



# **Planning Enforcement Local Plan 2022**

## INTRODUCTION

The National Planning Policy Framework (NPPF) 2021 recommends that local planning authorities publish a local enforcement plan to manage planning enforcement proactively and in a way that is appropriate to their area. This document sets out the Council's approach to planning enforcement for all those who are involved in or affected by breaches of planning control in Rugby borough.

Rugby Borough Council's Corporate Strategy 2021-2024 sets out a vision for the future of the borough. The planning process is key to ensuring the delivery of the priority outcomes set within this Strategy. It is vital that we have an effective planning enforcement process to help deliver these objectives.

## ENFORCEMENT OBJECTIVES

*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, RTPI President 2019, The Planning Enforcement Handbook for England, 2020*

The key objectives of the planning enforcement team are:

Pro-active and  
reactive  
enforcement

Maintain public  
confidence in the  
planning system

Responsive and  
robust processes

Proportionate and  
consistent action

## WHAT IS A BREACH OF PLANNING CONTROL?

The Town and Country Planning Act 1990 defines a breach of planning control as "the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted."

A breach of planning control can include the following:

- Building work and/or a material change of use undertaken without planning permission being granted.
- Development not being carried out in accordance with the approved plans of a planning permission.
- Non-compliance with conditions attached to a planning permission: and

- Non-compliance with a planning obligation contained in a s.106 legal agreement attached to a planning permission.

There are also other legislative codes which fall within the remit of the enforcement function. Breaches of this legislation can include the following:

- Works being carried out to a Listed Building which affect its character without listed building consent being granted.
- Non-compliance with conditions attached to a listed building consent.
- The display of advertisements for which express consent is required but not granted.
- The removal of protected trees and/or trees situated within a Conservation Area for which notification or consent is required but not given; and
- Unauthorised removal of important hedgerows (as defined by the Hedgerow Regulations 1997).

## MATTERS THAT ARE NOT BREACHES OF PLANNING CONTROL

Not all development or change of use requires planning permission from the local planning authority.

The following are examples of what is not covered by the planning enforcement service:

- Internal works to a non-listed building.
- Obstruction of a highway or public right of way (PROW)
- Parking of commercial vehicles on the highway or on grass verges.
- Parking caravans on residential driveways or within the curtilage of domestic properties if they are incidental to the enjoyment of the property.
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity.
- Land ownership including boundary disputes or trespass issues.
- Covenants imposed on property Deeds.
- High hedges.
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 as amended and or substituted.
- Advertisements that benefit from deemed or express consent, under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- Dangerous structures or other health and safety issues.
- The Town and Country Planning (Use Classes) Order 1987 (as amended) allows for certain changes of use without the need for planning permission.

## ENFORCEMENT ACTION IS DISCRETIONARY

It is important to note that just because there may be a breach of planning control, this in itself is not sufficient reason to take enforcement action. The Council must first decide, having given regard to policies contained within the adopted Rugby Borough Local Plan, guidance contained in the National Planning Policy Framework (NPPF), and all other material planning considerations whether it is '**expedient**' to take formal action. Expediency is a test of whether the unauthorised activities are causing material harm to the environment or amenity of the area. Therefore, enforcement action is **discretionary**, and each case must be assessed on its own merits.

Guidance from Central Government is that formal enforcement action should be a last resort and that Councils are expected to give those responsible for a breach of planning control, the opportunity to put matters right or to seek to regularise the breach, before resorting to serving a formal notice. Any such service of a formal notice must be proportionate and commensurate with the breach of planning control.

**This means that the Council may not take formal enforcement action in all cases where there has been a breach of planning control identified.**

Guidance from Central Government Councils goes on to state the Council should avoid taking action in the following circumstances: -

- 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 their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.
- A judgement will be taken on a case by case basis by the enforcement team who will provide a report setting out why no action should be taken which will be countersigned by either the Development and Enforcement Manager or any other authorised officer as set out in the Constitution.

