
Isle of Wight Council

Planning Enforcement Strategy

May 2023

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Foreword by Cllr Paul Fuller, Cabinet Member for Planning and Enforcement

TO BE ADDED

Councillor Paul Fuller

Cabinet Member for Planning and Enforcement

The Strategy

The Isle of Wight Council wishes to continue to exercise its discretionary Planning Enforcement function and provide the best possible service it can. In order to do this it has had to think about how it delivers the service and where it focusses its limited resources.

To achieve this the Isle of Wight Council as the local planning authority (LPA) has prepared a new Enforcement Strategy to replace the Enforcement Policy adopted in 2015. This, in part, has been instigated by the Local Government Association Peer Review into Planning Services undertaken in 2022.

Through its Planning Enforcement Strategy the Council wants to achieve:

The best possible outcomes for the greatest number of people

and it wants to do so in a way that is:

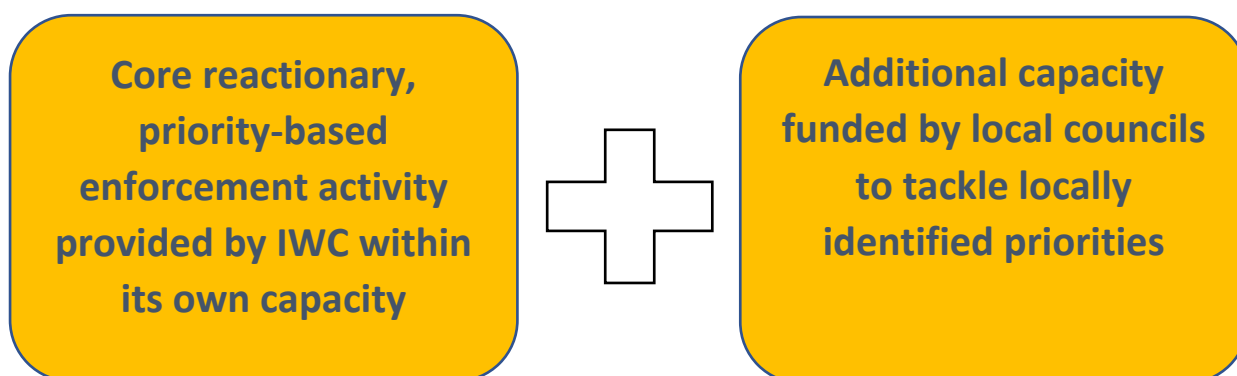
Customer-focussed and driven, with alleged breaches investigated in compliance with the Enforcement Strategy

The Planning Enforcement team will continue to investigate every alleged breach across the Island and assess the level of harm to understand the appropriate way to proceed. Due to the current capacity issues cases that allege significant or irreparable harm to listed buildings, protected landscapes or protected trees will be the priority. This will still be on a reactionary basis, responding when we receive alleged breaches.

The proposed strategy facilitates further conversations with local parish, town and community councils about how the 'core' Island-wide enforcement service already provided by the council could be expanded by additional capacity funded by local councils.

This further capacity could enable IWC to undertake additional enforcement on a proactive basis working to a set of local identified priorities. Alternatively additional capacity could enable IWC to deal with enforcement cases already received outside of the IWC core priorities more quickly than they would otherwise have been.

The Council's approach to Planning Enforcement can be split into two separate parts, as shown below. In this model the IWC provides a baseline, core service, which can be added by local councils, either individually or collectively.



The strategy is therefore based on two parts; the first setting out the Council's approach and then second outlining how the additional capacity could be provided.

When we have greater capacity, we can do things more quickly or we can do more. Capacity also gives the opportunity to be proactive and work towards locally identified priorities, which otherwise we won't be in a position to investigate or take action as quickly as people might like.

Part One – Local Authority approach to Planning Enforcement

Introduction

Planning enforcement is a regime to manage inappropriate unauthorised development that causes planning harm. It is **NOT** a regime to simply regularise unauthorised development.

LPA's have the power to manage and control development as set out in the Town and Country Planning Act 1990, as amended ("the Act"). Section 55 of the Act defines development as:

"the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change of use of any buildings or other land".

If the operation or use is not 'development' as defined, it is not a breach of planning control and the LPA has no power to take any further action.

The Act is supported by the National Planning Policy Framework ("NPPF"), which provides guidance to LPA's in terms of how they should manage breaches of planning control and when enforcement action should be taken. Paragraph 58 of the NPPF states the following:

"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 appropriate."

The Government's Planning Practice Guidance website also provides detailed advice in relation to planning enforcement. The website can be found via this link [Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/enforcement-and-post-permission-matters)

What is or is not a breach of planning control?

The Act defines a breach of planning control as:

"the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted."

As set out above, development is defined by section 55 of the Act. However, it should be noted that some development benefits from deemed consent, due to the allowances set out within the General Permitted Development Order 2015 (GPDO), which can be viewed [here](#). The GPDO grants planning permission for a wide range of works to dwellinghouses and their curtilages, including extensions to houses, garden sheds and fences. The GPDO also grants consent for various works to other types of land and buildings, as well as changes of use to land and buildings, and works undertaken by local authorities and certain Government departments.

These works are termed 'permitted development rights.' However, there are generally limitations to the extent of works that can be carried out via permitted development rights, and these must be checked by anyone wishing to use them. In addition, if land or buildings are the subject of

designations, permitted development rights may not apply. Where these limitations are exceeded, a breach in planning control can occur.

