



# Council of the Isles of Scilly

Planning Enforcement Charter | 2017



Council of the  
ISLES OF SCILLY



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# Introduction

1. In response to Paragraph 59 of the National Planning Policy Framework (NPPF), this Local Enforcement Plan has been published in order to manage enforcement in a way that is appropriate to the Isles of Scilly. The plan explains the role and powers of enforcement, how alleged cases of unauthorised development will be investigated and outlines the Council's discretionary powers in relation to planning enforcement. The integrity of the Local Planning Authority's function depends on the Council's ability to take appropriate and effective enforcement action against breaches of planning control. This is particularly important where it is necessary to protect the environment and the interests of the community. In recognition of this commitment, this plan sets out the policy, procedure and standards of the Council in relation to planning enforcement.

## *Enforcement*

*NPPF (2019), Para 58. 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.*

## The Enforcement Process

2. It is important to note that Planning Enforcement is a discretionary power to be used only when it is appropriate to do so. Breaches of planning control are often resolvable without resorting to formal enforcement action or prosecution and as such, any action taken should be proportionate to the alleged breach.
3. It is not a criminal offence to carry out development or change the use of land or a building without first obtaining planning permission (unless it is a listed building). It is merely unauthorised and therefore, in considering whether to take enforcement action, weight should not be given to the fact the development may have already commenced. Furthermore, the



Planning Act allows for the submission and consideration of retrospective applications. Only when the Council has served enforcement or similar notices and all avenues of negotiation and appeal have expired, does a development or use become illegal and a criminal offence. Enforcement action should not be taken simply to correct the absence of planning permission. In essence, enforcement action will be taken in those cases where the breach of control would unacceptably affect public amenity or the use of land and buildings merits protection in the public interest.

## The Enforcement Policy of the Council

4. The Council is committed to investigating all complaints about breaches of planning control. Breaches of planning control will be treated seriously but proportionately to the scale and impact of the breach with enforcement powers used in a cost-effective and efficient manner. The timescale for investigation and appropriate action will depend on the level and scale of the alleged breach.

## Prioritising Enforcement Cases

5. The investigation of alleged breaches of planning control will be made in accordance with the following scale:

<b>HIGH</b>	Unauthorised demolition, partial demolition or a significant alteration of a building which it is essential to retain for example a listed building or a building that contributes positively to the character of the Conservation Area.
	Unauthorised development or works where significant harm is being caused to the conservation area, AONB or setting of a listed building or scheduled monument.
<b>MEDIUM</b>	Unauthorised development or works which is clear will cause significant harm to character and amenity of the building or locality.
	Breach of condition that results in serious harm to the amenity of the area.
	Any unauthorised development where the time limit for enforcement action will expire within the next 6 months.
	Unauthorised development which is the source of significant public complaint.
<b>LOW</b>	Unauthorised advertisements where they are harmful to the character of the surroundings.
	Unauthorised development which would be likely to receive planning permission if a planning application were to be submitted.



	Unauthorised development or works that would normally have benefitted from permitted development rights but are required due to the blanket Article 4 Directions covering the islands.
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6. Complaints in connection with a planning matter should be submitted in writing to the **Planning Department, Town Hall, The Parade, St Mary's, Isles of Scilly, TR21 0LW** or by email to [planning@scilly.gov.uk](mailto:planning@scilly.gov.uk). The complaint will then be dealt with in the following manner:
- **Acknowledgement of the complaint within 5 working days of receipt by the Local Planning Authority.**
  - **The complaint and the details of the complainant will be treated as confidential, as far as possible, within the authority, and not disclosed publically.**
  - **Investigation of the complaint and a written response to the complainant within a further 15 working days from the date of the initial letter of acknowledgement, stating how the Council intends to deal with the matter. However, some matters may require lengthy investigations and it may not be possible to state precisely at that stage what action the Council may take.**
  - **Keep the complainant informed of progress.**
  - **Update Members regularly**
  - **Advise all parties when a case is considered closed.**

