

Planning Enforcement

Key Facts and Frequently Asked Questions

January 2016

This note has been prepared to assist with some of the key facts (misconceptions) about the planning enforcement process and to answer some of the most frequently asked questions the Council deals with. It is the intention of this note to provide some clarity about what can be a complex system and the following is offered as guidance only and does not override local or national policy.

Key Facts

The following is a summary of the key facts that should be considered when looking at a potential breach of planning control (note this is not an exhaustive list but it is pointers for consideration):

- Unauthorised development is not illegal (unless it relates to a listed building)
- Enforcement is not punitive and remedy should be sought in the first instance – it should not be used as a tool to punish.
- Negotiation is critical
- The enforcement process is lengthy due to the statutory processes that must be followed
- Multiple opportunities exist to apply for retrospective consent and appeal any decisions issued
- Formal Notices are a last resort not the “go to” answer
- The Council must follow planning law and the guidance set out in the National Planning Practice Guidance
- Technical breaches are unlikely to result in action (this could include failure to submit details required by a condition at the correct time)
- Large development sites:
 - There will be times when issues occur
 - It is not always appropriate to pursue formal action
 - Consideration must be given to the scale and magnitude of the offence in light of scale of operation as a whole – i.e. 10 incorrect vehicle movements in a month to a site that receives over 50 movements daily would not be sufficient to demonstrate a persistent breach/issue.
- Precise information is essential
- We cannot notify Members or Parishes due to provisions of DPA and FoIA when cases are received but we will notify when we serve a Notice.
- Enforcement is discretionary not statutory
- Officers must have regard to the public interest test, evidential test and the scale of planning harm before commencing formal action.

FAQs

1. If someone builds something that is different from what they got planning permission for, does that mean enforcement action will be taken automatically?

No. Although the Council does not condone building anything that is different to a proposal that has planning permission and it is extremely unwise and risky to do so, planning permissions do not represent the only form of proposal on that site that may be acceptable to the authority. Therefore, enforcement action would only be taken against a different and unauthorised building to that previously approved if it was considered to result in unacceptable harm by the Council.

2. If someone breaks planning regulations shouldn't they always be punished as a matter of principle, and made to remove or stop whatever they have done?

Not according to planning law. Other than in the case of unauthorised works to listed buildings, carrying out building works or a change of use without the necessary planning permission is not a criminal act and, initially, not subject to penalties such as fines or imprisonment. Later in the process, if an enforcement notice has been served and not complied with, then court action and penalties such as fines can be imposed. However, planning enforcement is a discretionary power of a local authority that should only be used to put right any harm caused by a failure to comply with planning control. When there is no harm, or it is insignificant, enforcement action is generally not justified. A harm requiring enforcement action would normally occur when the breach in question results in an unacceptable departure from relevant planning policies that would have justified refusing planning permission if it had been the subject of a planning application.

3. Doesn't planning law mean some people who break the regulations get away with it?

In the first instance, the objective of planning enforcement is generally not to punish those who break the regulations but to remedy any harm caused by unlawful actions. However, people who do not get the necessary planning permission for something they are doing risk the possibility of serious consequences from enforcement action that can be extremely costly, and failure to comply with an enforcement notice can result in court action and legal penalties. It may also be difficult or impossible to sell a property if planning permissions have not been properly obtained or followed.

4. Can you apply for planning permission to keep a building or continue a use that did not get the necessary planning permission?

Planning regulations do allow someone to apply for planning permission retrospectively after they have carried out unauthorised works or a use and the law requires the Council to accept and consider them. Such retrospective applications are considered on their planning merits in the same way as other applications and are not more likely to be approved or refused because they are submitted after the event. Planning permission may be granted retrospectively if the application proposal is considered to be acceptable but if this is not the case and permission is refused then it is likely that enforcement action will follow.

5. Do all alterations to houses require planning permission?

No. Some minor alterations may not require planning permission at all. In such cases, no enforcement action can be taken.

6. Is building without planning permission from the Council always unlawful and potentially subject to enforcement action?

No. Planning law allows some types and sizes of buildings, and some changes of use to take place without the need to get planning permission from the Council, and these are sometimes referred to as 'permitted development'. For example, many domestic extensions and out-buildings to houses are permitted development, but those wishing to carry them out should have this confirmed prior to starting any building by the Council's Development Management department. If you complain to the planning enforcement team about a building or use being carried out, officers will initially assess whether it requires planning permission. If it is a type or size that does not, perhaps because it is permitted development, then it will not be possible for the Council to consider taking enforcement action, or to assess its acceptability as is done with a planning application proposal, (for example in terms of neighbourliness).

7. What will the Enforcement Officer do about a complaint of an alleged breach of the planning regulations, and how long will it take?

The officer will investigate the complaint and, as a first step, assess whether there has actually been a breach of planning control regulations. If there has not, then the complainant will be told and no further action will be taken. If there appears to have been a breach then a number of options for action are available ranging from informal requests to voluntarily stop or remove unauthorised work to serving formal enforcement notices requiring remedial action. These options are set out in Local Enforcement Plan.

There is a right of appeal against planning enforcement notices and this, in addition to the work that is required to properly investigate some cases, means that the process of resolving a breach in regulations can take a long time. The Council recognises how frustrating this delay can be and will try to keep complainants informed at the key stages but it is important to understand that it is necessary for the Council to go through the procedures and requirements of the planning legal system.

8. What happens if you fail to comply with a condition on a planning permission?

The Council will need to consider the scale of the breach and what the harm is before considering issuing a Notice. As there is no right to appeal a breach of condition notice – and failure to comply is a prosecutable offence - Officers will need to satisfy themselves that the breach reported relates to the reason for the condition and that the breach can be evidenced. For example a breach of operating hours on a site may be having a detrimental impact on residential amenity however if the condition was applied in the interest of highway safety and no highway safety issue are arising, it would not be appropriate to serve a Breach of Condition Notice as the reason for the Notice would not be valid. Before serving a Notice the Council must be satisfied that the breach is persistent rather than sporadic and that it can be evidenced. Without evidence the Council would not satisfy the evidential test for prosecution and therefore could not take any further action.

9. What are priority cases?

<i>Category</i>	<i>Type of development</i>
Category 1 – High priority	When irreversible and serious damage to the environment or public amenity would result. Examples include works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; serious traffic hazards; contamination and or pollution being created, unauthorised caravan sites, or other development where there is actual or imminent residential occupation.
Category 2 – Medium priority	This covers less immediate yet still serious and harmful breaches and is likely to include breaches where building works have just commenced, where severe harm is being created and non-compliance with certain planning conditions (particularly pre-commencement conditions).
Category 3 – Low priority	This category relates to breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities. Such breaches may include untidy sites, non-compliance with other planning conditions, erection of satellite dishes, the unauthorised display of advertisements and the erection of fences.

10. Why have Bath & North East Somerset not taken enforcement action?

In some instances a reported breach may not actually be a breach of control, it may not constitute development or it may be permitted development. No formal action could be taken in these circumstances.

It will not always be expedient to take formal enforcement action; ultimately the Council has to satisfy themselves that it is in the public interest to commence formal action. Where formal action is not taken, or a case is closed Officers will advise the complainant of the decision and justification for the decision.