Potential breaches of planning control could include (this is not an exhaustive list):

- Works to listed buildings
- Demolition of building/s in a conservation area
- Works to trees subject of a Tree Preservation Order (“TPO”) or in a conservation area
- Building without consent (i.e. extensions, outbuildings, fences, walls)
- Change of use of buildings and/or land (inc. sub-division of houses to flats / HMOs)
- Advertisements and signage
- Non-compliance with conditions attached to planning permissions
- Not building in accordance with the approved plans of planning permissions
- Untidy land where it affects the amenity of the area
- Engineering operations, such as raising of ground levels or earth bunds
- Deliberate concealment of unauthorised building works or changes of use
- Unauthorised residential use of the land (i.e. caravans)
- Breaches of planning conditions, S106 Agreements and Community Infrastructure Levy (CIL)
- Minerals and Waste Development

Matters that are not breaches of planning control include:

- Internal works to a non-listed building
- Use of buildings in the curtilage of a dwelling for incidental domestic use
- Parking of commercial vehicles on the highway or on grass verges
- Land ownership disputes or trespass issues
- Infringements of covenants in property deeds
- Temporary structures/fencing associated with building works
- Dangerous structures or other health and safety issues
- Works within the Marine Environment that are administered by the Marine Management Organisation(MMO)
- Devaluing of property
- Issues relating to party walls
- Issues relating to damage of property or (potential) injury to persons
- Use of land for forestry or agriculture
- Carrying out of maintenance to pipes, sewers etc by a Council or statutory undertaker
- Highway maintenance by Island Roads
- Works that may cause harm to protected species and their habitats (these issues are managed by Natural England and the Police)

People often refer to illegal development when reporting what they believe to be a breach of planning control; however, it should be recognised unauthorised development is not a criminal offence. The only exceptions being unauthorised works to Listed Buildings and protected trees without consent, removal of protected hedges, advertisements displayed without consent and non-compliance with formal enforcement notices.

The Town and Country Planning Act 1990 enables people who have carried out development to apply for planning permission retrospectively in an attempt to regularise matters. In dealing with such applications, the LPA must consider the application in exactly the same way as any other development,

proposed or otherwise. The fact a development has already been carried out is not something that can be taken into account or that prejudices the determination of an application.

Our planning enforcement principles

Planning enforcement is a discretionary power, and each case should be considered on its own merits. We aim to provide a consistently high-quality service in relation to our planning enforcement duties, and will do this based on the following principles.

Standards

The Enforcement Team has clear standards, and this strategy sets out the level of service and performance which the public can expect to receive from us. In deciding what action is necessary the degree of planning harm the unauthorised development is causing, or likely to cause, should be considered carefully against national and local policy and any other material considerations, including caselaw set by appeals or judgements issued by the Law Courts.

Openness

We will be open about the way we work; we will provide information and assistance. The Enforcement Team will consider the full range of options when deciding what action to take. The full range would include negotiation, retrospective planning applications, or where appropriate, formal enforcement action and legal action. Alternatively, it could decide that whilst a technical breach of planning control has occurred, no action is required because no harm is being caused.

Helpfulness

We will actively work with our internal and external stakeholders to best help address relevant concerns, to help minimise any unnecessary overlap or time delays. We will acknowledge your concerns and following a full and proper investigation our findings will be shared with you. All of our officers are approachable and contact details of the investigating officer will be provided when a case is created. Equally, we would ask that you recognise we are a very busy department, with limited resources, doing a difficult job that often involves dealing with conflict. We will always endeavour to respond as quickly as possible, but we recognise that it might not be as quickly as some people might expect.

Proportionality

Enforcement action must always be proportionate to the severity of the planning harm being caused. It should not be taken solely to 'regularise' development which is acceptable on its planning merits but for which planning permission has not been obtained. Minor breaches of planning control that do no cause harm, or where harm would not warrant action will not have action taken against them even if the developer refuses to apply for planning permission to regularise the development.

We will take enforcement action depending on the seriousness of the breach of planning control. Any legal action we take will be proportionate to the harm arising from that noncompliance or criminal act. The judgement on whether to take action rests solely with the Council, as Local Planning Authority.

Consistency

The Enforcement Team will carry out their duties in a fair, equitable and consistent manner. Officers will consider each individual matter on its own merits. There will be a consistent approach to enforcement action against breaches of a similar nature and circumstance. This does not imply uniformity, but a full consideration of all the circumstances of a case guided by the Development Plan (the NPPF, the Council's Local Plan and, where relevant, Neighbourhood Development Plans), and consideration of relevant material planning considerations. They will also consider whether other legislation would be a more effective route to achieve the desired outcome.

In all but the most serious cases, the Council will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner. For enforcement cases where the implications of taking action have truly Island wide implications, the decision on whether to take action or not may be referred to the Council's Planning Committee, in agreement with the Strategic Manager for Planning and the Chairman of the Planning Committee.

Step by Step guide to a Planning Enforcement Investigation

This flow chart sets out the stages through which an enforcement investigation will go. The next sections of this strategy expand on each of the stages.

Step 1: Submission of an alleged breach of planning control	The best way to report an alleged breach to the local planning authority is through our website https://www.iow.gov.uk/environment-and-planning/planning/enforcement/report-an-unauthorised-development/
Step 2: Triage	A member of the team will contact you if mandatory information is missing, or to discuss the matter with you to get a better understanding of the issues and to advise you whether we are able to assist. If further investigations are not necessary you will be advised of this and no further action will be taken, otherwise the investigation will move to step 3.
Step 3: Open Case	When a further investigation is necessary a case will be created and you will be contacted and provided with the reference number for the case, details of what is being investigated and the name of the investigating officer.
Step 4: Investigate	We will undertake further desk-based assessment of the alleged breach, if necessary seek and consider third party evidence, serve formal notices to collect information, undertake a site visit and, if necessary, liaise with other services within the Council and external agencies.
Step 5: Identify Breach	If a breach has been identified, we will work to establish and achieve an appropriate outcome. If a breach is not identified, we will close the case and whoever reported the alleged breach will be provided with a summary of our findings.
Step 6: Find an appropriate and proportionate outcome	We will always try to resolve the situation informally and in an appropriate and proportionate way. This could mean that the situation could be regularised with a planning application, remedial works negotiated or the removal of the unauthorised work. If none of these outcomes are appropriate, we will move to the next step.
Step 7: Commence formal legal action	This is when informal resolution has not been achieved an Authority Panel will be convened to establish the most appropriate way to secure the desired outcomes through legal action. Once agreed, that course of action will be undertaken.

Step 1: Submission of an alleged breach of planning control

The best way to report an alleged breach to the local planning authority is through our website <https://www.iow.gov.uk/environment-and-planning/planning/enforcement/report-an-unauthorised-development/>

It is strongly advised, prior to notifying the LPA of the alleged breach of planning control, to check whether the particular development or activity which is causing concern already benefits from planning permission or does not need planning permission by virtue of permitted development rights. This can be done by checking our online planning register found at <https://www.iow.gov.uk/environment-and-planning/planning/planning-applications/application-search-view-and-comment/> and <https://www.planningportal.co.uk/permission>.