## Handling an Enforcement Investigation

6. As a result of preliminary investigations the Council may be able to conclusively establish that an activity does not amount to a formal breach of planning control as a result of, for example, the following:
- **It is not a matter which can be controlled by planning legislation. Although an activity may not contravene planning legislation, it may breach other legislation such as, for example, the Environmental Protection Act, the Health and Safety Act or Building Regulations and the matter would be passed on to those responsible for that area;**
  - **Planning permission has been granted by the Council;**
  - **Formal planning permission is not required as the development has the benefit of "Permitted Development" rights;**
  - **The activity is lawful for some other reason. A breach may, for example, be immune from enforcement due to the length of time it has been carried out. Where this is suspected to be the case a Certificate of Lawfulness may be invited to formally establish this immunity.**



7. In cases where the activity does not amount to a formal breach of planning control, the Council will inform all relevant parties of its decision and not pursue further courses of action.
8. Where a material breach of planning control is identified, the Council will initially attempt to rectify it through negotiation without immediate recourse to formal enforcement action. The methods used may include requesting the submission of a retrospective application. The submission of an application is no guarantee that permission will be granted. Any application will need to be processed and assessed taking into account all the relevant material planning considerations. Whilst no formal enforcement action would be taken during this consideration period, no further work should be carried out whilst an application is being considered:
  - **Negotiating the removal of unauthorised development(s);**
  - **Negotiating to ensure certain activities are stopped;**
9. Not all breaches of planning control are significant enough to justify enforcement action. Where planning permission is likely to be granted, but no application is actually submitted, or where there has been only a minor breach which will have no significant effect, the Council will need to consider whether it is in the best interest of the public to pursue the matter further. Where the breach is minor and unlikely to set a precedent, following consultation with the Chairman and Vice Chairman of the Planning Committee, it may be determined that taking enforcement action is not in the public interest. Where an application has not been submitted, the Land Charges Section of the Council will be advised of this breach to ensure that any future owner of the property is aware of the breach. Although breaches of planning control should never be condoned, it may not be in the public interest to spend further public money pursuing the issue. All relevant parties involved with an enforcement investigation will normally be advised within eight weeks of receipt of the initial complaint if no further action is proposed.

### **What is a Breach of Planning Control?**

10. A breach of planning control occurs where development or a change of use is carried out without the required planning permission or consent or where it does not comply with any condition or limitation subject to which planning permission has been granted. Such a breach could include, but is not limited to, any of the following:



- **Unauthorised building works such as an extension or erection of a shed or fence.**
- **The unauthorised change of use of land or a building such as the sub division of a dwelling to create a new self-contained unit of accommodation.**
- **Unauthorised engineering works such as the creation of a new access.**
- **A breach of a condition attached to a planning permission.**

## What is not a Breach of Planning Control?

11. The following are examples of works or operations that do not amount to development and do not therefore amount to a breach of planning control under planning legislation:

- **Most internal works (excluding internal works on a listed building, where it is always advisable to check with the LPA before the work is carried out);**
- **Operations which do not materially affect the external appearance of a building;**
- **Operating a business from home where the residential use remains the primary function and there is no adverse impact to neighbouring residents or to the safe use of the public highway (increased vehicular movements or the attraction of visiting members of the public can impact upon both amenity and highway safety);**
- **The use of buildings / land within the boundary of a property for any purpose incidental to the enjoyment of the property (this does not include the renting or letting out of accommodation within the grounds of a property);**
- **Changes of use within the same “Use Class” such as a butchers’ shop changing to a newsagent’s.**
- **Deeds and covenants attached to land or property are a private matter and cannot be controlled or enforced under planning legislation. Similarly, enforcement powers under planning legislation cannot be used against any failure to comply with building regulations.**

## Other Breaches

12. The Council has other enforcement powers that it can use against a range of other planning related breaches including the following:

- **Unauthorised works to a Listed Building which is a criminal offence.**



- **Unauthorised advertisements or signs which are liable to fines following conviction in a Magistrates' Court.**
- **Unauthorised work to trees within the Conservation Area.**
- **Unauthorised demolition work within the Conservation Area.**
- **Failure to properly maintain land that results in harm to the environment.**
- **Removal of a hedgerow without serving a Hedgerow Removal Notice or in contravention of a Hedgerow Retention Notice.**

13. The Council can also take action against a failure to comply with the terms of a Planning Obligation made under Section 106 of the Planning Act.

