



PLANNING ENFORCEMENT POLICY

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1. Introduction:

- 1.1 Individuals and organisations should expect consistency of service across the whole of Wiltshire Council's administrative area. In particular they have the right to expect that the Council will maintain the integrity of its planning processes and that harmful breaches of planning legislation are dealt with. This policy sets out Wiltshire Council's approach towards enforcing planning control and its priorities and procedures.
- 1.2 There is no statutory obligation on Wiltshire Council to take enforcement action; the Council has discretion to enforce against unauthorised development, where it considers it 'expedient' to do so. Nevertheless the Council regards an allegation of a breach of planning control as potentially a very serious matter.
- 1.3 Fair and effective planning enforcement is essential to protect the quality of life for people who live in and visit Wiltshire and the quality of its natural and built environment. A decision about enforcement action can have implications for many people, directly or indirectly.

2. The Purpose of this Document:

- 2.1 This document sets out the procedures the Service will follow and the level of service that Wiltshire Council will aim to deliver and to:
 - Establish priorities;
 - Make service commitments and enable them to be monitored;
 - Communicate to those enquiring about or accused of breaching planning controls and other members of the public the principles and procedures of enforcement;
 - Act as a key document in performance management of the enforcement function and the deployment of resources.

3. What is a breach of planning control?

- 3.1 Development which takes place without having obtained prior planning permission, listed building consent, advertisement consent or other such forms of approval from the Council is in breach of planning control.
- 3.2 The Council will deal with approximately 9000 applications for planning permission, listed building consent, advertisement consent and to carry out works to protected trees (i.e. trees the subject of a Tree Preservation Order or within a Conservation Area), annually. Approximately 75% of all applications are approved, often with detailed conditions attached. Some conditions require details to be approved prior to the commencement of development. Failure to do this is also a breach of planning control and in certain circumstances the whole development will then be unauthorised until the conditions have been discharged. It is beneficial to all parties if any failure to comply with a condition is addressed at an early stage.

4. The Principles of Good Enforcement:

- 4.1 The objective of the enforcement process is to remedy the undesirable effects of, amongst other things:
- Unauthorised development.
 - Unauthorised advertisements.
 - Unauthorised works to listed buildings and buildings in Conservation Areas.
 - Unauthorised works to protected trees.
 - The condition of land adversely affecting the amenity of its surroundings.
 - Failure to comply with conditions and Section 106 Obligations.
- 4.2 Breaches of planning control can have harmful effects on visual or residential amenities, on highway safety, the occupiers and users of surrounding land or the environment. The degree of harm caused will be a significant factor in determining whether enforcement action is 'expedient'. Harm may also occur through unauthorised works to listed buildings, unauthorised demolition of unlisted buildings in Conservation Areas or unauthorised works to protected trees.
- 4.3 Wiltshire Council aims to negotiate acceptable outcomes where possible, striking a careful balance between the rights of residents and businesses to use or alter their property, whilst safeguarding the amenity of their neighbours and protecting the wider environment.
- 4.4 Enforcement does not seek to penalise individuals for carrying out work without permission(s). However, enforcement is a serious procedure. Formal Notices carry criminal sanctions which the Council can use to deter continued non-compliance. Moreover, where there has been an irretrievable loss of historic building fabric or loss of valuable protected trees, or continued non-compliance with formal Notices, prosecution proceedings may follow in the public interest.
- 4.5 Enforcement is often a technically complex activity. In allocating resources, it must be recognised that the process is often very labour intensive. Thorough investigations of the relevant planning history and methodical evaluation of the facts are vital ingredients of successful enforcement. Because of this and the legal processes involved, enforcement investigations can often take a long time to resolve.
- 4.6 The Council's resources are not limitless. The priorities for action in this document therefore target available resources to have maximum effect. In enforcement terms this means prioritising cases where the most harm to amenity or the environment is being caused.
- 4.7 Not all unauthorised development is unacceptable. Where it is likely that planning permission would be granted, a retrospective planning application will be invited. An Enforcement Notice will not be issued solely to 'regularise' development which does not have planning permission where permission would have been granted unconditionally.