You may also wish to speak to the landowner regarding the works they are undertaking, to understand their intentions. However, we do understand that it may not always be appropriate to do so.

It is also essential to consider what planning harm is arising from the alleged unauthorised development?

Some examples of situations creating harm in planning terms are:

- Unacceptable design
- Severe harm to highway safety
- Loss of residential amenity - such as excessive overlooking of windows or gardens, loss of light, overbearing by large new buildings too close to boundaries.
- Detrimental impact on general amenity – when comparing against the existing character, appearance and environmental quality of a place
- Increased risk of flooding
- Harm to heritage assets
- Harm to designated landscape such as Area of Outstanding Natural Beauty (AONB), Conservation Area (CA), Site of Important Nature Conservation (SINC).

Harm in relation to planning does not include:

- Competition caused to another business
- Loss of an individual's view or trespass onto their land
- Ownership disputes
- Loss of value to a property
- Rights to light

These issues are private civil matters and advice can be sought from a Solicitor or the Citizens Advice Bureau.

If you believe that a breach of planning control exists **which is causing planning harm**, you can report the matter to our Planning Enforcement Team using the online enforcement notification form via our website <https://www.iow.gov.uk/environment-and-planning/planning/enforcement/>. Photographs can be included, but please do not put yourself at risk to do so. You will need to provide your contact details, a good description of the location of the alleged breach and your name. We may occasionally ask for further information to understand the location of an alleged breach, or what the issue is.

You can also notify us of an alleged breach in writing to the Enforcement Team, Planning Services, Seaclose Office, Fairlee Road, Newport, Isle of Wight, PO30 2QS. Please be aware, however, that we will be able to deal with online reports more quickly than written submissions.

Please be aware that **anonymous reports will not be investigated**. This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious complaints.

Your information will be held securely and will only be accessible to our enforcement section to enable them to carry out their investigations. **We will not share the details of complainants with anyone outside of the Council, without your consent**. Case details may be shared with planning officers, and other colleagues across the Council, to determine the best course of action to deal with an alleged breach of planning control.

We will view breaches of planning control with impartiality, and we will treat all parties with dignity and respect. We ask the same in return.

Step 2: Triage

A member of the team will contact you if mandatory information is missing, or to discuss the matter with you to get a better understanding of the issues and to advise you whether we are able to assist. If further investigations are not necessary you will be advised of this and no further action will be taken, otherwise the investigation will move to step 3.

We receive a large number of allegations of breaches of planning control every year. To ensure that our resources are prioritised to matters which constitute a breach of planning control **where harm is being caused**, once an alleged breach form has been received, it will be triaged by the Enforcement Team.

Following triage of the completed form, you will receive written confirmation that one of the following decisions has been reached;

- 1) **Insufficient information provided**, additional information requested (i.e. location, level of harm etc) in order to assess if the team's intervention is required.
- 2) If it appears at the outset the reported matter is **not a breach of planning**, we will not generate a case for further investigation.
- 3) If the reported matter could be better dealt with by a different team within the Council or a different agency, we will **re-direct the enquiry** as appropriate.
- 4) If it appears at the outset the reported matter could be a technical breach of planning control relating to (for example) a householder development (i.e. fences, outbuildings or small extensions), a case for **investigation may not be generated unless the complainant has demonstrated that the development causes planning harm**. This approach enables our resources to be focussed on the serious breaches of planning control that have the greatest level of impact and where our intervention results in wider public benefit.

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- 5) If it appears at the outset the reported matter could amount to a breach of planning control requiring further investigation, an **enforcement case will be generated**. The complainant will receive a formal acknowledgement letter containing the case reference number which is to

Step 3: Open Case

When a further investigation is necessary a case will be created and you will be contacted and provided with the reference number for the case, details of what is being investigated and the name of the investigating officer.

Dealing with planning enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity, as does the time taken for their resolution.

In dealing with breaches there is a need to strike a balance between:

- protecting the environment
- protecting the amenities of neighbours
- conserving historic buildings and areas
- the use of Council resources/ whether action would be in the public interest

Once a case has been opened, it will be allocated to an enforcement officer for further investigation as per step 3 of the flow chart.

Priority response will be given to cases which allege significant or irreparable harm to listed buildings, protected trees covered by a tree preservation order or stand within a conservation area. In some cases, priority will also be given to more serious breaches of planning control within Areas of Outstanding Natural Beauty.

We will also aim to prioritise those cases where a breach in planning control effects a wide number of people or causes significant harm to the amenity of an area. For example, where the state of land or buildings result in effects to a wide number of people or the appearance of a wider area, a case may be prioritised above those cases with limited impacts.

Government guidance sets out that formal enforcement action is usually a last resort. If there is a breach of planning control, the responsible person will usually be given the chance to rectify the matter first. Continuing negotiations to try and resolve the matter without pursuing formal action, together with the gathering of evidence, consideration of an application to remedy the matter and even awaiting the determination of an appeal means it is not possible to give a standard time for dealing with enforcement cases.

If an update on an enforcement investigation is requested, we will only be able to provide information as to what stage the investigation has reached in accordance with the flowchart above. Once the investigation is concluded, we will provide a brief summary of our findings to the individual(s) who reported the matter to us.

Please note that the specific information relating to the enforcement case may contain personal data. What is personal data is as defined under the General Data Protection Regulations (GDPR), and we will not share this information.

When a case is opened, the relevant parish, town or community council and ward councillor will be notified.

Step 4: Investigate

We will undertake further desk-based assessment of the alleged breach, if necessary seek and consider third party evidence, serve formal notices to collect information, undertake a site visit and, if necessary, liaise with other services within the Council and external agencies.

The Enforcement Officer will undertake the investigation, which will include a number of actions and could result in a number of different outcomes.

What we will do

- check planning history
- consider legislation and guidance
- consider third party evidence
- obtaining information via formal notices (Planning Contravention Notice, Requisition for Information or Interview Under Caution)
- Site visit / Meeting with owner/occupier
- Gather own evidence
- Land registry searches
- Discuss with other council teams / external agencies

What we might conclude

Following a site visit or desktop study it may be found that there is **no breach** of planning control because, for example, development has taken place but a planning application is not required as the development is 'Permitted Development' meaning planning permission is deemed to be granted under the Town and Country Planning (General Permitted Development) (England) Order 2015; there is insufficient evidence to confirm the allegation; the development already has planning permission; or the works do not constitute development. In such cases, you will be notified that the matter will be closed, with no further action.