## Legislation

14. The main legislation governing the enforcement of planning control is contained in the Town and Country Planning Act 1990 (as amended) which empowers the Council to:

- **Enter land to make necessary site inspections.**
- **Require owners and occupiers to provide information about the ownership and use of land and buildings.**
- **Serve enforcement and other notices on landowners and responsible persons to ensure breaches of planning control are stopped or made acceptable or both.**

## Taking Formal Action

15. If all reasonable lines of negotiation fail to resolve breaches of planning control, the Council will implement appropriate formal enforcement procedures. In accordance with the Council's Scheme of Delegation. As many cases require immediate action in the interests of health and safety to protect public, amenity or the environment this is delegated to the Senior Manager: Infrastructure and Planning (or other Senior Manager in their absence).
16. When investigating a specific case, the Council will rely on information and assistance from members of the public and other parties which may include the following:
- **Asking affected groups or individuals to keep a record of unauthorised activities;**
  - **If possible, obtaining specific details of unauthorised activities including datable photographic evidence;**
  - **In exceptional circumstances appearing as witnesses at a public inquiry or court hearing.**



## Enforcement Powers Available to the Council

17. If the submission of a planning application or negotiation fails to resolve the problem, the Council has a number of different Notices that can be used to obtain further information or specify what steps are required to remedy the breach within a specified time period. Set out below is a list of Notices and possible action that is available to the Council.

### A Planning Contravention Notice

18. A Planning Contravention Notice may be served in order to obtain more information about development or activities on land. The Planning Contravention Notice requires the recipient to provide information and establish a number of facts such as the exact use of the land and any works taking place, and when those uses or works commenced. The information provided on the Notice is used to assess whether enforcement action is required. The recipient has 21 days from the date of service to respond to the Notice. Failure to respond to a Planning Contravention Notice without reasonable justification is an offence and could result in a fine. It is also an offence to knowingly provide false or misleading information.

### Enforcement Notice

19. Taking enforcement action will result in the issuing of an Enforcement Notice or a Breach of Condition Notice. The decision on whether it is appropriate to take action is a matter for the Council to decide in the circumstances of each particular case. That decision must be reasonable and taken with proper consideration of the relevant facts and the planning merits of the case. Before serving an Enforcement Notice the Council must be satisfied that:

- **A breach of planning control has occurred;**
- **There is sufficient evidence to support formal action being taken;**
- **It is expedient to serve an Enforcement Notice.**

20. An Enforcement Notice must specify:

- **The nature of the alleged breach as either development without planning permission, or a failure to comply with conditions or limitations to which planning permission has been granted;**
- **Identify the land to which the Notice relates;**
- **Clearly state the matters which appear to make up a breach of planning control;**
- **State the reasons for issuing the Notice;**



- **Specify when the Notice takes effect;**
- **Specify the steps required to remedy the breach;**
- **Provide a reasonable period for compliance.**

21. It is an offence to fail to comply with the terms of an Enforcement Notice that is in force.
22. The steps required by an Enforcement Notice should not exceed what is necessary to correct any breach of control or damage caused. There is a right of appeal against a notice to the Secretary of State. If an appeal is lodged, no further action can be taken by the Council until the appeal has been determined. If an Enforcement Notice is served, it will be issued within **eight weeks** of the receipt of notification of the breach. An inspection will normally be made within **five working days** of the end of the compliance period. Both the offender and complainant will normally be advised of the outcome of this visit within **five working days**. If further steps are required, then the offender may, at the discretion of the Council, be given an extension of time to correct the matter. Compliance with the Enforcement Notice will not clear the Notice. It will remain as a charge on the land to prevent the breach recurring.

