

Rother District Council

Report to:	Cabinet
Date:	5 February 2024
Title:	Local Enforcement Plan 2023
Report of:	Kemi Erifevieme, Development Manager Ben Hook, Director – Place and Climate Change
Cabinet Member:	Councillor Killeen
Ward(s):	All
Purpose of Report:	To seek approval for the revised Local Enforcement Plan.
Decision Type:	Key
Officer	
Recommendation(s):	Recommendation to COUNCIL: That the revised Local Enforcement Plan be approved and adopted.
Reasons for Recommendations:	The new draft Local Enforcement Plan will assist in a more efficient and consistent planning enforcement service to manage stakeholders, customers and residents' expectations.

Introduction

1. The Council's Local Enforcement Plan (LEP) should provide information on how the Planning Enforcement Team (PET) of the Local Planning Authority (LPA), will undertake its monitoring and implementation duties, including how it should address and investigate breaches of planning control.
2. The current LEP – herein referred to as the 'Plan' (2021) has been found to be inconsistent with the operations of the service and does not appear to have a 'buy in' with staff enforcing its content. The Plan (2021) is also overly ambitious on timescales for enforcement proceedings which, bench marked against other LPA plans, has been found to be unreasonable. The Plan (2021) is also overly convoluted, and the information contained within is not entirely consistent with current legislation or working practices. It is lengthy as such making the information contained within it, difficult to understand. While there are positives to this document, it is considered a necessity to review the whole document instead of merely updating and adding what was originally missed out.
3. Consequently, the new draft LEP seeks to address those inconsistencies, provide up-to-date information on how the team carry out investigations on breaches, and provide context in an understandable format to manage stakeholders, customers and residents' expectations.

Analysis

4. The LEP has been reviewed and produced through gathering of evidence on how PET works and benchmarked information gathered from other LPAs.
5. The current Plan (2021), is not robust, is inconsistent and has some key enforcement actions omitted from the document (which was due to error in transferring the document from one format to another). This inconsistency is addressed in the new Plan document.
6. The Council has no other option. The existing document has been in a review format for a significant period, and this cannot be satisfactorily defended in its current format indefinitely.

Conclusion

7. Given the limited staffing in the PET, it is important to have an operational document that takes account of this and aligns with the way the PET works while also making room for working more efficiently.
8. The Plan (2021) is considered to be inconsistent in its current form in particular to the working practices of the PET. It is also important to bring the document in line with current practices and avoid unreasonable targets to manage stakeholders, customers and residents' expectations.
9. The new Plan will also bring the PET working practices in line and consistency with other LPAs.

Financial Implications

10. None identified.

Legal Implications

11. Consistency with local constitution.

Human Resources Implications

12. No Human Resource Implications are anticipated as a result of the new LEP.

Crime and Disorder

13. It is considered that this revised LEP will assist in a more efficient and consistent planning enforcement service which will include dealing with breaches of planning control which are or become criminal offences.

Risk Management

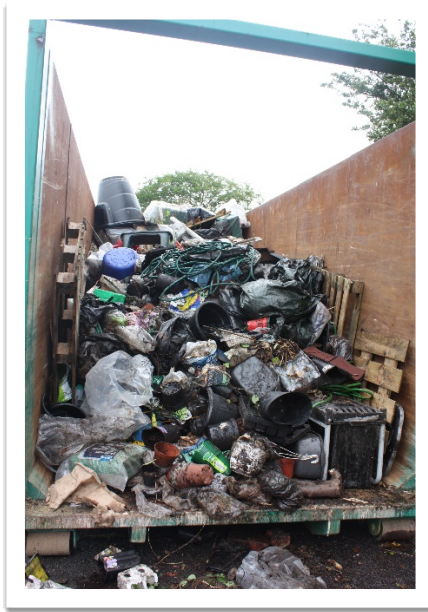
14. The LEP will assist in managing expectations.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	Yes	Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

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Appendices:	Appendix A Local Enforcement Plan (2023) <i>draft</i>
Relevant Previous Minutes:	N/A.
Background Papers:	None.
Reference Documents:	None.



Planning Enforcement Plan 2023



December 2023

INTRODUCTION

Paragraph 59 of the National Planning Policy Framework (NPPF) 2023, states that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development, and take action where appropriate.

