

MENDIP DISTRICT COUNCIL

LOCAL PLANNING ENFORCEMENT PLAN

(POLICY AND PROCEDURES)

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1. BACKGROUND AND OVERVIEW

- 1.1 This document sets out what customers can expect from Mendip District Council as Local Planning Authority in discharging its function in respect of Planning Enforcement.
- 1.2 Fair and effective Planning Enforcement is important to protect the integrity of the planning system and the quality of life for the people who live and work in the Mendip District Council Area.
- 1.3 Local Planning Authorities (LPAs) have a general discretion and must only take enforcement action when they regard it expedient to do so. Action must be commensurate with the breach of planning control to which it relates (see Para 3.2).
- 1.4 This document sets out:
 - 1.4.1 how reports are received by the Council
 - 1.4.2 how cases are prioritised
 - 1.4.3 how cases are investigated
 - 1.4.4 targets and timescales for the resolution of cases
 - 1.4.5 the relevant legislation and powers available to the Council
 - 1.4.6 the mechanisms in place to provide performance information to managers and members
 - 1.4.7 the mechanisms in place for customers to submit complaints or praise in respect of the service received
- 1.5 The Council will operate within the provisions of the relevant legislation, case law and Central and Local Government Policy and guidance outlined in Section 3.
- 1.6 Each case will be dealt with on its merits and will be prioritised according to the harm identified and available resources. Details of how investigations are prioritised are shown at Appendix 'B'.
- 1.7 Harm will be assessed on the basis of material planning considerations. Private or civil matters such as boundary disputes trespass or the breach of a civil covenant are not within the Council's jurisdiction and will not be investigated. Whenever possible cases will be resolved through negotiation and use of the planning system. Formal enforcement action will be considered if other attempts at resolution prove unsuccessful.
- 1.8 As far as possible investigations will be carried out in accordance with the service standards outlined at Appendix 'E'. The Council's Constitution through the Scheme of Delegation of Functions to Officers sets out the appropriate level of decision making available to enable officers to progress cases.
- 1.9 To ensure Enforcement Officers possess the necessary skills to perform their duties Mendip District Council operates a personal development programme to review skills and training requirements for all its officers.
- 1.10 In all cases Enforcement Officers will have regard to the Council's Equalities Policy to ensure investigations are carried out in a consistent and fair manner, free from any form of discrimination.
- 1.11 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of carrying out their official duties and will take appropriate action where necessary.

2 PRINCIPLES OF GOOD ENFORCEMENT

2.1 In performing its Planning Enforcement function Mendip District Council applies the following principles:

- 2.1.1 clear standards setting out the level of service and performance the public can expect to receive should be published.
- 2.1.2 information and advice, in plain language, on the rules applied will be provided. The Council will be open about its working policies.
- 2.1.3 the Council will work actively to advise and assist with compliance. Staff will be identified by name and point of contact provided.
- 2.1.4 the Council will provide well publicised and timely complaints procedures that are easily accessible to the public and will include details of any appeal process and likely timescale.
- 2.1.5 action taken will be proportionate to the harm identified, public interest and risks involved.
- 2.1.6 enforcement will be carried out in a fair, equitable and consistent manner.

3 GOVERNMENT GUIDANCE AND LEGISLATION

3.1 The Council's Planning Enforcement function is undertaken in accordance with current and emerging Local and Central Government guidance, policy and legislation including:

- 3.1.1 Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004) as amended.
- 3.1.2 Town and Country Planning (Control of Advertisements)(England) Regulations 2011.
- 3.1.3 Town and Country Planning (Environmental Impact Assessment) Regulations 2011.
- 3.1.4 Human Rights Act 1998.
 - 3.1.4.1 Article 1 of the First Protocol – protection of property
 - 3.1.4.2 Article 6 - the right to a fair trial
 - 3.1.4.3 Article 8 – right to respect for family life; and home
- 3.1.5 Police and Criminal Evidence Act 1984; as amended.
- 3.1.6 Localism Act 2011.
- 3.1.7 General Permitted Development Order 2015; as amended.
- 3.1.8 National Planning Policy Framework (including Planning Practice Guidance).

