

## **Introduction**

This procedure applies to all enforcement complaints received. It covers the processes associated to the receipt, recording, investigation and resolution of enforcement complaints received by the Planning Service, and the expectations of officers concerned. It also forms part of the formal induction process for enforcement and other relevant officers.

The procedure is set out in chapters to reflect distinct stages of handling a complaint, within which there are specified steps and actions. All steps and actions **must** be followed, with the officer responsible for that stage expected to complete the relevant parts of the back-office planning system (BOPS) and/or Work in Progress monitoring spreadsheet (WiP) accordingly. The responsibility to index key documentation to the document management system (DMS) is also set out relative to the officer(s) concerned.

At the time of writing this procedure, the following software solutions are used to assist in the operation of it:

BOPS	Uniform (provided by iDox)
DMS	Information @ Work (provided by Northgate)
WiP	Office365 – Excel (provided by Microsoft)

The following abbreviations are used in this procedure:

HoP	Head of Planning
DMM	Development Management Manager
TL	Team Leader (inc. Interim Service Development Manager and Development Improvements Management Manager)
EO	Enforcement Officer
DSO	Development Services Officer
SOO	Sign-off Officer (the TL, DMM or HoP)

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## **Guidance for prospective/current complainants and developers/landowners/occupiers**

In operating this procedure, EOs and DSOs must be cognisant of the varying degrees of knowledge surrounding the planning system as a whole. Many will not understand that the Council cannot involve itself with every single matter arising in day-to-day life, whilst others will also not appreciate that the local planning authority (LPA) is a defined function of the Council.

Aside from standard correspondence (e.g. acknowledgement of a complaint), communication will often need to be bespoke to the case concerned, and the stage of investigation. The manner in which correspondence is written must therefore consider the relevant audience, whilst opportunity should be taken to 'educate' interested parties in the limits to planning enforcement powers and likely timescales involved in remedying complaints. A single, well considered response can often avoid several subsequent questions and clarifications.

### Principles of planning enforcement

The principles around planning enforcement must be clear. The following key messages must be remembered at all times:

- The taking of enforcement action is a discretionary power of the LPA;
- When enforcement powers are exercised, they must be exercised proportionately and in the public interest;
- Any formal action can only relate to an act of development having occurred (i.e. it cannot pre-empt development – see section 172(1)(a) of the 1990 Act);
- Planning practice guidance (the PPG) points LPAs towards achieving mutual resolutions, either through negotiation or retrospective regularisation (a retrospective planning application where appropriate);
- The decision to take formal action must be expedient, taking into account the development plan and any other material considerations (see section 172(1)(b) of the 1990 Act);
- Any formal action must be robustly evidenced if the LPA is to defend any challenge against it;
- When an enforcement notice is served, it cannot take immediate effect – there is a 28-day period for it to do so, and there must also be a reasonable period allowed to comply with the steps to resolve the breach concerned;
- If an appeal is lodged, the compliance period is suspended until an appeal decision is issued. The compliance period may be varied by the Inspector;
- For a Breach of Condition Notice (BCN) to be used, there must be absolute certainty that the condition has effect – that the development concerned has been carried out (brought into use) as approved and that the breach has occurred subsequently;
- Enforcement officers can only advise developers to cease works, with a formal Stop Notice required to command cessation. Here, the degree of harm arising must be exceptional and causing serious environmental harm. Such powers attract a serious risk of compensation if planning permission is later granted for the development, either by the LPA or an Inspector.

The website and Enforcement Plan, as well as the PPG and the RTPI's '[Planning Enforcement Handbook](#)' should be relied upon to expand upon these matters. The current Enforcement Plan sets out the expectations of officers in undertaking an initial investigation of a complaint, and improved monitoring of complaints is helping to ensure resolutions are being reached in a timely and proportionate fashion.

## Reception of enforcement complaint ('the complaint')

Timescale: within 24 hours (1 working day) of the complaint

1. Does this matter present a possible danger to the public? If so, then flag immediately to TL and/or DMM, as well as relevant department (e.g. MKC Highways).
2. The DSO queries the BOPS for any existing case(s) related to the specific breach being reported.
3. If there is an existing case for the same breach, then the complainant is added as further complainant on that file and sent an acknowledgement, and thereafter receives any updates on the investigation. The complaint form/email is indexed to the DMS.
4. If there is no existing case in relation to the specific breach being reported, then a new case file is opened in the BOPS (i.e. if the description needs to be changed to accommodate the fresh alleged breach, then this indicates a fresh complaint
5. . When assigning the case, priority should be given to EOs who have dealt with the site previously. The complaint form/email is indexed the DMS.

