

**Title of meeting:** Cabinet Member for Planning, Regeneration and Economic Development  
**Date of meeting:** 6<sup>th</sup> November 2018  
**Subject:** Planning Enforcement Policy  
**Report by:** Claire Upton-Brown, Assistant Director of City Development  
**Wards affected:** All  
**Full Council decision:** No

---

## **1. Purpose of report**

- 1.1. The purpose of the report is to agree a local enforcement policy. The National Planning Policy Framework identifies that effective enforcement is important to maintain 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. The NPPF encourages local planning authorities to publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. The Plan should set out how the local planning authority will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

## **2. Recommendations**

### **2.1 It is recommended that :**

**The local enforcement plan (Attached as appendix A) is approved**

**The Assistant Director of City Development be authorised to make editorial amendments to the plan in consultation with the Cabinet member for Planning, Regeneration and Economic Development. These changes will not alter the meaning of the document and will be restricted to grammatical and typographical changes**

### **3. Background**

- 3.1 The National Planning Policy Framework encourages councils to publish a local enforcement policy to provide a local framework for investigating and enforcing breaches of planning control. In line with this the document attached as Appendix 1 has been produced to stand as the Council's Enforcement Policy.
- 3.2 The government advises that it is good practice to have an Enforcement Policy aimed at providing an open and transparent process to give clarity on procedure and to manage expectations of complainants as well as those who have carried out unlawful development. The appended Enforcement Policy sets out the following:
- 3.3 The plan provides the framework for a robust planning enforcement service within Portsmouth, and sets out the following:
1. The purpose of enforcement
  2. What we aim to do
  3. Planning enforcement principles
  4. Breaches of Planning Control
  5. Reporting a breach
  6. Prioritisation
  7. Possible outcomes
  8. Houses in multiple occupancy
  9. When you are being complained about
  10. Customer Care
  11. Development Monitoring
- 3.4 The approach set out in the document is considered to be a proportionate approach to the caseload that the local planning authority receives each year.

### **4. Reasons for recommendations**

- 4.1 The proposed Enforcement Policy sets out the way the local planning authority will proactively manage enforcement matters within the city and ensure that development is carried out to the standards required to ensure that quality development is delivered within the city.

### **5. Equality impact assessment**

- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

### **6. Legal implications**

6.1 Formal planning enforcement action must be conducted by liaising with legal services. Legal services are always pleased to provide the Planning Department with advice on any planning enforcement matter at any stage.

**7. Director of Finance's comments**

7.1 There are no financial implications arising from the plan.

.....  
Signed by:

**Appendices:** Appendix A - Planning Enforcement Policy

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
NPPF	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

## Planning Enforcement Policy

### Contents

1. Introduction	5
2. The purpose of enforcement	5
3. What we aim to do	5
4. Planning enforcement principles	6
5. Breaches of Planning Control	7
6. Reporting a breach	8
7. Prioritisation	9
8. Possible outcomes	11
9. Houses in multiple occupancy	13
10. When you are being complained about	14
11. Customer Care	14
12. Development Monitoring	15

## 1. Introduction

Portsmouth City Council's planning department have an enforcement team dedicated to working with the public in order to provide an efficient, helpful and fair planning compliance service.

This document is designed to explain what we do, what guidelines we follow and how we operate to ensure that Portsmouth's heritage is protected and new developments follow both national guidelines and our own plans for the future.

Our goal is to work with the public to ensure that Portsmouth progresses in being an exciting city full of both architectural heritage and innovative new designs.

This policy statement on Portsmouth City Council's ("the Council") Planning Enforcement Service describes what the service does and how we deliver the service to the community. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.

It is important to remember that planning consent may not be the only consent required from the City Council. For example, Building Regulations approval, and licensing etc. may be required in addition to planning consent. This policy only covers matters relating to planning control. Property owners should satisfy themselves that all other necessary consents needed are in place to carry out the work or activity they are contemplating. Securing such consents can be a time consuming process and persons are encouraged to engage with the relevant regulatory bodies at the earliest opportunity to avoid frustrating delays at a later date.

## 2. The purpose of enforcement

Planning Enforcement is designed to regulate the city's developments to ensure that they follow the [Town and Country Planning Act 1990](#), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Portsmouth Plan.

Planning Enforcement is a discretionary power that can only be used in conjunction with the above legislation and cannot be used for private interests or disputes. Enforcement actions must be fair and impartial and adhere to the above mentioned acts.

