

### INTRODUCTION

A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 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.***

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas.

The borough of Bromley is the largest in London by area and occupies 59 square miles of which the majority is Metropolitan Green Belt land and is perhaps the most rural. There are 47 conservation areas in Bromley, designated because of their special architectural or historic interest.

The enforcement of planning control is very important to the borough in order to:

- Investigate all alleged breaches of planning control including, unauthorised development, changes of use, non-compliance with conditions, unauthorised works on trees within conservation areas and protected trees (TPO), untidy sites and control of advertisements.
- Remedy the unacceptable harmful effects of any identified breaches of planning control and consider further action.

- Help protect the credibility of the planning system, and to ensure fairness for those who do adhere to planning controls.
- Ensure that works and uses are carried out in compliance with planning permissions and conditions unless variations are properly justified on planning grounds.
- Ensure the adopted planning policies applicable to this borough are properly implemented.
- Assess valid high hedge cases where complaint criteria are met and where required, issue remedial notices to achieve justified outcomes.

It is an important principle of the planning system of this country that the use of formal planning enforcement action is a **discretionary power of the Council** that, in most cases, is only justified to remedy a harm caused by a breaches of planning control.

The present enforcement regime dates from around 1990 and its evolution over the past 30 years provides the context for the current system. Significant improvements to the enforcement system were made following the Carnwath Report on Enforcing Planning Control (1989). Subsequently legislation, including the Town and Country Planning Act 1990 and the Planning and Compensation Act 1991, introduced additional measures such as Planning Contravention Notices and Breach of Condition Notices to deal with breaches of planning control more effectively.

The National Planning Policy Framework (NPPF) (paragraph 59) provides policy guidance stating 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.”***

It should also be noted that, other than in respect of works to a listed building, the felling or pruning of preserved trees or the display of a sign or advertisement, it is not illegal to carry out works without the benefit of planning permission or other related consents.

Works carried out without the benefit of planning permission are termed as being “unauthorised”. The retention of unauthorised works only becomes illegal if such works are retained in contravention of an Enforcement Notice that has come into effect and is not the subject of a current appeal.

## **INVESTIGATING ALLEGED BREACHES**

Not all building works, changes of use, demolitions, advertisement signs or tree works require permission from the Council, as local planning authority. However, when they do, breaches in planning control regulations could include:

- Unauthorised building development
- Unauthorised changes of use
- Non-compliance with plans or conditions
- Protection of listed buildings and Trees in Conservation areas
- Contravention of Tree Preservation Orders (TPO)
- Non-compliance with enforcement notices
- Untidy Sites
- Unlawful advertisements



## **Enforcement Priorities**

The Council should ensure that its resources are used in the most effective manner, and it is common practice to prioritise enforcement cases according to the degree of harm being caused by the breach as follows:

**High Priority** – unauthorised development that causes immediate irreparable harm in the locality, eg. erection of a building without permission, unauthorised works to a listed building, felling of protected trees, deposit of waste material. Ward Members may wish to call in some enforcement matters that are causing serious harm to their constituents or ward area.



**Medium Priority** – Unauthorised development that causes some harm to the locality but not to the extent that 'high priority' applies. Examples might include vehicle repairs, erection of domestic extensions or outbuildings, pruning of protected trees, change of use of agricultural buildings or breaches of planning control relating to hours of use.

**Low Priority** – A full expediency test is carried out on breaches of planning control which may cause little or no harm to the locality. This may also include advertisements, erection of fences or outbuildings or marginally/de-minimis development, in excess of permitted development tolerances or minor variations to approved plans which have no material impact on the amenities of local residents. In some cases in relation to trees on privately owned land, compliance conditions and remedial notices may also not be considered expedient to take any further action.

**What we do not investigate:**

- Matters relating solely to methods of building construction
- Matters relating to private rights of access, neighbour and boundary disputes
- Land ownership disputes
- Matters relating to the restrictions imposed on property by a covenant
- Health and safety and the behaviour of those working on a development site
- Disturbance to protected wildlife



## **Time limits for taking enforcement action?**

In most cases, development becomes immune from enforcement if no action is taken:

- within 4 years of substantial completion for a breach of planning control consisting of operational development;
- within 4 years for an unauthorised change of use to a single dwellinghouse;
- within 10 years for any other breach of planning control (essentially other changes of use).
- Unlimited for felling or destruction of protected trees and within 3 years for summary offences as stated in Section 210 of the Town and Country Planning Act 1990



When a breach of planning regulations is discovered, officers will deal with these according to the following procedures and principles:

## **Reporting a complaint**

**Confidentiality of a complainant's identity will be safeguarded at all times**

To initiate a planning enforcement investigation, complaints should normally be made in writing by letter, email or via the standard complaints form provided on the Council's website. These should include the identity and address of the writer, the site address at which the alleged breach of planning control has taken place, a short description of what is alleged to be a breach of planning control and what is considered to be the harm caused by it.