<<Insert list of Breach Types and how the complaint should be matched to the correct Type, and thus priority>>

Explanatory note: while the LPA may issue a single enforcement notice which deals with multiple breaches, each breach must have a reference number. This allows for clear distinction between unauthorised works/uses/activities to be made and reflects the amount of work the site is generating. If there are 10 identified breaches on a site and only 9 are resolved, it appears as though no breaches have been resolved. Adding granularity means that performance statistics accurately represent the work carried out by officers.

It also means that where multiple notices and appeals are underway, we need to distinguish between them clearly.

6. The complainant is sent a standard acknowledgement email, providing the EOs contact details and timeframes for initial investigation. This can be found in the templates folder as ENFLetter1Ack.
7. Complaint and acknowledgment uploaded to the DMS. Event Action created in BOPS as to when the acknowledgement letter was sent. The WiP is updated with a new entry to reflect the BOPS.

*(Template letter to include details of the case, officer assigned and request for addition information/photos)*

8. <<The local Ward Members and Parish are alerted to the existence of a new complaint. Due to data protection issues and to ensure public confidence, this can only summarise the site address and alleged breach, and reference number>>.

## Initial investigation

Timescale: within 2 working days of receipt of the complaint

1. The EO reviews the complaint and available records. Notes of findings are recorded in the Initial Investigation pro-forma [**Annex 1**], with this indexed to the DMS.

The following records should be considered:

- Planning & enforcement records
  - Building control records
  - Council Tax/Business Rates records
  - Electoral Register
  - MKC Housing Team records
  - MKC Environmental Health records
  - Land Registry
  - Companies House
  - Google Earth / Street View (see below)
  - Rightmove/Zoopla/local estate agents
  - DVLA, Environment Agency, etc.
2. Where possible, a virtual site visit is conducted. This allows potential to establish if breaches are likely immune through the passage of time. All findings must be recorded in the Site Visit pro-forma [**Annex 2**], with this indexed to the DMS.
    - Google Street View, Google Earth, Bing Maps and internal GIS should be checked, carefully observing the dates concerned. As with internal GIS, StreetView and Google Earth also allow 'roll back' to previous dates.
    - If there is any uncertainty about the location of the breach, the EO must contact the complainant directly for additional information. Where possible, photos should be requested from the complainant, as this can aid with identification of the location and comparison of the works or use with aerial/street level photography (e.g. whilst a structure might appear to be lawful by way of aerial/street level photography, the works being carried out may be a replacement of that structure).
    - The EO should always err on the side of caution. Most complaints arise from a result of works being carried out at that time. If there is any doubt as to whether the description of the breach exactly matches that alleged, an in-person visit must be carried out (see next section).

3. Initial contact is made with the owner/developer if the complaint cannot be closed as a result of information gathered from the initial investigation or virtual site visit.

High priority cases (Works to listed buildings, important buildings in a conservation area, or trees, or breach of condition (see breach types))

4. The EO contacts the complainant immediately for more details about the potential breach.
5. Where contact details are available, the EO contacts the owner/developer to establish activity and/or negotiate a mutual cessation of the works/activity.
6. Legal officers should be alerted to the potential for serving a Notice(s) or making of a Tree

Preservation Order (TPO).

7. The EO attends site as soon as possible (see 'Further Investigation' section below). If there is ongoing work which may cause irreparable damage, a speedy intervention is crucial. If the EO is not able to attend within an appropriate timeframe, then they should liaise with other EOs and their TL for support.

#### Referrals to other departments

8. The EO contacts the relevant MKC department to alert them of the complaint and their initial findings. The complaint form/email and a copy of the Initial Investigation report should be provided to this department (note: that department is subject to GDPR in the same way as Planning Services). Evidence of this correspondence must be indexed to the DMS.
9. The EO completes a Recommendation Report, using the pro-forma [**Annex 3**]. This is then submitted to the TL for review.
  - **Note:** as the substantive text of the Recommendation Report will be distributed upon closure of the complaint, it must be written so not to identify individuals involved (especially the complainant). Parties involved must be referred to as 'owner', 'developer', etc.
10. If the recommendation is agreed, the TL countersigns the Recommendation Report. The EO indexes this to the DMS.
11. The EO updates the complainant of the referral and provides the relevant contact details for that department/officer. This correspondence must be indexed to the DMS. The WiP should then be updated accordingly and row highlighted to signal that the complaint requires closure in the BOPS.
12. The TL reviews the WiP, checking that all relevant correspondence has been saved in the DMS, and closes the relevant record in the BOPS, updating the WiP accordingly.