## 3. What we aim to do

Portsmouth City Council, as a whole, is committed to maintaining the quality of the city. Planning enforcement aim to contribute to this using the following objectives:

- To prevent and remove harm to amenity caused by unauthorised use or development.
- To ensure that public amenity is protected as far as practicable and development is acceptable, even if the development may not have been authorised at first.

- To ensure that the Planning System is followed and not undermined.
- Work with others to monitor developments, so that we can ensure planning permissions and conditions imposed are followed.
- To reach outcomes that show regard to the views of interested parties, whilst adhering to planning legislation.

## 4. Planning Enforcement Principles

### **Fairness**

We aim to be consistent with all cases, and the action we take will be proportionate to the breach of planning.

It should be noted that no two cases are the same and the evidence we gather will be considered on its own merit.

We act in accordance with planning laws, The Portsmouth Plan and Portsmouth City Council's policies in every case in order to remain fair and consistent.

**Planning Enforcement is a discretionary power and it is ultimately the decision of  
The Local Planning Authority as to what action, if any, is taken.**

### **Confidentiality, Professionalism and Integrity**

We will keep all details of the complainant totally confidential. Details of enforcement cases are not uploaded to the Council's website and are treated as confidential where possible.

We aim to provide comprehensive details and information in the best way possible and always confirm that the recipient understands the situation as fully as possible.

We will try to keep everyone involved in the case updated as much as possible. If you require an update from us, please contact [planningenforcement@portsmouthcc.gov.uk](mailto:planningenforcement@portsmouthcc.gov.uk) and we will be more than happy to assist.

We ask for communication in writing so that we can keep records of what is discussed and will always distinguish between formal enforcement action proceeding under legislation and informal advice.

### **Achieving compliance efficiently**

We aim to resolve possible breaches of planning without taking formal enforcement action.

We aim to agree reasonable time periods in which a resolution can be reached.

Planning permission can be sought retrospectively. Planning enforcement, in the first instance, aims to remedy harm caused by unlawful development and not to punish. If works to a development have already begun or been completed, permission will be considered on the merit of the application by a planning officer.

Planning enforcement action will be suspended until such a time that the application is determined.

**Where possible, the best method of regularising a breach of planning is to prevent it before works have begun. This is why Portsmouth City Council offers a comprehensive [Pre-Application service](#) - to advise on whether a proposed development requires permission and even offer advice on whether an application would be supported.**

## 5. Breaches of planning control

A breach of planning control is the carrying out of development without or against planning permission, when planning permission is required.

In essence, anything that is in contravention of the Town and Country Planning Act 1990 or the General Permitted Development Order (as amended) can be considered a breach. Listed below are some examples of what could constitute a breach of planning control.

### **Breaches of Planning Control**

- Unauthorised developments that do not fall within permitted development.
- Unauthorised material change of use of a building or land.
- Unauthorised works to Listed Buildings.
- Unauthorised works to trees protected by a TPO (tree preservation order) or a conservation area.
- Unauthorised demolition in a conservation area.
- Unauthorised works to a building protected by an Article 4(2) direction.
- Breaches of conditions attached to Planning Permission.
- Developments not built in accordance with the approved plans.
- Engineering works (substantial raising of ground levels etc.) without planning permission.
- Operation of a business where the business takes over the residential use of the property.

Adversely, there are many instances where there is not a breach of Planning Control. These instances can include (but are not exclusive to):

### **Not a breach of Planning Control**

- Internal works to a non-listed building.
- Obstruction of Highway (contact our highways team on [Highways.PFI.Team@portsmouthcc.gov.uk](mailto:Highways.PFI.Team@portsmouthcc.gov.uk))
- The situation of caravans or mobile homes on private property, as long as it is incidental to the enjoyment of the property itself
- Running a business from home, as long as the business use is secondary to the residential use of the property.
- Land ownership or boundary disputes. These are a civil, private law matter.
- Works that fall under permitted development.

- Advertisements that are allowed under the [Advertisement Regulations](#).
- Dangerous structures. Please contact our building control team on [bcpartnership@fareham.gov.uk](mailto:bcpartnership@fareham.gov.uk)
- Health and safety issues. Please contact our environmental health team on [pubprot@portsmouthcc.gov.uk](mailto:pubprot@portsmouthcc.gov.uk).
- Damage caused to neighbouring properties (this would be a civil, private law matter in most instances).

**When a complaint reaches us that doesn't constitute a breach of planning control but we think it could be suited to another department's statutory functions, we will ask for permission to pass it on to a relevant department.**

## 6. Reporting a breach

We ask for complaints in writing because it provides evidence to justify why we are investigating, and is also useful if we need to update you.

