



Bannau
Brycheiniog

Planning Enforcement Charter

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Purpose of this document

The Brecon Beacons National Park Authority as Local Planning Authority is responsible for investigating alleged breaches of planning control. The Brecon Beacons National Park Authority is referred to hereon in as the Local Planning Authority.

The purpose of this Charter is to:

- Provide a summary of planning enforcement and what is a breach of planning control;
- Summarise the enforcement process and powers available to the Local Planning Authority; and
- Set the broad parameters on how the Local Planning Authority will deal with an enforcement complaint including service standards that the Local Planning Authority aims to achieve.

What is enforcement?

The planning system operates to manage land in the public interest in line with planning legislation. Enforcement is the process by which the Local Planning Authority investigates and seeks to resolve breaches of planning control and is one aspect of the development management process.

Some key sources of further information on the enforcement process can be found here:

- [Welsh Government's Development Management Manual](#) including Section 14 Annex of this document, and;
- [Welsh Office Circular 24 /97](#) (Enforcing planning control: legislative provisions and procedural requirements).

What is a breach of Planning Control?

There are two main ways in which a breach of planning control can occur:

- Building works or engineering operations or changes in the use of land or buildings that are carried out without the necessary planning permission.

However, not all building/engineering work or changes of use require planning permission. Many are either considered not to be development at all or are defined as 'permitted development', meaning that an application for planning permission is not necessary. For example, the erection of a small house extension or a garden shed within specified limits may not need planning permission (being classed as 'permitted development').

- Where planning permission has been granted but the approved plans and/or the conditions attached to the approval have not been followed properly.

For example, a building may be larger than shown on the approved plans or a condition that specifies the working hours of a business may have been breached. To assist in identifying such breaches the Local Planning Authority often liaises with the local authority building control and

environmental health departments. Where a breach is suspected, a site visit may be carried out to ensure the development is in accordance with the approved plans.

Planning Enforcement Matters include:

- a) Non-compliance with conditions attached to planning permissions;
- b) Construction not in accordance with the approved plans of planning permissions;
- c) Unauthorised advertisements and signage;
- d) Unauthorised Engineering operations, such as raising of ground levels or earth bunds;
- e) Unauthorised Demolition of buildings or structures in a conservation area;
- f) Unauthorised works to listed buildings;
- g) Unauthorised Works to trees subject of a Tree Preservation Order ("TPO") or any trees in a conservation area;
- h) Unauthorised Building works (i.e. extensions, outbuildings, fences, walls) where this is not permitted development;
- i) Unauthorised Material Change of use of buildings and/or land without planning permission (inc. sub-division of houses to flats / Houses in Multiple Occupation or residential caravans) where the change of use is not permitted development;
- j) Breaches of the Hedgerow Regulations 1997;
- k) Unauthorised mineral workings;
- l) In exceptional cases where the condition of land or buildings is having a significant impact on public amenity; and
- m) Works are urgently necessary to prevent the severe deterioration in the condition of a listed building or to secure the long-term preservation of a listed building.

Please note we will not investigate non-planning enforcement matters relating to:

- a) Party Wall Act issues
- b) Covenant matters
- c) Boundary or ownership disputes
- d) Internal works to a building when this is not a listed building.
- e) Parking of commercial vehicles on the highway or on grass verges;
- f) Malicious complaints (including neighbour disputes)
- g) Wildlife Crime
- h) Anti-Social Behaviour

Reporting a planning control breach

If you suspect there has been a planning control breach and wish to raise an enforcement complaint, you must formally submit a complaint. This can be done in the following ways:

- using the electronic complaints system on the Local Planning Authority's [website](#); or
- in writing via the post

Failing the above being available to you, a complaint can also be verbally reported by calling the Local Planning Authority's Enforcement Team (tel. 01874 620 431).

All complainants need to provide their full name, a phone number, postal address and an email address. **The Local Planning Authority will not process anonymous complaints** (unless the complaint is clearly of a very serious nature, and then investigation will be at the discretion of the Local Planning Authority). This aims to avoid unnecessary resources being expended on hoax or malicious complaints.