## Further investigation

Timescale: within the timescales specified by the Enforcement Plan:

Priority	Description	Response time				
<b>High</b>	<ul style="list-style-type: none"> <li>▪ Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a Conservation Area or to the open countryside</li> <li>▪ Unauthorised works to a Listed Building</li> <li>▪ Irreversible harm to the amenity of a Conservation Area</li> <li>▪ Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area</li> <li>▪ Non-compliance with planning conditions</li> </ul>	Within 2 working days				
	<b>Medium</b>		<ul style="list-style-type: none"> <li>▪ Breach which results in serious demonstrable harm to the amenity of the neighbourhood</li> <li>▪ Unauthorised development in a designated area</li> <li>▪ Source of significant public complaint</li> </ul>	Within 10 Working Days		
			<b>Low</b>		<ul style="list-style-type: none"> <li>▪ Unauthorised development which is not the source of significant public complaint</li> <li>▪ Erection of advertisements</li> <li>▪ Untidy land</li> </ul>	Within 20 working days
					<b>No Action</b>	

### Site visits in person

13. EOs/TLs should always comply with the Site Visit Safety Protocol and Lone Worker guidance as applicable.
14. Powers of Entry must be held by a EO/TL attending the site visit.
15. Unannounced site visits should be discussed with the TL prior to scheduling. All other visits should be arranged in advance with the relevant person(s). Use of Land Registry to obtain owner details may be required, thus delaying the visit slightly.
16. At the visit, the owner/developer should be advised that, going forward, they may wish to be represented by a planning professional. This is beneficial to all as it elevates the likely quality and completeness of further information required/applications made, etc.
17. Measurements of relevant buildings and structures should be taken, with notes taken in diagrammatical form. Available equipment (laser measure, tape measure, ranging pole, etc.) should be taken in all cases. Where possible, measurements taken should be photographed/agreed with the other persons present during a visit and recorded as such. All photos/diagrams/notes must be uploaded and/or scanned to the DMS within 1 working day of the site visit.

18. Where the size or scale of the building/structure, etc. prevents accurate measurement with available equipment, the owner/developer should be requested to provide an up-to-date topographical survey of the site within an agreed, reasonable timeframe.
  - **Note:** a chartered surveyor should be required. This ensures that they are professionally accredited so reliance can be placed on the accuracy of their survey.
19. Where the breach relates to use of occupied property (e.g. rooms in a HMO), the owner/developer should be asked whether there are any safeguarding concerns with taking photos. At all times, care should be taken to exclude individuals from photos. Photos and/or diagrammatical notes of observations should be taken (e.g. to note where rooms are individually locked or served by kitchen/WC facilities). All photos/diagrams/notes must be uploaded and/or scanned to the DMS within 1 working day of the site visit.
20. A Site Visit pro-forma [**Annex 2**] must be completed by the EO within 1 working day of the visit and uploaded to the DMS. Any associated photos not saved within the Site Visit pro-forma must be uploaded to the DMS. The written portion of the notes should be copied into the BOPS as a site visit action.
21. If access is not possible (e.g. due to the site being locked or no other parties attending as agreed), or threatening behaviour is experienced, then the EO should abandon the visit and agree an alternative date and time with the owner/developer. A Site Visit pro-forma [**Annex 2**] must still be completed by the EO within 1 working day of the visit and uploaded to the DMS. If this occurs a second time (accompanied by another EO or the TL in the case of threatening behaviour), a Site Visit pro-forma must still be completed by the EO within 1 working day of the visit and uploaded to the DMS, but the matter should then be discussed with the TL so to establish an approach to gaining access.
  - **Note:** following the first attempt, the owner/developer should be warned that a further failed attempt will be taken as indicative of their lack of co-operation, unless good reason for not facilitating access can be demonstrated.
22. If denied access, the EO should make a note as to why, for the record. Do not argue about rights of access. If there is a disagreement, discuss later with the TL so to establish an approach to gaining access.
  - **Note:** following the first attempt, the owner/developer should be warned that a further failed attempt will be taken as indicative of their lack of co-operation.

