

# Planning Enforcement Protocol

October 2023

# What Is Planning Enforcement?



**The main purpose of planning enforcement is to resolve the problem rather than to punish the person who has not obtained the appropriate consents**

Planning Enforcement is a process to investigate cases where **development** without planning permission is taking place and to ensure that development with planning permission takes place in accordance with the approved plans and planning conditions.

It is recognised that public confidence in the planning system would be quickly undermined if development is not monitored or unauthorised development proceeds without intervention by the Local Planning Authority. So effective enforcement is important to maintain public confidence.

Whilst the investigation of an enquiry is mandatory, the powers available to the Council are discretionary and the Council will consider enforcement action in the **public interest**, having regard to the risk and **planning harm** arising from the alleged breach.

The Council's focus will be on those cases where the impacts or **planning harm** arising is significant.

# What is development?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in [section 55 of the Town and Country Planning Act 1990](#) and is not development that is permitted under the General Permitted Development Order [Permitted Development Order 2015 \(as amended\)](#)

'Development' includes:

- building operations (e.g. structural alterations, construction, rebuilding, most demolition);
- [material changes of use of land and buildings](#);
- engineering operations (e.g. groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwelling house for use as 2 or more separate dwelling houses





## What is permitted development?

The [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (GPDO), established most permitted development rights.

It is a very detailed document, covers a wide range and types of development, including householder works, minor operations, changes of use, temporary uses etc. The majority of these are subject to conditions and limitations.

The conditions and limitations, together with the interpretation of each class, should be read carefully before deciding if a development has the benefit of planning permission granted under each class.

The conditions and limitations can be the subject of enforcement action in that they are attached to a grant of planning permission, albeit planning permission granted by the GPDO.

For signage (also known as adverts), you can read the Department for Communities and Local Government's '[Outdoor advertisements and signs: a guide for advertisers](#)'

For changes of use the legislation is [Town and Country Planning \(Use Classes\) Order 1987](#) and puts land and buildings into categories known as 'Use Classes'. A change of use can occur within the same 'use class' without needing planning permission.

More advice is available on the planning portal at: [Use Classes - Change of use - Planning Portal](#)

# What is a breach of planning control?



A **breach of planning control** is defined by 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’.

If there has been no **‘development’** then there **is** no breach of planning control and the planning enforcement team cannot take further action.

The following are examples of breaches of planning control.

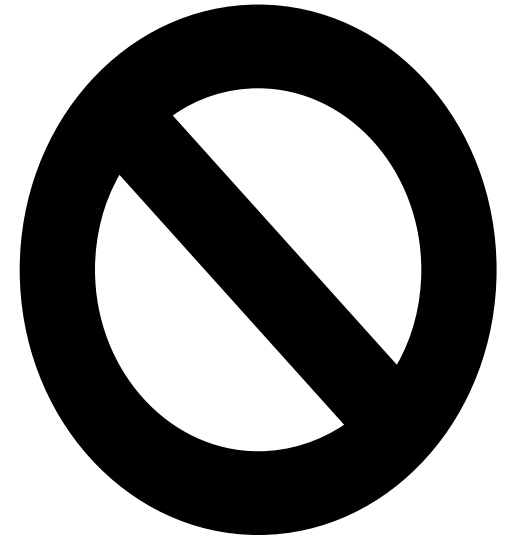
- Unauthorised erection of a building
- Development not in accordance with the approved plans of planning permissions
- Unauthorised change of use of a property or land
- Unauthorised works to trees protected by a Tree Preservation Order (TPO) or in a conservation area
- Carrying out works to a listed building without listed building consent
- Unauthorised demolition in a conservation area
- Failure to comply with the conditions attached to a planning permission
- Failure to properly maintain land so that it adversely affects the amenity of the area
- Displaying a sign or advertisement without advertisement consent

# What is not a breach of planning control?

The following are examples of issues which are **not** planning breaches:

- Where development is '**permitted development**'
- We cannot look into matters that you think may take place but have not actually commenced
- Parking of vehicles in residential areas or on grass verges
- Operating a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity.
- Clearing land of undergrowth, bushes and trees provided these are not subject to planning protection
- Parking a caravan within the curtilage of a residential property if it is stored, or used as an extra bedroom, and not used as a separate, self-contained residential unit
- Obstruction of a highway or right of way
- Boundary disputes/trespass, deeds and covenants
- Party Wall Act issues
- Fly tipping
- Health and safety issues
- Wildlife Crime

**We can not investigate non planning matters but will signpost where we can the relevant department or organisation to assist.**





## How to report a suspected breach of planning control?

**Before contacting us**, read this document to see if it is a planning matter, use our website to check if there is planning permission or if there are permitted development rights. Speak to the party undertaking the works.

