
Bath & North East Somerset Council

Improving People's Lives



Bath and North East Somerset Council Local Enforcement Plan

December 2022

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Introduction

1.1 What is a Local Enforcement Plan

Paragraph 59 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 publish a local enforcement plan to manage planning enforcement proactively and in a way that is appropriate to their area.

In accordance with the NPPF, this Local Enforcement Plan sets out how Bath and North East Somerset Council will investigate and resolve allegations of unauthorised development and other breaches of planning control. It explains what will be investigated and what will not, it outlines the Council's general discretionary powers with regards to planning enforcement and sets out the priorities and timescales for responding to enforcement complaints.

1.2 Service Aims

Consistency – Whilst each individual case will be considered on its own merits, there will be a consistent approach taken with each enforcement investigations particularly where circumstances are similar. However, please note that the expediency of the decision to take (or not take) formal action will depend on the circumstances of each case and the harm resulting; consistency in the approach to handling individual cases does not mean uniformity.

Proportionality - As far as the law allows, the Planning Service will take account of the circumstances of each case and the degree of harm or potential harm in planning terms when considering appropriate action; not every breach of planning will require formal action.

Openness - The Planning Service will:

- i. Keep complainants informed of any significant case updates.
- ii. Make it clear as to why the Council has or has not taken formal enforcement action, or why the case has been closed.

1.3 Defining a Breach of Planning Control

It is not usually a criminal act to undertake building works or a change of use without the necessary planning permission (except where the works concern a listed building or a protected tree). However, unauthorised works or changes of use are likely to represent a breach of planning control. To remedy a breach of planning control, or rectify harm caused by a breach of planning control, the Council has the discretionary power of planning enforcement.

The statutory legislation for planning enforcement is derived from the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. A list of additional legislation relating to planning enforcement can be found in Appendix A.

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

1.3.1 What can and cannot be investigated by the Planning Enforcement team?

Without the correct consents, the following examples may constitute a breach of planning control:

Potential Breach of Planning Control

- Building works affecting the external appearance of a building
- Internal or external works to a listed building or within its curtilage
- The material change of use of land or buildings
- Failure to comply with conditions attached to planning consents
- The display of advertising
- Substantial demolition in a conservation area
- The felling of protected trees

Although the Council has a statutory duty to investigate alleged breaches of planning control, the Planning Enforcement Team are unable to investigate civil matters or complaints which fall within the remit of other Council departments. For example:

Not a Breach of Planning Control

- Neighbour disputes where development requiring permission has not occurred.
- Land boundary or ownership disputes.
- Disputes under the Party Wall Act.
- Smells, noise, and pollution should be reported to the Council's Environmental Protection Team.
- Fly-tipping should be reported to the Council's Environmental Protection Team.
- Use of development on highways or pavements should be reported to the Council's Highways Team.
- Dangerous structures should be reported to the Council's Building Control Team.
- Parking or traffic obstructions should be reported to the Council's Highways Team.

The relevant Council departments can be reached online, through [our website](#).

1.3.2 Permitted Development

Not all developments require an application for planning permission. Certain works are known as "Permitted Development" and are outlined in [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#) ("the GDPO").

Before submitting an enforcement complaint, we suggest checking whether the development is covered by the provisions of the General Permitted Development Order. Where the works or use meet all the conditions and criteria of the relevant class of the GDPO, it will be considered 'permitted development'. Therefore, formal planning permission is not required from the Council, and no enforcement action can be taken.

1.3.3 Immunity

Breaches of planning may become immune from enforcement action by virtue of the passage of time. Section 171B of the Town and Country Planning Act 1990 sets two time limits:

- After 4 years "unauthorised operational development" becomes immune (although the 'clock' only begins when the development is substantially completed). This includes building works, engineering, or mining operations.
- After 10 years, other types of development (such as a change of use or breach of condition) become immune from enforcement action.

If a development has become immune through the passage of time, the Planning Enforcement Team will be unable to take enforcement action.

Please note, there is no immunity from enforcement action in respect of unauthorised works to listed buildings.



2.0 How to Make a Complaint

2.1 Before Submitting a Complaint

Planning enforcement is a quasi-regulatory process which does not always lead to immediate solutions. In some cases, more effective and efficient outcomes can be achieved by use of powers outside planning legislation. Where appropriate, we would suggest that complainants initially attempt to resolve the problem directly with the property owner before a formal enforcement complaint is submitted. We recommend using an intermediary you both trust or one recommended by the [Civil Mediation Council](#).

Before submitting a complaint, we advise that you check to ensure a breach has occurred (i.e. that the breach is not lawful or is not permitted development). See the above guidance on the matters with which Planning Enforcement can and cannot investigate.

