

# Planning Enforcement Charter

(January 2018)

## A guide to the Enforcement of Planning Control in Neath Port Talbot



THIS COMMUNICATION  
AFFECTS YOUR PROPERTY

### ENFORCEMENT NOTICE

#### OPERATIONAL DEVELOPMENT

The Town and Country Planning Act 1990  
(as amended by the Planning and Compensation Act 1991)

ISSUED BY NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control under Section 171A(1)(a) of the Town and Country Planning Act 1990 at the land described below. They consider that it is expedient to issue this Notice having regard to the provisions of the development plan and all other material planning considerations. The area is shown at the end of the Notice and the enclosures to which it refers contain important additional information.

TO WHICH THE NOTICE RELATES



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## **Planning Enforcement Charter:**

### **A guide to the Enforcement of Planning Control in Neath Port Talbot**

#### **Executive Summary**

Enforcement is one of the most complex parts of the planning system and is an issue that concerns many members of the public, given the need to ensure that appropriate action is taken against unacceptable development in the wider public interest.

While all valid complaints will always be investigated, it is not however always possible or expedient for the Authority to take action against unauthorised development. The aim of this Charter is therefore to establish a framework against which the public can judge the effectiveness of the delivery of the Planning Enforcement service delivered by Neath Port Talbot Council.

This Charter seeks to:-

- Provide an overview of the planning enforcement system, including a summary of what may constitute a breach of planning control
- Detail the enforcement processes and powers available to the Council
- Identify policies and procedures which set out how the NPT Planning Enforcement team will deal with enforcement complaints in a fair, reasonable and consistent manner
- Detail the service standards that we strive to achieve to ensure that enforcement complaints are dealt with in a timely manner, and that complainants are advised of the outcome of such investigations at appropriate stages

## 1. Introduction

### Objectives of the Enforcement System

The planning system operates to regulate development and the use of land in the public interest, and planning enforcement is a key part of the trinity of Development Plans, Development Management and Enforcement which make up the statutory planning process in Wales.

Neath Port Talbot County Borough Council (NPTCBC) recognises the importance of an effective planning enforcement service in seeking to ensure that national and local planning policies are robustly and reasonably applied, and the integrity of the system is not undermined.

Within this context, the primary objectives of our enforcement team are as follows:

- To investigate alleged breaches of planning control, acting proportionately and reasonably
- To remedy undesirable effects of unauthorised development; and
- Taking action where appropriate and expedient to bring unauthorised development under control in the wider public interest.

This Charter seeks to identify the policies and procedures which allow NPTCBC, as Local Planning Authority, to robustly enforce compliance with planning controls.

### Planning Enforcement Officers

The planning enforcement function of the council is carried out by the Council's Planning Enforcement Officers within the Planning Division (Development Management) of the Environment Directorate.

Contact Details for the Enforcement team and Managers are provided at [Section 8](#).

### Framework and Guidance

The planning enforcement team operates within the legislative framework of the Town and Country Planning Act 1990 (as amended) ("the Principal Act"), the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), the Planning (Wales) Act 2015 and all their subordinate and associated legislation.

Welsh Government Policy on planning enforcement is set out in section 3.6 of [Planning Policy Wales](#) (PPW). National policy guidance was formerly set out in Technical Advice Note (TAN) 9: Enforcement of Planning Control (1997), but is now included in the [Development Management Manual](#), incorporating where appropriate the guidance on changes introduced by the Planning (Wales) Act 2015. This provides guidance on when enforcement action is appropriate.

Detailed consideration of all enforcement investigations are undertaken within the above legal framework, and are led by the need to ensure that development is acceptable within the context of national guidance in **Planning Policy Wales** and the Council's adopted [Neath Port Talbot Local Development Plan](#), having regard to all other material planning considerations.

## 2. What is a Breach of Planning Control?

There are many ways in which a breach of planning control can occur, although the two main reasons are:

- Undertaking building works or engineering operations, or materially changing the use of land or buildings, without the necessary planning permission;
- and
- Where planning permission has been granted but the approved plans and/or the conditions attached to the approval have not been complied with.

The planning system is, however, complex, and it is quite often the case that building works (often called 'operational development') or changes of use may not actually require planning permission. This could be because they are not actually 'development'<sup>1</sup>, or they may be 'permitted development' (meaning that an application for planning permission is not necessary)<sup>2</sup>. Examples of this could include some small-scale extensions to houses or outbuildings within specified limits.