It might also be that the investigation reveals that a planning breach has occurred, but that it has been occurring continuously for so long that it has now **become immune from enforcement action**. In cases relating to operational development this period is four years, anything else being ten years. In such cases, often no action can be taken by the LPA. Again, you will be notified that the matter will be closed, with no further action.

If a breach is identified, then the LPA will move to the next stage and seek to find an appropriate and proportionate outcome.

What if a breach of planning control is alleged on my property and/or land?

We recognise the anxiety that is caused by finding out that someone has reported an alleged development or activity on your property. It is therefore important for us to make sure that people or

companies who are the subject of a planning enforcement investigation are treated fairly and given the opportunity as part of the investigation to explain the situation from their perspective.

If you have received a visit or a letter from an enforcement officer explaining that a matter has been brought to our attention please don't ignore the issue.

The law provides the LPA with a series of tools in order to enable a full investigation to be carried out. This means that the matter will not 'go away' if you ignore the correspondence you have received regarding the alleged breach.

If you do not engage with the Enforcement Team from the outset to address the matter you run the risk of the LPA taking formal enforcement action without further warning.

Please note that the information submitted to the Council as part of the initial report it is considered to be personal information, which is therefore exempt from the provisions of the Freedom of Information Act 2000 (as amended) and will not be disclosed by the Council. The only details which could be revealed are the nature of the report made, e.g. wall built without planning permission.

Step 5: Breach identified

If a breach has been identified, we will work to establish and achieve an appropriate outcome. If a breach is not identified, we will close the case and whoever reported the alleged breach will be provided with a summary of our findings.

Planning laws are designed to manage, and where necessary control the development and use of land and buildings. They are not intended to protect the private interests of one person against the activities of another.

Formal planning enforcement action will not be instigated solely to regularise breaches in planning control or seek a planning fee.

In taking formal planning enforcement action the LPA will be prepared to use whichever available enforcement power or combination of powers that are appropriate to deal effectively with an identified breach of planning control.

Initial decisions regarding enforcement action will be the responsibility of the authorised officer dealing with each particular case.

In deciding whether to take enforcement action the LPA will have regard to the Development Plan and to any other material planning considerations.

Material planning considerations can include (but are not limited to):

- Previous planning decisions on the application site
- Previous appeal decisions on the site and on other sites where similar and/or the same development has been proposed
- Traffic generation from the development proposed

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- Road access to the site of the development
 - Nature conservation/impact on protect species (ie bats/great crested newts) and habitats
 - Landscaping needed/proposed as part of the development
 - Noise and disturbance resulting from the proposed use/development
 - Loss of trees on the site and the impact of the development on trees covered by a Tree Preservation Order
 - The layout and density of the building/development proposed
 - Overlooking and loss of privacy, outlook or light/ overshadowing
 - Local, Strategic and National planning policies
 - Proposals in the Development Plan/Local Development Framework
 - Government Circulars, Orders and Statutory Instruments
 - The impact of the development on a Listed Building and/or the setting of a Listed Building
 - The design, appearance and materials of the proposed development
 - Smells generated by the development
 - Impact on Highway safety
 - Impacts during construction works (eg noise associated with crushing or hours of working) – mainly applicable to larger developments
 - Adequacy of parking, loading and turning facilities associated with the proposed development
 - Archaeological impacts
 - Impact on a Conservation Area
 - Hazardous materials/ground contamination

Matters that are not considered to be material considerations include:

- Private property rights such as covenants
- The developer's identity, morals or motives
- Effect on the value of your property
- Loss of a private view
- Private disputes between neighbours
- Ownership disputes
- Competition
- Issues covered by other non-planning legislation

It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the LPA would become involved or advise upon.

In considering whether it is expedient to take planning enforcement action the decisive issue for the LPA will be whether the breach of planning control causes planning harm and the extent of the impact of the harm.

The planning enforcement team will not take formal action against a minor breach of control that causes no real planning harm having assessed the matter against adopted policies and all material planning considerations. However, any breach of planning control will be recorded and may be drawn to the attention of the developer and/or landowner, as appropriate. This is in line with Government advice set out in the National Planning Practice Guidance (NPPG) which states:

Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development.*

In defending planning enforcement action on appeal and in the courts, it will be necessary to show that relevant procedures have been followed and that national and local policy on planning and enforcement has been taken into account.

Step 6: Finding an appropriate and proportionate outcome

We will always try to resolve the situation informally and in an appropriate and proportionate way. This could mean that the situation could be regularised with a planning application, remedial works negotiated or the removal of the unauthorised work. If none of these outcomes are appropriate, we will move to the next step.

If, following investigation, a breach has been found the LPA will first need to consider whether it is expedient to pursue.

There is a breach of planning control but not ‘expedient’ to pursue: The question of whether or not it is expedient to take planning enforcement is answered by balancing the advantages and disadvantages of a proposed course of action. Expediency is a planning decision (and is not something that should be influenced by public opinion). Matters such as the degree of harm caused by a breach of planning control, having regard to the development plan policies and other material considerations, will be relevant to the expediency test. The fact that a breach may exist does not automatically mean that formal action will be taken. The planning enforcement team will not take formal action against a breach of control that causes no real planning harm. However, any breach of planning control will be recorded and may be drawn to the attention of the developer and/or landowner, as appropriate.

If it is considered expedient the LPA will look to negotiate.

Negotiations take place to find a solution: Where it is considered that the breach of planning control is unacceptable, attempts to negotiate a solution without recourse to formal enforcement action will

be made, unless of course the breach is continuing to cause irreparable harm to amenity. Negotiations may involve the reduction or cessation of unauthorised development. In carrying out negotiations the LPA will have regard to the specific circumstances of the individual case. Planning guidance advises the LPA, where possible, to negotiate resolutions to planning breaches thus avoiding formal action. This can often be the quickest way of resolving an issue. However, in some cases negotiations may fail and therefore, formal action may be the only recourse.