3.2 The National Planning Policy 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.”

4 SCOPE OF PLANNING ENFORCEMENT

- 4.1 Development is defined by the Town and Country Planning Act, 1990 as: ‘... *the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*’.
- 4.2 It is not a criminal offence to carry out development without first obtaining planning permission if required for it. The following are exceptions to this general rule as they carry an immediate criminal liability:
- 4.2.1 unauthorised works to a listed building.
 - 4.2.2 unauthorised advertisements.
 - 4.2.3 unauthorised demolition of an unlisted building or structure in a Conservation Area.
 - 4.2.4 unauthorised works to protected tree.
 - 4.2.5 unauthorised works to trees in a Conservation Area.
- 4.3 Unauthorised development can often be regularised by the submission of a retrospective planning application and, where appropriate the responsible person may be invited to submit this, normally within four weeks of the request. Where an application is not submitted no enforcement action will be taken if it is judged that the unauthorised development would have been granted unconditional planning permission. This is in line with Government guidance which specifically advises against the use of formal powers to regularise technical breaches or appropriate development.
- 4.4 Enforcement action cannot be taken where development, operational or change of use, falls within the criteria of Permitted Development as defined by the General Permitted Development Order 2015 and its subsequent amendments.
- 4.5 The Planning Enforcement Team does not investigate the following:
- 4.5.1 non-planning related neighbour disputes.
 - 4.5.2 land boundary, ownership, access or covenant disputes.
 - 4.5.3 hedge related neighbour disputes.
 - 4.5.4 Use or development on highways, pavements or grass verges; unless in private ownership. (These are generally the responsibility of the Highway Authority).
 - 4.5.5 Dangerous structures (In some cases affecting public safety these can be investigated by a Building Control Surveyor).

When information relating to such cases is received the Enforcement Team will either direct the informant to the relevant agency or refer the case on their behalf.

- 4.6 An enforcement investigation will not be undertaken if information received, at the time of the initial case, indicates that the alleged breach occurred prior to the commencement of the period of time necessary for the development to become immune from enforcement action. Relevant time periods are as follows:
- 4.6.1 4 years in respect of operational development (building or ground works) or the change of use of a building to a single dwelling.

- 4.6.2 10 years in respect of any other change of use or the breach of a planning condition.

Where there is evidence that operational development occurred more than 4 years ago but has been deliberately concealed an investigation may still be carried out and action taken.

- 4.7 When considered necessary the Planning Enforcement Team, in consultation with the Group Manager (Planning and Growth) will monitor the implementation of specific planning consents and associated conditions.

5 COMMENTS AND REVIEW

- 5.1 The Council will strive to provide the highest possible quality of service delivered in a fair and consistent manner. Customer suggestions are therefore welcome as to how we can make improvements to the planning enforcement process. Alternatively, problems may arise from time to time and any difficulties concerning the enforcement service should be brought in the first instance to the attention of the Senior Enforcement Officer.
- 5.2 If still dissatisfied a further complaint can be submitted through the Council's formal complaints procedure and the Local Government Ombudsman. Details of both are available on the Council's website.
- 5.3 In order to assist in the improvement of service delivery, a full review of the following elements will be undertaken annually.

Such reviews will enable this policy to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements.

Reporting a Suspected Breach of Planning Control

1. All information received from an informant is treated as strictly confidential. No person who is subject of any investigation will be informed of the source of the information. The subject of the investigation may make assumptions in respect of informants and the Council cannot prevent this happening. Should enforcement action result in a planning appeal or court action where the identity of a informant will, out of necessity be revealed, (as a witness for example), the matter will be discussed with the informant prior to proceeding.

Anonymous cases can be difficult to investigate and may be malicious and are not normally accepted.

2. Where possible cases should be submitted in writing or by e-mail.
3. To enable the Council to investigate the alleged breach as much information as possible should be submitted. This should include:
 - 3.1 name, address, telephone number and email address (if available). Unless an informant requests otherwise all correspondence, with the exception of formal notices, will be sent via email.
 - 3.2 when the alleged breach occurred or commenced.
 - 3.3 description of the works or activity (use of land).
 - 3.4 duration and frequency of occurrences.
 - 3.5 the exact location of the problem; including postcode, if known. In remote or isolated locations a map reference or directions may assist in the identification of the site.
 - 3.6 the name and address of the person(s) believed to be responsible for the alleged breach, if known.
 - 3.7 The harm suffered as a result of the alleged breach and by whom.

