

# **Strategic Development & Planning | Place**

## **Compliance and Monitoring Plan**



# 1. Introduction

Paragraph 207 of the National Planning Policy Framework states:

*‘Enforcement is important as a means of maintaining 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.’*

Planning Enforcement Policy DM11 of the adopted North Devon & Torridge Local Plan states that:

*‘Unauthorised development will be investigated by the Local Planning Authority, acting proportionately to the scale of the suspected breach of planning control. Enforcement action will be taken where it is appropriate to do so and in the public interest.’*

The Supporting Text explains that:

*‘Managing development and the investigation of suspected breaches is an important function of a Local Planning Authority. Unauthorised development can be detrimental to the local environment and be a source of social tension. Failure to enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system.’*

*When undertaking investigations, the Local Planning Authorities will act in proportion to the scale of the suspected breach to which it relates. The Local Planning Authority will then take enforcement action where it deems such action to be appropriate, having regard to the scale of the breach and the impact on public amenity.’*

*To ensure that enforcement is managed proactively and in a way that is appropriate to northern Devon, the Local Planning Authorities will publish a Local Enforcement Plan. This document will set out the Councils’ approach to enforcement, including timescales for action and detailing how the Councils will respond to suspected breaches.’*

## Our Aim

We appreciate that development (whether unauthorised or approved) can be very disruptive and cause a great deal of upset to our residents and the community. We believe that the timely investigation of concerns and effective communication can help reduce distress.

Our aim is to ensure development:

- is delivered in a manner that is environmentally acceptable
- does not significantly harm amenity
- accords with the North Devon & Torridge Local Plan
- supports our corporate priorities

The purpose of this plan is to explain:

- how we work as a compliance, enforcement and monitoring team
- how our work may affect you
- the possible outcomes of our investigations
- what can happen when we take enforcement action

## 2. Investigation

### Proactive investigation

We undertake a number of proactive measures to uphold the integrity of the planning system as follows:

- monitor identified developments to check whether they are in accordance with the approved plans and that conditions have been complied with
- intervene early on major developments to protect the amenity of local residents
- monitor s106 agreements to ensure public benefits are secured
- check temporary planning permissions to ensure that unauthorised development does not continue
- identify listed buildings in disrepair and negotiate improvement to protect the integrity of such buildings
- identify untidy sites and negotiate improvement to enhance the visual appearance of the area
- identify unauthorised advertisements that adversely affect the amenity of the area or result in a highway safety concern

### Reactive investigation

We receive hundreds of requests from the public each year and will respond to new concerns, some of which are where no permission is in place. We will give priority to those allegations where there is significant public interest. We will investigate each allegation impartially and make decisions based on our policies.

We may share information with other council services. If the enquiry refers to a different council/statutory body or another of our services, we will pass it to the appropriate body and inform the source of the complaint that we have done so. We will not discuss or disclose the source of a complaint.

### Reporting a breach of planning control

You can report an alleged [breach of planning control](#) on our website or contact our customer service team on 01271 327711. The customer services team can also help with general planning enquiries. We may not investigate anonymous allegations.

When you report an alleged breach of planning, we require specific information to be able to understand the problem and investigate. Initially we need:

- your contact details and we encourage you to provide an email address
- the exact location of the site (a map would help)
- the details of the person or organisation who may be responsible
- the date you were aware that the works or activity began
- the nature of works or activity (including photographs, if you wish)
- to know the problem and how it impacts you, the community or the environment
- the planning application number if you suspect a breach of a condition attached to a planning permission
- details of any neighbour disputes

## **What we do when we receive a report of an alleged breach of planning control**

- assess whether the concern is a planning issue
- refer any non-planning issue to the appropriate authority or body
- check whether we are already investigating the alleged breach
- where no current investigation exists, register a new record on our management system
- send an acknowledgement and advise you which officer will be investigating the allegation
- ensure we know the location of the site
- check the planning history of the site
- undertake other desktop checks of the site such as a history of aerial images
- schedule a site visit