The LPA will always seek to resolve enforcement breaches without the need for formal action. However, if negotiation doesn't achieve the LPA's desired outcome, it will move to formal action. Pursuing formal action is a significant undertaking. The LPA needs to be confident in its case and that all reasonable options have been considered and potentially exhausted.

Formal action is taken: Generally, a small percentage of alleged breaches we receive result in formal action being taken. There are a range of formal powers the council can use to remedy breaches of planning control. There may also be instances where other agencies or regulatory teams within the Council could achieve an effective outcome, in which case the matter would be passed to that team or agency to progress.

The LPA has a range of 'tools' available to it when dealing with planning enforcement matters. The main tools are

- **Planning Contravention Notice:** Requires persons to divulge information in respect of land and activities. Often undertaken to determine if there is a breach of control (at Step 4) and to help decide the appropriate course of action.
- **Breach of Condition Notice:** Secures compliance with conditions specified within a planning permission
- **Tree Replacement Notice:** Requires the replacement of trees removed without consent
- **Enforcement Notice:** Requires particular steps to be taken to remedy the harm caused by unauthorised development
- **Listed Building Enforcement Notice:** Requires works to be done to prevent or reverse unlawful works to a listed building S225A
- **Illegal Advertisement Notice:** Requires the removal of advertisements displayed without consent
- **S330 Notice:** Requires information about interests in the land
- **Stop Notice / Temporary Stop Notice:** Requires the unauthorised activities to cease immediately, a stop notice is linked with an enforcement notice and a temporary stop notice lasts for a period of up to 28 days
- **Section 215 Notice:** Requires steps to be taken to properly maintain land and buildings which are 'untidy' so to protect public amenity

When the LPA serves a formal notice, the notice should set out clearly those it is served upon, the Authority who has served the notice, the principal Act under which it has been served, the nature of the breach, the address of the site or land that the breach relates to, the actions that those served upon must undertake and the timeframes to do so. The notice should also set out the penalties/implications for those served upon not complying with its requirements.

It should be noted that for some notices, the timescales for actions may begin immediately upon service. For example, the actions within a Planning Contravention Notice will need to be complied with within 21 days of service.

Some notices may not become effective for a prescribed period of time. For example, Planning Enforcement Notices will not become effective until 28 days after service, or until a specified date set out within the notice.

Step 7: Commence formal action

This is when informal resolution has not been achieved an Authority Panel will be convened to establish the most appropriate way to secure the desired outcomes through legal action. Once agreed, that course of action will be undertaken.

Formal legal action can be taken if an individual fails to comply with the formal notice that they have been served with.

Legal action can also result if irreparable harm has arisen from;

- The unconsented internal or external works to a listed building;
- The unconsented lopping, topping or felling of a tree or woodland covered by a Tree Preservation Order; or
- The unconsented lopping, topping or felling of a tree located in a conservation area,

Such acts constitute a criminal offence and therefore will be treated as the highest of priorities for the Enforcement Team.

If following initial investigation, the investigating officer considers the most appropriate course of action is one which may involve legal action, they will instigate a meeting, to be known as an Authority Panel.

An Authority Panel will consist of a minimum of two members of the relevant Service Management Team or an appointed senior officer, the case officer and a representative from legal services.

Persons or companies who are considered to be responsible for the alleged illegal works will be contacted prior to the authority panel meeting and invited to make a written submission, outlining their thoughts on the matter.

The panel will discuss the use of the following tools as the most appropriate course of action after considering the submissions to determine the next course of action.

- **No Further Action (NFA)**

This will be appropriate for situations where legal advice has been received, that a successful prosecution would be unlikely, or where formal enforcement is inappropriate in the

circumstances. This might be due to personal circumstances, such as the mental wellbeing of the person.

- **Simple caution**

Simple Caution should only be issued for offences which are less serious, the resultant harm has been mitigated or remedied and where the offence is readily admitted. A caution can be used to:

- deal quickly and simply with less serious offenders
- to divert them from unnecessary appearance in the criminal courts
- to reduce the chances of their re-offending

Simple cautions should not be used as an alternative to prosecutions where insufficient evidence is available. A simple caution is an admission of guilt and does not constitute a criminal conviction. The Planning Authority may resort to Prosecution should a person fail to carry out agreed actions to resolve the harm caused by the illegal works.

- **Prosecution in the Magistrates/County Courts**

The Planning Enforcement Team considers that such action should be reserved for those who blatantly disregard the law or refuse to implement legal requirements. Prosecution shall be limited to situations where the Authority Panel considers that, in all the circumstances of the relevant case, prosecution is the most suitable enforcement option. In addition, prosecution will always be considered where:

- The offence involves a failure to comply in full or in part with the requirements of a served notice;
- There is the provision of false or misleading information provided to officers in the course of any investigation;
- Or,
- Irreversible and/or material harm has been caused in relation to illegal works (as described above)

A decision to prosecute will be independently reviewed by the Council's Prosecutor before proceedings are issued to ensure compliance with the Code for Crown Prosecutors and that the decision is reasonable and fair and that the evidential and public interest tests are met.

- **Proceeds of Crime Application (POCA)**

Where we believe that there has been financial gain from the criminal activity the Council may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of the offender.

- **Direct action / works in default**

Certain legislation provides the power to allow for the Council to carry out works in default to ensure the breach of planning control is resolved. The costs of this work will, where possible, be recharged to the person responsible for the breach of planning control. This will be

recovered as a civil debt and may be placed on a property as a land charge. The use of this power is rare and is normally contained to non-compliance with Section 215 Notice (Untidy land).

- **Injunctions**

An injunction is only sought, in the County or High Court, in the most exceptional investigations. It is used as a last resort if the Council wants to prevent unauthorised development that would result in immediate or irreversible harm.

When deciding on the most appropriate method of legal action in response to the criminal act, the officer and Authority Panel will also consider:

- The seriousness of the offence;
- Consequence of non-compliance/continued non-compliance;
- Previous history of compliance;
- Wilfulness of non-compliance;
- Admission of guilt (given under caution)
- Public interest consideration,
- Human Rights;
- Any obstruction on the part of the offender;
- Effectiveness of the enforcement options;
- The sufficiency of the evidence available.

