



**CORNWALL
COUNCIL**

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Local Council planning refresher 2023

Planning Enforcement overview

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Content

- Overview of the planning enforcement regime
- What is planning harm?
- GDPR – General Data Protection Regulations

General principles of Enforcement

Paragraph 58 of the National Planning Policy Framework states:

Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.

- Planning Enforcement is not a system to punish people who carry out works without planning permission. It is there to prevent inappropriate development that would not get planning permission
- Breach of Planning Control is not an Offence
- A large percentage of breaches of planning control have no action taken against them because they cause no harm
- The planning system is a permissive regime

National Planning Practice Guidance

The NPPG also states:

- *Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so.*
- *In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*
 - *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](#).*
- *What this means is that unauthorised development that causes no harm and is compliant with planning policy is not likely to have enforcement action taken against as it would be considered not-expedient as per the NPPG advice above.*

Position facing all councils

Quote from Martin Goodall, a prominent planning solicitor, which neatly sets out the position facing all councils:

Faced with unauthorised development, a Local Planning Authority is in an initial quandary as to whether it is expedient to take enforcement action at all. As ministerial guidance makes clear, enforcement action should not be taken solely because the development was unauthorised; if the development does no harm then there is no excuse for taking enforcement action, even if the developer refuses to 'regularise' the position by applying for retrospective permission.

Enforcement consideration no different to a planning application

Dealing with a Planning Application should not be that different than dealing with an Enforcement case. With a Planning Application you have a set of plans and generally nothing built; with an enforcement case you don't have a set of plans but something built on the ground. With both you assess against the Development Plan and any other material considerations to determine whether the development is acceptable or not.

What is Planning Harm?

- Increased risk of flooding
- Unacceptable design
- Severe harm to highway safety
- Loss of residential amenity - such as excessive overlooking of windows or gardens, loss of light, overbearing by large new buildings too close to boundaries.
- Detrimental impact on general amenity – when comparing against the existing character, appearance and environmental quality of a place
- Harm to heritage assets
- Harm to designated landscape such as Area of Outstanding Natural Beauty (AONB), Conservation Area (CA), World Heritage Site (WHS), etc.

Planning Harm – residential caravan in the countryside contrary to Development Plan Policy



Planning Harm would not normally be:

- Loss of value to a neighbouring property
- Competition with another business
- Loss of individual's view
- Trespass onto someone else's land or boundary disputes
- Breaches of covenants

Neighbour disputes, not a planning matter!



Data Protection

General Data Protection Regulations (GDPR) and implications:

- Introduced May 2018
- Council no longer put details of enforcement cases online, even the address of the site being investigated could easily identify the person under investigation within a community
- Whilst enforcement case under investigation we do not have a fair and lawful basis for putting that information in the public domain (Article 5 of GDPR)
- No longer provide updates to the public and local Councils during the course of investigation
- This change came into force following legal advice we received after introduction of GDPR and a complaint we received from a person who we investigated for an alleged breach of planning control

Data Protection

What to do when asked by a member of the public on how an enforcement case is progressing:

- We have introduced a [flowchart](#) showing the stages of an Enforcement Investigation Process
- Should avoid discussing enforcement cases in public meetings
- If asked by members of the public the enforcement case officer can advise you as to which stage on the flowchart the case is at, this flowchart is on the Council's website and you can direct them to that

The Council's approach to this is supported by case law issued by the Information Commissioner's Office (ICO) in 2017 in a case involving West Berkshire District Council: The ICO stated:

Planning Applications are different to information on a breach of planning control, where it is clear that there has been an allegation of or potential for wrongdoing. This in itself would shape the expectations of the subject of any allegation that the information would remain confidential, at least until the Council had decided there was a breach that required an Enforcement Notice to remedy.

Data Protection position confirmed

This position was also confirmed in advice issued to Councils in June 2021 from the Planning Advisory Service:

- Allegations of breaches against a particular property or person should not be made public without any investigation.
- It is important that there isn't a "weekly list" of new allegations circulated, as this could be seen as some indication of wrongdoing and even prompt members of the public to undertake their own investigations.
- Most LPAs maintain a list of cases where a breach has been identified but the matter is under further investigation or negotiation to bring about some kind of remedy. This list might be reported to a planning committee or some other oversight or scrutiny panel in a public or semi-public context, and to involve councillors in what are sometimes finely-balanced decisions. Even if the list avoids using names and just references cases by site, it could still contain personal data and so would still fall within the ambit of the GDPR.
- Given the circumstances and the risks around mismanagement of data it is likely that a sound policy approach is to separate out the detail of the breach and the procedure itself. The LPA can, by making information available about the stage of the process, assure the public at large that it is responding properly without making available any personal data. Any consideration of live enforcement cases can then be done as a closed session.

Enforcement investigation process

Please note we are unable to provide regular updates during the course of the investigation. Once our investigation is concluded we will provide a summary of our findings.

Step 1

Report Received

The best way to report a matter to us is through our website at www.cornwall.gov.uk/reportbreach. Please remember to include your telephone number.

Step 2

Triage

A member of the team will contact you, by phone wherever possible, if mandatory information is missing, or to discuss the matter to get a better understanding of the issues and to advise you whether we are able to assist. If further investigations are not necessary you will be advised of this and no further action will be taken. If not, go to step 3.

Step 3

Case required

Further investigations are necessary. A case will be created and an acknowledgement letter will be sent to you providing the reference number of the case.

Step 4

Investigations underway such as:

- Check planning history
- Check any approved plans
- Site visit
- Meeting with owner/occupier
- Consider legislation and guidance
- Gather own evidence
- Consider third party evidence
- Discuss with other council teams or other agencies
- Land registry searches
- Obtaining information via formal notices (Planning Contravention Notice, Requisition for Information or Interview Under Caution)

Step 5

Breach identified

Yes - continue to step 6

No - Case will be closed and you will be provided with a summary of our findings

Step 6

Working to find appropriate outcome

such as:

- Regularise with application
- Negotiate remedial works
- Negotiate removal of unauthorised works

Step 7

Negotiations successful/ application received

No - Continue to step 8

Yes - Case will be closed and you will be provided with a summary of our findings

Step 8

Consider expediency of formal action

- Assess against local and national policy
- Consider the harm caused and the material planning considerations
- Consultee comments
- Consider relevant appeal decisions/case law
- Consider personal circumstances and Human Rights
- Consult divisional member

Step 9

Is it expedient to take formal action?

Yes - Continue to step 10

No - Case will be closed and you will be provided with a summary of our findings

Step 10

Commence formal action

such as:

- Draft notice and prepare appendices/report
- Discuss with owner/occupier
- Discuss implications with other teams within the Council
- Inform the local councillor
- Liaising with contractors
- Checking land registry details
- Site visit

Step 11

Formal notice served

The investigation is now complete and you will be provided with a summary of the outcome



Thank you / Meur ras

If you have any questions or comments

planningenforcement@cornwall.gov.uk