## **What we investigate**

- unauthorised building or engineering works
- unauthorised changes of use to a building or land
- unauthorised advertisements
- unauthorised works to listed buildings
- unauthorised demolition
- untidy sites that are harmful to the amenity of a neighbourhood or part of the countryside
- non-compliance with plans and conditions imposed on planning permissions
- hedgerow/tree removal

## **What we do not investigate**

- anonymous allegations
- neighbour boundary disputes
- property and land ownership issues
- persistent complaints we have previously investigated and we consider have been resolved
- breaches of covenants between landowners or trespass issues
- malicious or vexatious reports
- loss of views
- alleged reduced value of property or land
- competition between businesses

## **How we investigate – we will:**

- act professionally and impartially when undertaking our work and we will not take sides. Our role is to investigate, establish the facts and make a decision based on our policies and the legislation
- undertake our work in accordance with our service standards as set out in section 3 of this plan
- act immediately to investigate allegations of unauthorised works (known as a breach) to listed buildings and unauthorised demolition
- aim to investigate all planning related concerns in order to decide whether action should be taken, although anonymous complaints may not be investigated
- in most cases visit the site to gather evidence, take photographs and measurements

Some alleged breaches may be difficult for us to investigate. It could be that the alleged breach only occurs occasionally. In such circumstances, we may ask the person who has reported concerns to keep a record of the activity (possibly over a period of weeks) and then submit a log to us for consideration. This evidence may be heard in court if we decide to take enforcement action. If we intend to take court action and use evidence obtained from the public we will discuss and agree their role as a witness prior to taking such action.

Our officers carry leaflets explaining what we do and how the process works. Although we do not normally make appointments or notify the owner/occupier when we visit a site, we may speak to them to obtain further information such as contact details.

Our officers are [authorised to enter land](#) at any reasonable hour to:

- ascertain whether there is or has been any breach of planning control on the land or any other land
- determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land
- determine how any such power should be exercised
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land

This right is limited to that which is essential for effective enforcement of planning control. The phrase "or any other land" means that if necessary neighbouring land can be entered, whether or not it is in the same ownership, or is being occupied by the person whose land is being investigated.

We can apply to the magistrates' court for a warrant to enter land if we have already been refused entry or believe that we will be refused entry. We may ask the Police to accompany us when executing the warrant.

During the investigation, we may seek advice from planning consultees such as the conservation officer, landscape and countryside officer or Devon County Council highways. Once we have completed the investigation we will pass a report of our findings to a planning officer who will consider the facts and decide whether there has been a breach. If a breach has occurred, the planning officer will then decide what action (if any) is necessary to remedy the breach. We work jointly with planning officers when negotiating compliance with people to resolve breaches.

### **Following an investigation**

Once we have completed our investigation a planning officer will decide whether:

- a breach has occurred
- the breach is environmentally acceptable, does not significantly harm amenity, accords with the North Devon & Torridge Local Plan and supports our corporate priorities and if so, no further action will be taken
- to request the owner of the building or land to take action to remedy an unacceptable breach
- we are in time to take enforcement action

We will also decide whether to take enforcement action without entering into negotiation.

It is worth noting that it is not a criminal offence for someone to carry out building works (or, to change the use of land) to a non-listed building without planning permission. The Town and Country Planning Act 1990 allows for the submission of a [retrospective planning application](#) following a breach. However, we will not encourage the submission of a planning application if we decide that the breach is unacceptable, when judged against our policies.