### [Check planning history](#)

The simplest and quickest way to report a planning enforcement problem is by completing the **online form** on the Council's website following the link below: -

## [Complete enquiry form](#)

Alternatively, you can contact us by e mail:

[PlanningEnforcement@Shropshire.gov.uk](mailto:PlanningEnforcement@Shropshire.gov.uk)

If not using the online form your email needs to include the following information:

- Your name, address and contact details.
- The precise address / location where the breach is taking place.
- What you consider the breach of planning control to be, i.e., works, use, activities.
- How it affects you and the harm arising from the alleged breach.
- What solutions you consider would resolve the matter.
- Supporting information, photos, log sheets etc.

### In All Cases

**Reports with insufficient information will be delayed in the registration process and may not be investigated further. We do not have sufficient resource to chase for supporting information.**

## Anonymous Complaints

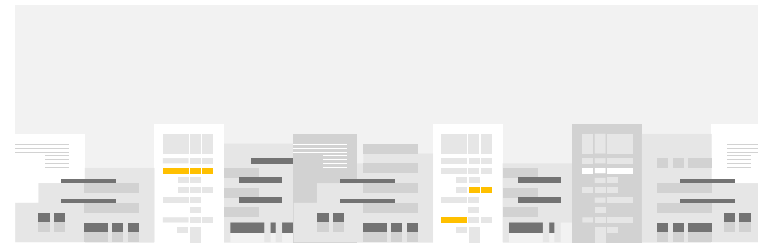
Given the number of complaints we receive and the need to engage with complainants during investigations, we do not investigate anonymous complaints.

**Complainant details are entirely confidential and not shared with the alleged breach site owner.**

There are more details on confidentiality on the following page.

## Malicious and/or Vexatious Complaints

If the Council feels that a complaint is vexatious or malicious, with no real planning grounds to substantiate it, there will be no investigation.







## Will my details be kept confidential?

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant authorises otherwise, or the complainant is required to give evidence at a public hearing, inquiry or court case.

Please note that the specific information relating to the enforcement case would contain personal data. This is as defined under the General Data Protection Regulations UK 2018 (GDPR). We are unable to share this information. This means that we cannot provide regular updates as to what is happening on individual cases during the course of our investigation. If an update on an enforcement investigation is requested, we will only be able to provide information as to what stage the investigation has reached.

The Freedom of Information Act 2000 does not override this right to confidentiality and therefore the identity of complainants will not be revealed to third parties, unless any of the circumstances above apply. Where the success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach of planning control. The Council will discuss with the complainant whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal enforcement action or a prosecution.

If you feel threatened and therefore unable to provide your details, it is recommended to seek support from your Local Councillor who can act on your behalf and protect your anonymity.

# How does the Council deal with alleged breaches?

When we receive a completed form a member of the team will triage the report, and determine if the matter is a **planning breach**, including is this development if not the matter will be referred to other departments or organisations, as necessary and we will not investigate any further. Complainants will be notified of this.

We aim to register valid cases within **5** working days.

Upon registration of a case, we inform the following interested parties:

- The Local Member
- The relevant Town or Parish Council
- The complainant(s)

A dedicated officer will then be assigned. Planning Enforcement Officers will carry out their duties in an equitable and consistent manner.

It is not a criminal offence to do something without planning permission. Officers are **not** empowered to physically stop unauthorised works.

Full consideration is given to the circumstances of the case, guided by the adopted development plan and other material planning considerations.

## **Whilst planning enforcement is a lengthy process.**

The Council aims within 12 weeks to notify complainants of the stage at which the complaint is at, this can include:

- No action – i.e. no breach, no significant harm, permitted development
- Further investigation is needed
- Retrospective planning application invited
- A breach established but not yet resolved, this can include negotiating solutions and/or proceeding to formal action.

Complainants should be aware that unfortunately due to the often complex nature of planning enforcement which can involve legal challenges and appeals against statutory enforcement notices, some cases can take several months/years to fully resolve and it is impossible to give a specified time period that cases will be resolved within.