#### Virtual site visits by video call

23. This type of visit must only be used in exceptional circumstances (e.g. due to the owner/occupier currently isolating due to a positive Covid-19 test) or where there are significant safeguarding issues for occupiers (e.g. at a secure residential institution). In all cases, efforts must be first made to attend in person, as in-person observations will be more reliable as evidence under a prosecution.
24. Officers should only use work devices to connect for remote visits with individuals on site/at the premises. Under no circumstances should personal device details be provided.
25. Notes of observations must be taken by the EO during the call. Calls must not be recorded by the EO for data protection reasons. If visual records of specific elements are needed, then

photographs should be subsequently requested from the owner/occupier. A Site Visit pro-forma [**Annex 2**] must be completed by the EO within 1 working day of the visit and uploaded to the DMS.

26. A site visit notes sheet should be completed by the officer immediately following the call. The written portion of the notes should be copied into the BOPS as a site visit action.

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## Statutory tools to enable the gathering of information

The LPA must take steps to ensure, as far as possible, that all available and relevant information has been obtained. There are three tools available to gather such information:

- A Planning Contravention Notice (PCN) (under section 171C of the 1990 Act)

The notice must contain the following:

- A description of the land to which it refers, referenced by a red edged site plan;
- Details of the alleged breach;
- What is required (i.e. the questions);
- The time for compliance (i.e. 21 days);
- A warning regarding non-compliance and providing false information;
- Additional information regarding further action and compensation in respect of a stop notice.

Sections 171C(2) & C(3) set out the type of information that can be obtained via a PCN. The LPA can also ask other questions it considers necessary. Such questions should be kept clear and straightforward, requiring simple specific responses (wherever possible) relating to the breach of planning control.

A PCN cannot be used speculatively (i.e. a breach must be apparent, although there need not be definitive proof on all aspects).

A PCN cannot be used to obtain information in relation to suspected breaches relating to listed buildings, conservation areas, hazardous substances, or protected trees.

- A Section 330 Notice (under section 330 of the 1990 Act)

A Section 330 (s330) notice can be served on the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of that premises.

The notice must specify the time by which the person(s) served must respond (at least 21 days)

The range of questions which can be asked is limited under section 330(2). Consequently, the notice is only useful to ascertain current land use and ownership details.

- Requisition for Information (Rfi)

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 enables a LPA to obtain information for the purpose of exercising its powers under the 1990 Act.

A requisition may be served on:

- the occupier of the land;
- any person who has an interest in the land either as freeholder, mortgagee or lessee, or who directly or indirectly receives rent for the land; and
- any person who, in pursuance of an agreement, is authorised to manage the land or to arrange for the letting of it.

A requisition can therefore be served on a bank or building society, etc.

The requisition must specify:

- the land;
- the function and enactment conferring the function; and
- the period by which the recipient must provide the LPA with the information (at least 14 days)

If all that is required is information regarding the ownership of land, it may be more useful to serve a Requisition for Information.

Timescale: upon completion of the initial investigation or site visit, whichever is the latter:

1. Determine whether there is a need for a PCN, s330 notice or RfI. Discuss this with the TL to agree the principle of issuing one.
2. Draft the PCN, s330 notice or RfI, including the questions in a manner which requires specific responses (i.e. consider whether an open or closed question is best), and provide it to the TL for review.
3. The TL provides comments/track changes accordingly and authority for service. This authority needs to be uploaded to the DMS.
4. <<To be completed>>

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## **Establishing course of action**

Breach not established:

1. Request access or further details from the complainant. Note in communication that the case may be closed if a breach cannot be confirmed. Photos and observations should be invited.
2. Consider a PCN or access letter.
3. Gain access to relevant areas via the complainant.
4. Discuss next steps with Team Leader. Record conclusions of discussion on Uniform.
5. Where no breach has been established, move to the 'Case Closure' section below.

