

PLANNING ENFORCEMENT POLICY





Plymouth City Council Planning Enforcement Policy

**Tackling unauthorised developments and other
planning law offences robustly but fairly...**

**A concise guide for customers explaining what
action the Council will take where planning rules
have not been complied with.**

Introduction;

The integrity of the planning service depends on the Council taking effective enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unauthorised/unacceptable development is allowed to proceed, or remain without any apparent attempt by the Council to intervene.

Planning enforcement is limited to managing development under the terms set out in the Town and Country Planning Act 1990 (as amended). Specifically the service can only deal with breaches of planning control as defined in section 171A of the Act that states;

“the carrying out of a development without the required planning permission, or failing to comply with a condition or limitation subject the which planning permission has been granted”.

Local Planning Authorities have a discretionary power to take enforcement action where unauthorised development has taken place. Unauthorised development includes building works, changes in the use of buildings or land, the appearance of buildings or land, advertisements, works to Listed Buildings, demolition within a designated Conservation Area or works to trees subject to Tree Preservation Orders (TPO).

A decision whether to take enforcement action will be based upon the following criteria:

1. The merits of each case;
2. The aims and objections of the Plymouth and South West Devon Joint Local Plan (JLP); and
3. Whether it is expedient or in the public interest to take enforcement action in respect of the above factors.

This Policy will set out Plymouth City Council’s approach to investigating unauthorised development and our decision making process when deciding whether to take enforcement action.

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Plymouth City Council has introduced this policy to provide the basis for the provision of its Planning Enforcement Services, and as also recommended in Paragraph 58 of the National Planning Policy Framework (NPPF) (February 2019). It has been introduced taking into account:

- The National Planning Policy Framework
- The Government's Planning Policy in respect of Intentional Unauthorised Development, issued in August 2015, which requires weight to be given to the intentional nature of unauthorised development in all planning decisions taken by the Council and Planning Inspectors
- Policies contained within the Plymouth and South West Devon Joint Local Plan (JLP) (March 2019).
- The need to protect, maintain and enhance sites of special control for example Sites of Special Scientific Interest and Plymouth's fifteen valuable Conservation Areas
- The need to protect Plymouth's equally valuable listed buildings and other heritage assets
- The need to ensure compliance with the Council's Article 4 Direction – 'Managing Houses in Multiple Occupation'
- The need to protect the urban and semi-rural environment from unauthorised advertisements
- The need to provide a balance between protecting amenity and enabling good quality acceptable development to take place
- You can find further information on the Strategic Planning & Infrastructure Service's web page on the Plymouth City Council website at <http://www.plymouth.gov.uk> or by telephoning 01752 304366.

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The objectives of the enforcement process are:

- Ensure that the aims and objectives of the Local Plan are adhered to and implemented
- Investigate, resolve and monitor unauthorised development, especially with regard to conservation areas, protected trees and listed buildings
- Monitor compliance with planning permissions, conditions and planning agreements
- Investigate and respond to complaints in an efficient and timely manner
- Maintain public confidence in the planning system

Plymouth City Council's principles of enforcement

- Plymouth City Council will apply its Planning Enforcement Policy in a proportionate and fair manner. This means that there will be a consistent approach to investigation and consideration of enforcement action, but does not mean uniformity.
- We will conduct all investigations with discretion.
- We will actively work to advise and assist with compliance, seeking solutions with all parties.
- We will take into account the circumstances of the case, the degree of harm (or potential harm) and the impact on the wider public interest when considering appropriate action.
- We will make clear reasons why the Council has decided to take or not take enforcement action on a specific case.

Expediency

The use of enforcement powers is discretionary and the Council will take into account a number of factors and will make a judgement about whether to take enforcement action based upon the following criteria:

- Whether the breach of control would unacceptably affect public amenity, including Tree Preservation Orders.
- Whether it would give rise to a serious risk to public safety
- Whether the existing use of the land/buildings merit protection in the public interest

In considering whether to take enforcement action the Council will not give weight to the fact that the development may have already commenced. It is not a criminal offence to carry out development without planning permission, unless this involves a Listed Building or a tree protected under a Tree Preservation Order.

When considering whether to take enforcement action, the Council will take action proportionate to the harm/potential harm caused by the development.

Although pursuing the strongest action wherever necessary, planning enforcement action is a discretionary activity, and may not be pursued in some instances where after very careful consideration this is not considered to be expedient or in the public interest.