5. Making an Enquiry - Service Standards:

- 5.1 In exercising the enforcement function, Wiltshire Council Officers will carry out site visits, give advice on compliance and where appropriate, consider formal enforcement action.
- 5.2 The Council will require enquiries to be made in writing (there is a proforma on the Council's website). In PRIORITY 1 cases, telephone enquiries will normally be actioned as soon as practicable with the enquirer asked to follow up in writing.
- 5.3 As much detail as possible should be provided by the enquirer, including:
 - Their address and telephone number;
 - The nature of the enquiry;
 - The name and address of the person causing the activity/the land owner (if known);
 - The site location;
 - What has happened, for how long, or is happening now;
 - An explanation of the harm being caused.
- 5.4 Enquirers may also be expected to substantiate their evidence in any subsequent proceedings brought by the Council to help ensure a successful outcome. Successful outcomes often depend on the willingness of witnesses to give evidence.
- 5.5 The Council will have regard to the presumption in favour of disclosing environmental information under the Environmental Information Regulations 2004, in relation to its records of enforcement investigations. In all cases, the Council will have full regard to the Data Protection principles.
- 5.6 The Council will not normally deal with anonymous enquiries as they cannot be relied upon and can lead to accusations of harassment on the part of the Council. Such enquiries will be read, but only in exceptional circumstances, such as where there is strong evidence that a breach causing immediate and irremediable harm is being caused, would it be investigated. Enquirers concerned about possibly revealing their identity should discuss the matter with their Parish/Town Council or District Councillors, who could act on their behalf.
- 5.7 Enquiries by or on behalf of Town and Parish Councils will only be accepted from the Clerk or the Chairman. Such enquiries should already be a matter of public record so the source will be subject to disclosure under FOI/EIR (see above).
- 5.8 The priority given to investigations and progress to formal action following the initial site visit will also reflect the nature of the breach of planning control and its seriousness according to the list of enforcement priorities.
- 5.9 In investigating enforcement enquiries, the Council will:
 - (i) Endeavour to ensure that sites, the subject of enquiries which require inspection are visited within the time scales identified in the list of enforcement priorities (see Annex 2 below);
 - (ii) Endeavour to ensure all enforcement enquiries are acknowledged within 3 working days of receipt;
 - (iii) Endeavour, by week 13 following receipt of the enquiry, to have completed the investigation and informed all interested parties of the outcome; or if not to explain why the investigation is taking longer;
 - (iv) Ensure that all current/recent/ongoing enquiries are treated in confidence;
 - (v) Ensure that all persons are treated in a manner which is fair and equitable, which respects their age, economic or social background, gender, sexual orientation, disability, race, religion and beliefs, cultural values, race or ethnic background and

- way of life in accordance with equalities legislation and reflects the Council's commitment to social cohesion.
- (vi) Not suspend enforcement proceedings unless a valid retrospective application has been received prior to service of any Notice and there are good reasons, such as lack of harm to amenity or public safety, for doing so.
 - (vii) Where an offence is being committed advise that the breach should be remedied until such time as any application had been approved, to avoid enforcement proceedings.
 - (viii) Not delay formal enforcement proceedings, where negotiations have failed to remedy a continuing breach which is causing harm;
 - (ix) Where appropriate, negotiate Unilateral Undertakings as an alternative to formal enforcement action.
 - (x) Ensure that planning permissions, conditions and Section 106 Obligations are monitored in accordance with the priorities for compliance monitoring.
 - (xi) Work together with internal and external partners to ensure that joint investigations are undertaken where it is known that a suspected breach may involve other regulatory agencies, to minimise unnecessary overlaps and delays.