To manage complaints effectively the complaint **must include** an address, a grid reference and/or a site location plan, the nature of the alleged breach of planning control and an explanation of the harm that is being caused. Photographs, and diary logs may also be useful if they are available. **Without sufficient information provided, the Local Planning Authority will not register a complaint** unless the complaint is clearly of a very serious nature, and then investigation will be at the discretion of the Local Planning Authority. This aims to avoid unnecessary resources being expended on unsubstantiated or potentially malicious complaints.

Your details will remain confidential and will be processed in line with the requirements of relevant General Data Protection Regulations (GDPR). Please note however that while sensitive information will not be divulged, the Local Planning Authority has a duty to respond to requests under the Freedom of Information Act, Environmental Information Regulations, Data Protection Act and UK GDPR.

In order to comply with GDPR requirements, if you submit a complaint that is more appropriately dealt with by another agency, such as the police, Local Authority or Natural Resources Wales (NRW) we will not be able to pass on your complaint, you will have to contact them directly.

If the information is required for use as evidence in court, the Local Planning Authority will make all reasonable efforts to inform you before disclosing any information. We may also need to contact you prior to any site inspection being carried out to seek further information or clarification from you regarding the details of the alleged breach.

What is the enforcement process?

General

Enforcing compliance with planning controls can be both time consuming and complex. It will not always be expedient to enforce. In many cases the Local Planning Authority will try to negotiate compliance rather than pursue formal action although in those cases where serious environmental damage or demonstrable harm is being caused on the local amenity of the area, or where damage is being caused to protected landscapes, trees and listed buildings, the Local Planning Authority will use the full range of its enforcement powers to bring the matter under control.

Whilst it is a criminal offence to carry out unauthorised works to a listed building or a protected tree, or display an unauthorised advertisement it is not illegal or an offence to

carry out a development or use that does not have proper planning permission. It is merely unauthorised and no criminal offence has been committed. Any such unauthorised development is carried out by the contravener at their own risk, and could be enforced against if the Local Planning Authority considers it is expedient to do so (e.g. building works might be required to be removed or significantly altered). Only when the Local Planning Authority has served formal enforcement or similar notices, all avenues of appeal have been exhausted and time periods for compliance have expired, does the person responsible for the unauthorised use or development become liable to prosecution and, if found guilty, acquire a criminal record. Appendix 1 of this Charter includes further information on the various enforcement powers and tools.

The person against whom an enforcement notice is served has rights of appeal which must be respected and this can result in some delay in securing a resolution of the matter.

The Process

Upon receipt of a valid complaint the broad steps the LPA will follow are set out below:



Registration & Acknowledgement

The Local Planning Authority will undertake an initial check of all complaints received to ensure they are valid. This entails checking:

- a) the complaint relates to a planning related matter
- b) the complainant has provided their own postal address and contact details
- c) the exact location of the alleged breach has been adequately identified (e.g. address, a grid reference and/or a site location plan)
- d) the complainant has identified the harm being caused by the alleged breach (i.e. what impact is the matter having upon you/the environment/amenity or character of area?)

The Local Planning Authority will aim to acknowledge complaints within 5 working days from receipt. In cases where the complaint is deemed invalid we will provide the complainant an opportunity to submit the required information before advising the complaint has not been registered. Where it is considered that the matter is one which is more appropriate to another Agency, the complainant will be advised and the case will not be registered.

Valid complaints will be given a case reference and a registration letter setting out reference and investigation process will be sent to the complainant.

Where a matter has previously been investigated the Local Planning Authority will only register a new investigation where significant evidence of intensification is received and an unacceptable level of harm is identified.

SERVICE DELIVERY TARGET 1: Register and acknowledge all valid enforcement complaints within 5 working days from receipt.

Investigation

The case officer to whom the matter is allocated will undertake an investigation into the complaint. This often requires a site visit (but not always) and photographs may be taken from the site and/or from adjoining land to assist with investigation.

Should a breach of planning control have been established through the course of an enforcement investigation then consideration needs to be given to whether it is **expedient** for the Local Planning Authority to take enforcement action. A decision will be taken in accordance with the Local Planning Authority's Scheme of Delegation which may necessitate a decision to be taken at Planning Committee (enforcement matters are considered in confidential session) or the matter may be delegated to officers. This does not, however, mean that formal action will be taken. The taking of formal action is discretionary and such action is limited to the most serious cases where harm arises and action is warranted in the public interest.

