

Local Planning Enforcement Plan

Planning and Strategic Housing



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(Revised)

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1. Introduction

1.1. Planning Enforcement is a vital function of the Council's overall planning strategy and service. It underpins the planning decisions and policies of the Council while helping protect the district's built and natural environments. In accordance with the Council's overarching Enforcement Plan, adopted in March 2015, (<http://www.cotswold.gov.uk/media/1138682/Enforcement-policy-March-2015.pdf>) its approach to planning enforcement will be fair, effective and consistent.

1.2. Paragraph 58 of the National Planning Policy Framework (NPPF) sets out the importance of a proactive and proportionate planning enforcement regime. It recommends that Local Planning Authorities (LPAs) consider publishing a Local Enforcement Plan, setting out how it will monitor the implementation of planning permissions and investigate allegations of unauthorised development.

“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”. (Para 58.NPPF)

1.3. This Local Enforcement Plan sets out how the Council (as LPA) will respond to, investigate and address complaints of unauthorised development. It will confirm the general principles that lay behind its planning enforcement powers, what these are and when they can be used. It will explain how suspected breaches of planning control are categorised and the timeframes for their investigation.

2. Key Aims

2.1. An effective planning enforcement service can help to maintain public confidence in the planning process and positively manage the impact of development. The Council aims to provide a planning enforcement service which: -

- is accessible, consistent, efficient, effective and fair
- works towards securing the strategic aims of the Council

3. What is Planning Enforcement?

3.1. Planning enforcement is a function of the planning system which gives LPAs the powers to address harmful impacts of unauthorised development. It is a complex area of planning and can appear to be slow moving.

3.2. Planning enforcement action is discretionary and serves a remedial purpose, meaning that action is taken to remove the harm caused by a breach of planning control. Formal enforcement action should not be taken simply to punish somebody who has carried out unauthorised development.

3.3. Planning enforcement is carried out in accordance with the powers of the relevant acts. These include the Town and Country Planning Act 1990, the Planning and Compensation Act 1991 and the Localism Act 2011. The Council will also consider relevant case law when exercising its planning enforcement powers.

3.4. When considering whether to take formal planning enforcement action the Council may be criticised if its decision is considered too hasty or unreasonable. Equally, the Local Government Ombudsman has the power to award compensation to injured parties if the Council fails to take action against clearly harmful breaches.

4. What is a Breach of Planning Control?

4.1. A breach of planning control can occur where one, or more, of the following has taken place (this list is not exhaustive):

- Building works are being carried out without the relevant approval
- Development is not being built in accordance with a planning permission
- Planning conditions are not being complied with
- Adverts are being displayed without consent
- The condition of land has become unacceptable (an eyesore)
- Works to a listed building are being carried out without the relevant consent
- Works to a protected tree are being carried out without the relevant consent

4.2. Most breaches of planning control are not illegal. Exceptions include unauthorised work to trees protected by a Tree Preservation Order or which are located in a Conservation Area. Unauthorised works to listed buildings/structures are also an offence.

4.3. Breaches of planning control become lawful (can no longer be enforced against) after a period of time has elapsed without action being taken against them. Broadly speaking, these periods are 4 years in relation to operational development, such as physical building works, and 10 years in the case of material changes of use to land and other breaches. There is, however, no time limit in relation to unauthorised works to listed buildings or structures. Further, in cases where there has been a deliberate concealment of a breach of planning control, the time period in which action could be taken may not commence until the breach has been positively identified by the council.

5. Assessing a Suspected Breach of Planning Control

5.1. Each report of an alleged breach of planning control will be assessed on its merits. Further, as planning enforcement is discretionary the Council is not required to take formal action against every breach that it identifies. This ensures that councils take a proportionate approach to enforcement in accordance with Paragraph 58 of the NPPF. In practice this means that formal action will not be taken against unauthorised development that is acceptable in planning terms.

5.2. In assessing suspected breaches of planning control the Council will have regard to all relevant planning policies and other material considerations. The table below provides some examples of material and non-material considerations in respect of planning (enforcement) decisions (this is not exhaustive).