Enforcement action is discretionary and we do not take action against every breach we uncover. We will:

- act proportionately to the scale of the breach
- not take action in respect of unauthorised works that are acceptable and accord with our policies
- not seek the submission of a planning application simply to regularise unauthorised works that are otherwise acceptable
- try to negotiate the submission of a planning application to regularise works that require change to make them acceptable and/or when we wish to control the development by imposing conditions when we grant planning permission
- exercise discretion when negotiating timeframes for submission of a planning application
- try to negotiate compliance when we consider that a breach can be remedied in a timely manner and we will exercise discretion when negotiating timeframes
- take robust and timely enforcement action when we consider it necessary, proportionate and in the wider public interest, in order to maintain the credibility of the planning system
- consider [declining to determine a retrospective planning application](#) if an enforcement notice has already been issued in respect of any part of the development

Although we may negotiate with a planning agent who is representing a landowner, the way we work and the process we follow will not alter. If we are unable to reach a resolution, we may still take enforcement action to remedy the breach.

We will advise the person who has reported the breach of the outcome of our investigation and explain our decision. Our service standards detailed in section 3 of this document sets out the timeframes for our work. We request that the public do not contact us for an update while the investigation remains within the timeframe.

The following are possible outcomes of an investigation:

**No breach identified** - sometimes, there is no breach and we will take no further action. It could be that the works do not need planning permission. This would include extensions and garden outbuildings built under a householder 'permitted development rights', or the use of part of a house for the owner's hobby or in connection with their business, as long as the property is still mainly used as a dwelling.

In some cases, the works or use may already have planning permission. Implementation of a planning permission must normally begin within three years of the date of the decision. We cannot normally require the development to be finished within a set timeframe.

**A breach has occurred, but the works are minor and are acceptable** - not all breaches of planning require further action. If the planning officer decides that the breach is acceptable, we will not take any further action. In these instances, we will advise the landowner that planning permission is required and close our record. We will not seek to



regularise small scale or trivial breaches. Unauthorised works are undertaken at a landowner's own risk. Many property owners do decide to apply for retrospective planning permission because it may be in their interest to do so, as they may need to demonstrate that there is no ongoing planning breach when they come to sell or refinance.

We cannot take action if the breach may be beyond the [time limit allowed for enforcement action](#). The works or use may have become lawful because of the passage of time, even if it did not have permission in the first place. We will be unable to take enforcement action if the landowner can prove that the breach is beyond the time limit allowed.

**A breach has occurred but the works may be acceptable** - some breaches may become acceptable with minor alterations and the submission of a planning application. The planning officer may decide that a development is acceptable but only with the imposition of a specific condition on the grant of planning permission so that we maintain control over the development. In these instances, we will request the submission of a retrospective planning application to resolve the breach.

We appreciate that a planning application can take time to arrange. We will allow reasonable time for the submission of a retrospective planning application. Where cases are less clear we may ask the landowner to submit a [pre-application enquiry](#) so that the planning officer can assess the merits of the development informally first and then provide written advice prior to the submission of a retrospective planning application. There is a fee for a pre-application enquiry.

**An unacceptable breach has occurred** - if we believe that the landowner can remedy a breach easily and relatively quickly, we will try to negotiate with them to agree the required action and reasonable timeframe for compliance. We will explain that if they do not take action to remedy the breach we will consider enforcement action. Where possible, we aim to work with the landowner in order to resolve the breach and we will try to be flexible with timeframes.

However, there are some breaches where we decide that negotiation would not be appropriate and so we would take enforcement action in the first instance. Examples of these could be where:

- the breach causes ongoing significant harm to the environment or the amenity of people or the local area
- the landowner has persistently carried out unacceptable works
- the time limit allowed for enforcement action is due to expire
- negotiation to remedy the breach may take several months without any guarantee of resolution

We will inform the relevant ward member if we decide enforcement action. The action could include one or more of the following:

- planning contravention notice - to require a person to provide information before we issue an enforcement notice
- enforcement notice - to require action to remedy the breach of planning control. If we issue an enforcement notice or a listed building enforcement notice, we publish these on our website, for the public to see
- breach of condition notice - to secure compliance with conditions specified within a planning permission