## HOW TO REPORT A BREACH OF PLANNING CONTROL

You can report a breach [online](#) or by emailing [RBC.planningenforcement@rugby.gov.uk](mailto:RBC.planningenforcement@rugby.gov.uk)

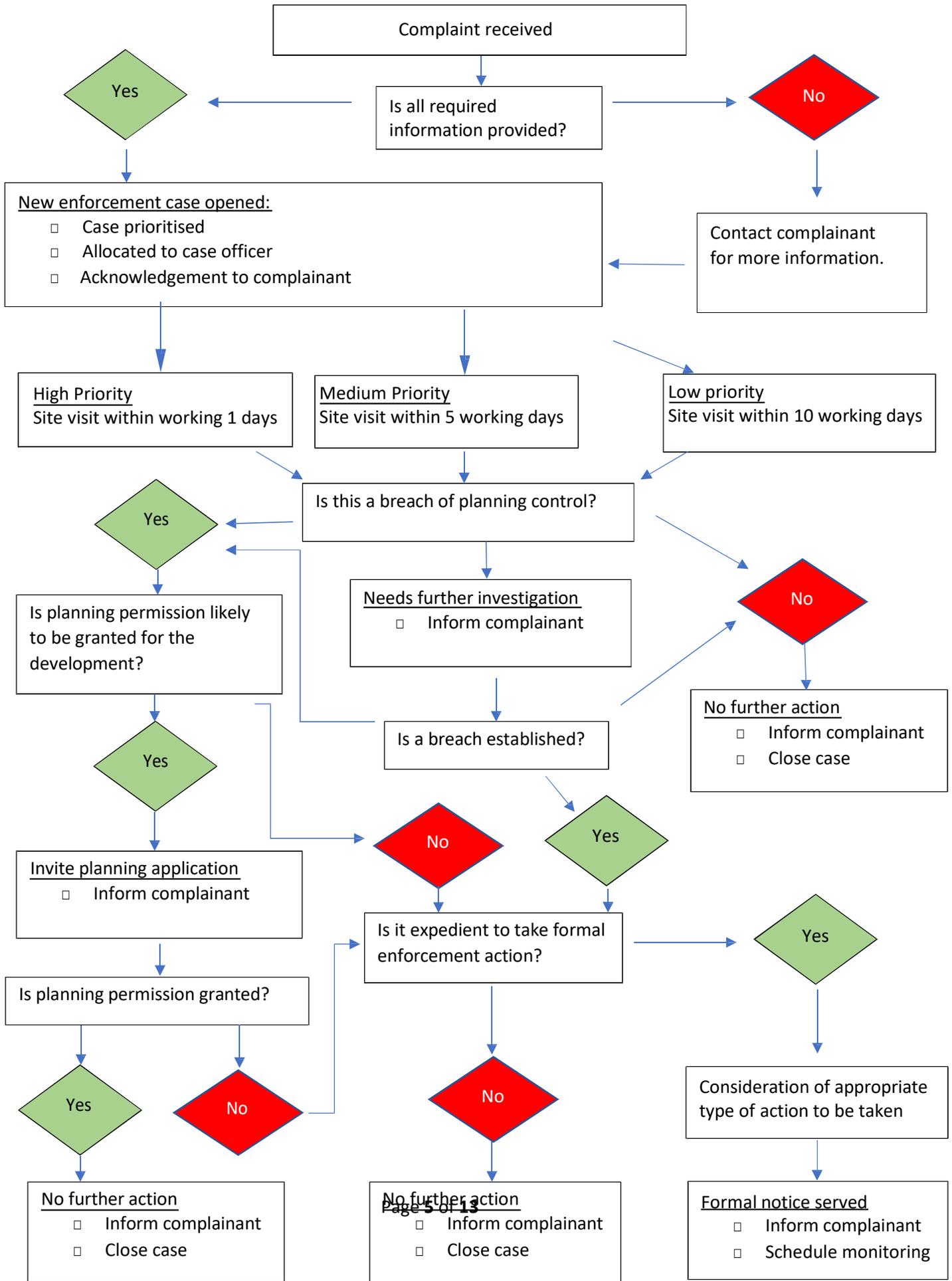
Please provide the following information:

- Your name, address, and contact details. These will remain strictly confidential. We do not investigate anonymous complaints unless it relates to a matter of public safety.
- 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.

The Council determines whether the alleged breach merits investigation. Complainants who do not wish to give their personal details will be advised to contact either their Local Ward Councillor or their Parish Council who may then raise their concerns on their behalf. Personal details provided by a complainant will be kept confidential and will not be disclosed unless required to do so because of any formal Court proceedings.