Material Consideration	Not a Material Consideration
Overlooking and loss of privacy	Property values
Loss of light	The right to a view
Overshadowing	Business Competition
Creating a sense of Enclosure/Overbearing	Restrictive Covenants
Impact on the character of an area	Matters covered by other legislation
Noise, Odour Pollution	Moral Objections
Highway Safety	Land Ownership
Planning Policy and Guidance	
Design	
Effect on Listed Buildings	
Previous planning decisions	
Relevant case law	

Table 1: Material Considerations

5.3. When taking formal action the Council must be able to show demonstrable harm has occurred as a result of the breach planning control. It must also show that any action is proportionate and reasonable. The Council's decision is therefore based upon expediency, which is informed by a number of considerations that may include:

- Is the development contrary to national and/or local planning policy?
- Is the development acceptable in respect of all other material considerations?
- If an application was submitted for the development, prior to it being carried out, is it likely to have been supported / permitted?
- Is the breach causing harm to public amenity and/or safety?
- Would action be proportionate to the level of harm identified?
- Is action required now?

5.4. Where necessary the Planning Enforcement Team will liaise with colleagues in other Council departments, including Building Control, Council Tax and Environmental Regulation Services. This will happen where specialist knowledge/ advice is required.

5.5. The Council's decisions in all planning enforcement matters will be made in accordance with its adopted scheme of delegation, which can be found at <http://www.cotswold.gov.uk/media/1570419/Scheme-of-delegation-Dec-2017A.pdf>.

A record will be kept of all the decisions that the Council makes.

5.6. The flow chart on the following page illustrates the general process that the Council will follow in all planning enforcement cases. Please note that this is a simplified process chart and that within each step a number of actions may be required. For example, the investigation stage may require seeking specialist advice from colleagues in other departments.