The Local Planning Authority can only use its enforcement powers effectively if there is **sufficient robust evidence** available to demonstrate clearly that a breach of planning and/or listed building control has occurred.

During the investigation the case officer will aim to:

- a) Establish whether a breach of planning control, listed building control or other planning enforcement matter has taken place.
- b) Where a breach has occurred the Local Planning Authority will–
 - i. try to negotiate a solution with the "transgressor" if the development/use can be stopped or if there is a possibility that planning permission might be granted.
 - ii. consider the expediency of taking formal enforcement action having regard to the development plan and all other material considerations. If it is considered that formal action is required, the complainant shall be notified at this stage.
 - iii. gather sufficient robust evidence as necessary to be satisfied that formal action is justified.

- iv. notify the complainant in writing if the Local Planning Authority does not consider that formal enforcement action is expedient. This written notification will set out the reason/s why the Local Planning Authority is not taking any further action.
- c) Where there is no breach found, or otherwise investigation discovers that another agency is more empowered, the complainant will be notified that no action is proposed.

In certain cases the complainant may be asked to assist the Local Planning Authority by providing evidence at an appeal or in Court. Before this happens the Case Officer will ask for the complainant's consent. If the complainant is unwilling to give consent it is possible that the Local Planning Authority would be unable to take further action.

Enforcing planning control breaches is a discretionary power, not a duty and the Local Planning Authority will make a judgement about whether it is expedient to enforce. Ultimately however, the action should be sufficiently supported evidentially and in the public interest.

Authorisation of Prosecution

All prosecutions must meet both limbs of a test set out in the Code for Crown Prosecutors. In all prosecutions there must be:

- **Evidential sufficiency – sufficient admissible evidence that there is a realistic prospect of conviction; and**
- **Public interest – it must be in the public interest to prosecute.**

If either of these tests is not met, then a prosecution cannot be brought. A prosecutor must keep both limbs under review throughout the life of any case. The decision on whether either limb is met is a legal decision, initial taken by the Local Planning Authority's Solicitor and ultimate responsibility for that decision rests with the prosecution advocate in court.

Investigation Complete

The complainant will be advised when the investigation has been completed. An investigation is considered complete when the following outcomes have been reached:

- a) no breach of planning control has occurred or the breach has been removed;
- b) a breach has occurred but the Local Planning Authority has formally determined that planning enforcement action is not expedient;
- c) a breach has occurred, planning enforcement action is expedient and a formal decision has been made by the Local Planning Authority to issue an Enforcement Notice (including an Enforcement Warning Notice, Breach of Condition Notice, Listed Building Enforcement Notice or Notice Requiring the Proper Maintenance of Land) or bring a prosecution against an offender in cases where unauthorised works are an offence (e.g. advertisements, works to a listed building, works to protected trees, etc.); or
- d) the receipt and approval of a valid planning application (including Non-Material Amendment, Discharge of Condition, Certificate of Lawfulness, Advertisement

Consents and Listed Building Consent applications) proposing retention of the development or the regularisation of the breach at the site.

- e) a further outcome is where enforcement action would be expedient but that a period of time has been allowed for the contravener to remediate the breach voluntarily.

SERVICE DELIVERY TARGET 2: We will aim to complete* investigations regarding a valid enforcement complaint within 84 days from date of receipt.

**'Investigation complete' means that the Local Planning Authority has investigated the alleged breach and advised the complainant of one of the following outcomes: - that no breach of planning control has occurred; a breach has occurred but it is not expedient to pursue the matter or that a breach has occurred and enforcement action will need to be pursued.*

Decision

The complainant will be notified upon closure of the case.

SERVICE DELIVERY TARGET 3: We will aim to resolve* investigations regarding a valid complaint within 180 days from the date of receipt. Where this has not been possible, the complainant will be notified in writing of the reasons for the delay.

**Resolution is closure of the case as a result of the cessation of the breach in a number of ways. Either that:*

- *planning permission has been granted through a planning application or enforcement appeal;*
- *an enforcement or breach of condition notice has been complied with;*
- *the breach of control is ceased by the developer; or*
- *direct action by the Local Planning Authority removes the breach of control.*

The Local Planning Authority's decision on an enforcement investigation is final in terms of material planning considerations and whether to move to formal enforcement action or not.