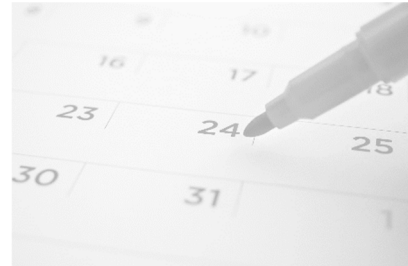
In exceptional circumstances, such as when emergency action is required, or when there is a special reason why writing is difficult or impossible, then investigations can be initiated by a telephone call.

An equal duty exists to the complainant and the alleged contravener to resolve matters fairly and consistently. Planning applications and appeals have clearly defined targets for determination, for example 8 weeks for a planning application. Defining targets for

enforcement cases is less straightforward as there are many variables which are beyond the Council's control. For the process to be transparent and fair to all the following targets may be defined:

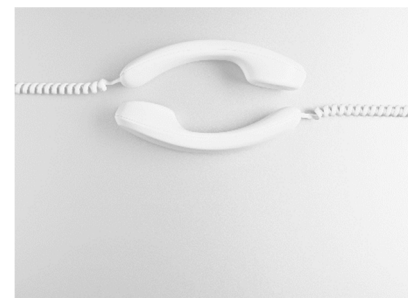
### **Complainant – targets and timescales (see flow chart Appendix 1)**

- Complaint acknowledged within 5 working days
- Site visit within 10 working days wherever possible
- Complainants advised of progress at significant stages throughout the process
- Notify complainant when notice issued within 10 working days
- Notify complainant if appeal lodged within 10 working days
- Notify complainant of closed case and reasons why within 10 working days.



### **Communication with alleged contravener**

The usual approach before taking formal enforcement action is for the officer concerned to, fully and openly discuss the circumstances of the breach and where possible resolve any points of difference in all cases.



A Planning Contravention Notice will be issued by legal to assist in the investigation.

A warning will normally be given (including a formal caution of the works carried out are potentially illegal), and a time period to comply with the legislation. In such cases written notices of the breach and the requirements to conform to the legislation will be given before any action is taken. However, this may not be possible if urgent or immediate enforcement action needs to be taken.

### **Contravener – targets and timescales**

- Contact owner/occupier and visit site within 10 working days
- If breach identified, advise owner/occupier of the remedial steps required, timescale and consequences of taking no action within 10 working days of site visit
- If breach accords with planning policies request application for retrospective planning permission to be submitted within 14 days



- If development does not accord with policy allow a reasonable period (at least 14 days dependent on the type of breach) to rectify voluntarily
- Failing the above, seek authority to take appropriate action to rectify breach
- Send letter before action giving prior notice of taking formal action
- Notify offender of proposed course of action.

### **Outcome of investigation**

There are several possible outcomes of an enforcement investigation, which may be summarised as follows:

- No breach identified
- Breach identified but not expedient to take any further action
- Permitted development (planning permission not required)
- Development immune from enforcement action
- Breach remedy achieved
- Retrospective application requested
- Formal enforcement action (serving of a notice)

### **A range of powers are available when a negotiated resolution cannot be achieved.**

- Planning Contravention Notice
- Enforcement Notice
- Breach of Condition Notice
- Untidy Site Notice (S215)
- Advertisement Proceedings
- Prosecution
- Direct Action [charge will be put on land or property]
- Injunction



### **Failure to comply with a notice**

As soon as the compliance period for an Enforcement Notice or a Breach of Conditions Notice has passed, we will carry out further investigations to confirm whether the breach is continuing.

When we believe an Enforcement Notice has been fully complied with, we will confirm this to the owner/occupier of the land, and to anyone who has complained about the

development or activity. Even after compliance, the notice will remain as a charge on the land to prevent any re-occurrence of the breach.

Further negotiations may be needed for full compliance with the notice. If a criminal offence is suspected, the gathering of evidence during a site inspection may have to be carried out under caution. Interviews would be carried out in accordance with the [Police and Criminal Evidence Act 1984](#) (PACE).

A planning breach only becomes a criminal offence when an owner/occupier fails to comply with the requirements of an Enforcement Notice or BCN.

### **Failure to comply with an Enforcement Notice**

We take firm action when the requirements of an Enforcement Notice are not complied with. Such action may involve:

- prosecution of the parties concerned in the local courts – depending upon the availability, nature and strength of evidence
- issuing an injunction through the high court
- direct, or 'default' action – we will seek to recover the costs of such action from the persons responsible for the breach

We usually seek to bring the matter to a successful conclusion as quickly as possible through the action in the courts. When someone is found guilty of failing to comply with an Enforcement Notice, the fine may be:

- a maximum of **£20,000**, if imposed by the Magistrates Court
- **unlimited**, if imposed by the Crown Court

Prosecutions will continue to be brought until the notice has been complied with.