In response, this plan sets out Rother District Council's vision for the future of the district, where everyone contributes to achieving a safe, fair, creative, and active community. The planning process is key to ensuring the delivery of the objectives for the district. It is vital that we have an effective planning enforcement process to help deliver these objectives.

ENFORCEMENT OBJECTIVES

Successful planning relies on three essential areas of work by our local authorities: visionary plan-making which sets out the policies and proposals for the area; efficient and effective development management, which applies those local and national policies in the determination of planning applications; and well-resourced and effective enforcement. These three aspects go hand-in-hand. To achieve great development, planning relies on the energy and imagination of planners, decision-makers, developers, designers, and investors. Each of these contributes to bringing ideas through the system to delivery – but without enforcement, our places, our environment, and our quality of life would all be the poorer. At its heart, the planning system relies on trust and our enforcers provide the backbone of this trust – trust that those who flout our planning laws (and often other laws at the same time) will be brought to account; trust that those who strive for high quality will not be undermined by those who would deliver ill-planned and ill-designed development; and trust that the high quality schemes that achieve planning permission will be delivered with that same quality – that planning will deliver what is promised (Ian Tant, Royal Town Planning Institute President 2019, *The Planning Enforcement Handbook for England*, 2020).

The key objectives of the Planning Enforcement Team (PET) are:

- Pro-active and reactive enforcement
- Maintain public confidence in the planning system
- Responsive and robust processes
- Proportionate and consistent action

We encourage Parish and Town Councils, RDC Officers, residents, local businesses and groups to report suspected breaches of planning control to the PET.



WHAT IS A BREACH OF PLANNING CONTROL?

A breach of planning control is the carrying out of development without obtaining the required consents; or failing to comply with conditions or limitations attached to a consent which has been granted (Section 171A of the Town and Country Planning Act 1990 as amended).

There are other breaches such as:

- Unauthorised works to a listed building - any works for the demolition of the building or for its alteration or extension which affects its character as a building of special architectural or historic interest.
- Demolition in a conservation area – demolition of a building with a volume of 115 cubic metres or more and any gate, fence, wall, or other means of enclosure with a height of one metre or more if next to a highway or a height of 2 metres or more elsewhere (Town and Country Planning (Permitted Development) England Order 2015 as amended).
- Unauthorised advertisements - most advertisements require either express consent or have the benefit of deemed consent granted by Regulation 6 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). For more detail see link in section 15).
- Unauthorised works to trees covered by Tree Protection Orders and protected trees in conservations areas (on private land). Where a hedge has grown into a line or row of trees, they may be protected. **Please go to the Planning website to check if a tree is protected.**
- High hedges - Part 8 of the Anti-social Behaviour Act 2003 allows councils to deal with complaints about high hedges whose area contains the land on which the hedge is situated. If the height of a high hedge is having an adverse effect on a neighbour's enjoyment of their home and/or its garden or yard, action can be taken to put right the problem and stop it from happening again. Please complete the online Forms to Report such matters.
- Breaches of Conditions/S106 Legal Agreements – any deviation from planning obligations including compliance with or failure to submit plans to comply with conditions of approval.

There are time limits for taking enforcement action. Development can become immune from enforcement if action is not taken within:

- For substantial completion for a breach of planning control consisting of operational development – 4 years;
- For the change of use to residential – 4 years;
- For all other changes of use or breach of condition – 10 years.

For other matters, not listed above such as breaches of noise nuisance please contact the Council's Environmental Protection Team. For matters such as structural, party wall related to building control, please contact East Sussex Building Partnership and for Highway contact East Sussex County Council's Highway Team.

Further information on how to report planning breaches please visit:

<https://www.rother.gov.uk/planning-and-building-control/planning-enforcement-team>

Party wall issues and neighbour disputes are civil matters and will not be dealt with by the Council.

SERVICE AIMS

Our guiding principles are to protect and enforce, take proportionate, consistent, and expedient action and to meet, talk and explain by being proactive (but reactive where appropriate). Breaches may be unintentional, and any action proposed must be proportionate to the breach of planning control to which it relates.

We aim to answer the following questions during each investigation:

1. Is there development?
2. Is there a breach?
3. Can the breach be resolved through negotiation?
4. Is the breach causing harm?
5. Is enforcement expedient?

Formal Action will be taken where there is serious or irreparable harm and it is expedient that the activity which amounts to the breach is stopped immediately and where the breach is causing harm e.g., contrary to planning policies and guidance, and attempts to resolve the breach through informal action have been unsuccessful.