Prioritising Cases

1. The Council receives a large number of reports of alleged breaches of planning control each year. Some cannot be resolved quickly especially if formal action results. Council resources are finite and it is therefore necessary to manage the case work by prioritisation. Prioritisation will be based on the following:
 - 2.1 ongoing unauthorised works to a listed building or scheduled ancient monument (if within the Council's jurisdiction).
 - 2.2 ongoing unauthorised works to a tree which is subject of a Tree Preservation Order or is situated within a Conservation Area.
 - 2.3 any case where the time limit for taking enforcement action expires in the near future.
 - 2.4 specific enforcement action deemed necessary in consultation with the relevant Council Portfolio Holder(s).
 - 2.5 any unauthorised development or breach of condition which is causing significant public harm or danger; including pollution or environmental harm.
 - 2.6 Newly established, unauthorised Gypsy or traveller encampments.

3. Medium Priority
 - 3.1 unauthorised development which would adversely affect the character/appearance of a conservation area or the setting of a listed building
 - 3.2 Cases that clearly require attention but are not otherwise a high priority.

4. Others
 - 4.1 unauthorised completed works to unlisted buildings.
 - 4.2 unauthorised signage/advertisements (unless the sign/advertisement seriously affects public safety).
 - 4.3 unauthorised telecommunications equipment/satellite dishes/equipment on residential premises.
 - 4.4 flyposting.
 - 4.5 Any technical or minor breach of development control.
 - 4.6 unauthorised fences wall or gates (unless public safety is compromised or attached to adversely affecting the setting of a listed building.
 - 4.7 any breach of development control which is not causing significant noise, vibration, smell or visual harm.

5. Other factors taken into consideration when prioritising an investigation include:
 - 5.1 time limits for enforcement action to be taken.
 - 5.2 previous case history.
 - 5.3 Likelihood of the alleged breach being repeated.
 - 5.4 The overall, probable, public benefit of formal action.

Case Investigation

1. Enforcement can be a lengthy and complex process. It is, therefore, not possible to predict the time required to resolve individual cases. This will vary from one case to another. However, the basic process that is followed remains the same in each case.
2. Investigation and Site Visit
 1. The initial investigation will include research and analysis of the site and/or its planning history. Depending on the result of this, a site visit will be carried out in accordance with the process described at Appendix 'E'.
 2. A written record will be kept of site visits carried out. This will include, when available, details of relevant persons present. Photographs taken on site will include a digital date and time stamp. A record of the visit, including photographs will be entered into the Council's casework database.
 3. Where more information in respect of the use or ownership of a site is required a Planning Contravention Notice (PCN) or Request for Information (RFI) may be served.
3. Identifying Breaches of Planning Control
 1. A site visit may assist in the identification of the suspected breach of planning control and a decision on whether an actual breach has occurred will be made by the investigating officer. If necessary the case officer will consult an appropriate Planning Officer.
 2. Where it has been decided that there has been no breach, the informant will be notified and no further action taken. A case will only be closed after authorisation from the Senior Planning Enforcement Officer.
4. Enforcement Case Reviews
 1. Where a breach is identified a decision will be made if action should be taken. Planning enforcement is a discretionary function and formal enforcement action will only be undertaken where it is expedient and proportionate to do so.
 2. Where specific guidance is required the investigating officer will liaise with an appropriate Planning Officer and/or a Heritage Conservation Officer. The outcome of the meeting will be entered in the Council's casework database.
5. Decision to Take Action
 1. The decision on action will be made by the Senior Planning Enforcement Officer and/or the Group Manager (Planning and Growth) in consultation with the Ward Member where considered necessary or appropriate.
 2. In cases involving the unauthorised residential use of land or buildings, when formal action will result in the displacement of the occupants, the Ward Member and Portfolio Holder will be consulted.
 3. Where necessary the decision will be communicated, in writing, to the alleged offender. Where appropriate the Parish Council and Ward Member/s will also be notified. The informant will be notified separately.

4. When it is decided to take action, one of three options will apply:
 - i. the alleged offender is invited to submit a planning application with a view to regularising the breach
 - ii. the alleged offender is asked to remedy the breach or
 - iii. the alleged offender is required, by means of a formal notice, to remedy the breach.

Note: This may be a progressive process using all options sequentially. With the exception of a formal notice no step is restricted to a single use.