If an appeal against an Enforcement Notice is lodged with the Secretary of State, the outcome of the appeal will be awaited before we take further action. If an appeal has been considered and found in our favour, compliance with the Enforcement Notice requirements will be firmly pursued.

### **Failure to comply with a BCN**

If a BCN has not been complied with, or a breach re-occurs, the party responsible will be asked to state what steps have occurred to secure compliance with the conditions specified in the notice. If no reasonable steps have been taken or any reasonable explanation is not given the council will normally pursue a prosecution.



Failure to comply with a BCN carries a maximum penalty of **£2,500**. A person may be convicted of a second, or subsequent, offence if they are fined but still fail to comply with the notice. It is for anyone charged with this offence to prove that they had a reasonable excuse for failing to comply.

Prosecutions are carried out in the interests of justice and not solely for the purpose of achieving a conviction. Once we have started taking action in court we may not withdraw, even if the breach of planning control is rectified before the case is heard – particularly if we have incurred significant costs. The matter will be considered in the public interest and on legal advice.

### **Injunction**

In the case of a persistent offence involving unauthorised activity, an injunction may be sought through the County Court or High Court. In these circumstances, more severe penalties may be imposed if the offence continues.

### **Direct or default action**

In certain circumstances we will consider taking direct or default action to remedy a planning breach. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work.

Such circumstances are likely to arise, for example, when there is ongoing non-compliance with an enforcement notice and we consider that the landowner will not resolve the issues. In such cases we will seek to recover our costs, possibly in the form of a charge on the land, which is recoverable at the time of any future sale of the land or property.

### **Penalty for Trees**

There is also [a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order](#), unless dispensed.

Anyone found guilty in the magistrates' court of an offence under [section 210\(4\)](#) is liable to a fine of up to Level 4 (currently £2,500).

Scale of fines for summary offences:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500



Higher offences:

a maximum of **£20,000**, if imposed by the Magistrates Court and **unlimited**, if imposed by the Crown Court.

The majority of decisions on enforcement matters are made under powers delegated to the Assistant Director or Head of Planning and Development Support or Head of Building Control by this Development Control Committee. A full expediency test is carried out on breaches of planning control which may cause little or no harm to the locality. This may also include advertisements, erection of fences or outbuildings or marginally/de-minimis development in excess of permitted development tolerances or minor variations to approved plans which have no material impact on the amenities of local residents. In some cases in relation to trees on privately owned land, compliance conditions and remedial notices may also not be considered expedient to take any further action.

## **Building Control**

### **Unauthorised work**

Building Control team will investigate alleged unauthorised work or where there is a concern over safety.



However, there are exceptions.

The building control for over half of the building projects in Bromley is provided by private building control companies. These are called Approved Inspectors. The Approved Inspector must serve an Initial Notice to the Council of their intention to carry out the Building Control function.

Approved Inspectors are completely independent to the Council. When there is a valid Initial Notice in place, we have no legal jurisdiction to interfere.

On receiving a complaint about work that is subject to an Initial Notice, we will bring this to the attention of the Approved Inspector and recommend that they schedule a site visit.

Where there is a contravention that the Approved Inspector cannot resolve with the developer, they will revert the work to the Council because they have no enforcement

powers. In this instance, the Initial Notice is thus invalid and Building Control will investigate and take action as required on resolving the contravention.

### **Dangerous Structures**

Reports of dangerous structures are investigated within 1-2 hours. If there is an imminent threat to public safety, emergency work will be undertaken to secure or remove the structure. The cost of such will be recovered from the owner of the building or structure.



### **Party Wall and boundary disputes**

Boundary and party wall disputes fall under civil law, the Council has no jurisdiction. We would direct the complainant to their Party Wall surveyor or the Royal Institution of Chartered Surveyors (RICS) who would be able to give advice.