- stop notice - can be issued with or after an enforcement notice to require a relevant activity to cease
- temporary stop notice - where urgent action is required to stop a relevant activity immediately
- planning enforcement order - granted by the court to allow enforcement action to be taken if a breach has been deliberately concealed
- section 215 notice - to secure the proper maintenance of land and buildings
- prosecution - it is an offence to breach the requirements of a notice, to undertake works to a listed building without consent or display an advertisement without consent. We will consider a prosecution to secure a remedy to the breach and on conviction, we will apply for our costs
- injunction - we can apply to the high court or county court for an injunction to restrain a breach of planning control
- confiscation order - we can apply to the crown court for a confiscation order when someone is convicted in a magistrates' court of breaching the requirements of a notice and has directly financially benefitted from their criminal activity

More detail of the possible enforcement action is contained in section 7 of this plan.

## Appeals

We will normally suspend enforcement action if an appeal is made to [The Planning Inspectorate](#) against:

- the refusal to grant retrospective planning permission or
- the issue of an enforcement notice to remedy a breach of planning control

If The Planning Inspectorate:

- allows an appeal and grants retrospective planning permission with no conditions, we will close the investigation and take no further action. If conditions are imposed we may check that these are complied with
- dismisses an appeal against the refusal to grant retrospective planning permission we will consider enforcement action to remedy the breach of planning control
- quashes an enforcement notice and grants retrospective planning permission we will remove the enforcement notice from our website. If conditions are imposed we may check that these are complied with
- upholds an enforcement notice, we will publish the appeal decision on our website and seek to secure compliance with the steps required by the enforcement notice. This may involve further enforcement action

## 3. Our service standards – how quickly we aim to carry out our work

We set milestones for each case that we investigate. We aim to:

- register & acknowledge 90% of enquiries within three days of receipt
- visit 75% of sites within 21 days of receipt
- decide on a course of action on 75% of cases within 42 days of receipt
- advise the person who reported that allegation of our decision or provide an update within 56 days (eight weeks). We will not provide an update before the expiry of the initial eight weeks period, unless we make a decision within the period.

A minority of breaches take longer than usual to resolve. We are unable to set a service standard for cases where we take enforcement action.

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## How much can we tell you about our work?

- If you have reported an alleged breach, we will try to provide you with an update every eight weeks. We will write to you to inform you of our decision
- We will not be able to give you specific detail or let you see our records as much of our work is not publicised and protected by data protection laws
- If you are responsible for a breach and we require you to take action, we will write to you to tell you what you need to do. Although in most instances, we will open negotiation with you to try to find a resolution, we will sometimes take enforcement action without entering into negotiation if we decide that the breach is so serious
- We will not disclose the source of a complaint

## 4. Partnerships

We work closely with ward members as well as town and parish councils and may attend meetings to help us understand community concerns and priorities first hand. We will listen to local concerns and take those into account when investigating and making decisions.

We will share additional information about our investigations and activities with ward members and parish councils and provide them with access to our online enforcement tracker so that they can monitor the progress and outcomes of investigations in their local area.

Our officers have limited powers provided by Devon and Cornwall Police under the [Community Safety Accreditation Scheme](#) and we work closely with colleagues in other council services to improve community safety. We may use drones and body cameras when undertaking our investigations.

Some requests for planning investigation are relevant for some of our other services or external agencies, whose powers may be more effective. Subject to [data protection](#) compliance, we will share information with other services and external partners and undertake joint visits and investigations with them to avoid duplication of tasks and to reach a quicker resolution. We work alongside and may share information with the following services:

- building control - how building work is undertaken; dangerous structures.
- environmental health - community protection, noise, fumes, vibration, food safety, noisy parties, fly tipping, environmental crime
- licensing - behaviour in licensed premises, sales of alcohol and cigarettes to minors, public order, night time uses, animal boarding, houses in multiple occupation
- private sector housing - housing options, inspection of privately rented accommodation
- revenues and benefits - council tax, business rates and housing benefit
- waste and recycling - domestic and trade waste collections
- legal services – advice and court action