Email is generally preferable because it means we can respond more quickly and efficiently, but we accept written letters.

Telephone complaints will be accepted if the matter is urgent, for example; if works are being undertaken to a TPO tree, a conservation area tree or listed building.

We generally do not investigate anonymous complaints unless the allegation is serious (as above).

**Our email: [Planningenforcement@portsmouthcc.gov.uk](mailto:Planningenforcement@portsmouthcc.gov.uk)**

**Our postal address:**

Planning Enforcement,  
Civic Offices,  
Guildhall Square,  
Portsmouth,  
PO1 2AU

**For urgent matters only: Please contact the City Help Desk on 023 9283 4092 and ask to be put through to planning enforcement.**

The complaint should include:

- An accurate description of the site, including its address.
- A description of the alleged breach and what is currently happening at the property.
- Any details you may have of those responsible for the alleged breach.
- When the alleged breach occurred/began.
- Other information such as planning reference numbers, previous breaches, conservation areas etc. if possible.
- Further evidence such as photographs from your point of view, if possible.



The more information we receive, the more straightforward the investigation will be. By supplying comprehensive evidence, a resolution may be able to be reached more quickly.

**We can only consider information regarding planning. When considering evidence, we cannot take into account matters including (but not limited to) non-planning issues such as loss of property value, trespassing, damage to property and competition to your business.**

## 7. Prioritisation

Planning enforcement regularly deal with over 450 cases per calendar year, and some cases are more urgent than others. Works to Listed Buildings, TPO trees and conservation area trees are given the highest priority, and will receive officer attention immediately.

Any other cases are dealt with as soon as information is received. We aim to gather evidence in the first instance, contact the proprietor and send a response to the complainant as soon as possible. If you want an update on how the case is being undertaken, please do not hesitate to contact us.

Where significant harm to amenity can clearly be demonstrated, the Council will usually contact the person allegedly causing the breach to discuss the problem.. This will often result in a planning application being submitted or, where something is considered to be unacceptable, there will be a discussion about removing or adjusting it. Only if the person causing the breach refuses to contact the Council, or to resolve an unacceptable matter, will the Council take enforcement action.

Enforcement action is, however, discretionary. The Council has discretion as to whether to take enforcement action or not, and it is not a mandatory duty so to do. Because something is a breach of planning control this is not, in itself, reason to take enforcement action. Even when it is technically possible to take action, the Council is required to decide if such formal action would be “expedient” in the public interest. There needs to be harm arising that is of sufficient detriment to warrant action being taken.

A breach of planning control is not normally a criminal offence in the first instance. Even if the Council is aware that someone is going to carry out works that require planning permission, it does not follow that it will be stopped. There would have to be considerable harm for the Council to seek an injunction to stop an unauthorised development taking place. It is recognised that this can be very frustrating for complainants, but the Council must operate within the legislative framework as set by the government.

The Council reserves the right to take into account any benefits someone has created through carrying out unauthorised development. Any breach of the requirements of a formal Notice will constitute a criminal offence. Should this happen, the Council has the ability to seek to recover profits made either under the Town & Country Planning Act 1990 and/or under the Proceeds of Crime Act 2002 and will consider such an application to the courts for deliberate breaches.

The Council starts from a position of trying to resolve all breaches of the planning system through dialogue and normally formal action is a last resort. The Council is usually expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity, formal action will not be delayed by protracted negotiation or attempts to delay the process. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control.

It follows that any enquiry can result in many different outcomes, from the Council concluding that there is no breach of planning control, through to serving an injunction to stop a breach with immediate effect. Some possible options are summarised below, but if you make an enquiry, whatever the outcome, you will be fully advised about what the Council is doing and why.