Breach established:

6. Raise the issues presented in the next case conference with TL. Should discretion be exercised in relation to this breach?
7. Regularising breaches where possible should be the priority response as it provides closure in the long term through a formal assessment of the development's impacts, and allows for interested parties to bring forward material considerations through the publicity process.
8. Inviting an application is at the discretion of the EO and should not be automatic in all cases. In order to inform the decision as to whether an application should be invited, a discussion with the relevant planning officer for the Parish should be held. The planning officer should be asked to identify:
  - a. Relevant planning policies;
  - b. Relevant constraints applicable to the site;
  - c. Relevant consultees;
  - d. Likely acceptability or otherwise of the development, with or without amendment from its current state; and
  - e. Validation requirements for an application
9. The EO should then liaise with relevant MKC consultees to establish likely acceptability or otherwise, and what information might be necessary to justify the proposal.
10. Communicate next steps with the owner/developer. Invite application within a reasonable period (i.e. for most domestic works, it should be possible to identify a suitable planning consultant and/or architect and have an application prepared within 28 days; for more complex proposals and where supporting studies are required this may extend to 2 months or more).
11. Update the complainant that an application is being invited and the anticipated timescales for its receipt. Advise that they will be updated by the EO upon validation of the application.
12. <<Monitoring>>
13. In the case of breaches where the development is not likely to be supported, invite a schedule of works to remediate the breach.
14. If no schedule is received or it is unreasonable, prioritise the case for discussion with the TL.

**Enforcement Notices:**

Timeframe: following establishing the course of action

1. Notices should be considered where the breach has a material negative impact on amenity, appearance of the building within its context or a protected asset (Open countryside, listed building, conservation area etc.).
2. If a planning application is ongoing service of a notice should be held pending determination. There may be exceptions based on the level of harm, but generally a full DM officer report can be used as the basis for a very strong enforcement notice.
3. An enforcement notice should be drafted specifically to address the perceived breach. Where there is more than one breach a discussion should be had with the Team Leader as to whether multiple notices should be served.
4. It should be noted that notice can be served against a use and against the physical development which enables it. There may be cause to regard them as distinct breaches.
5. An Enforcement Notice Report is prepared for the team leader, this should outline evidence of the breach, its impact and the remedy sought. A draft of the proposed notice text should be included with the report. The team leader checks the submission and forwards it to Legal Services for their final draft and service.
6. Legal Services places a copy of the notice on the S188 register and forwards a copy to the Planning Enforcement administrator for indexing.
7. The case officer updates the complainant with details as to the service of the notice and records this on the BOPS and DMS. The WiP must be updated accordingly.
8. The complaint remains open during the extant and compliance period for the Notice, noting that an appeal may suspend the latter. The complaint is not resolved until the breach is resolved.

**Case Closure:**

Timeframe: ideally within 6 months of receipt, but longer where formal action has been taken and/or prosecution is required.

1. Write up a closure report specifying the basis on which the case is to be closed and providing relevant evidence. If the closure on expediency grounds, then it will not be signed off unless the reasoning is justified in relation to policy.
2. Closure communications to complainants should include the detailed reasoning as to why the case is being closed at this time.
3. All cases will be closed by either the Team Leader or by Senior Management if the Team Leader has been involved in the case. No officer may sign off their own recommendation.

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## Planning Enforcement Initial Investigation Notes



Reference number: YY/NNNNN/ENF

Address of alleged breach: *Type here*

Officer: *Type here*

Date of report: *Click to enter a date*

Planning & enforcement records checked?	Y / N / N/A
Building control records checked?	Y / N / N/A
Council Tax/Business Rates records checked?	Y / N / N/A
Electoral Register checked?	Y / N / N/A
MKC Housing Team records checked?	Y / N / N/A
MKC Environmental Health records checked?	Y / N / N/A
<a href="#">Land Registry</a> checked?	Y / N / N/A
<a href="#">Companies House</a> checked?	Y / N / N/A
Google Earth / Street View checked?	Y / N / N/A
Rightmove/Zoopla/local estate agents checked?	Y / N / N/A
DVLA, Environment Agency	Y / N / N/A

PCN to be issued? Y / N / N/A      Instruction to legal sent: *Click to enter a date*

Notes: *Type observations here, summarising what is observed from above records. Where StreetView or aerial photography (Google, Bing or GIS) is used, reference the date of the photography and provide a short URL to that exact view (for Google and Bing).*

Relevant documents:

*Provide URL and screenshots of any webpages viewed (noting that pages can be removed/archived at a later date). Also provide list of documents indexed to I@W.*