POLICY CONTEXT

All relevant and current legislation and planning policies will be taken into consideration when assessing a breach of planning control, this includes:

Town and Country Planning Act 1990 (as amended) ("the Principal Act") and all its subordinate and associated legislation

National Planning Policy Framework (NPPF) 2023

National planning practice guidance

RDC Local Policy Plans

Neighbourhood Policy Plans

REPORTING A BREACH

You can report a breach by completing the online form. Please provide as much information as possible including and not limited to:

- Your name, address and contact details - these will remain confidential (we do not investigate anonymous complaints)
- The address where the breach is taking place
- What the breach is and when it started
- Where possible a photo of the works (this helps us prioritise the breach)
- Where possible, the name, address, email/telephone number of who is carrying out the work

WHAT HAPPENS AFTER A BREACH OF PLANNING CONTROL IS REPORTED

Once an online form is completed and submitted, it will be logged on the system within 5 working days of receipt (see Appendix 1 for process).

The following steps will be taken once a complaint is logged:

Discussed in the weekly enforcement meeting;

Desktop investigation is undertaken to identify breach;

If breach is considered to have occurred, a Planning Enforcement Officer is allocated to investigate;

If no breach identified – decision is made to close case.

All breaches will be investigated within 40 days of the case being registered. Some cases may be exceptionally longer due to the type of action that may be required to address the breach. We will notify the complainant of the work being undertaken. Following the investigation, the decision on whether or not there has been a breach and what action is appropriate will be discussed in the Enforcement Meeting. The decision on what action to be taken will be agreed by the Development Manager and Enforcement Team Leader.

The complainant will be notified of the outcome of the investigation and agreed action, where appropriate. Where following an investigation it is considered that no breach has occurred or permission would be granted for the works undertaken, the case can be closed as NFA (No Further Action) and the complainant will be informed of this decision and reason.

How are breaches resolved?

There is a range of tools available to the Planning Enforcement Team to tackle breaches of planning control:

Informal action

Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost-effective way of achieving a satisfactory and lasting remedy. The offender will be advised what steps are required to resolve the breach within a specified timeframe (usually up to 28 days), outlining the risks of formal action if the breach is not resolved. If the steps are followed, the case will be closed.

Planning/listed building applications may be used to regularise unauthorised works or to seek confirmation that amendments to the unauthorised works would be acceptable. If planning permission is refused, formal enforcement action will then be taken. If there is a breach of planning control but it is not expedient to take formal action, we will request the submission of a planning application to regularise the breach.

Formal action

Planning Contravention Notices - A PCN is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. It also invites the offender to respond constructively to us about how any suspected breach of planning control may be satisfactorily remedied. The offender has 21 days to respond. It is a criminal offence to fail to respond or provide misleading information to a PCN.

Enforcement Notices – These are formal legal documents that require the owner or occupier to follow specific steps to correct the planning breach in a set time. If the notice is not complied with, the planning breach will become a criminal offence which can be prosecuted in the courts. We may decide not to require action to be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”. A copy of the notice will be entered on the local land charges register and the local planning authority’s register of enforcement notices – the enforcement register is available on the website.

Breach of Condition Notices (BCN) - can be used where the unauthorised activity is in breach of a condition attached to a planning permission. A BCN will require compliance with the conditions within a specified period. A breach of the notice will have taken place if the condition(s) has not been complied with, the specified steps have not been undertaken or activities not ceased. There is no right of appeal against these notices. Details of the case will be made available online.

Section 215 Notices – can be used to take steps requiring land or buildings to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of an area is being adversely affected by the condition of neighbouring land and buildings, a notice can

be served on the owner requiring that the situation be remedied. There is no right of appeal, although before the notice takes effect, an appeal can be made to a Magistrates' Court by those served with the notice or any other person having an interest in the land.

Section 225A Notices – can be used to remove and dispose of any display structure, such as an advertisement hoarding, which is used for the display of advertisements in contravention of the regulations. Before we can take this action, we must first serve a 'removal notice' upon the person who appears to be responsible for the erection or maintenance of the structure. Under Section 225B, a person served with a removal notice or a 'permitted appellant' (an owner or occupier who has not been served with the notice) may appeal against the notice to the Magistrates' Court.