## Direct Action

23. Where the owner or occupier of the land fails to carry out the requirements of the Enforcement Notice, the Council will consider using its default powers to enter the land and carry out the required steps itself. Any expenses will be recovered from the offender.

## Appeals

24. An appeal may be lodged against an Enforcement Notice before the date it comes into force on any or all of the following grounds:
  - **That planning permission should be granted for what is alleged in the notice**
  - **That the breach of control alleged in the enforcement notice has not occurred as a matter of fact;**
  - **That there has not been a breach of planning control (for example because permission has already been granted, or it is 'permitted development');**
  - **That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice;**
  - **The notice was not properly served on everyone with an interest in the land;**



- **The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections;**
- **The time given to comply with the notice is too short.**

## Breach of Condition Notice

25. Most planning permissions are granted subject to conditions. When a condition is not complied with the Council can serve a Breach of Condition Notice (BCN). The Notice must specify the steps that the Council consider ought to be taken or the activities that the Council consider ought to cease and the time within which this must be done (this must not be less than 28 days). There is no right of appeal to the Secretary of State against a BCN. It is an offence to be in breach of a BCN.
26. Whether a condition is appropriate or reasonable can only be tested at appeal following a refusal to remove or modify it. The removal or modification of a planning condition involves the submission of a planning application together with a fee that will be assessed on its planning merits by the Council.

## Stop and Temporary Stop Notices

27. A Stop Notice can only be served in conjunction with an Enforcement Notice and this may prohibit any activity on the land to which the Enforcement Notice relates. A Stop Notice will normally take effect three days after it has been served, although in cases where the activity to be prohibited is causing irreversible damage, it may take effect immediately. The Notice will remain in force until the period for compliance has expired or the Notice is withdrawn. There is no appeal against a Stop Notice. However, if an appeal is made against the Enforcement Notice, the merits of the Stop Notice may be considered.
28. A Temporary Stop Notice can be served where there has been a breach of planning control and it is necessary to safeguard the amenity of the area immediately. As such, a Temporary Stop Notice takes immediate effect and does not require an Enforcement Notice to be issued.
29. Stop Notices are only served where it is essential that unauthorised works or activities cease immediately to safeguard amenity or public safety or to prevent serious and irreversible harm to the environment. In some circumstances, Stop Notices may give rise to valid claims for compensation. Contravention of a Stop Notice or a Temporary Stop Notice is an offence.



## Prosecution

30. The decision whether or not to prosecute will be made by the Senior Manager for Infrastructure & Planning in consultation with the Chairman and Vice Chairman of the Planning Committee following legal advice on the basis of the available evidence and the planning issues involved.

## Listed Building Enforcement Notice

31. This Notice is similar to an Enforcement Notice but used where works have been carried out to a Listed Building without the benefit of Listed Building Consent or in contravention of a condition of such consent. It is a criminal offence to alter a Listed Building without the necessary consent.

## Section 215 Notice

32. The Notice can be served on the owner or occupier when the poor condition and appearance of a property or land is harming the surrounding area or neighbourhood. The Section 215 Notice requires proper maintenance of the property or land in question. It specifies what steps are required to remedy the problem within a specified time period. An appeal may be lodged against the Section 215 Notice to the Magistrates' Court. The non-compliance with a Section 215 Notice is an offence.

## Planning Obligations

33. Restrictions or requirements set out in a Planning Obligation or Agreement under Section 106 of the Planning Act can only be enforced by injunction and not through the enforcement procedures as described in this charter. Nevertheless, the Council will have regard to the general principles contained in this Charter when considering an alleged breach of a planning obligation.

## Injunction

34. Where the Council considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained, they may apply to a Court of Law for an injunction. Such action will normally only be used in exceptional circumstances.