If formal action is instigated, complainants will be notified. Otherwise, when cases are finally resolved, complainants will be notified of the outcome of investigations, including a brief summary of the case.

# Prioritise Cases

Taking formal enforcement action can be time consuming, complex and expensive. When breaches are discovered, resources will be targeted towards unauthorised development giving rise to significant harm having regard to the public interest.

It is our officer's discretion which priority a case is allocated and whether a site visit is required.

As such we have 3 levels of priority and if site visits are required the timescales aimed to be undertaken.

## Level 1- High Priority

Immediate or irreparable harm . Site visit within 48 working hours.

Can include:

- Works to Listed Buildings
- Works to trees within Conservations Areas or with Tree Preservation Orders
- Demolition in Conservation Areas
- Existing cases with appeal deadlines or court action
- Cases within 6 months of immunity

## Level 2 – Medium Priority

Significant planning harm, Sites with protected designations, i.e. Green Belt, AONB, SSSI's. Site visits within 20 working days.

- Unauthorised change of use of land or buildings
- Unauthorised building works
- Breaches of conditions or plans on permissions causing serious harm
- Development clearly in breach of planning policy and unlikely to be granted planning permission
- Retrospective development where planning permission has been refused

## Level 3 – Low Priority

All other instances – Site visit within 30 working days.

- Untidy land
- Advertisements
- Minor Householder developments, fences, windows etc.

# What are the possible outcomes of the investigation?

When a breach of planning control has been established it does not always follow that enforcement action will occur. This does not however condone a willful breach of planning control.

Government guidance sets out that formal enforcement action is usually a last resort. If there is a breach of planning control, the responsible person will usually be given the chance to put the matter right first. This opportunity is normally given before taking formal enforcement action. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious **planning harm** to amenity.

There are various options to deal with suspected breaches of planning control and their use will be proportionate to the breach and have regard to the planning policies and guidance and other material planning considerations.

[More guidance at:  
www.gov.uk/guidance/ensuring-effective-enforcement](http://www.gov.uk/guidance/ensuring-effective-enforcement)

## The options include:

- No formal action:
  - No breach has occurred
  - Technical breach with no serious harm
- Negotiations to find solution or remedial action
- Retrospective planning application invited
- Establish breach is immune from action
- Formal Action:
  - Planning Contravention Notice
  - Enforcement Notice
  - Temporary Stop Notice or Stop Notice
  - Breach of Condition Notice
  - Listed Building Enforcement
  - Discontinuance Notice (Advertisements)
  - Section 215 (amenity) notices
  - Injunction
  - Prosecution

# When will formal action occur?

Planning legislation is clear an enforcement notice can be issued where:

- There has been a breach of planning control; and
- It is expedient to use a notice having regard to the development plan and other material considerations.

In taking formal planning enforcement action the Council will be prepared to use whichever available enforcement power or combination of powers that are appropriate to deal effectively with an identified breach of planning control.

In considering whether it is **expedient** to take planning enforcement action the decisive issue for the Council will be whether the breach of planning control causes **planning harm**. Other considerations are the likelihood of getting planning permission, public interest, proportionality and obligations under the Human Rights and Equality Act. Accordingly, formal planning enforcement action will not be instigated solely to regularise breaches in planning control or seek a planning fee.

There are also time limits as to when enforcement action can be taken. For operational development or use as a single dwelling house, action must be instigated within 4 years. In other cases action must be taken within 10 years, except for works to a Listed Building which have no time limit and works to trees which have different timescales.

## Examples of planning harm:

- Unacceptable design
- Severe harm to highway safety
- Loss of residential amenity
- Detrimental impact on general amenity
- Harm to heritage assets
- Harm to designated landscape such as Area of Outstanding Natural Beauty (AONB), Conservation Area (CA), World Heritage Site (WHS), etc.

## The following are NOT examples of harm:

- Competition caused to another business
- Loss of an individual's view or trespass onto their land or damage to property
- Ownership disputes
- Loss of value to a property
- Rights to light

It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and is not an area where we would be involved.

## What can happen next?

Enforcement Notices are legal documents, and will include within them details of the alleged breach, the reasons for the notice and steps to be undertaken to remedy the breach and a timeframe for completion.

These notices can be appealed, (within 28 days of service) and if appealed, cases are held in abeyance pending the appeal outcome.