Discontinuance Notice – requires the display of a particular advertisement with deemed consent (or the use of a particular site for displaying advertisements with deemed consent) to cease. This action can only be taken where it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. "Substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity that applications for deemed consent are assessed against.

When an Enforcement Notice is served, and the case becomes 'formal' (all cases other than the serving of a PCN) details of the case will be made available/viewable online.

The following remedies can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified or where other actions have failed:

Stop Notices - can prohibit any or all the activities comprising the alleged breach(es) of planning control specified in the related enforcement notice. A stop notice cannot be served without an accompanying enforcement notice. A stop notice's requirements must only prohibit what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. A stop notice may not prohibit the use of any building as a dwelling house. Where the associated Enforcement Notice is quashed, varied, or withdrawn or the stop notice is withdrawn, compensation may be payable. A full assessment of the likely consequences of serving the notice will be considered when deciding what action to take.

Temporary Stop Notices – require an activity which is in breach to cease immediately. The notice does not have to wait for an accompanying Enforcement Notice to be issued. It cannot be used to get someone to do something such as remove an extension or stop the use of a building as a dwelling house. A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an Enforcement Notice is not issued and a stop notice served.

Injunctions – an application can be made to the High Court or County Court for an injunction to restrain a breach of planning control. Proceedings for an injunction are the most serious enforcement action that can be taken because if a person fails to comply with an injunction they can be committed to prison for contempt of court. The first stage is to formally warn the offender of an injunction and require them to sign a legal undertaking which confirms that the alleged breach will cease. If this undertaking is breached an application is, then made for an injunction.

WHAT HAPPENS IF I CARRY OUT WORK WITHOUT PLANNING PERMISSION

There is a weekly Planning Enforcement Meeting where the Planning Enforcement Team and Development Manager attend to review all enforcement complaints received. Following the triage by the Planning Enforcement Team and Development Manager to establish if there is a breach, a Planning Enforcement Officer will contact you. This will include a site inspection and review to assess the resulting harm caused and determine the next steps.

We will inform you of the action required to resolve the breach within a set timeframe. This may include:

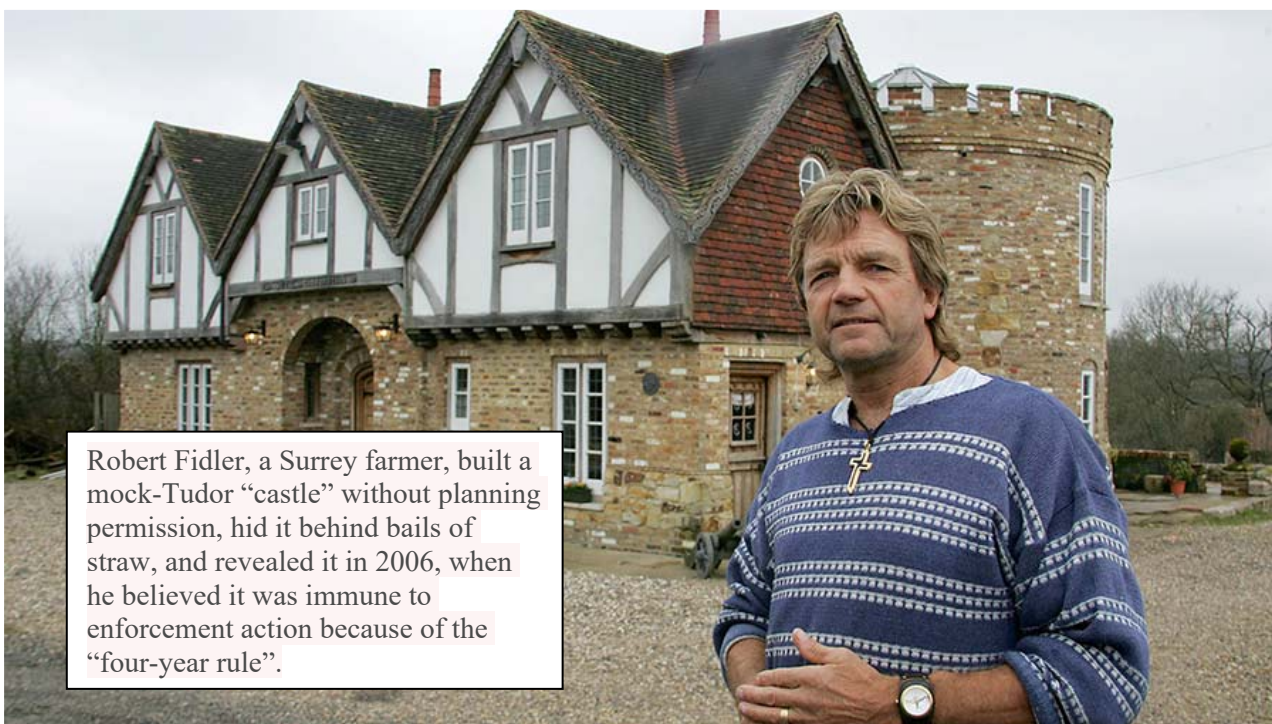
- To completely cease the use/development/remove extension;
- Invite the submission of a retrospective application to determine whether planning permission should be granted; or
- Request works required to make the breach comply with an approved scheme / conditions / permitted development right.