In some cases, a multi-agency approach can achieve the best outcome. We also work with:

- Devon County Council
- Devon and Cornwall Police
- Environment Agency
- Fire Service
- Historic England

## 5. Chargeable Services

Whilst we fund most of our work, some elements of our service attract a fee. The following are chargeable services:

- pre-application advice to determine details required for the submission of a retrospective planning application following an investigation
- written confirmation to a landowner and/or interested party that we intend to take no further action following an investigation
- issue an enforcement compliance certificate or provide written confirmation of compliance with an enforcement notice. This may include a charge if a site visit is necessary
- application to withdraw an obsolete enforcement notice from the enforcement register and land charges record (considered on a case by case basis)

## 6. [Human Rights](#)

We will ensure that we adhere to the following relevant relevant articles of the European Convention on Human Rights, adopted by the Human Rights Act 1998 when carrying out our planning investigation, compliance and enforcement work:

Article 6	Right to a fair trial
Article 8	Right to respect for private and family life
Article 14	Prohibition of discrimination

## 7. Enforcement Action

Once we have decided to take enforcement action we will consider the most appropriate action in order to remedy the breach of planning control. The tools available to us and their use will vary depending on the nature of the breach and the level of harm that we consider is being caused. They are as follows:

**[Planning contravention notice](#)** - we serve this notice when we intend to take issue an enforcement notice and require information from the landowner before we do so.

**[Enforcement notice](#)** - we issue an enforcement notice where there has been a breach which causes significant harm or where our attempts at negotiation have failed. In the case of physical works / changes in land use, we issue this notice on each owner of the land and any other person with an interest in the land (for example, a mortgage company). This notice describes:

- the location of the land affected
- the breach of planning control alleged
- reasons for issuing the notice
- alleged breach
- the period when action is required
- what action is required to remedy the breach
- the date the notice takes effect

Once we have served this notice, the recipient has a right of appeal to [The Planning Inspectorate](#). If an appeal is made we will normally suspend further enforcement action until The Planning Inspectorate has made a decision. We cannot issue an enforcement notice against a breach that took place more than four years ago (building / engineering works or change of use to a dwelling), or ten years ago (for other breaches), unless the person responsible for the breach had deliberately concealed it.

**[Breach of condition notice](#)** - we can serve this notice to deal with a breach of conditions imposed on a planning permission (except in dealing with breaches of conditions relating to a listed building, or conservation area consent). Before we serve a breach of condition notice, we require evidence of a breach of a valid and enforceable planning condition. This notice must state what action the recipient needs to take to comply with the condition and give a deadline for complying, which is not less than 28 days. The owner has no right of appeal to The Planning Inspectorate against this notice. We cannot serve this notice against a breach that took place more than ten years previously, unless the person responsible for the breach had deliberately concealed it.

**[Stop notice](#)** - can be issued to accompany or follow an enforcement notice in order to require a relevant activity to cease on any part of the land to which the enforcement notice relates.

**[Temporary stop notice](#)** - can be issued where it is necessary to stop a breach of planning control immediately. The notice is only valid for 28 day after which we must take alternative enforcement action if necessary.

**[Planning enforcement order](#)** - if a developer or owner has deliberately concealed unauthorised development we can apply to the magistrates' court for this order. If the court agrees and approves the order, we can take enforcement action at any time up to 22 days after the court's decision.

**[Listed building enforcement notice](#)** - this notice relates to listed buildings only and is similar to a planning enforcement notice, in that we must clearly explain the breach, what action is required to remedy the breach and provide a timeframe for complying with the notice. There is no time limit for us taking enforcement action against a breach involving a listed building.

Other **[listed building and conservation area](#)** action - when work has been carried out to a listed building without our consent or when a building has been demolished in a conservation area without our consent, we have the option to prosecute the offender (we decide this on a case-by-case basis). We can prosecute the building owner and / or the person who carried out the work if they are not the same. We are more likely to prosecute if the breach involves the permanent destruction of the historic fabric of a listed building or if a particularly important listed building, which makes a positive contribution to the character and appearance of a conservation area has been damaged by the unauthorised building work. We may also consider compulsory acquisition of a listed building in need of repair.