Timescales

It is appreciated that the length of time taken to investigate complaints and consider enforcement action can sometimes be frustrating to complainants. Some of the factors which can result in apparently slow progress include:

- the gathering of satisfactory robust evidence;
- continuing negotiation to try to resolve the matter with the offender without pursuing formal action;
- consideration of a planning application seeking to remedy the matter; and
- awaiting determination of an appeal against formal Notices.

The timescale for 'resolution' is often dependent on factors outside the control of the Local Planning Authority, such as the complexity of the case, and the time taken for determination of an appeal and subsequent compliance periods.

Proactive Enforcement

The Local Planning Authority will undertake proactive planning enforcement where resources allow to check compliance with planning control. However it will not investigate complaints made on the basis that there is a belief someone is going to carry out unauthorised development.

APPENDIX 1

Enforcement Powers/Tools

Listed below is a brief description of the main enforcement powers available to the Local Planning Authority should it be considered expedient to take enforcement action. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Local Planning Authority will seek to use the most effective power available to remedy a breach of planning control.

Listed Building Urgent Works Notice

An Urgent Works Notice (UWN) may be served where works are urgently necessary for the preservation of a listed building. A Schedule of Works is prepared by the Local Planning Authority and accompanies the Urgent Works Notice which is served on the owner of the Listed Building. The owner may then decide to undertake the necessary works. Completion of works is required within e.g. 28 days. If the owner does not carry out those works, the Local Planning Authority must carry them out and attempt to recover the costs from the owner.

Listed Building Repairs Notice

If a listed building is not being properly maintained, the Local Planning Authority can compulsorily purchase it after serving what is called a "Repairs Notice" which gives the owner an opportunity to carry out the necessary works, contained in a Schedule of Works prepared by the Local Planning Authority.

Planning Contravention Notice

This Notice enables the Local Planning Authority to require detailed information about suspected breaches of planning control.

A Planning Contravention Notice may require the person on whom it is served to give information such as:

- details of all operations being carried out on the land which might be suspected as being a breach of planning control;
- matters relating to the conditions or limitations subject to which any planning permission has been granted;
- names and addresses of any person known to use the land for any purpose; and
- the nature of any legal interest in the land and the names and addresses of any other person known to have an interest.

The service of a Planning Contravention Notice does not stop the Local Planning Authority taking other formal action against a breach of planning control. The recipient of a Planning Contravention Notice has 21 days to respond to it, but if there is no response a legal offence

has been committed which can be subject to prosecution by the Local Planning Authority in a Court of Law.

The penalty for non-compliance with a Planning Contravention Notice can result in a fine of up to £1,000. Similarly, if any person makes a false or misleading statement he/she shall be guilty of an offence on conviction (maximum penalty £5,000).

A Planning Contravention Notice cannot be served in respect of any suspected breaches of listed building control or other matters that would constitute an offence.

Similar tools to the Planning Contravention Notice are Requisitions for Information under Section 330 of the Town and Country Planning Act 1990 and Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

Enforcement Warning Notice

Where the Local Planning Authority considers that, subject to the imposition of conditions there is a reasonable prospect that, if an application for planning permission in respect of the unauthorised development were made, planning permission would be granted, an Enforcement Warning Notice (EWN), giving a specified period within which, the application must be made, can be issued. The issue of an Enforcement Warning Notice will 'stop the clock' in terms of the unauthorised development gaining immunity from enforcement action.

Enforcement Notice

This is the principal form of Notice used to deal with unauthorised development. As in all other forms of action it is subject to the Local Planning Authority and its legal advisors being satisfied that a breach of planning control has occurred.

Above all, the Local Planning Authority must be satisfied that it is expedient to serve an Enforcement Notice having regard to the development plan and to any other material considerations.

Such a Notice must specify the time at which it takes effect, what steps must be undertaken to remedy the breach and a time period in which those steps must be undertaken.

An appeal against an Enforcement Notice must be made before the date on which the Notice takes effect (normally within 28 days of service). If an appeal is made, the requirements of the Notice are suspended until the appeal has been decided.