- No breach established - after a site visit there is found to be no breach of planning control: for example the development is permitted development or is not within the control of planning legislation. No further action will be taken and all parties will be advised as such.
- There is a breach, but it is not considered to be expedient to pursue the matter. If a 'technical' breach has taken place, for example a new garden fence has been erected that is only marginally over permitted development limits, then it is not normally proportionate to take lengthy and expensive enforcement action over something that causes minimal public harm. The owner would normally be advised to submit a planning application to regularise the development but if they do not do so the case could be closed and the complainant advised. It is usually in the best interests of the property owner to regularise the problem, or they may encounter problems when the property is sold.
- There is a breach and part of it is considered to be harmful. The Council may "under enforce" by serving a notice to secure a remedy to the most harmful part of the development, whilst leaving the lesser parts of the development untouched. For example, most garden fences can be 2m in height and it may be erected to 2.1m for the length and then one panel perhaps goes to 3m next to a neighbour's window. The Council may seek the removal of the 3m panel, but not to reduce the rest of the fence by 0.1m.
- There is a breach but it is 'immune' from action. It is possible that there has been a breach of planning control for some time but the Council has not been aware of it. If the building was substantially completed more than 4 years before, or a use commenced 10 years before, then the development can be considered to be immune from enforcement action. There are many caveats to these rules (for example, the period for residential use of a building is 4 years) and so more information will be required. The landowner would normally be advised to apply for a Certificate of Lawful Development to prove its immunity.
- If negotiation does not secure compliance with what the Council considers to be an acceptable solution, then it has the power to take formal action against any breach. The nature of the breach will dictate which route the Council chooses to pursue. Depending upon what action is taken, the person responsible may receive a criminal record. The Council will make it clear in correspondence (to the property owner or the person in control

of the land) what options are open to them to remedy the breach of planning control, and the timescales within which to carry those out.

The Council is very keen to promote businesses in the city to ensure a healthy economy, which is seen as a central part of delivering sustainable communities. With this in mind, the Government has considerable concern that small businesses in particular should not be unduly jeopardised by hasty enforcement action. Therefore, the Council will always seek to ensure there is a good dialogue with a business that has carried out development without planning permission and, if a solution cannot be found, then consideration will be given to ensure that any action that is taken is carried out to minimise the impact on the business, if reasonable and possible. This may result in longer compliance periods being given to regularise development. However, this desire to work with businesses will not be at the expense of tolerating any unacceptable impact on neighbours. The Council will have to weigh up and balance the impact on the business and the harm caused to others.

## 8. Possible outcomes

In most cases, we are able to resolve cases without taking formal enforcement action. Such a resolution can be achieved by reaching the following conclusions:

- **No Breach.** It can sometimes be concluded that no breach of planning has occurred. In such cases, the file will be closed and the details will be added onto our database for future reference. The complainant is informed and details of how the conclusion was reached are explained.
- **Non-expedient to enforce.** When a breach is identified but it is judged as being an unnecessary use of time and resources, it can be described as being **non-expedient to enforce against**. This is often used for lesser breaches and has to be agreed and signed off by the head of department.
- **Development is lawful.** The proprietor can prove that the property has been in use for such a time period that it is exempt from enforcement action. They will be invited to submit an application for a certificate proving the lawful use and this will be added to our records.
- **Breach ceasing negotiations.** We have attempted to reach a resolution that satisfies all parties. For example, use ceases, a time scale for the removal of offending structures is agreed or a planning application to regularise the development is submitted in a requisite time frame.

In such a situation where a resolution cannot be reached, formal enforcement action may be undertaken, utilising the following tools and procedures:

- **Planning contravention notice (PCN).** A PCN can be issued by the LPA in order to establish more information around the situation and is used as a formal procedure to signal intent that enforcement action is imminent. This offers the offender an opportunity to explain the breach and may include arranging a site visit to establish the best way forward.

**Failure to respond to a PCN is an offence under the Town and Country Planning Act and carries a maximum penalty of £1,000 (Level 3 on the standard scale at the time of writing). Providing false or misleading information in response to a PCN can be punished by an unlimited fine (Level 5 on the standard scale at the time of writing).**

- **Enforcement Notice.** This is the primary method of regularising a breach of planning control and can be issued under the Town and Country Planning Act 1990. This notice creates a legal duty for any that have a stake in the land to remedy the contravention within a timeframe specified within the notice.

The recipient of a notice may appeal the notice to the Planning Inspectorate, at which time the notice will be held in abeyance until the appeal is determined. Enforcement Notices are entered onto the Land Charges Register and stays with the Land they are served upon rather than the person.

Non-compliance with an Enforcement Notice constitutes a criminal offence for which the recipients may be prosecuted and are liable to receive a criminal record and an unlimited fine, **plus for payment of the Council's costs in bringing the case to court, which often run into thousands of pounds.**

The time limits set out by the Town and Country Planning Act 1990 detailing when an Enforcement Notice can be served are as follows:

Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed.

Four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken.

Ten years for all other development. The ten year period runs from the date the breach of planning control was committed, until the investigation commences.