**[Completion notice](#)** - if we believe that a development is not going to be finished within a reasonable timeframe we can serve a completion notice stating that the planning permission will cease to have effect, once a further period of at least 12 months has expired. We can then consider additional enforcement action.

**[Section 215 notice](#)** - if the condition of land is causing significant harm to the amenity of an area we have the power to require its proper maintenance. If we serve this notice, we must

specify what action is required to improve the condition of the land and give a timeframe for compliance. If nothing happens, we have discretion to extend the deadline, prosecute the offender or to take direct action.

**Direct action** - if we have issued an enforcement notice and the requirements of it have not been met we have the power to take direct action. If we take direct action and are unable to recover the cost from the landowner, we may place a charge on the land to recover costs. In all cases, before we decide to take direct action we will:

- assess if the breach is continuing to cause significant harm or cause harm over a wide area
- look at the overall costs of carrying out the action and the prospects of recovering any costs
- assess any risks to the health and safety of our employees, contractors, the owner or occupier(s) of the property
- check whether the direct action is consistent with our corporate objectives and overriding objectives of national planning policy

**Hedgerows** - the local planning authority determines hedgerow removal notices received by it. We have the power to issue notices to replace and/or retain a hedgerow.

**Advertisements** - if someone displays an advertisement without consent and it causes visual harm to the area or results in a highway safety concern we have the right to prosecute the offender. We also have power to remove structures used to display adverts and adverts themselves, in some circumstances.

**Section 225A notice** - we have power to take direct action to remove placards and posters, provided we take reasonable steps to notify the person who displayed the placard / poster before we remove it. We will use this power against people who persistently display posters and placards without advertisement consent in locations that cause harm to amenity or public safety.

**Discontinuance notice and Article 4 direction** - in very exceptional circumstances we may consider serving this notice, to stop an existing use or require the removal of buildings we have previously given planning permission for, or had consent through permitted development rights. We can also issue a direction to remove permitted development rights.

**Injunction** - we can apply to the high court or county court for an injunction to restrain an alleged breach when there is clear evidence a breach, which will give rise to harm to public safety, significant harm to amenity or serious / irreversible harm to the environment has or is likely to occur. We may also believe that an injunction is the most proportionate method to remedy a breach.

**Prosecution** - if someone commits an offence in breach of planning legislation, we will consider applying to the court for a summons to prosecute, as another step in trying to remedy the breach. On conviction, we will issue a press release to publicise the prosecution so that we inform the public of our work and deter potential offenders.

**Confiscation order** - if we prosecute a person who has financially gained from criminal activity directly relating to a planning breach we will apply to the crown court to confiscate a sum of money set by the court.

## 8. Publicity

We will publicise the following on our website:

- [how to report an alleged breach of planning control](#)
- [what is planning enforcement?](#)
- [our compliance and monitoring plan](#)
- [a list and a link to every enforcement notice by parish](#)
- [a link of the enforcement notice on our mapping search facility](#)

We will issue a press release when we take court action in order to keep the public informed and deter potential offenders. We may also use our [website](#), [Facebook](#), [Twitter](#) and [Instagram](#) to keep the public up to date with our activities.

## 9. Feedback

We constantly review our practices and processes to improve our service. Whether you are someone reporting an alleged breach to us, or the person we are negotiating with to remedy a breach we welcome your feedback. If you provide feedback and want us to take further action please explain why and what you would like us to do to resolve your concerns.

You can provide feedback by completing our feedback form at [northdevon.gov.uk/feedback](http://northdevon.gov.uk/feedback) or by emailing [customerservices@northdevon.gov.uk](mailto:customerservices@northdevon.gov.uk)

Information about [feedback and our complaints procedure](#) is available on our website.