OPENNESS

5.10 The Council will:

- (i) Review enforcement performance regularly. Performance targets are set out in Annex 2.
- (ii) Keep Division Members and Parish Councils updated on progress on enforcement cases in their areas.
- (iii) Keep interested parties informed as to the progress of investigations, as far as possible. (Due to high demand on resources it is not always possible to update enquirers as often as we would like. Anyone wishing for an update is encouraged to contact the case officer direct);
- (iv) Where formal action is necessary, make it clear why the Council intends to take, or has taken, enforcement action.
- (v) Where action has not been taken, explain why.

HELPFULNESS

- 5.11 The Council believes that prevention is better than cure and that our role involves actively working with individuals and organisations to advise on and assist with compliance with planning legislation.
- 5.12 The Council will provide a courteous and efficient service and staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and encourage organisations and individuals to seek advice/information from us.
- 5.13 The Council aims to maximise public understanding of and access to the planning enforcement system. Information regarding our procedures will be publicised and will be available from Council Offices, and on the Council website. This will explain the key elements of enforcement and the adopted policy.
- 5.14 The Council will seek to provide further advice notes to provide guidance to interested/affected organisations and individuals.

PROPORTIONALITY

- 5.15 The Council will take account of the circumstances of the case and the degree of harm or potential harm when considering action.

- 5.16 Factors such as pre-meditation or a history of breaches of planning control on sites by the individual(s) or company concerned will be weighed against the genuineness of the developers' intentions and their willingness to remedy the breach when considering the most appropriate course of action.

CONSISTENCY

- 5.17 The Council will carry out its duties in a fair, equitable and consistent manner. There will be a consistent approach to enforcement action in similar circumstances. However, consistency of approach does not mean uniformity. Each individual case has to be considered on its merits.

6. Enforcement Procedures:

- 6.1 The Council will endeavour to ensure that:

- (i) Unless immediate formal action is required, there will be an opportunity to discuss the circumstances of the case before formal action is taken.
- (ii) Where immediate formal action is considered necessary, an explanation of the reasons will be given at the time or as soon as practicable and confirmed in writing, together with a time scale for implementation. Such action might be necessary in the interests of health and safety, environmental protection or to prevent historic fabric or evidence being destroyed.
- (iii) Individuals or organisations that do not comply with any formal notice served on them will be liable to prosecution;
- (iv) The use of injunctive proceedings is considered at any stage during the enforcement process, where there is serious ongoing harm and an injunction is likely to be the only effective manner in which the breach can be quickly remedied.
- (v) The use of a Stop Notice is considered where it appears that serious, irremediable harm is being caused to local amenity, for example through loss of trees, valuable natural features or historic buildings.
- (vi) Direct action is considered, where such action will achieve a cost-effective and timely remedy to the harm caused by the breach.
- (vii) The individual's Human Rights are balanced against the public interest at all stages of the enforcement process.
- (viii) There is fairness and consistency between cases, which are investigated in line with the priorities set out below, rather than the persistency or status of enquirers.
- (ix) Unauthorised encampments are dealt with having full regard to all of the above principles, in accordance with the list of priorities below.

7. Priorities for investigations:

(NB: The following priority list is for guidance only and is not an exhaustive list).

PRIORITY 1

Alleged breaches causing irreparable/immediate and continuing serious harm and loss of amenity to affected neighbours and/or the environment and/or where there is danger to public or highway safety.

Works in progress involving demolition or alterations to a listed building or building in a Conservation Area.

Works in progress to protected trees.

Advertisements - where it is considered that there is immediate harm to public safety.

PRIORITY 2

Development contrary to policies on AONB/ countryside/landscape/Conservation Areas.

Breaches of conditions attached to planning permissions resulting in serious harm to neighbours, affected parties and/or the environment.

Unauthorised advertisements in Conservation Areas/AONBs.

Unauthorised development where it is possible that the time for taking enforcement action could expire within the next 6 months.

Commencement of development in breach of Section 106 agreements/conditions.

PRIORITY 3

All, other breaches, i.e. unauthorised breaches of a minor nature which do not cause immediate/long term harm or loss of amenity e.g. breaches which are temporary in nature or those capable of being regularised.

All other unauthorised advertisements.

