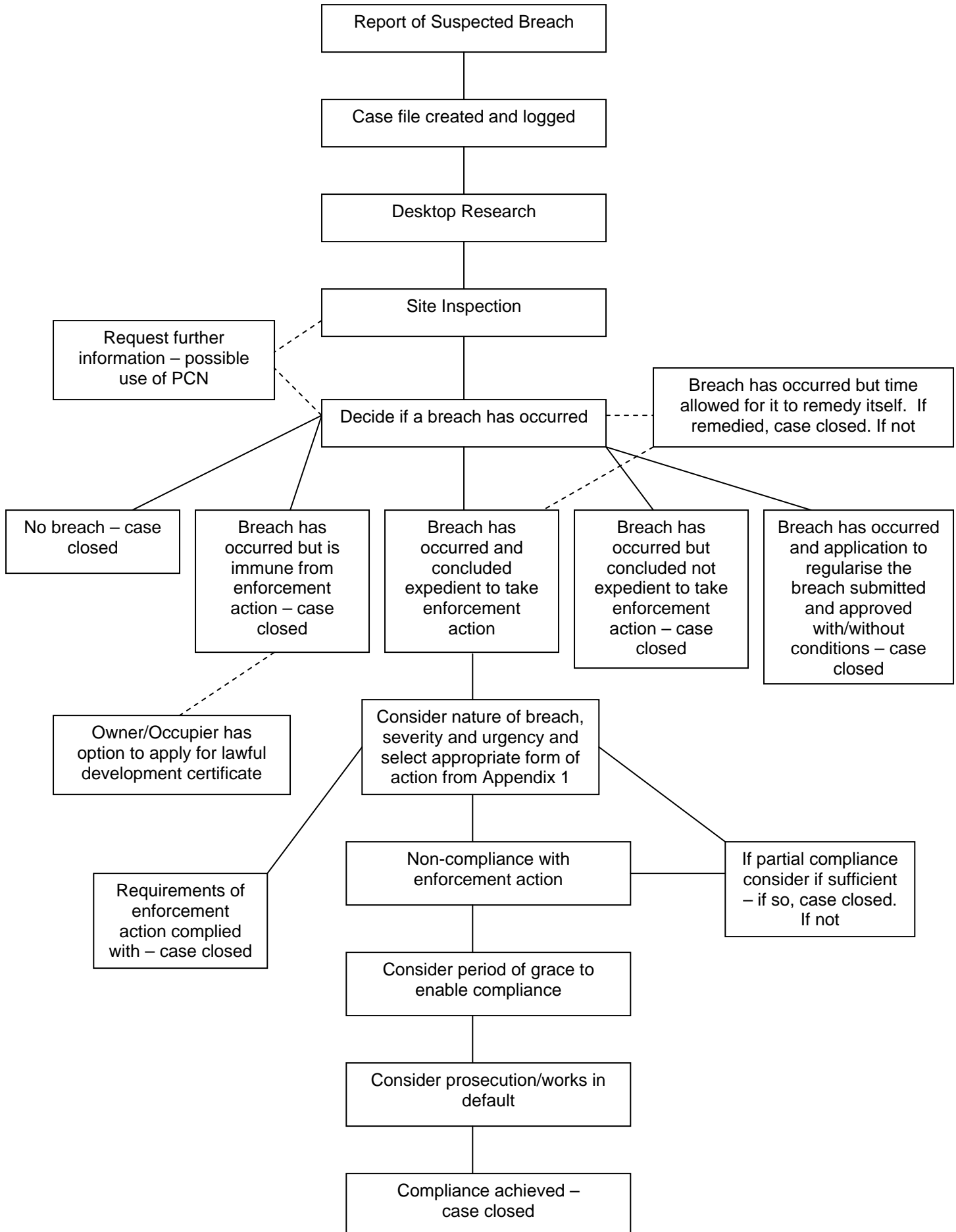
Reports of suspected breaches can be made by:

- Sending a letter to the Planning Enforcement Team at the Council's Whitfield Offices
- Emailing [developmentcontrol@dover.gov.uk](mailto:developmentcontrol@dover.gov.uk)
- Completing an online complaints form that can be found on the Council's website at <http://www.dover.gov.uk/planning/enforcement.aspx>

Reports will normally be acknowledged by means of a letter or by e-mail advising which Officer will be handling the case. The Officer will act as your point of contact and will advise on progress and outcome of the case.

Details of reports of suspected breaches will be dealt with in the strictest confidence. The name and address of those making reports will not be repeated to the person or organisation involved in the possible breach. In certain cases those reporting breaches may be asked to assist the Council by providing evidence at an appeal or in Court.