The outcome of the Authority Panel will be communicated to the persons or companies who are considered to be responsible for the alleged illegal works, those who reported the breach, the local parish, town or community council and the ward Councillor once a decision has been reached.

Appeal Process

With the exception of a section 330 Notice and a Planning Contravention Notice, an appeal may be lodged with the Planning Inspectorate or the Magistrates Court (depending on the type of notice been served) **before** it comes into effect. Information advising how to appeal against a notice served by the Planning Enforcement Team will be attached to the notice. If an appeal is made, the requirements of the notice are held in abeyance until the appeal is determined.

Appeals lodged with the Planning Inspectorate or the Magistrates/County Courts can sometimes take up to a year or longer to be determined. The timescales for an appeal are set by the Planning Inspectorate or the Magistrates/County Courts and are entirely outside of the control of the Isle of Wight Council.

If an appeal is allowed, the notice no longer applies.

If an appeal is dismissed the Notice will take effect once the specified time period has passed (starting from the date of the appeal decision). Legal action, such as a prosecution, can only be taken if an individual then fails to comply with the notice and prosecution proceedings are considered to be an

appropriate next course of action following consideration at the Authority Panel – please see section 15 below.

What if I am dissatisfied with the way the case was managed?

We always strive to provide the best possible level of customer service and investigate all alleged enforcement breaches in a professional manner and in accordance with our Enforcement Strategy. However, we recognise that unfortunately sometimes there may be instances when a case has not been investigated to the standards that are expected.

If, having received the Council's final response to your enquiry or your land or buildings are the subject of the authority's enquiries and you are dissatisfied with the way the investigation has been managed (rather than being unhappy with the outcome if it has been decided that formal action will or will not be taken), you may wish to consider using the Council complaints procedure. More information about this and how to make a complaint can be found online at <https://www.iow.gov.uk/Council/OtherServices/Council-Complaints/Complaint?anonymous=true>.

We always want to ensure that we provide the best possible level of service and learn from feedback, so if there is any feedback please do send it to planning.enquiries@iow.gov.uk.

Unreasonable customer behaviour

The Council does not normally limit the contact people have with it, whether complaining, making requests for service, information or help and guidance. The Council is committed to dealing with these requests fairly and impartially and to providing a high quality of service to those who make them.

The LPA understands awaiting a resolution to an enforcement investigation can be frustrating as investigations are, by their nature, often lengthy and can be perceived as being slow to progress.

The LPA is keen to resolve the complaint as soon as possible, and will provide key updates as the investigation progresses (i.e. a planning application has been submitted). However please remember that the level of information that can be provided about an ongoing enforcement investigation may be limited and therefore regular updates are unlikely to be provided.

Whilst the Council can understand such situations could be frustrating, the Council will not tolerate behaviour which is deemed unreasonable in line with the Council's Unacceptable Behaviour Policy.

Examples of unreasonable behaviour may include but is not limited to one or more of the following:

- Presenting the same issues repeatedly (exactly or with minor differences) but never accepting the explanations & outcomes,
- Seeking unrealistic outcomes and persisting until it is reached,
- Pursuing a complaint where the council's complaints process has been fully and properly implemented and exhausted,
- Making groundless complaints about employees
- Attempting to use the complaints procedure to pursue a personal vendetta against an employee or team (professionally or personally),
- Contact with the local authority is disproportionately frequent, lengthy, complicated or stressful for staff,
- Raising large numbers of detailed but unimportant questions and insisting they are fully answered,

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- Making and breaking contact with the local authority on an ongoing basis without proper justification,
 - Repeated approaches to different staff or members of the local authority about the same issue,
 - Demands impose a significant burden on resources of the council and where the contact:
 - Clearly does not have any serious purpose or value;
 - Is designed to cause disruption or annoyance;
 - Has the effect of harassing the public authority;
 - Making personal or derogatory comments on social media directed or indirectly at individual staff members in relation to their job or the way it is carried out

When this happens, we have a duty to take appropriate steps to limit the customer's contact with the Council. See the Council's Unacceptable Behaviour Policy [here](#)

Seeking planning and other specialist advice

The LPA provides a paid advice service. Through this service a Planning Officer can advise on the likelihood of a proposed or retrospective development gaining planning consent and will highlight the key material considerations that will be taken into account, including relevant policy guidance. In addition, you can gain separate advice from our Tree Officers, Ecology Officer and historic environment specialists. Details of the advice we can offer, and its cost can be found [here](#)

Our advice service covers the following:

- protected trees
- biodiversity
- the historic environment (including archaeological matters)
- rights of way
- enforcement queries
- planning-related restrictions and the use class of land and buildings
- enforcement or legal agreements

We do not however, confirm whether or not development requires planning permission or not. To gain a view on this, you will need to submit a Lawful Development Certificate (LDC).

The Island Roads Development Control Team provide separate advice relating to highway matters. Their contact details are provided below.

In addition, both the Environment Agency and Natural England provide paid advice in relation to environmental issues. Their contact details are provided below.

You can also seek independent planning advice from the Royal Town Planning Institute's (RTPI) Planning Aid England. This provides planning advice to individuals and communities via a network of volunteers, funded by the RPTI. Planning Aid England is separate to both central and local government. Contact details are provided below.

Part Two – Local enforcement strategies with Town, Parish Community Councils

Introduction

This section of the Enforcement Strategy sets out the opportunity for parish, town and community councils to agree to fund additional capacity within the LPA's Planning Enforcement Team, which would be used exclusively for their area.

In recent years the LPA has experienced an increase in reports of unauthorised development, and this has placed additional pressure on the limited resources that the LPA has available to investigate and then enforce against breaches of planning control.

As the first part of this strategy states, the LPA is committed to the enforcement of planning regulations, which underpin the integrity of the planning system. To use limited resources in the most effective manner, the LPA will first prioritise those situations where harm has been caused to listed buildings, Conservation Areas, Areas of Outstanding Natural Beauty or protected trees. This may result in delays to the processing of breaches of planning control that are not affected by these designations.

Breaches of planning control that fall outside of priority cases can still cause harm to the character of a surrounding area and the amenity of nearby properties or impacts through a range of planning related matters, such as highway safety, drainage or ecology. These impacts can still raise concerns for local communities.

The LPA will continue to investigate these situations, but these will not be a priority and it is likely that action will take longer based on current resources.