8. Complaints about the Service:

- 8.1 If you are unhappy about the advice given, action taken or the level of service you have received from the Council in relation to enforcement matters, you will be given the opportunity to discuss the matter with the relevant Team Leader.
- 8.2 An Officer receiving such a request will refer the matter to the relevant Team Leader who will:
 - Listen to the details of the complaint;
 - Consider whether the service provision has fallen below the standards set out above in this particular case;
 - Provide a written / verbal response to the person making a complaint.

- 8.3 If the problem cannot be resolved, the person making the complaint about the service will be given information on the Council's Corporate Complaints Procedure

ANNEX 1 -NATIONAL LEGISLATION/GUIDANCE

The following have been taken into account in the preparation of this document:

- Town and Country Planning Act 1990 (as amended).
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Police and Criminal Evidence Act 1984.
- Criminal Procedure and Investigations Act 1996.
- Human Rights Act 1998.
- Regulation of Investigatory Powers Act 2000.
- Freedom of Information Act.

- Environmental Information Regulations 2004.
- Planning Policy Guidance Notice 18 "Enforcing Planning Control."

- Circular 10/97 "Enforcing Planning Control."
- Enforcement Concordat DTI 1998.
- Enforcement Concordat: Good Practice Guide DTI 2006.
- Enforcing Planning Control: Good Practice Guide DETR 1997.
- Best Practice Guidance on Listed Building Prosecutions: DCLG 2006.
- The Road Ahead: Final Report of the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers (published December 2007).
- The Statutory Code of Practice for Regulators published by the Department for Business Enterprise and Regulatory Reform, December 2007.
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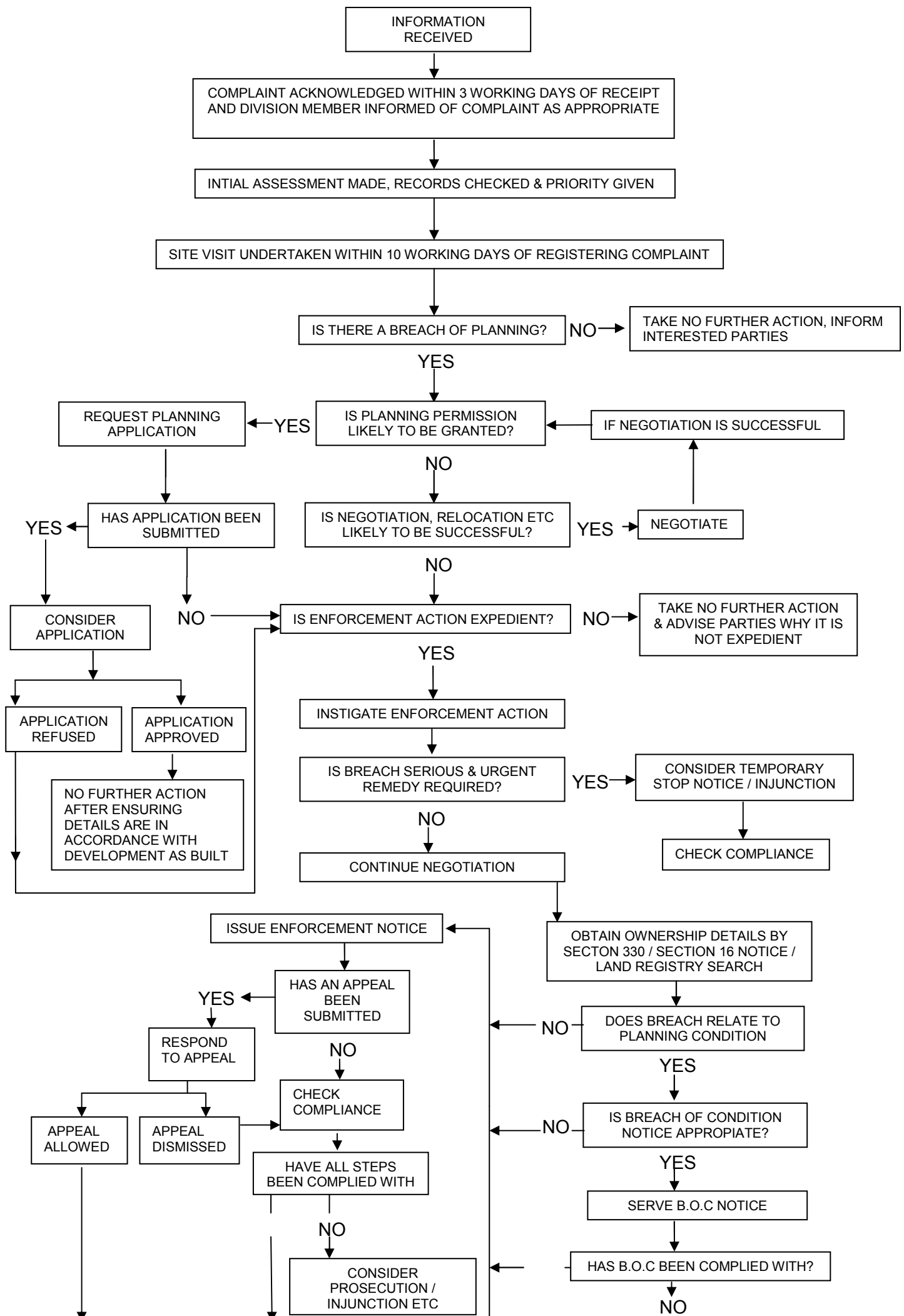
ANNEX 2 –PERFORMANCE TARGETS