If it is considered there is serious or irreparable harm, and it is expedient that the activity which amounts to the breach is stopped immediately, we may take appropriate formal action.

If you do not comply with our requests within the specified timeframe, (this will differ on a case-by-case basis) and it is expedient to do so, we will then commence with formal enforcement action. This will involve a formal notice being served on all those with a legal interest in the property. If the notice is not complied with, we will then commence with prosecution procedures.

Unauthorised works to listed buildings, demolition in conservation area, works to Tree Preservation Order (TPO) trees / conservation area trees - It is an offence to carry out works to a listed building, demolition in a conservation area, works to trees in a conservation area and works to trees subject to a TPO without obtaining the necessary consents. It is also an offence to fail to comply with a condition on a listed building consent. The offence is committed by the person who carried out the works and by anyone who caused them to be carried out. A formal caution will be issued, and we will request that all unauthorised works stop immediately.

Where we consider that there is a risk, works have not stopped or the harm warrants it, we will review action to stop works immediately on site. We may conduct Police and Criminal Evidence (PACE) interviews under caution and will consider prosecution action having regard to the Crown Prosecution Service's tests of prosecution.



ENFORCEMENT APPEAL

There is a right to appeal most formal notices. The notice is held in abeyance whilst the appeal is determined. Appeals can be determined by written representations, informal hearings, or public inquiries. If the appeal is allowed, then the enforcement notice is quashed, and investigation will be closed. The notice is upheld if the appeal is dismissed (Planning Inspectorate (PINs) can modify notices) with the compliance time starting from the date of the appeal decision. There is no set timeframe for the determination of appeals, and this can delay resolution of the breach.

It is a criminal offence to fail to comply with an enforcement notice, breach of condition notice, or a stop notice and we will take prosecution action. Listed building breaches, unauthorised works to protected trees, advertisements, demolition in conservation areas and non-compliance with planning contravention notices can all also result in prosecution action.

In initiating prosecution proceedings, we will have regard to the Crown Prosecution Service's tests of prosecution:

- Does the prosecution have a realistic prospect of success?
- Is it in the public interest to prosecute?

Where we have a successful prosecution and it is appropriate, we will apply for a Confiscation Order under The Proceeds of Crime Act 2002 ("POCA") where an offender has failed to comply with the terms of an enforcement notice and financially benefits from their unlawful activity. This will help to cover the costs of enforcement action and act as a deterrent against future breaches.

As well as prosecuting, as a Local Planning Authority (LPA), we have powers to enter land that is subject to an enforcement notice and carry out the requirements of the notice ourselves (section 178 of the Town and Country Planning Act 1990) often referred to as 'Direct Action'. It is an offence to wilfully obstruct anyone who is exercising those powers on the LPA's behalf.

We would then recover any expenses reasonably incurred by undertaking this work from the person who is then the owner of the land (regulation 14 Town and Country Planning General Regulations 1992).