### Types of Breaches

While a complaint may relate to something not requiring permission, or not constituting a breach of planning, we will always investigate validly-made complaints. Examples of the kind of breaches that the planning enforcement team investigates are:

- Unauthorised Operational Development – carrying out of building works. For example, construction of new buildings or extensions;
- Unauthorised Material Change of Use of Land or Buildings. For example, changing the use of a shop to a hot food takeaway;
- Breach of Conditions attached to planning permissions. For example, failing to comply with conditions restricting hours of operation;
- Development out of accordance with approved plans. For example, a building may be larger than shown on the approved plans;
- Unauthorised works to a Listed Building that affect its character as a building of special architectural or historic interest;
- Unauthorised demolition in a Conservation Area;

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<sup>1</sup> [Section 55](#) of the Town and Country Planning Act 1990

<sup>2</sup> Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales)

- Unauthorised display of advertisements;
- Unauthorised works to trees protected by Tree Preservation Order (TPO) or by reason of their location in a Conservation Area; and
- Untidy Land or Buildings that may be adversely affecting the amenity of an area.

### **3. Determining Whether Action should be Taken**

[Planning Policy Wales](#) states that an effective Development Management process requires Local Planning Authorities to be prepared to take enforcement action in appropriate circumstances. The decisive issue is to consider whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

Welsh Government guidance emphasises that: -

- Any enforcement action should be commensurate with the breach of planning control to which it relates;
- The intention should be to remedy the effects of the breach of planning control, not to punish the person(s) responsible for the breach;
- It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity; and
- Enforcement action should not be taken simply to regularise development for which permission had not been sought but which is otherwise acceptable.

When investigating an alleged breach of planning control, therefore, the Authority always seeks to ensure that decisions are taken concerning the most appropriate way forward in an effective and timely manner. This does not, however, mean that formal action will be taken. Indeed such action is limited to the most serious cases where harm arises and action is warranted in the public interest.

In the majority of cases, even where breaches are identified, we will seek to resolve these informally, which may include: -

- Informal negotiation with an owner / developer to remove a breach, or to make changes to a development such that it no longer constitutes a breach, or no longer causes material harm;
- Seeking the submission of a planning application to regularise a breach, which may include the need to comply with conditions to mitigate any harm caused by the development;
- Concluding that no harm arises from the breach, such that it is not expedient for the Council to take the matter further.

## How Do We Determine When it is, or is not, 'Expedient' to Take Action?

When we investigate complaints, and these are found to require planning permission ('a breach of planning'), we will undertake an initial assessment to determine whether the development would be acceptable judged against the Policies within the Council's adopted Local Development Plan. Although the nature of such assessment will vary depending on the breach, this may involve consideration of matters including: - the principle of development; and the impact on visual amenity / local character, highway safety, and residential amenity.

Where we feel that such development is likely to be acceptable, or could be made acceptable by condition, we would usually seek submission of an application to regularise development.

There will often be cases, however, where the nature of the breach is considered to have no unacceptable impacts, and we will conclude that it would not be 'expedient' in the public interest to take any action (including requiring submission of an application). An example may be where a boundary enclosure technically exceeds the 'permitted development' limit, but causes no demonstrably adverse impact on neighbouring amenity. In such cases, we will inform complainants of our conclusions and close the investigation.

In such 'non expediency' cases, we appreciate that complainants will not always agree with our decision. Officers will, however, always be happy to explain the reasoning behind such conclusions with a complainant. Should a complainant remain dissatisfied with such a response, [Section 6](#) of this Charter explains how they may progress such complaint.

National Policy guidance covering the different ways investigations can be resolved is covered in the [Development Management Manual](#).

## What Type of Action can be Taken?

When a decision is made that it is expedient to take action against a breach of planning, there are a number of types of action that can be taken. A summary of these enforcement powers can be found in [Appendix 2](#).

## Are there Time Limits for Enforcement Action?

Planning Policy Wales states that the statutory time limits for taking enforcement action must be adhered to and prompt initiation of action may be necessary to prevent an unacceptable breach of planning control from becoming well established and more difficult to remedy.

For most types of 'operational' development, plus the change of use of a building to a single dwelling house, the time limit is four years after the development is completed.

For any other breach of planning control the time limit is ten years after completion.

### **If Enforcement Action is taken, is there a right of appeal?**

There is a right of appeal against an Enforcement Notice (including an 'amenity notice' served under section 215), but not against a Breach of Condition Notice, Stop Notice or Temporary Stop Notice.

An appeal against a Notice may be made to the Planning Inspectorate during the period (usually 28 days) before it comes into effect. The grounds for appeal can include that planning permission ought to be granted for the activities cited in the Enforcement Notice or that the alleged breach of planning control has not taken place.