6. It is necessary to give the alleged offender a clear and appropriate timescale for undertaking the chosen option. Enforcement will keep an electronic record of these deadlines. Extensions to deadlines will only be granted where a clear indication exists that the alleged offender is co-operating with the Council and apparent harm to third parties can be minimised. Reasons for granting the extension, together with the new deadline, will be recorded on the case file.
7. Negotiation is an essential part of the enforcement process. Government guidance is that breaches should be addressed through negotiation wherever possible. Applications seeking retrospective permission should be sought where it is likely that planning permission would be granted, conditionally or unconditionally, or where an application provides the best forum for considering the planning merits of the case. Such applications will also often be the best means of obtaining the views of Parish Councils, neighbours, statutory bodies and other interested parties. The invitation to submit a retrospective application does not imply that an application will be approved. It will be judged on its merits in the normal way and be subject to the usual determination process.
8. Applications for retrospective permission will not be invited where an initial assessment indicates that there is no reasonable prospect of permission being granted. The alleged offender is still able to submit an application and the Enforcement Team will consider its position should that occur.
9. In line with guidance contained in the National Planning Practice Guide it may sometimes be the case that action is not taken even where planning permission is required and no application submitted. Such cases are rare and the Council will normally seek to regularise, or remedy, unauthorised development.

1. The following list shows the main powers available to investigate cases and deal with breaches of planning control. In all cases the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost effective remedy. Any enforcement action should always be commensurate with the breach of control to which it relates and be in the public interest.
 1. **Planning Contravention Notice (PCN) – Section 171C; Town & Country Planning Act 1990**
Often the first formal step in resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches. The intention of the Council in issuing a PCN is also to send a clear warning that further formal action is being considered. Failure to provide the information required by a PCN can result in a fine of up to £1,000 whilst providing false information can result in a fine of up to £5,000.
 2. **Request for Information (RFI) - Section 330 Town & Country Planning Act 1990**
Also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It is also used in cases involving unauthorised works to a listed building where there is no associated breach of planning control.
The penalties attached to an RFI are similar to those for the PCN.
 3. **Enforcement Notice (EN) – Section 172 Town & Country Planning Act 1990**
The most common notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action. An Enforcement Notice will specify the breach, the steps that must be taken to remedy the breach, and a specified time period for compliance. The recipient(s) of such a notice have a right of appeal to the Secretary of State. An appeal suspends the effect of the notice until it is determined.
Failure to comply with an Enforcement Notice can result in a fine of up to £20,000.
 4. **Breach of Condition Notice (BCN) – Section 187A Town & Country Planning Act 1990**
Used as an alternative to an Enforcement Notice but only in circumstances where there has been a failure to comply with conditions attached to a planning permission. The BCN must specify details of the breach and the steps required to secure compliance. A minimum period of 28 days must be given for compliance. There is no right of appeal to the Secretary of State.
Failure to comply with a BCN can result in a fine of up to £1,000.
 5. **Stop Notice – Section 183 Town & Country Planning Act 1990**
Must be accompanied by an Enforcement Notice and served at the same time when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or are causing irreversible harm to the environment... It can be used to ensure that an activity does not continue when an appeal is lodged against the Enforcement Notice.
Failure to comply with a Stop Notice can result in a fine of up to £20,000.
 6. **Temporary Stop Notice (TSN) – Section 171E Town & Country Planning Act 1990**
Can be served without an Enforcement Notice but is only valid for 28 days and cannot be reissued at the end of that period. Is only used when a breach demands immediate action and the Council requires time to complete its investigation.
Failure to comply with a Temporary Stop Notice can result in a fine of up to £20,000.
 7. **Injunction – Section 187B Town & Country Planning Act 1990**
In exceptional cases where there is a necessary and serious need to restrain an actual breach of

planning control, the Council can apply to the Court for an injunction. An injunction can be sought whether or not other enforcement action(s) has been taken.

Due to the high costs involved an injunction is only used as a last resort when other action is unlikely to succeed.

8. Section 215 Notice – Town & Country Planning Act 1990

This section of the Act empowers the Council to issue a notice on the owner or occupier of land if it appears that the visual amenity of the area is adversely affected by the its condition. Such a notice may deal with buildings as well as land and would specify the steps required to remedy the existing condition and time scale for compliance. The recipient of a 215 Notice can appeal against it in the Magistrate's Court.

Failure to comply with a S215 Notice can result in a fine of up to £1,000.