### **Site Safety Matters**

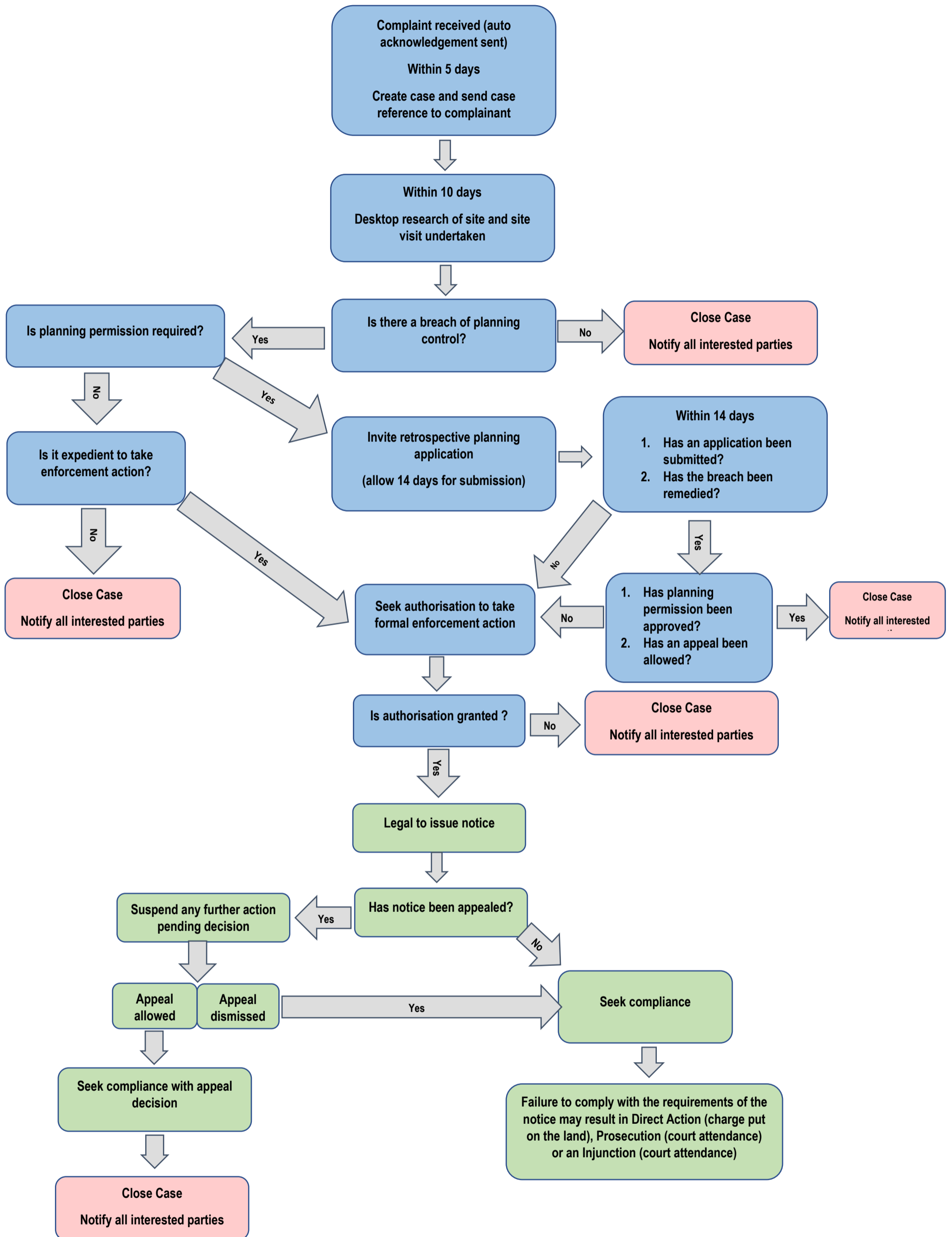
Site health and safety matters fall under the remit of the Health and Safety Executive (HSE) and should be reported directly by the complainant. If the building control is being carried out by the council, we would normally visit the site and raise the concern with the site manager.

### **Contacts and Further Information**

Our service provides a range of supplementary planning guidance, design guidelines, planning and Building Control information and forms. These can be obtained by:

- Calling Planning Investigation team **020 8461 7730**
- Emailing [planninginvestigation@bromley.gov.uk](mailto:planninginvestigation@bromley.gov.uk)
- Calling Telephone Enquiry team **020 8313 4956**
- Looking at our website [www.bromley.gov.uk](http://www.bromley.gov.uk)
- By writing to us at: **Planning Investigation, Bromley Civic Centre, Stockwell Close, Bromley, BR1 3UH**
- Trees: [trees@bromley.gov.uk](mailto:trees@bromley.gov.uk) for unauthorised tree works to protected trees  
[www.bromley.gov.uk/trees/report-tree-problem](http://www.bromley.gov.uk/trees/report-tree-problem)
- Building Control: [buildingcontrol@bromley.gov.uk](mailto:buildingcontrol@bromley.gov.uk): for unauthorised work and dangerous structures
- [www.hse.gov.uk](http://www.hse.gov.uk)
- [www.rics.org/uk](http://www.rics.org/uk)
- Public Protection: [Construction or demolition noise – London Borough of Bromley](#)

# Planning Investigation and Enforcement Process flowchart



**Responsibility:** Renewal, Recreation and Housing Portfolio

**Responsibility:** Public Protection and Enforcement Portfolio