The appeal process is independent and administered by the planning inspectorate and the Council will robustly defend decisions to issue notices.



It is a criminal offence not to comply with a notice once the period for compliance has elapsed and there is no outstanding appeal.

The council has powers of prosecution and direct action

The Council will then consider prosecution proceedings in such cases to secure compliance.

To proceed to prosecution there must be:

- Sufficient admissible evidence; and
- Public interest

The Council also has powers to enter land, undertake the requirements of the Notice in default and recover its costs if it is considered expedient to do so. These direct-action powers can be used when other methods to secure compliance with a notice have failed and the issues of harm identified remain.

# What if a complaint is made about your property or development?

If you receive a letter from the Council, you are entitled to know the allegation, (but not who made it) and explain your side of the case. We would encourage you to respond quickly and provide any required information. It is advisable to cease any works at this stage while a preliminary assessment is undertaken to assess whether a breach of planning control has occurred.

Officers may need to visit your site as part of any investigation and have a right of entry to land or property and you will be requested to assist in this process.

We recognise that some breaches of the planning regulations will be genuine mistakes, for example where the need for planning permission was not established before commencement of work. However, there are also cases where planning laws or the terms of a planning permission have been significantly contravened or where the unauthorised work is intentional, which will be a material consideration weighed up in the determination of any successive planning application or appeal.

As part of any discussion during the investigation the council;

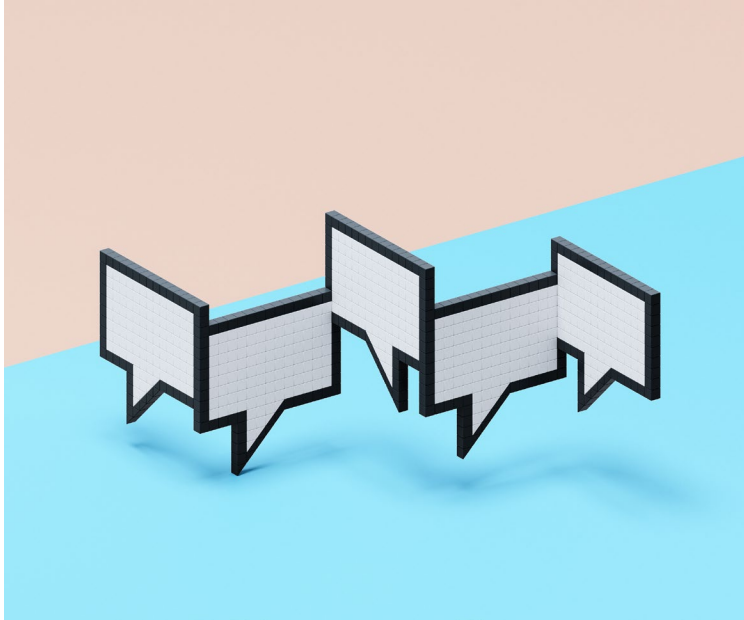
- may allow an opportunity to apply for retrospective planning permission;
- will seek resolution, e.g., by stopping the use, removing or reducing the size of an unauthorised building;
- may serve a formal request for information S330 or Planning Contravention Notice (PCN) which is a legal document which requires you to answer a range of questions and return to us in 21 days;
- will consider taking formal action to resolve the matter.

Owners should be aware that unauthorised development could delay or potentially prevent a future sale of property or land. In addition, any formal enforcement notices served will be registered with land charges and appear on property searches. It is therefore in owners' best interests to have all necessary planning permissions in place and any enforcement issues resolved.



## Physical and verbal abuse towards officers

The Council will not tolerate any physical, written or verbal abuse towards its Enforcement Officers. Where necessary the Council will use legal action to prevent abuse, harassment or assaults on its Officers.



## Complaints and Compliments

If you are happy or unhappy with our service, then you can contact us direct at [planningenforcement@shropshire.gov.uk](mailto:planningenforcement@shropshire.gov.uk)

You can feedback corporately either online:

<https://www.shropshire.gov.uk/feedback/complaints-comments-and-compliments/>

by email:

[customer.feedback@shropshire.gov.uk](mailto:customer.feedback@shropshire.gov.uk)

Write to: Feedback and Insight Team,  
Shropshire Council, Shirehall, Abbey  
Foregate, Shrewsbury, Shropshire, SY2  
6ND

Telephone customer services: 0345 678  
9000