2.2 Submitting a Complaint

Complaints should be made online, through the Council's webform:
<https://beta.bathnes.gov.uk/report-something-planning-enforcement>

The more information you can provide to support your complaint, the easier it will be for Officers to understand and assess what the issues may be leading to a quicker determination of the best course of action.

When submitting a complaint, as a minimum we require:

- A description of what you are reporting and why you believe this to be a breach of planning control.
- The location or address of the alleged breach (post code, grid reference, [What3Words](#) reference or similar that will allow the Case Officer to find the location and cross reference any relevant planning history).
- Details of the amount of time that the breach has been ongoing.
- Your email address and phone number so that we can keep you updated.

In the event that your complaint relates to a site subject to planning permission, please include details of how the development may be deviating from an approved plan, or what condition you believe to have been breached.

If insufficient information is provided, the enforcement team may not be able to investigate the complaint.

2.3 Confidentiality



The integrity of the Council's enforcement function is predicated on the ability for those reporting alleged breaches of planning to do so knowing that their identity is protected, and confidentiality is maintained.

The subject of enforcement investigation will not be told who has made the report; similarly, this information is exempt from disclosure under the provisions of the Freedom of Information Act, 2000. Please note, in certain circumstances it may be possible for the subject of a complaint to deduce or assume who has made the complaint; in such circumstances, Officers will not however confirm the identity of a complainant.

We do not process anonymous complaints unless it relates to unauthorised works to a Listed Building or protected tree.

Individuals concerned about the possibility of revealing their identity, or having difficulties explaining the problems affecting them, may wish to discuss the matter with their local Councillor or Parish Council who can then raise the issue on their behalf. Details of your Ward Councillor can be obtained from the Councils website. Alternatively, complaints may be submitted by a planning agent on behalf of a concerned customer.

All information received by the Enforcement Team is held securely on our internal database and is not accessible by the public. 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 or advice is required. Similarly, we may consult external organisations such as the Police, Environment Agency, Utilities providers, DVLA etc.

Full details of the Council's Planning Privacy Notice, setting out how we will store and use your data can be found on the [Council's website](#).

3.0 How Complaints are Investigated

3.1 Complaint Prioritisation

In view of the significant numbers of complaints that are received each year, and to ensure efficient use of Council resources, each complaint received will be priority assessed before logging. This approach ensures that those breaches of planning control that are causing the greatest public harm are acted upon as quickly as possible. There are three enforcement priorities. These are set out in the following table:

Priority Level	Description
High Priority	Ongoing unauthorised demolition or a significant alteration of a Listed Building, unauthorised works to protected trees or other breaches causing either a risk to public safety or substantial harm to amenity.
Medium Priority	Unauthorised developments or uses where there is the potential to cause an unacceptable level of harm.
Low Priority	Technical or trivial breaches where planning permission would likely to have been granted had it been sought, or where the development is marginally beyond the parameters of Permitted Development or an approved development.