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How the Council will deliver the service;

- Prioritising cases in accordance with the Planning Enforcement Protocol and Priority Schedule.
- Investigate all alleged breaches of planning control that are brought to our attention in writing.
- Complaints received by telephone will also be actioned however, complainants will be encouraged to follow up complaints in writing.
- Anonymous complaints will only be registered and investigated where the reported breach is felt to be potentially serious and/or readily noticeable.
- Register and record all written complaints received, and **acknowledge receipt within working 5 days** as well as appropriately updating complainants of the progress of the investigation.
- Retaining confidentially of complainants
- Pursuing a breach of planning control to a suitable conclusion where considered expedient to do so.

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Planning Services

Planning Enforcement Protocol

Plymouth City Council receives on average, 400 planning enforcement enquiries per year. Some of these complaints will require no further investigation because we identify that planning permission already exists for the work, or that planning permission was not required.

Complaints that are logged on our system are allocated to an investigating Case Officer. The officers first task will be to identify whether there is existing planning permission for the development. This will be done in-house using the Council's planning database.

We will then identify whether the potential breach is subject to a time limit for taking enforcement action. The time limits area as follows;

- 4 years in respect of operational development (building or ground works) or the change of use of a building to a single dwelling. Where there is evidence that development has been deliberately concealed an investigation may still be carried out and action taken
- Within 10 years for any other breach of planning control (essentially other changes of use)
- No time limit for breaches related to Listed Buildings.

We will acknowledge planning enforcement enquiries within 5 working days

If the investigating case officer establishes that there is a potential breach of planning control, the officer will categorise the enquiry into one of the priority levels identified on the next page. Whilst we will investigate every enquiry that we receive, the volume of workload means that cases will be prioritised, so that higher risk cases are dealt with first.

NB – As planning enforcement can be a lengthy and legally complex process, it is not possible to give an average time for dealing with a complaint. The time taken for satisfactory resolution can vary considerably from one complaint to another. However, the basic process that is followed remains the same in each case.

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| <p>Level 1: High Priority Immediate action initiated to address the breach of planning control Site Visit undertaken within 5 working days</p> <ul style="list-style-type: none"> - Development that could cause a serious and immediate danger to public health and/or safety - Unauthorised works to a listed building - Unauthorised works to tree protected by Tree Preservation Order (TPO) or situated within a Conservation Area - Any case where the time limit for taking enforcement action expires in the near future - Any unauthorised development, advert or breach of condition which is causing irreparable public harm or danger; including pollution or environmental harm |
| <p>Level 2: Medium Priority Action required promptly, but no immediate harm being caused Site visit undertaken within 15 working days</p> <ul style="list-style-type: none"> - Unauthorised development which would adversely affect the character/appearance of a Conservation Area or setting of a Listed Building - Unauthorised change of use to the detriment of neighbouring amenities - Ongoing development unlikely to be granted planning permission without substantial modification |
| <p>Level 3: Low Priority Breaches of planning that cause limited or no harm to the environment or residential amenity Site visit undertaken within 25 working days</p> <ul style="list-style-type: none"> - Unauthorised development which would be likely to receive planning permission if a planning application were to be submitted - Minor breaches e.g. unauthorised satellite dishes/telecommunication equipment on residential premises - Unauthorised advertisements e.g. fly-posting or banners where the harm to neighbouring amenity is not significant - Unauthorised signage/advertisements (unless the sign/advertisement seriously affects public safety). - Technical permitted development breaches - Neighbour based disputes e.g. other neighbour based disputes that do not meet criteria of high or medium cases. - Minor variations from approved plans |

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Site visits;

The first stage of our investigation will be conducted by researching evidence provided by the complainant, as well as all of the records held of the site by the Council. If we suspect that a breach of planning control has taken place, we may decide to conduct a site visit to investigate further.

If the Council does undertake a formal site visit, we will;

- Act with discretion at all times, especially in cases where we need to view the site from the complainant's address.
- Take a written record of the site visit.
- Take photographs of the site – to be uploaded onto the Council database.

Keeping complainants advised:

- Where we find no breach of planning control you will be informed in writing. In certain instances, you may be referred to alternative services to address the issue.
- Where legal action becomes necessary you will be informed of this in writing and we will endeavour to keep you updated of steps being taken in the case.
- Where a decision has been taken to close an investigation without action, you will be informed in writing of this.

Keeping the contravener advised:

- When a breach of planning control is found, the person(s) concerned will be informed in writing of the action that will be taken.
- When warnings are necessary, these will be issued in writing. There may also be a verbal warning if necessary.
- If no further action is required or if the matter is for another Council department or external body/agency, the contravener will be informed in writing.
- We will maintain an ongoing register of alleged breaches of planning control and a summary of what our investigations have revealed.