9. Default Powers and Direct Action – Sections 178(1) and 219 Town & Country Planning Act 1990

The Council may enter land and carry out required works to secure compliance when an Enforcement Notice is in effect but has not been complied with. There is no requirement to give notice to either the owner or occupier of the land, although it is good practice to do so. In some circumstances the Council can enter land to carry out remedial works and recover costs incurred from the land owner.

10. Listed Buildings – Section 7 Planning (Listed Buildings & Conservation Areas) Act 1990

It is an offence to demolish a listed building, or to carry out works/alterations, which affect its character, without the Council's prior consent. A Listed Building Enforcement Notice may be issued or prosecution action instigated (or both) depending on the circumstances of the case. It is also an offence to demolish some unlisted buildings in Conservation Areas without prior consent.

11. Trees (Conservation Areas/Preservation Orders) – Sections 210 and 211 Town & Country Planning Act 1990

It is an offence to cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area. Consent from the Council also has to be obtained for any remedial works to a protected tree such as lopping or pruning. If any of these are carried out, the Council can consider either prosecution action or the serving of a replanting enforcement notice.

12. Advertisements – Section 224 Town & Country Planning (Control of Advertisements)(England) Regs 2007

It is an offence to display an advertisement in contravention of the above. When deciding on action the Council will consider factors such as amenity or public safety.

13. Planning Enforcement Order (PEO) – Section 124 Localism Act 2011 (and Section 171B Town & Country Planning Act 1990

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order. Once granted the LPA can serve an enforcement notice. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach and having sufficient information to justify enforcement action being taken.

14. Completion Notice – Section 94 Town & Country Planning Act 1990

In some circumstances the LPA can issue a notice requiring unfinished, lawful, development to be completed within a specified period of not less than twelve months. Failure to do so can affect the validity of the planning permission.

15. **Community Protection Order (CPN) – Section 43 Anti-social Behaviour, Crime & Policing Act 2014**

Intended to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. It may be considered as an alternative to a Section 215 Notice. A written warning must be issued before a CPN can be used. There is a right of appeal to a Magistrate's Court within 21 days of issue. Failure to comply with the requirements of a CPN can result in a fine or the issue of a Penalty Notice.

Service Standards

1. Though Planning Enforcement action is discretionary; the investigation of complaints received is statutory and all complaints are investigated. No national performance targets are set but subject to workloads and available resources the Planning Enforcement Team aim to meet the following targets. Performance will be monitored on a regular basis.
 1. Cases will be registered, prioritised and allocated within two working days of their receipt by the Enforcement Team. (In cases where the information provided by the informant lacks the detail necessary for the Council to effectively investigate the alleged breach the Council will liaise with the informant, as soon as is practicable, to obtain the necessary additional information).
 2. All enquiries will be acknowledged within two working days of registration by the Enforcement Team. The informant will be supplied with details of the case officer assigned.
 3. If necessary, the site will be inspected in accordance with the priority of the case and, where practicable, no later than seven working days from the date of registration.
2. Wherever possible, the informant will be contacted within 21 days of the date of the registration of the case to advise them of the preliminary assessment of the case.
3. Further contact with the parties involved will maintained according to the demands of the case. Regular updates will not be provided, except on arrangement with the case officer, but interested parties should be advised of any significant developments in the investigation.
4. A case will be considered resolved when:
 1. a decision is made that it is not expedient to pursue enforcement action.
 2. the matter is resolved through negotiation.
 3. the breach of development control has ceased.
 4. planning permission has been granted.
 5. a formal notice is served and complied with.

Glossary

1. Amenity

1. This is not defined in legislation but in planning terms is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as: the types of land uses; the quality of the buildings; juxtaposition of buildings; the provision of open land or trees; and the inter-relationship between all the different elements in the environment.
2. Residential amenity may take into consideration privacy - whether there is overlooking over and above that which already exists, any overbearing impact, or overshadowing or loss of light. There is no right in planning law to a particular view and the Council cannot take into consideration loss of monetary value of a property. Nor can we take into consideration matters which may be controlled under other legislation, for example light pollution from security lighting.

2. Expediency

1. Enforcement action is discretionary and the Council does not have to take enforcement action even if a breach of planning control is identified. In deciding whether or not to take enforcement action the Council will balance the seriousness of a breach of planning control; the level of any harm that it causes; and the likely chances of success in pursuing enforcement action. Having weighed up these factors we will make a decision as to whether we will take action i.e. if it is expedient to take action.