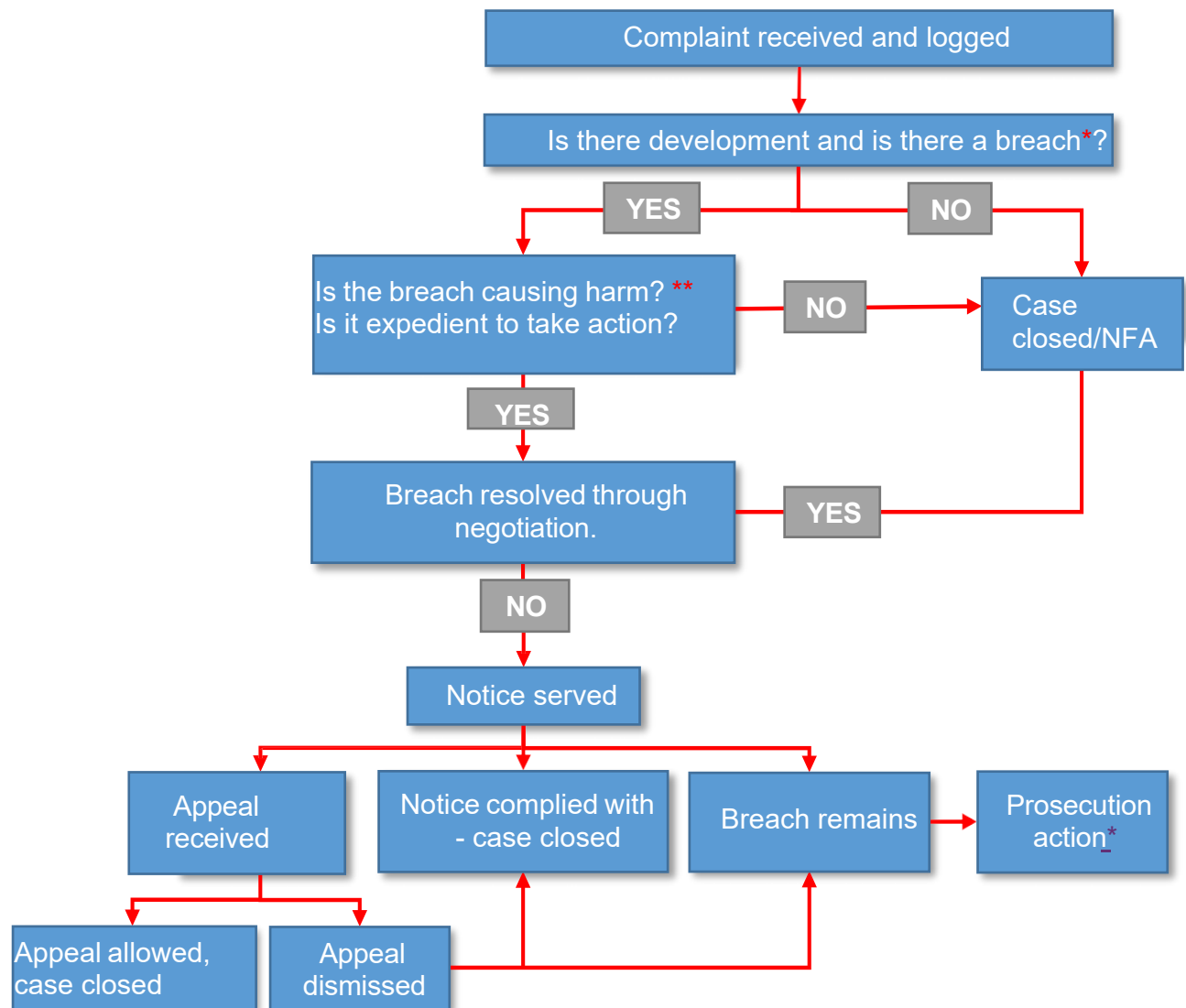
ENGAGEMENT

It is important to regularly seek the view of our local councillors, residents, and groups on their experience of the enforcement process and understand the particular development pressures in their area.

We will provide feedback through an enforcement weekly list that will be sent to all councillors, parish and town councils and available on our website.

Feedback on the enforcement workload, with a quarterly Performance Report, will be given to the Planning Committee.

Flowchart of Process of an Enforcement Investigation



*If the breach constitutes an offence, prosecution procedure will be followed.

**Where serious/irreparable harm is caused review of action to cease breach immediately

Links and Further Information

Further information on the Council enforcement function can be viewed on the following link:

<http://www.rother.gov.uk/article/10192/Alleged-Breaches-of-Planning-Control>

Copy of the online Complaint Form (Note: online form is currently under review):

[Planning Enforcement Complaints Form - Consent - My Rother](#)

Guidance on Enforcement for Listed Buildings can be found on the Historic England website at:

[Stopping the Rot | Historic England](#)

Guidance on works to protected trees can be found at:

[Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#)