The Council's resources must be carefully balanced between different departments and therefore, it is reaching out to the Island's parish, town and community councils to understand whether they would wish to assist with providing additional capacity within the Planning Enforcement Team.

This approach would give parish, town and community councils (local councils) a choice over the planning enforcement priorities for their community, if they were different to those set out within Part One of this Strategy. Local communities would be able to highlight specific projects, particular site or types of breaches or to simply provide additional capacity for their area, so that an appointed officer could focus on their community for all or part of their working week.

As part of these proposals, the Council has introduced the potential for locally funded enforcement capacity to the Isle of Wight Association of Local Councils (IWALC) and any local councils wishing to explore this further is welcome to contact the Strategic Manager for Planning and Infrastructure Delivery to discuss expressions of interest.

How the additional resource would be secured

Initially a local council, or a combination of them, would write to the Strategic Manager for Planning and Infrastructure Delivery and express their interest in this scheme. A member of the Planning Management Team and the relevant Cabinet Member would meet with the local councils to discuss the nature of their interest.

The local councils would set out their likely priorities for planning enforcement, if different to those set out within Part One of this strategy and whether casework would be based on proactively identifying potential breaches of planning control, relying on reports to the Council or local council(s) or a mixture of both options. Local councils would confirm whether their priorities applied to the whole of their Parish boundaries, or specific areas.

The LPA and local councils would discuss the likely amount of time required to suitably progress identified breaches of planning control in an area and whether a senior planning enforcement officer or planning enforcement officer would be used. The Local Planning Authority would provide the costs for each level of officer.

Following the initial meeting, local councils would, within an agreed timescale, confirm the desired number of days per week for additional capacity, the duration of the scheme and their priorities, in writing to the Strategic Manager for Planning and Infrastructure Delivery. It is unlikely that the LPA would be able to provide less than one year of capacity, due to challenges around recruitment and the availability (and cost) of enforcement officers. The LPA would provide written confirmation that the proposed priorities were subject to planning control, would be reasonable in planning terms (taking into account legislation, policy guidance and best practise guidance, recognising that the Local Planning Authority cannot undertake planning enforcement action outside of its area of jurisdiction, or where the issue raised is not relevant to planning legislation or is lawful for planning purposes), were realistic based on the chosen amount of officer time and outline the cost.

Following formal agreement for additional capacity, a local planning enforcement agreement document will be created by the Planning Authority within an agreed timescale. The project document would outline the following:

- The start and end dates for the project
- The chosen level of planning enforcement officer to be used
- The geographical area/ types of breaches of planning control and/or specific sites to be focussed upon where different to Part One of this strategy
- The number of days per week of officer time to be used
- Agreed cost of the project and schedule of payments
- The key performance indicators for the delivery of the agreement

Once the above had been formally agreed, the LPA would create a specific officer post for the role or allocate the work to an existing officer. If necessary, the Local Planning Authority would undertake formal recruitment for a suitable candidate, through the Council's normal recruitment process. It may be necessary to utilise agency staff to provide this capacity, which would have an implication on the cost to the local council.

At all times, the member of staff used to provide capacity in an area would be under the sole employment of the Isle of Wight Council and subject to the Council's terms and conditions of employment. The day-to-day management of the member of staff assigned to the project would rest with the LPA, but would be driven by the content of the local planning enforcement agreement with the local council(s).

Where a local council had agreed to fund further capacity in their area, it should be noted that any action undertaken in relation to breaches of planning control would be undertaken by the LPA in

accordance with the principles of Part One of this Strategy. This would be to ensure that the processing of cases and any formal action taken was consistent, in accordance with planning law and procedure and the LPA's own procedures.

Any decision on whether to take enforcement action in relation to breaches of planning control would rest solely with the LPA. In addition, any formal complaints regarding enforcement action undertaken within an area subject to a local planning enforcement agreement would remain within the remit of the Isle of Wight Council's Complaints Policy.

Monitoring of local planning enforcement agreements

It is important that both parties, but especially the local councils can demonstrate that local planning enforcement agreements are effective and that they add benefit to their local communities. It is also important to ensure that all parties to the agreement undertake regular reviews, and if necessary revise and change its scope.

To support the relevant local council, the LPA will provide quarterly (or at otherwise agreed times) reports for the relevant area that set out the following:

- The number of planning enforcement cases on hand
- The number of alleged breaches of planning control received
- The number of confirmed breaches of planning control identified
- A list of cases, specifying the case reference number, site address, nature of the breach and action undertaken at the time of the report
- A list of cases that have been the subject of a planning application or appeal, and if available the outcome
- A list of those cases subject to formal action (through the service of formal notices or Court action) and if available the outcome

A quarterly meeting will be held with the appointed Planning Enforcement Officer and a senior officer within Planning Services, to discuss the above reports. In addition, during these meetings, all parties will be able to discuss the effectiveness of the agreement and whether any changes are required. Any changes would result in the local planning enforcement agreement being revised, provided the LPA and local council(s) were in agreement. A time period for introduction of any changes would also be agreed.

The appointed Planning Enforcement Officer will provide more regular updates regarding individual cases within the local council's area. The officer will notify the relevant local council(s) of any confirmed new cases (where breaches of planning control have been identified) and designate them as an interest party. The officer will provide updates for each milestone for a case, with these milestones being:

- Initial and subsequent site visits and findings
- Requests to landowners/ interested parties to remedy breaches in planning control and timescales

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- Confirmation of compliance/ non-compliance with requests
 - The submission of a planning application/ lawful development certificate to remedy a breach in planning control
 - Notification of decisions made in relation to applications described above
 - Notification of the submission of an appeal to the Planning Inspectorate and subsequent decision
 - Notification of any formal notices served in relation to a breach of planning control
 - Confirmation of any other significant milestone/ changes in circumstances for a case

The detailed timings of the above milestones will be agreed when the local planning enforcement agreement is drawn up. All cases will be held on the Planning Register.

The Planning Authority recognises that over the course of any agreed project, that may be a need to review its content or duration. Either party to the agreement may convene a meeting to do review a local planning enforcement agreement and the proposed changes can be discussed and the agreement then altered at an agreed time. Should any of the signatories wish to end the local planning enforcement agreement prior to the agreed end date, then a period of 2 months' notice will be required.