# WHAT HAPPENS AFTER I REPORT A BREACH OF PLANNING CONTROL?

## Planning Enforcement Investigation Flow Chart



## HOW WILL WE PRIORTISE YOUR COMPLAINT

To make the best use of resources available it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the Council following receipt of the complaint however may be subject to change following a site inspection or when further information comes to light.

### **High Priority – A site visit will take place within 1 working day of receipt**

#### **Severe, irreversible, and usually on-going/progressive**

1. Breaches of Listed Building control caused by on-going work
2. Removal of hedgerows/works to trees which are protected by Tree Preservation Orders/within Conservation Areas
3. Development that causes significant harm or danger to the amenities of neighbouring residents and the public or is contrary to significant policies in the Local Plan.
4. Unauthorised encampments
5. Unauthorised development / advertisements which gives rise to a potential risk to public safety

### **Medium Priority – A site visit will take place with within 5 working days of receipt** **On-going work which may cause significant and progressive harm to the area if not addressed swiftly.**

1. Large scale building works causing significant loss of amenity.
2. Breach of condition, which results in serious demonstrable harm to the neighbourhood.
3. Unauthorised development, which is the source of significant public complaint (significant public complaint can be quantified as 5 or more independent sources complaining about the same alleged breach of planning control).
4. The erection of unauthorised advertisements causing serious harm to amenity or public safety and/or a detrimental impact on highway safety.
5. Unsightly buildings or untidy land that are causing serious harm to the amenity of neighbouring residents and/or significant harm to the appearance of the area in which it is located.

### **Low Priority – A site visit will take place within 10 working days of receipt, if necessary, following a desktop appraisal of the issues.**

#### **No significant harm or impact limited to adjacent properties and reversible.**

1. Other advertisements (no known or potential harm to public safety)
2. Domestic extensions and outbuildings.
3. Most breaches of planning conditions likely to be resolved without formal action.
4. Untidy land, except where it causes serious harm to the amenity of neighbouring residents.

## HOW ARE BREACHES RESOLVED

There is a range of tools available to the planning enforcement team to tackle breaches of planning control. The use of these can vary depending on the nature of the breach and the level of harm caused. The most common measures are set out below.

### INFORMAL ACTION

**No breach established** – Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased, or the development is permitted development.

**There is a breach of planning control but not considered expedient to pursue** – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be judged to be de minimis, for example too minor to justify the likely amount of time and expense involved in pursuing them.

**The development is lawful and immune from enforcement action** - This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the Council. There are certain time limits involved in relation to operational development and changes of use, however for further details please contact the Enforcement Team who will be happy to advise you if you think this may apply to you ([rbc.planningenforcement@rugby.gov.uk](mailto:rbc.planningenforcement@rugby.gov.uk)).

**Negotiations take place to find a solution** – In accordance with Government guidance the priority is to try and resolve any breaches of planning control through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not however allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

**Retrospective planning applications** - In accordance with Government advice the Council will firstly seek to negotiate an amicable solution to any confirmed breach of planning control. By entering negotiations with the parties involved, a solution may be found which could involve the cessation of any unauthorised change of use or building operations, the removal of any unauthorised building works or items constituting a material change of use of land, and/or the remedy of any breach by the submission of a retrospective planning application.

A retrospective application will be invited where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be able to be made acceptable by way of the imposition of conditions. Whilst a planning application is being considered no further enforcement action will be taken.

Minor or technical breaches of planning control may not be pursued if a retrospective application has been requested but no application has been forthcoming and it is not considered expedient to do so.

If an enforcement notice has already been served, then the Council may decline to determine any retrospective planning application which seeks to regularise any or all the breaches of planning control that are referred to in the enforcement notice.

## FORMAL ACTION

**Planning contravention notices** - A PCN is a legal notice which allows the Council 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 the Council 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. The Council 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, available online. There is a right of appeal against an Enforcement Notice, which must be exercised prior to the Notice coming into effect. There is no right of appeal outside of this time.

**Breach of condition notices** - 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 within the timescales identified in the BCN, or activities have not ceased. There is no right of appeal against these notices.

**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. If the associated enforcement notice is quashed, varied, or withdrawn or if the stop notice is withdrawn compensation may be payable. A full assessment of the likely consequences of serving the notice will be made as such action may expose the Council to additional financial burden or legal challenge.