**If a person deliberately conceals a development with the intention of deceiving the LPA to a point when the requisite time frame will have expired, an enforcement order can be obtained which would alleviate the time limit and allow for formal enforcement action to be taken.**

- **Listed building enforcement notice.** This is equivalent to an Enforcement Notice but can be served under the Listed Buildings legislation. This means that it doesn't have to comply with time frames and may be issued at any time. If found guilty, the offender can face an unlimited fine and up to 6 months' imprisonment, or, upon indictment, up to two years' imprisonment and a fine.

- **Breach of condition notice.** This may be served when conditions imposed upon a planning permission are not adhered to. You cannot appeal this type of notice to the Planning Inspectorate and it can carry a fine of up to £2500.
- **Section 215 Notice** – provides the power to secure the proper maintenance of land and buildings where there is an adverse effect on the amenity of the area.
- **Stop notice.** This is the most serious type of enforcement action. It first requires an enforcement notice to be issued. It requires everyone to cease unauthorised use and is not limited just to recipients of the enforcement notice.

Improper use could result in severe implications for the LPA including reimbursement of earnings lost while the notice was served.

The fine for breaching a stop notice is unlimited upon indictment.

A temporary stop notice is also an option, and can be served without an enforcement notice being in place, but can only be renewed after 28 days if an enforcement notice has been served. The fine is the same as above.

- **Advertisements.** Adverts that aren't exempt under the advert regulations require consent or permission.  
Anyone that acts in contravention with regards to these regulations is liable for fines of up to £2500 upon conviction, and up to £250 for each day the offence continues after conviction.  
A discontinuance notice may be served against an advert where express consent is applied if the advert is considered to be inappropriate or dangerous. This can be appealed against.
- **Prosecution.** Prosecution can be pursued in accordance with the above notices and where it is in the public interest to do so.  
Pursuant to prosecution, the LPA may be awarded costs of the process and fines may be imposed, along with a resultant criminal record.
- **Powers of entry.** The LPA has powers of entry that allow any authorised officer to enter land at a reasonable hour to assess whether a breach of planning control has occurred and how the LPA's powers are best used under the Town and Country Planning Act 1990. If entry is refused an LPA can obtain a warrant from a court to make entry, pursuant to the Town and Country Planning Act 1990.

## 9. Houses in multiple occupancy

Houses in multiple-occupancy ("HMOs") are a significant part of Portsmouth's community infrastructure and are regulated as closely as possible by the LPA.

More information can be found on these types of properties in our [HMO Supplementary Planning Document](#).

If you believe that there is a HMO in the city operating unlawfully, please follow the complaints process detailed above in section 6.

## 10. What happens if someone complains about you?

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, and so we will always seek to work with you to understand the facts of the case.

Initially a member within the Enforcement Team will visit the site. Due to time constraints, this is usually without any prior warning to the owner or any tenants/employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive. Enforcement officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the Enforcement Officer.

If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, the Planning Enforcement team will advise you of the details of the breach and how it can be rectified. You may be served with a Planning Contravention Notice, which requires information concerning the alleged development. This notice is used to establish the facts of what has occurred and the details of those with an interest in the land, so that the Council can determine whether a breach has taken place and who is responsible. It is a criminal offence to not complete and return such a notice within the specified timescale.

In the event of a breach being established, your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development, or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this. In some circumstances you may be invited to submit a retrospective planning application or, other appropriate application if it is considered that consent may be granted or an application for a Certificate of Lawfulness of Existing Use or Development, where it can be shown that the breach is immune from enforcement action and therefore lawful.

If compliance is not secured through negotiations or the relevant retrospective application / Certificate of Lawfulness is refused, formal action may be instigated (see types of formal action above).

## 11. Customer Care

The City Council is committed to offering a fair and transparent enforcement service to the community.

Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control. In exercising this policy, the City Council will offer all of its customers, whether they are complainants or those who may be in breach of relevant controls, adequate opportunities

to fully state their case, in order to ensure that the correct decisions are taken to safeguard the built and natural environment of Portsmouth.

If persons are aggrieved with the Planning Enforcement Service offered to them, there is a complaints procedure, where complaints can be investigated.

If both stages of the procedure have been exhausted and a customer is still not satisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the City Council and if it has, recommend what remedy ought to take place. This may include the payment of compensation.

## 12. Development Monitoring

Where possible, the Local Planning Authority aims to monitor developments to ensure that they are built in accordance with approved plans and conditions are discharged and complied with. As such, we generally rely on working in conjunction with other council departments, local residents, ward councillors, community groups and internal notifications to become aware of non-compliance.

On major developments the enforcement team will monitor on site from the commencement of development to ensure that the development is carried out to the highest standards.