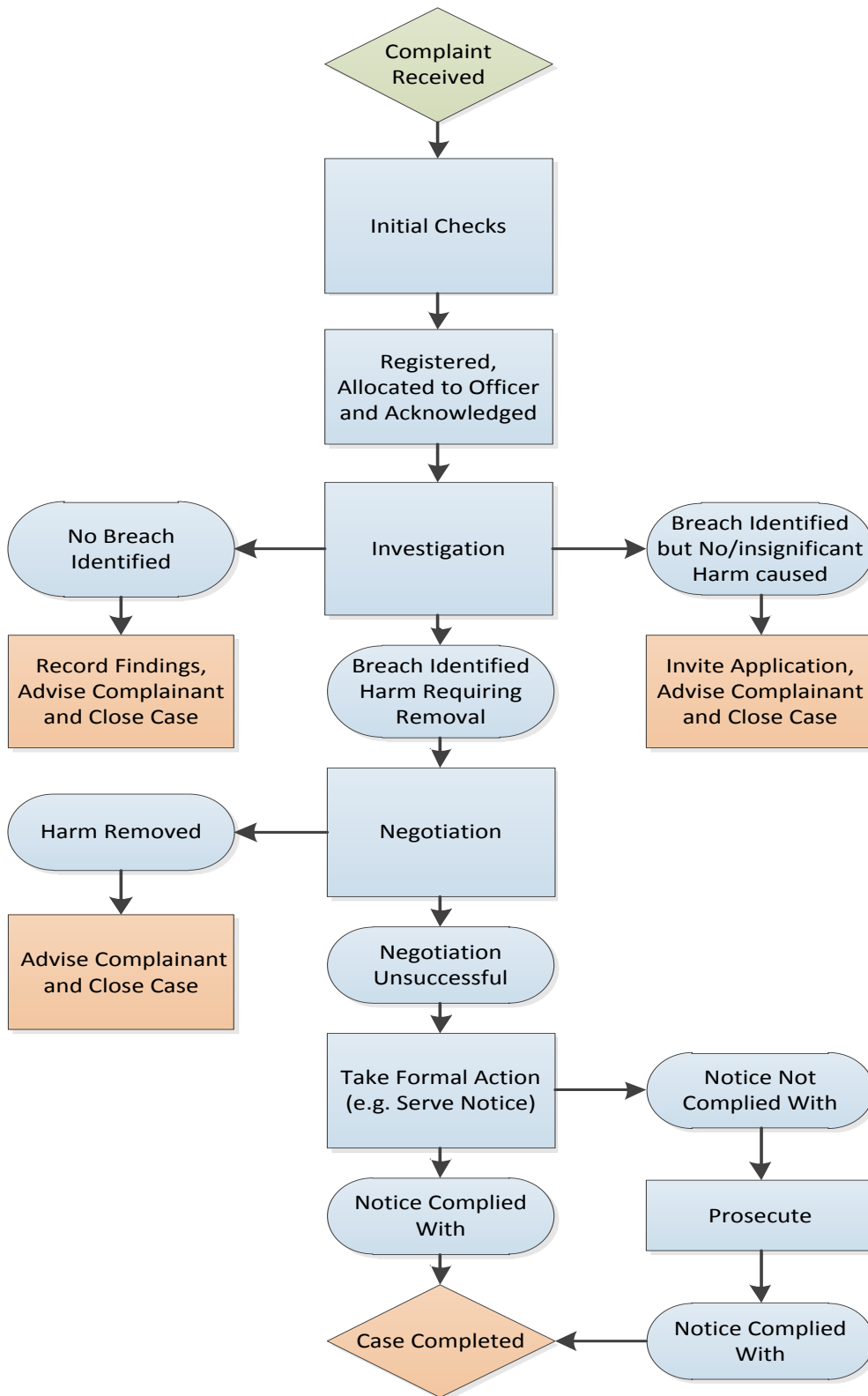


Figure 1: The Enforcement Process

6. Enforcement Tools

6.1. In most cases the Council will seek to negotiate a solution where a breach of planning control has occurred and harm has been identified. Where a solution cannot be agreed there are a number of formal enforcement tools available. Some of these are set out below (this list is not exhaustive).

Planning Contravention Notice (PCN)

6.2. This notice is used to gather information relating to an alleged breach of planning control. It is an offence if the recipient fails to provide, without good reason, the information requested.

Enforcement Notice (EN)

6.3. An EN may be issued in respect of unauthorised operational development and material changes of use. The notice will confirm the breach of planning control, what steps are required to remedy it and the timescale for that action to be carried out. It is an offence to fail to comply with an EN. Recipients can appeal an EN, during which time no further action can be taken until the appeal has been determined.

Breach of Condition Notice (BCN)

6.4 A BCN may be issued when a condition attached to a planning permission has not been complied with. The notice will set out the nature of the breach (what condition is being contravened), what steps are required to remedy it and the timescale for that action to be carried out. It is an offence to fail to comply with a BCN and there is no right of appeal.

Stop Notices and Temporary Stop Notices

6.5. Stop Notices can be issued to prohibit the activities that comprise the alleged breach of planning control. The notice can only be issued following the service of an EN. A recipient can challenge the notice and claim compensation.

Temporary Stop Notices do not require the prior service of an Enforcement Notice and take effect immediately.

Section 215 Notices (S215)

6.6. S215 Notices can be served where the state of land or buildings are considered to cause significant harm to the amenity of an area. The notice will set out the harm caused by the state of the land/building, the steps required to remedy that harm and the timescale for these to be carried out. It is an offence to fail to comply with a S215 Notice. Recipients have the right of appeal.

Advertising

6.7. The Council has various powers that it can exercise in respect of unauthorised advertisements.

Prosecution

6.8. Prosecution proceedings may be brought where unauthorised works have been undertaken to protected trees or listed buildings. Anyone failing to comply with formal (planning) notices served by the Council is also liable to prosecution. The Council's Legal Department is responsible for taking the matter to Court. Before doing so they must be satisfied that there is a realistic prospect of conviction and that pursuing such action is in the public interest.

Inviting Applications

6.9. In cases where a breach of planning control is assessed to be acceptable, the Council will invite a planning application to regularise the development. An application may also be invited in cases where a breach has occurred and any identified harm could be overcome by attaching conditions to a planning permission.

7. Reporting a Suspected Breach of Planning Control

7.1. You can report a suspected breach of planning control in a number of ways: -

In person (or by letter) at: The Council Offices, Trinity Road, Cirencester, Gloucestershire, GL7 1PX

By telephone: 01285 623 000

By e-mail: planning@cotswold.gov.uk

By completing the Council's on-line form:

<http://www.cotswold.gov.uk/residents/planning-building/planning/planning-enforcement/>

Via your local Ward Councillor: You can use the Ward Member Finder tool on our website at <http://www.cmis.cotswold.gov.uk/cm5/Councillors.aspx>

7.2. Before submitting a complaint there are some simple checks that you can carry out to see if there is likely to be a breach of planning control:

- Check for existing planning permissions/consents at:
<http://www.cotswold.gov.uk/residents/planning-building/planning/planning-applications-register/>
- Check whether the development benefits from Permitted Development or is a permitted Change of Use at:
https://www.planningportal.co.uk/info/200125/do_you_need_permission

7.3. The Council will take steps to keep complainant's details confidential and ensure that they are not shared with the individual(s) responsible for the alleged breach.

8. Prioritising Breaches, Timeframes and Performance

8.1. While the Council will treat each complaint seriously some require a greater degree of urgency in its response. The table below shows how the Council has categorised possible breaches so that it can respond appropriately to complaints.