Contact Details

The planning Enforcement Team can be contacted in the following ways:

By Letter to:

Planning Enforcement
Mendip District Council
Cannards Grave Road
Shepton Mallet
Somerset
BA4 5BT

By e-mail to

planningenforcement@mendip.gov.uk

By telephone (via Customer Services):

0300 303 8588

In person at:

Mendip District Council's main offices at the above address.

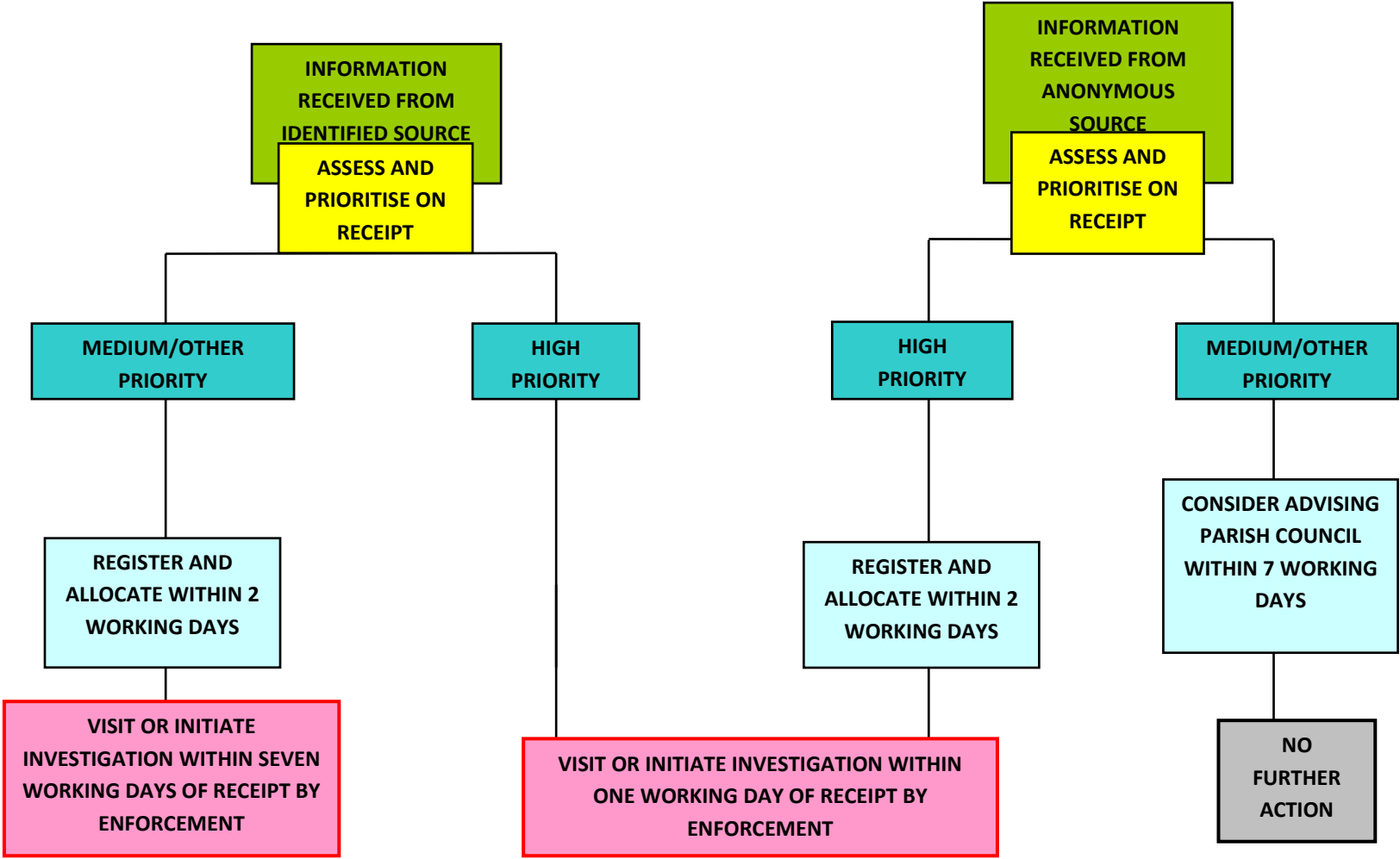
A meeting with an Enforcement Officer cannot be guaranteed without prior appointment.