If an appeal is received, no further action can usually be taken until the appeal has been determined.

## **4. Reporting a Breach of Planning Control**

### **Who Can Report a Breach of Planning Control?**

Although the Council will seek to identify possible breaches of planning control as part of its service, it is largely a reactive service which responds to complaints received from members of the public and Elected Members.

The Council accepts that many people do not like to make formal complaints to the Council. However, although a complainant may find it difficult to report a nearby development which they suspect may be unauthorised, the role of the public in identifying potential breaches of planning control is essential in allowing the Authority to effectively and robustly enforce the planning system, in the wider public interest.

Please note and be assured that **complainant's details will remain confidential** and will not be publicly available (although please note advice at [section 7](#) regarding how the Authority will deal with requests under the Freedom of Information Act / Environmental Information Regulations).

### **Contact Details**

It is important that complainant's provide full contact information, and ideally an email address, so that we can contact them to inform of our investigations.

For all online complaints, and when we are provided with an email address, all written communication will be undertaken electronically only.



## How We Deal with Anonymous Complaints

Please note that we will not normally deal with anonymous complaints, and will only investigate such complaints in the following circumstances: -

- When Officers determine that the nature of the complaint is sufficiently serious that it may require immediate action by the Council in terms of public amenity and /or are irreversible actions that involve serious breaches resulting in significant harm (see Priority 1 Complaints).
- When Officers consider the nature of the complaint is of specific interest having regard to the need to protect the wider public interest, and /or where it is acknowledged that protecting disclosure of the identity of the complainant may be justified (for example, allegations of new dwellings / residential uses in the countryside, or concealment of breaches of planning control)

Officers will always seek to reassure complainants of the confidentiality of complainants details (as explained above), but please note that, if you would prefer, you may approach your local Ward Councillor, or the Town Council / Community Council in your area to make a complaint on your behalf.

## How to Make an Enforcement Complaint

The Council will accept complaints relating to breaches of planning control by any of the following methods: -

- **ONLINE** by completing the [Enforcement Complaint Form](http://www.npt.gov.uk/planning) at [www.npt.gov.uk/planning](http://www.npt.gov.uk/planning).

**Note:** This is the preferred method of contact since it allows complainants to provide full information, and upload any relevant photographs etc. which may assist our investigation and lead to earlier resolution of a complaint.

- **BY EMAIL** to: [PlanningEnforcement@npt.gov.uk](mailto:PlanningEnforcement@npt.gov.uk)
- **IN WRITING TO:** Development Manager – Planning  
The Quays, Brunel Way, Neath SA11 2GG
- Although we always seek to get complainants to provide details of their complaint in writing using one of the above methods, we will also take details by Telephone on 01639 686711 or 01639 686752

## What Information Do We Need?

When receiving an enforcement complaint, it is essential that complainants supply us with sufficient information to enable us to identify the location of the site, and the nature of the alleged breach of planning, including any background information relating to the breach (such as the name of the person involved if known).

This will ensure that we are able to deal with all complaints in a timely manner, and for our investigations to be undertaken in the most efficient way. Failure to provide sufficient information could not only result in delays to our initial investigation, and our ability to meet our service standards, but also potentially affect our conclusions.

The information and evidence supplied by a complainant is therefore vital to the Council's investigation and potentially the success of any formal action. In this regard, please be aware that complainants may be contacted and requested to provide further information such as:

- Photos or diary evidence to substantiate any claims made, e.g. if the alleged breach is of a business operation in a residential property, details of what has been observed
- Details of how long the alleged breach has been taking place or when the unauthorised works were commenced or completed

Please note that the Authority will not normally investigate some complaints, such as neighbour disputes over boundaries or complaints over anti-social behaviour as they relate to matters over which the planning service has no control and cannot be investigated by the planning enforcement section.

Where Officers consider the complaint relates to such matters where there are private or civil law solutions, the Council will not become involved. In such cases you will be advised of this and, if relevant, where the complaint could be directed.

## 5. How Do We Deal With Complaints?

Our investigation into an enforcement complaint can usefully be broken down into the following stages, with the appropriate service standards based on the Welsh Government's current expectations for delivery of the enforcement service: -

### **STAGE ONE: Registration and Acknowledgement**

Upon receiving a complaint with supporting evidence the Authority will:

- Register the complaint in the Council's Enforcement System
- Check that we have all the necessary information to investigate the complaint and, if not, make further contact with the complainant
- Prioritise complaints based on the 'Prioritisation Scheme' at [Appendix 1](#).
- Acknowledge complaints in writing within 5 working days from receipt (by email), providing:-
  - The Enforcement Case reference number
  - The name and contact details of the investigating Enforcement Officer
  - The Priority assigned to the case
  - Details of this Enforcement Charter

**SERVICE TARGET 1:** The Council will seek to ensure that 100% of complaints are registered and acknowledged in writing within 5 working days of receipt.