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Planning Enforcement – Our commitment:

Openness:

- We will comply with the standards contained in our Enforcement Policy
- We will publish these standards and our annual performance against them
- We will provide information and advice in plain, jargon free language on the rules and regulation we will apply
- We will be open and transparent about the way in which we work
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness:

- We will provide a point of contact and telephone number for each complaint
- We will ensure that where practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays

Complaints about service:

Where disputes about service cannot be resolved you have the right to make a complaint using the 'Have Your Say' section of the Council's website

<http://www.plymouth.gov.uk/homepage/newsandviews/haveyoursay/complaint.htm>

Procedures:

- Our advice will be put clearly and simply, will be confirmed in writing with an explanation as to why action is necessary
- Before formal action is taken, we will usually try to provide an opportunity to discuss circumstances of the case, resolve points of difference, unless immediate action is required
- Where immediate action is necessary, this will be followed up in writing
- Where there are rights to appeal against formal action these will be clearly set out in any correspondence.
- Occasionally an investigation can involve more than one Council department. In these cases, officers will share information and intelligence where necessary.

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| Type of enforcement action | Purpose |
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| Planning Contravention Notice (PCN) | Requires persons to divulge information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action |
| Breach of Condition Notice (BCN) | To secure compliance with conditions specified within a planning permission. |
| Enforcement Notice | To require steps to be taken to remedy the breach of planning control. |
| Stop Notice/Temporary Stop Notice | To require the unauthorised activities to cease. |
| Section 215 Notice | To secure the proper maintenance of land and buildings. |
| Injunctions | To prevent unauthorised development and only used in a very limited number of specific circumstances. |
| Prosecutions | It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed and there is no outstanding appeal. A successful prosecution in the Magistrates Court or Crown Court can result in a fine. |

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Useful Information

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| Permitted Development (PD) | Householders and developers have a degree of entitlement for a limited amount of development, without the need for planning permission. This is termed 'permitted development and is defined in the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) as amended. |
| Boundary Disputes | Disputes regarding land ownership are a private matter and cannot be controlled under planning legislation. |
| Obstructions to the highway or public right of way | These matters are either controlled by the Police, the Council's Street Services team - https://www.plymouth.gov.uk/streetcareandcleaning |
| Trespass on land | This is a private matter and cannot be controlled under planning legislation |
| Operating a business from home where the residential use of the dwelling remains the primary use | You do not necessarily need planning permission to operate a business from a home address. The key test is whether the overall character of the dwelling will change as a result of the business i.e. is the property still mainly a home or has it become a business property? |
| Internal works to a non-listed building | Internal work to a non-listed building does not normally require planning permission. The exception to this rule is internal work that is being carried out to facilitate a change of use i.e. converting a single dwelling into separate residential units. |
| Issues relating to deeds and covenants | Compliance with covenants and other issues relating to deeds are a private matter between the signatories of the documents. |
| Clearing land of hedges, bushes or undergrowth | <p>The clearing of land of hedges, bushes or undergrowth does not normally require planning permission unless the hedgerow is subject to the Ancient Hedgerows Regulations 1997.</p> <p>This covers hedgerows which are more than 20 metres long and are on, or adjacent land used for agriculture, or forestry, the breeding or keeping of horses, ponies or donkeys; common land, village greens, Sites of Special Scientific Interest or Local Nature Reserves.</p> <p>Garden hedges are not affected.</p> |

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| The insertion of windows in houses or bungalows | <p>Once a dwellings has been occupied windows may be inserted into existing walls provided there is not a planning condition to prevent the insertion or additional windows or a restriction set by permitted development rights.</p> <p>N.B Restrictions do not normally relate to ground floor windows.</p> |
| Parking a caravan within the residential boundary of a property provided that it is ancillary to the dwellinghouse | <p>In most cases, caravans are not classified as development and therefore it is only their use that is subject to planning control. Provided the use of a caravan is ancillary to the dwellinghouse (i.e. no occupied as an independent unit of accommodation) it is lawful.</p> |
| Noise arising from construction work | <p>Noise arising from construction work would normally be dealt with by the Council's Public Protection Service</p> |
| The Party Wall Act | <p>The Party Wall Act provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations nearing neighbouring buildings.</p> <p>The Act is separate from obtaining planning permission or building regulations approval and therefore is beyond the scope of planning control.</p> |

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Simplified Flow Chart of Enforcement Investigation Process