Category	Type of reported breach
High	Works to listed buildings or structures
	Works to trees in conservation areas or protected by a tree preservation order
	Works that would undermine one of the Council's strategic priorities; e.g. flood resilience
	Work being carried out in contravention of enforcement or stop notices
	Work which may lead to substantial and/or permanent damage to a Site of Special Scientific Interest or other sites of known wildlife significance and important archaeological areas
	Work likely to cause serious and/or permanent harm to the amenity of an area or endanger the well-being of people
Medium	Breaches of planning conditions where that condition is designed to protect residential amenity or other significant considerations but the breach is not likely to endanger the well-being of people
	Unauthorised development where the time limit for taking formal action will expire within the next 6 months
	Complaints regarding untidy land
Low	Small scale/minor development, such as unauthorised advertisements, minor departures from approved plans and small scale domestic alterations, including extensions and the erection of fences

Table 2: Categorisation of breaches

8.2. To ensure that the Council responds within an appropriate time frame it will aim to investigate complaints in accordance with the service levels below.

Stage	High Priority	Medium Priority	Low Priority
Register case, allocate to officer and acknowledge	Immediate	Within 5 working days	Within 10 working days
Site Visit (if necessary)	As soon as possible but within 24 hours (excluding weekends)	Within 15 working days	Within 20 working days
Provide Initial Assessment to Complainant	As soon as possible but within 24 hours (excluding weekends)	Within 15 working days	Within 20 working days
Commence formal action, where necessary, or close case	As soon as necessary/appropriate	Within 12 weeks	Within 20 weeks

Table 3: Timeframes

8.3. At times the priority allocated to a case may change. This is because it is not always clear when a complaint is made which of the categories is most relevant. Where the timeframe for taking action or closing a case exceeds the above; for example, negotiations are entered into, the Council will advise the complainant.

8.4. From time to time the Council will experience spikes in workload when it receives more complaints than it does normally. Staff absences and other factors can also affect how it delivers the planning enforcement function. At these times the Council will need to concentrate its resources on high priority cases.

8.5. There are no Government targets for how Council's respond to planning enforcement complaints. The Council will therefore measure its performance against the targets set out on the following page.

Targets

- 90% of all cases acknowledged within target
- 85% of all cases visited within target
- 85% of all cases where no breach of planning control is identified closed within 20 working days
- 80% of appeals against notices served by the Council successfully defended

Figure 2: Targets

9. Keeping Parties Informed, Feedback and Complaints

9.1. The Council will acknowledge complaints in accordance with the service levels set out in this plan. Thereafter, it will update complainants on the progress of its investigation on a case by case basis. As a minimum the Council will advise complainants of all key decisions that it takes such as recommending formal enforcement action or closing a case.

9.2. When corresponding with parties suspected of carrying out breaches of planning control the Council will explain the nature of the complaint. Throughout the course of its investigation the Council will, where necessary, establish clear timeframes and explain the possible consequences if these are not met.

9.3. Complaints about the planning enforcement service will be considered in accordance with the Council's Corporate Complaints Procedure, details of which can be found at <http://www.cotswold.gov.uk/about-the-council/having-your-say/comments,-complaints-compliments/>. General feedback and comments about the service may also be made here.

10. Proactive Compliance

10.1. Paragraph 58 of the NPPF states that councils should "*set out how they will monitor the implementation of planning permissions*". The Council will explore how this area of work may be facilitated.

11. Conclusion and Further Information

11.1. Planning enforcement is a vital element of the planning system and can help support key decisions made by the Council. Breaches of planning control can have significant impacts upon the district's historic and natural environments and the well-being of its citizens. However, not all breaches of planning control will be harmful and it will not always be expedient for the Council to pursue formal action.

11.2. Complainants will be advised of the Council's initial findings within the time scales set out at table 3 of this plan. Thereafter the Council will advise complainants of all key decisions taken on a case.

11.3. The Council's decisions in all planning enforcement matters will be made in accordance with its adopted scheme of delegation, which can be found at <http://www.cotswold.gov.uk/media/1570419/Scheme-of-delegation-Dec-2017A.pdf>. It will keep a record of all the decisions that it makes.

11.4. Further information regarding planning enforcement, including the National Planning Practice Guidance document, 'Ensuring Effective Enforcement', can be found on the Planning Portal at <https://www.gov.uk/guidance/ensuring-effective-enforcement>. Further information is also available on the Council's own web-site.

11.5. This plan will be reviewed every three years. A review may take place earlier if important legislative changes are made that impact upon this area of work.

Revisions to this document
<i>October 2018 – Changes to the NPPF</i>