### APPENDIX 3 - THE ENFORCEMENT PROCESS



## Notes on the Enforcement Process

### Compliance with planning conditions

- A3.1 Where planning permission has been granted for development, and conditions have been imposed, which are designed to protect or alleviate any injury to the amenity caused by the development and/or to improve the visual appearance of the development, and those conditions have not been complied with within a specified period, consideration will be given as to whether it is appropriate to issue an Enforcement Notice for non-compliance with the planning conditions imposed or to issue a Breach of Condition Notice.
- A3.2 The advantage of serving a Breach of Condition Notice is that there is no right of appeal to the Secretary of State against the notice and, unlike an enforcement notice, its effect cannot be suspended by means of an appeal. The failure to comply with a breach of condition notice is a criminal offence. A Breach of Condition Notice should not, however, be served if there is any doubt as to the validity of the condition.
- A3.3 The advantage of serving an Enforcement Notice is that its requirements can be more flexible than those contained in a Breach of Condition Notice. Where an Enforcement Notice has not been complied with, the Council can exercise its default powers by entering the land and carrying out any works required by the notice.

### Granting planning permission for unauthorised development

- A3.4 When development, which requires planning permission, has been carried out or is in the process of being carried out without the benefit of planning permission, an assessment shall be made to establish if it is likely that permission would be granted for the development.
- A3.5 If unconditional planning permission is likely to be granted, a retrospective planning application shall be requested. Where such an application has been requested but not submitted within a reasonable time the owner or occupier of the land will be informed that without a specific planning permission for the development there may prove to be conveyancing implications when disposing of the land where no evidence can be produced of a planning permission having been granted. When there is no specific planning objection to such a development enforcement action would not be considered appropriate and the case would be closed.
- A3.6 When an assessment under the preceding paragraph indicates that planning permission is likely to be granted but only with conditions to ensure the acceptability of the development, an application for retrospective planning permission would be invited. If, after a reasonable period, the owner or occupier of the land appears unwilling to submit a planning application, an Enforcement Notice will usually be issued. The notice would have the effect of granting planning permission subject to full compliance with those steps specified in the notice, which will remedy or alleviate the injury caused by the development.

## Periods for compliance with the requirements of an enforcement notice

- A3.7 Once a breach of planning control has been determined as unacceptable and that it is in the public interest to pursue enforcement action, it is necessary to determine an appropriate period in which the contravener has to comply with any necessary steps to alleviate the breach of planning control. In determining periods for compliance it is appropriate to consider matters such as, the time needed to relocate or re-organise a business, the effect of enforcement action on employment, social costs on the owner or occupier of the land, the time needed to organise and carry out physical works, and any seasonal considerations for example when planting and landscaping works are involved.
- A3.8 When relocation is required, it is not the Local Planning Authority's responsibility to seek out an alternative site that might be more acceptable in planning terms. However, if a suitable site is known it will be suggested and a time limit for relocation agreed.
- A3.9 When a development provides valuable employment, the Council will advise the owner or occupier how long the activity or operation shall be allowed to continue or to be reduced to an acceptable level of intensity. An enforcement notice shall usually be issued allowing a realistic period for compliance for the unauthorised activity or operation to cease, or its scale to be reduced to an acceptable level.
- A3.10 Enforcement action against unlawful and unacceptable development may result in social costs such as homelessness to the occupants. Whilst not condoning any unlawful residential use of land social costs may be taken into account in determining periods of compliance.

## Under Enforcement

- A3.11 When an enforcement notice has been served which provides a reasonable time for compliance but, despite serious and evidenced efforts, the owner or occupier has not fully complied, the Council can consider whether either:
- a) The requirements of the notice should be relaxed to provide additional time to enable compliance; this would need to be weighed against the degree of harm caused by the unauthorised development
  - b) The steps that have been taken to comply are sufficient to have remedied the harm to an acceptable degree; taking account of whether insisting on full compliance is practical and proportionate to the benefit to be gained.

If neither of the above approaches is considered appropriate the Council would take action to ensure full compliance with the Notice.

## Ensuring compliance

- A3.12 When enforcement action has been taken but compliance not achieved within the agreed period and under enforcement is not appropriate, the Council has several options, which can vary depending on the type of Notice served. The Council can bring prosecution proceedings through the Courts, seek the assistance of the Courts in obtaining an injunction or exercise default powers and use its approved contractors and agents to carry out any or all of the steps required. Each mechanism has advantage and disadvantages. Successful prosecution proceedings will punish the contravener but will

not in itself bring to an end a breach of planning control, although it may deter further contraventions. Default action is effective especially in removing structures and the total cost is normally recoverable in time. However, the primary consideration in determining the manner in which compliance with the requirements of an Enforcement Notice can be achieved is ensuring that the proper planning of the area is restored as soon as possible.