There are also Council Access Points in Frome, Glastonbury, Street and Wells and the Planning Enforcement Team can be contacted through any of these.

If you report a suspected breach of planning control to the Council you will be provided with direct contact details for the allocated case officer.

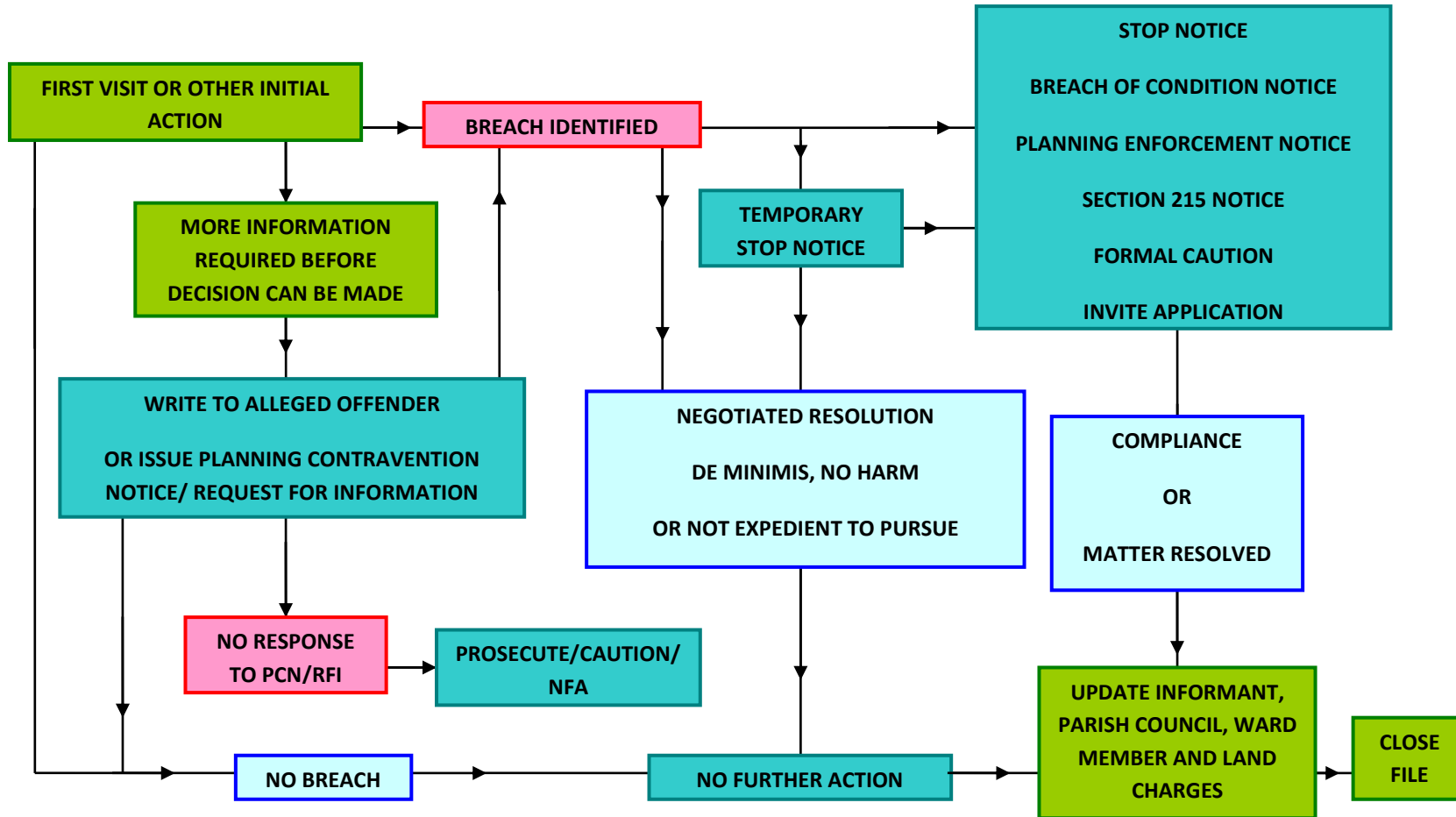
PLANNING ENFORCEMENT – PROCEDURES FLOW CHART

STAGE 1



PLANNING ENFORCEMENT – PROCEDURES FLOW CHART

STAGE 2



PLANNING ENFORCEMENT – PROCEDURES FLOW CHART

STAGE 3