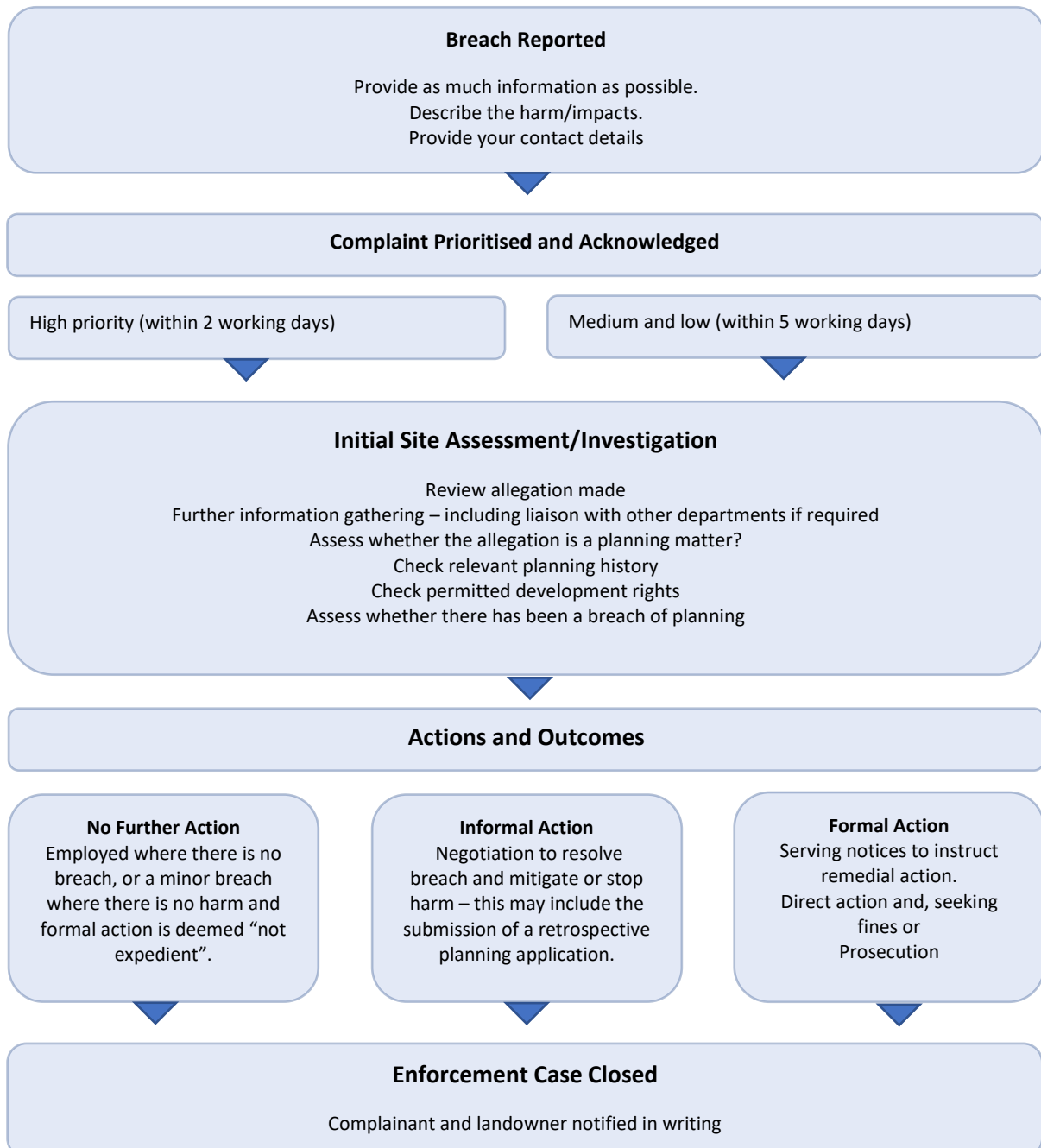
3.2 Timeframes

Primarily, the prioritisation level will determine the speed at which cases are investigated. It should be noted that, depending on information and evidence obtained, the prioritisation category may change during the course of any investigation:

Action	Priority		
	High	Medium	Low
Complaint Acknowledgement	2 working days	5 working days	5 working days
Initial Site Assessment	2 working days	10 working days from acknowledgement	20 working days from acknowledgement
Initial update	10 working days from initial site assessment	10 working days from initial site assessment	10 working days from initial site assessment
Case Review	6 months	6 months	6 months

3.3 Stages of Investigation and Action

The following diagram illustrates the main stages of the enforcement investigation process. Each of these stages are summarised in detail in the following pages. Please note this is not an exhaustive list but an overview of the key stages:



3.3.1 Initial Site Assessment and Investigation

Once received, we will register the complaint and allocate it to a Case Officer. Written acknowledgement including the case reference number and Case Officer contact details will follow within 2 working days for high priority complaints, and within 5 working days for all other cases.

In cases where the information provided by the complainant lacks the detail necessary for the Council to effectively investigate, the Council will liaise with the complainant, as soon as is practicable, to obtain the necessary additional information.

An initial site assessment will follow. This may include actions such as a check of relevant planning history, a check of GIS information, and a check of permitted development rights. A site visit will be undertaken if required however please note, depending on the level of information provided or otherwise available to the Case Officer a site visit may not be necessary.

Council Planning Enforcement Officers are authorised under Section 196A of the Town and Country Planning Act 1990 to enter, at any reasonable hour and when it is reasonably necessary to do so, any land to ascertain whether there is or has been any breach of planning control.

To allow timely investigation and effective work-planning, the majority of site visits are made without prior arrangement. If no occupier can be found at the time of visit, Officers have powers to inspect the land in their absence.

Please note it is an offence under Section 196C(2) of the Town and Country Planning Act, 1990 to wilfully obstruct an authorised Officer acting in exercise of a right of entry.

As part of the investigation, Officers may take measurements and photographs at the site. These will be stored in a secure manner and will not be accessible to the public but may be used in documents which the public will have access to in the event of them being required as evidence.

3.3.2 Customer Updates

In line with the timescales above, Officers will endeavour to contact the complainant within 10 working days of the initial site assessment to provide an initial update on the case. Where further time is required to undertake an initial investigation, complainants will be advised of the revised timescale. Further contact will be maintained according to the demands of the case. Regular updates will not be provided, except on arrangement with the Case Officer, but interested parties will be advised of any significant developments in the case.