**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. The effect of issuing a temporary stop notice will be to halt the breach of planning control, or the specified activity immediately. This can have immediate serious consequences on a business particularly in terms of costs, so the Council should ensure that a temporary stop notice's requirements prohibit only 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.

**Injunctions** – An application can be made to the High Court or County Court for an injunction to restrict or prevent 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, then an application is made for an injunction.

**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.

**Community Protection Warnings/Notices**- can be used to deal with unreasonable behaviour, ongoing problems or nuisances (such as an untidy building which is having an adverse impact upon the amenity of the area) which negatively affect the community's quality of life by targeting the person responsible. The warning/notice can direct any individual, business or organisation responsible to stop causing the problem and to take reasonable steps to ensure it does not happen again.

**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.

In addition to the above, further action is available by way of the taking of direct action to remedy a breach or to instigate prosecution proceedings for non-compliance where it is deemed necessary to do so.

If the Council considers that a complaint, either at the start or after an initial investigation, is vexatious or malicious with no real planning grounds to substantiate it will either refuse to investigate or close the file with no further action.

Please note, planning enforcement is a protracted and complex legal process and in some instances can take long periods of time to resolve, which is heavily influenced by the co-operation of any alleged offender. Please see Appendix 1 for the Council Service Standards relating to Planning Enforcement.

## WHAT CAN I EXPECT IF I CARRY OUT WORK WITHOUT PERMISSION?

If a complaint is received that affects you then the first thing that will happen is either you will be contacted (where your details are known to the Council) or the site in question will be visited by an enforcement officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If there is a breach of planning control, you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. If no breach is identified, then no action will be taken against you.

You will be given a reasonable period (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through amicable negotiations or the submission of a retrospective planning application formal action may be instigated.

## POWER OF ENTRY ONTO LAND

Section 196(a) of the Town and Country Planning Act (as amended), the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Order Act 2003 gives officers of the Council the power to enter land and/or premises at all reasonable hours to undertake their official duties. Wilful obstruction of a person exercising a right of entry is an offence.

The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the legislations unless twenty-four hours prior notice of the intended entry has been given to the occupier of the building.

All planning enforcement officers are required to carry approved identification which can be produced for inspection upon request. Access may be requested to nearby properties where this is necessary to fully investigate an alleged breach.

## REGISTER OF ENFORCEMENT NOTICES.

Every planning authority must keep an Enforcement Register (Section 188 register). Details of all enforcement notices, stop notices, enforcement orders and breach of condition notices issued in respect of land in their area must be entered in the register. A copy of the register can also be visited on the Council's website [www.rugby.gov.uk](http://www.rugby.gov.uk).

## DELEGATION OF POWERS

The ability for officers to take enforcement action is set out within the Council's constitution which is reviewed regularly and can be viewed on the Council's website [www.rugby.gov.uk](http://www.rugby.gov.uk).

## EQUALITY

As required as part of the Equality Act 2010 Section 149, in the drafting of this plan due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between different groups and foster good relations between different groups. It is not considered that this plan would conflict with the requirements of the Equality Act 2010 or the Council's policy on equality.

## COMPLAINTS

If an individual is unhappy with the way in which an enforcement case has been handled all complaints must follow the Council's Corporate Complaints process which can be found at: <https://www.rugby.gov.uk/complaints>

## APPENDIX 1: SERVICE STANDARDS

SERVICE STANDARDS	STANDARD TARGET
Acknowledge allegation within 3 working days of its receipt	100%
When a site visit is necessary, to conduct the visit within prescribed priority timescale	80%
Close file within 10 working days of the site visit or desktop investigation where there is no breach of planning control	80%
Close file within 8 weeks where there is a breach of planning control but it is not expedient to take action	80%
Determine action within 8 weeks where there is a breach of planning control and it is expedient to take action	80%
Serve Enforcement Notice within 28 days of instruction	90%
During the enforcement notice compliance period at least one written contact is made, warning of need to comply where appropriate	100%
To check compliance, review file, determine next action and review date within 10 working days of compliance date stated on Enforcement Notice	90%
Where prosecution or injunction agreed, evidence to be provided to legal within 10 working days of agreement date for action	90%
After prosecution to review file and determine action within 10 days	90%