## Planning Enforcement Site Visit Notes



Reference number:	YY/NNNNN/LLL
Address of alleged breach:	Type here

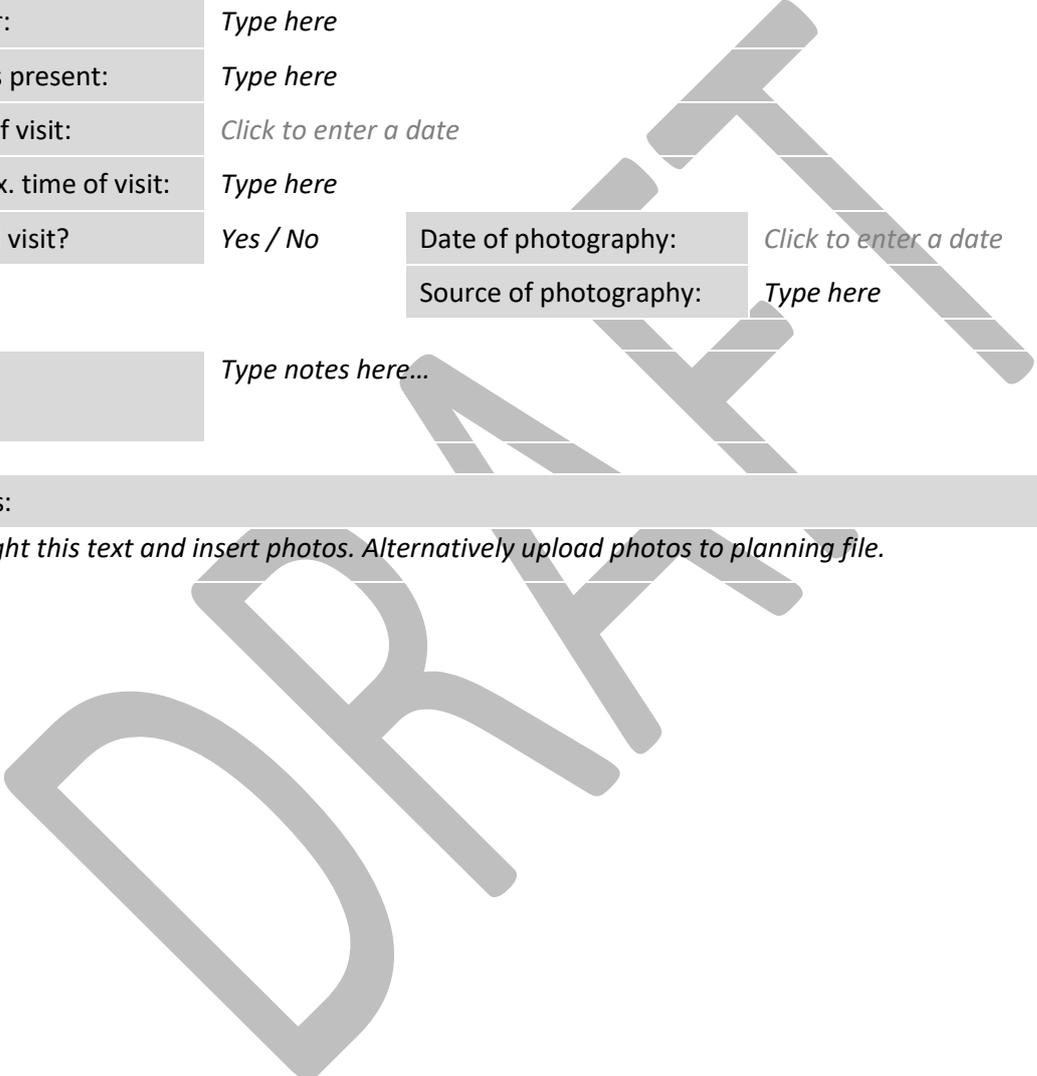
Officer:	Type here
Others present:	Type here
Date of visit:	Click to enter a date
Approx. time of visit:	Type here
Virtual visit?	Yes / No

Date of photography:	Click to enter a date
Source of photography:	Type here

Notes:	Type notes here...
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Photos:

*Highlight this text and insert photos. Alternatively upload photos to planning file.*



## Planning Enforcement Recommendation



Reference number:	YY/NNNNN/LLL
Address of alleged breach:	Type here
Officer:	Type here
Date of report:	Click to enter a date
Recommendation:	No breach / Permission granted / Not expedient / Action required
Actions taken to date:	Summarise what actions have been taken in advance of preparing this recommendation, including what resources have been considered in establishing a breach, etc.
Reasons for recommendation:	Type justification here, summarising relevant planning policy and responses from planning officer/consultee(s)...
To be completed by the authorised officer	
Agreed by:	Line manager name
Date of report:	Click to enter a date