The Planning Enforcement Agreement will effectively be a service level agreement. As such it will include built in mechanisms to deal with a range of scenarios.

Should a signatory to a local planning enforcement agreement be unsatisfied with the service provided by the Local Planning Authority, then the issue should be raised to the Strategic Manager for Planning and Infrastructure Delivery. The complaint should set out the details of the dispute and if relevant, the site referred to.

The management team for the Local Planning Authority will then investigate whether agreed service standards have not been met, set out their findings by letter and in doing so, provide details of any remedies required. If necessary, a member of the management team will meet with the relevant local council(s).

Appendix 1: Relevant legislation and policies

Planning enforcement decisions will be made in accordance with the following legislation and will have due regard to the planning policies and guidance listed below. All of which are correct at the point of publication.

- Town and Country Planning Act 1990
- The Planning and Compensation Act 1991
- The Planning and Compulsory Purchase Act 2004
- Planning (Listed Buildings and Conservation Areas) Act 1990
- The Localism Act 2011
- The Town and Country Planning (Development Management Procedure) (England) Order 2015
- Town and Country Planning (General Permitted Development) (England) Order 2015
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as Amended)
- Police and Criminal Evidence Act 1984
- European Convention on Human Rights Article 1 of the First Protocol and Article 8 and Article 14
- The Hedgerow Regulations 1997
- Land Drainage Act

Policies and guidance:

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Island Plan Core Strategy or any subsequently adopted development plans
- Supplementary Planning Documents (SPD's), Neighbourhood Plans, Conservation Area Character Assessments
- Guidance on specific issues for example, Historic England guidance in respect of works to heritage assets

Appendix 2: Contact details and useful links

Environment Agency and Natural England advice services - [Developers: get environmental advice on your planning proposals - GOV.UK \(www.gov.uk\)](#)

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

Government Planning Practice Guidance website – [Planning practice guidance – GOV.UK \(www.gov.uk\)](#)

Hampshire Constabulary wildlife crime - [Wildlife crime | Hampshire Constabulary](#)

Island Roads - islandroads.com/our-highway-service/managing-the-roads/development-control/

Isle of Wight Council planning register - <https://www.iow.gov.uk/environment-and-planning/planning/planning-applications/application-search-view-and-comment/>

Local Planning Authority contact – planning.enquiries@iow.gov.uk

Local Planning Authority website - <https://www.iow.gov.uk/environment-and-planning/planning/>

Marine Management Organisation - [Marine Management Organisation - GOV.UK \(www.gov.uk\)](#)

Natural England - www.gov.uk/government/organisations/natural-england

Planning Aid - www.rtpi.org.uk/planning-advice/about-planning-aid-england

Planning Portal – www.planningportal.co.uk

Planning Inspectorate - [Planning Inspectorate - GOV.UK \(www.gov.uk\)](#)

Appendix 3: Glossary

Appeal – An appeal submitted to the Planning Inspectorate in relation to a decision made by the Local Planning Authority

AONB – Area of Outstanding Natural Beauty is a formal designation of an area of landscape and/or seascape that seek to protect and enhance its natural beauty

Change of use – the material change of use of land, as defined by s.55 of the Act

Compliance date – the date on which the requirements of a notice must be fully carried out

Conservation Area – An area designation for its special architectural or historical interest

Curtilage - Land either enclosed or not enclosed that forms the grounds surrounding a home, and that is used for the daily activities of life

Effective date – the day/ date that the requirements of a notice will come into effect

Enforcement – Powers used to rectify contraventions of the Planning Acts

Expediency – A test applied by the Planning Authority as to whether action should be taken to remedy an identified breach of planning control, taking into account the nature of the breach, material planning considerations and whether action would be in the public interest

Flood Zone – An area identified either by the Environment Agency or the Council as being at risk of flooding

HER - Historic Environment Record contains details on local archaeological finds, sites, historic buildings and landscapes

Heritage Coast – An area defined for its natural beauty with an aim of being conserved, protected and enhanced

Historic Park of Garden – Gardens, parks and designated landscapes that are of national interest and included within Historic England’s register of Parks or Gardens of special historical interest

Immunity from enforcement action – Development has taken place in excess of the time limits set out within s.171(b) of the Act.

Listed buildings – Buildings or structures that are included within Historic England’s list of buildings and structures of special architectural or historic interest

Local Plan/ Core Strategy – The strategic plan for the Isle of Wight, containing both strategic and detailed policy guidance

LPA - Local Planning Authority

Marine Management Organisation – This is effectively a Planning Authority that is responsible for the management of the marine environment and the consenting processes for development within it

Material planning consideration - A material planning consideration is one which is relevant to making the planning decision in question

NPPF – National Planning Policy Framework sets out the Government’s planning policies for England

NPPG – National Planning Practice Guidance provides detailed guidance relating to the planning system

Operational development – development that involves physical works as defined by s.55 of the Act

Permitted development rights – Allowances for certain works or uses to be undertaken without the need for planning permission

Planning condition – Imposed by a grant of planning permission, and includes some form of stipulation or limitation for a development

Planning Inspectorate - Oversees planning appeals on behalf of the Secretary of State

Planning Obligation (section 106 agreement) – An obligation signed under s.106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development

Ramsar site - Wetlands of international importance designated under the Ramsar Convention

SAC – Special Area of Conservation. Species or habitats which have been given greater protection under the Conservation of Habitats and Species Regulations 2017 (as amended) in England and Wales (including the adjacent territorial sea)

Scheduled Monuments – Selection of nationally important archaeological sites categorised by Historical England

SINC – Site of Importance for Nature Conservation. This is a non-statutory designation but recognises the substantive nature conservation value of an area.

SPA – Special Protection Area. A designation to protect one or more rare, threatened or vulnerable bird species listed in Annex I of the Birds Directive, or certain regularly occurring migratory species

SSSI – Site of Special Scientific Interest. A designation relating to a rare habitat or species or geological area.

Statutory consultee – A body that can be consulted in relation to planning related applications or enforcement action

SPD - Supplementary Planning Documents are documents produced by the LPA to add further guidance to the Local Plan

Tree Preservation Order – An order which makes it an offence to cut down, top, lop, uproot or wilfully damage or destroy a protected tree without the prior consent of the LPA