Measuring enforcement activity is unlike tracking the performance of a planning application where there are clear timetabled performance targets. It is also inappropriate to set targets to issue a certain number of formal notices in any one period of time.

The following performance targets have therefore been adopted which give a more detailed and meaningful overview of the Council's performance and strike an appropriate balance between challenge and achievability: -

- New enquiries registered within 3 working days of receipt. Target 95%.
- Response to enquirer within 10 working days of initial site visit. Target 95%.
- Priority 1-site visit within 24 hours of registration. Target 80%.
- Priority 2 site visit/response within 5 working days of registration. Target 95%.
- Priority 3 site visit/response within 10 working days of registration. Target 95%
- Priority 1 cases to be completed within one year from date of enquiry. Target 80%.
- Priorities 2 and 3 cases to be completed within 6 months from date of enquiry. Target 80%.

**ANNEX 3 –FLOWCHART SHOWING KEY STAGES IN THE
ENFORCEMENT PROCESS (see following page)**



YES

YES

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ANNEX 4 –CONTACT DETAILS

Forms

[Make a planning enforcement enquiry online](#)

(currently Salisbury Area office only)

Web site: www.wiltshire.gov.uk

Salisbury Area Office:

Planning Office,
61 Wyndham Road, Salisbury, SP1 3AH
Telephone 01722 434541 Fax 01722 434520

[Click here for location map](#)

Devizes Area Office:

Browfort,
Bath Road,
Devizes,
Wiltshire, SN10 2AT
E-mail: <mailto:developmentmanagementeast@wiltshire.gov.uk>

Telephone 01380 724911 Fax 01380 729146

[Click here for location map](#)

Chippenham Area Office:

Monkton Park,
Chippenham,
Wiltshire, SN15 1ER
Telephone 01249 706111 Fax 01249 443158
E-mail: <mailto:developmentmanagementnorth@wiltshire.gov.uk>

[Click here for location map](#)

Trowbridge Area Office

Bradley Road,
Trowbridge,
Wiltshire, BA14 0RD
Telephone 01225 776655 Fax 01225 770316
E-mail: <mailto:developmentmanagementwest@wiltshire.gov.uk>

[Click here for location map](#)

For enquiries in relation to mineral workings or waste management sites, across Wiltshire:

Minerals and Waste Development Team

Bradley Road,
Trowbridge,
Wiltshire, BA14 0RD
Telephone 01225 776655
E-mail: mineralsandwastedevelopment@wiltshire.gov.uk