Non-compliance with the requirements of an Enforcement Notice is a criminal offence against which the Local Planning Authority can instigate prosecution proceedings. The maximum fine in the Magistrates Court is £20,000 and is unlimited in the Crown Court. The Local Planning Authority can also enter the site and carry out the works required by the Notice in default and then seek to recover its costs from the owner/occupier.

Listed Building Enforcement Notice

This is similar to an Enforcement Notice. The Notice may (a) require the building to be brought back to its former state; or (b) if that is not reasonably practicable or desirable,

require other works specified in the Notice to alleviate the effects of the unauthorised works; or (c) require the building to be brought into the state it would have been in if the terms of any listed building consent had been observed. The Notice must specify time constraints for securing compliance with the requirements of the Notice.

There is a right of appeal against a Listed Building Enforcement Notice. The procedures are similar to those for an appeal against an Enforcement Notice.

If works subject to a Listed Building Enforcement Notice are later authorised by a retrospective application for Listed Building consent, the Listed Building Enforcement Notice will cease to have any effect although the liability to prosecution for an offence committed before the date of any retrospective consent remains.

Breach of Condition Notice

If any conditions imposed on a grant of planning permission or listed building consent have not been complied with, the Local Planning Authority can serve a Breach of Condition Notice to require the recipient to secure compliance with the condition/s.

The Breach of Condition Notice will specify the steps which the Local Planning Authority considers should be taken or the activities which the Local Planning Authority considers ought to cease, in order to secure compliance with the condition/s specified in the Notice.

There is no right of appeal against a Breach of Condition Notice although the Local Planning Authority's decision to issue a Breach of Condition Notice can be challenged in the Court.

If the requirements of the Notice have not been met within the prescribed period, the person responsible is in breach of the Notice and shall be guilty of an offence on conviction (maximum penalty £1000), should the Local Planning Authority decide to prosecute the matter.

Injunctions

Where the Local Planning Authority considers it necessary or expedient for any actual or apprehended breach of planning or listed building control to be restrained, it can apply to the Court for an injunction. Such action would normally only be sought if the breach was particularly serious or protracted and was causing, or was likely to cause, exceptional harm to the local environment. Failure to comply with an injunction may result in imprisonment.

Stop Notice

The Local Planning Authority can serve a Stop Notice at the same time as an Enforcement Notice where it considers it expedient to take urgent action, in order to bring a particularly offensive activity to stop sooner than an Enforcement Notice.

The exercise of the power to serve a Stop Notice is discretionary, and the fact that it is expedient to issue an Enforcement Notice, will not automatically mean that it will be expedient to serve a Stop Notice. If a Stop Notice is served it will have effect either immediately or within a few days and even if an appeal is made against the accompanying

Enforcement Notice, the Stop Notice must be complied with or otherwise the Local Planning Authority can prosecute the offender.

As a breach of listed building control is in itself a criminal offence, there is no need or provision for serving a Stop Notice in respect of a breach of listed building control.

Temporary Stop Notice

If it is expedient that unauthorised development should be stopped immediately, yet the Local Planning Authority requires time to arrange an effective enforcement response, a temporary stop notice (TSN) can require an activity which is a breach of planning control to stop immediately.

Section 215 Notice

The Local Planning Authority can serve a Section 215 Notice on the owner/occupier of any land or building which is considered to be in an untidy condition to the extent that it is having an adverse effect on the amenity of a neighbourhood. The Notice requires the person/s on whom the Notice is served to tidy up the site and if this is not undertaken legal proceedings can be taken by the Local Planning Authority.

Advertisements

Some advertisements may not be displayed without prior approval by the Local Planning Authority. In such cases, the Local Planning Authority can prosecute persons responsible for displaying an illegal advertisement or serve a Discontinuance Notice (in cases where an advertisement does not need express consent but where it causes "substantial injury" to the amenity of the locality or a danger to members of the public)).

Hedges

The Local Planning Authority can serve a Hedgerow Replacement Notice requiring the replanting of a hedgerow which has been removed without compliance with the Hedgerow Regulations 1997.

Prosecution

In instances where a criminal offence has been committed (non-compliance with the above notices; unauthorised works to listed buildings; unauthorised hedgerow removal, unauthorised works to trees; unauthorised display of advertisements), consideration will be given to prosecution.