Significant developments in a case may include:

- Site visits
- The submission of a retrospective planning application
- The determination of a retrospective planning application
- Formal Notice served
- Case closed

As planning enforcement can be a lengthy and legally complex process, it is not possible to give an average timeframe for determining a complaint. However, at a minimum, every case will be reviewed after 6 months following acknowledgement. Complainants will be updated at this point.



3.3.3 Determination and Outcomes

Following an initial site assessment, or any further evidence gathering, Officers will consider the appropriate actions. This may include no action, informal action, or formal action:

No Action:

National Planning Practice Guidance advises that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost-effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore, in some instances formal enforcement action may not be appropriate.

Formal enforcement action will only be considered where it is expedient and proportionate to do so. Therefore, in line with guidance contained in the National Planning Practice Guide, action may not be taken even where planning permission is required, and no application submitted.

The use of formal 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
- 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

Any formal enforcement action taken will be commensurate with the breach of control to which it relates. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which cause no harm to amenity in the locality of the site, or where the development undertaken is otherwise acceptable on its planning merits having regards to the provisions of the Development Plan and any other material planning considerations.

Informal Action:

Unless significant or irreparable harm is being caused, the Council will initially try to resolve breaches through negotiation. This may result in voluntary remedial action.

Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible will normally be invited to submit a retrospective planning application. However, this is not a guarantee that permission will be granted, and where permission is refused, formal enforcement action may still be taken.

Formal Action:

Where it has not been possible to remedy a breach of planning control through negotiation, or the submission of a retrospective application; and where it is deemed expedient to do so the Council has a number of available options for formal enforcement action.

Formal Actions may include:

- Planning Contravention Notice (PCN)
- Enforcement Notice
- Breach of Condition Notice (BCN)
- Stop Notice
- Temporary Stop Notices
- Section 215 Notice

It is an offence not to comply with a notice once served by the Council. Therefore, where formal action is taken by the Council, and those responsible for the breach have failed to comply, further action may be taken.

Further Action may include:

- Injunction
- Prosecution
- Direct action

When considering legal action to restrain non-compliance with a formal Notice, the Council will have regard to the [CPS Code for Crown Prosecutors "Full Code Test"](#):

***Evidential Test** - Where formal legal proceedings are engaged, any evidence to be presented to Magistrates Court must be reliable and sufficient to satisfy the Council's Legal Officer (prosecutor) that there is a realistic prospect of conviction. The evidence must clearly prove that the offence has occurred and identify who is legally responsible for that breach (the defendant).*

***Public Interest Test** - Where formal legal proceedings are engaged the Council's Legal Officer (prosecutor) must be satisfied that the public interest factors tending in favour of the prosecution outweigh those tending against.*

Direct Action

In accordance with Section 178 of the Town and Country Planning Act, 1990, where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the Council may enter the land and take the steps required to comply with the Notice and recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

4.0 Expediency

In cases where it has been established that a breach of planning control has occurred, the Council will undertake an assessment of expediency to determine which next course of action should be taken, having regard to the provisions of the development plan and to any other material considerations (please note that what constitutes a material consideration is a matter of law, and there can sometimes be effects arising from planning breaches that we cannot take into consideration, for example any impact upon property values).

In determining whether it is expedient to take formal enforcement action the Council will have regard to the degree of harm. The primary considerations will include: whether the breach of control would unacceptably affect public amenity, whether it would give rise to a serious risk to public safety, or the existing use of land and buildings merit protection in the public interest.

Any action taken will be commensurate with the breach of control to which it relates.

In considering whether to take enforcement action the Council will not give weight to the fact that the development may have already commenced.

Formal enforcement action is a discretionary activity and may not be pursued in instances where it is not considered expedient or in the public interest to do so.

5.0 Contact Planning Enforcement

Enforcement complaints, reports and enquiries should be made online, through the Council's webform: <https://beta.bathnes.gov.uk/report-something-planning-enforcement>

Phone: 01225 394041

6.0 Reviewing the Plan

This Local Enforcement Plan will be reviewed if there is a substantial change in the relevant legislation.

7.0 Appendix

Appendix A – Relevant legislative framework.

Primary Legislation:

1. [Town and Country Planning Act 1990 \(as amended\).](#)
2. [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#)

Secondary Legislation and guidance:

3. [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)
 4. [The Town and Country Planning \(Control of Advertisements\) Regulations 2007 \(as amended\)](#)
 5. [The Town and Country Planning \(Use Classes\) Order 1987 \(as amended\)](#)
 6. [Localism Act 2011](#)
 7. [Planning and Compensation Act 1991](#)
 8. [Planning and Compulsory Purchase Act 2004](#)
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