<b>STAGE TWO: Investigation Phase</b>
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Following registration and acknowledgement of a complaint we will: -

1. Undertake any relevant initial research (a 'desktop study') which may assist in identifying whether the complaint constitutes unauthorised 'development' (as defined under Section 55 of the Planning Act 1990 (as amended));
2. Undertake a site visit to gather information and evidence relating to the alleged breach of planning control, including taking notes and photographs from the site or adjoining land;
3. Depending on the seriousness of the alleged breach and available resources the target time for our initial investigation will be as follows: -

**Priority 1 Cases:** A site visit and initial investigation will be made no later than the **next working day** following the registration of the complaint.

**Priority 2 Cases:** A site visit and initial investigation will be made within **ten working days** of receipt.

**Priority 3 Cases:** A site visit and initial investigation will be made within **fifteen working days** of receipt.

4. Where contact with either the complainant or the person who has carried out development without planning permission is necessary and access is required (or not given), Officers will seek to contact the complainant / owner / developer by phone or in writing to ensure such access is afforded (using the Council's access powers if appropriate)
5. (Where relevant) Contact the alleged offender to discuss the allegations and seek any relevant information relating to the alleged breach of control to inform the investigation
6. If adequate information is unavailable, undertake further site visits if necessary to gain further information and/or evidence, or contact a complainant to assist in the collation of any necessary evidence (for example to record activities where an alleged breach relates to a business activity from a residential property)
7. Following the site inspection, undertake any necessary further research into the planning history or other relevant sources, for example ownership details, aerial photography and records from other Council services such as Building Control and Council Tax. Officers may also serve a [Planning Contravention Notice](#) (PCN) which requires person(s) to provide information pertaining to the alleged breach

8. In accordance with the Welsh Government's '[Planning Performance Framework](#)' reach one of the following formal conclusions on the 'investigation stage': -

A. That there has not been a Breach of Planning Control

B. That there has been a Breach, but it would not be *expedient* to pursue further action in the public interest

Note: Even where a breach has been identified, it may not be expedient to take action against a development that Officer's consider to be acceptable, when assessed against policy and guidance and to not cause any harmful impact upon public amenity.

C. That a breach has occurred, and action is expedient

This could be either through the submission of a planning application to regularise development with conditions, or the service of an [Enforcement Warning Notice](#) (EWN)

D. That a valid planning application has been received in respect of the development in question

Note: Where it appears to officers that there is a reasonable prospect that planning permission would be granted for the development, the planning enforcement team will encourage submission of a retrospective planning application. The person will also be advised to cease any work or use.

9. Notify the complainant(s) in writing of the outcome of the investigation phase, including information on the next stages of the investigation where relevant.

10. (Where relevant) Notify the owner / developer of the conclusions of the investigation phase, including details of the next stage of the investigation where a breach of planning has been identified and it is expedient to pursue the matter further

**SERVICE TARGET 2:** The Council will strive to ensure that in 90% of enforcement cases, complainants (where an email or postal address has been provided) are notified in writing of the outcome of the 'Investigation Phase' within 12 weeks (84 days) of receipt.<sup>3</sup> (80% or higher is considered by Welsh Government to be 'good' performance).

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<sup>3</sup> The date on which written notice is given of the outcome is known as the 'investigation date'

### **STAGE THREE: 'Positive Action' Stage**

Where Officers have decided that a breach has occurred and it is (or would be) expedient to take action, the Council will then seek to resolve the breach through one of the following 'positive actions': -

#### **A. Removal of the breach through informal negotiation**

The purpose of the enforcement system is not to punish an offender, but to remedy a breach of planning in the wider public interest. Officers will therefore usually seek, wherever possible, to informally negotiate a solution to a breach of planning control.

In considering this, it is important to bear in mind that it is **not an offence** to carry out development without first obtaining any planning permission required for it. In line with guidance in [Planning Policy Wales](#) the Local Planning Authority should first attempt to resolve breaches of planning control informally through negotiation with the land owner or developer.

Formal action by the Council will be as a last resort or used in situations where an immediate solution is necessary in the interests of public amenity.

#### **B. Serve an Enforcement Notice in respect of the Alleged Breach;**

Where a breach is found which is considered to be a high priority due to its harmful effect upon public amenity, and negotiation has been unable to remedy such harm, authorisation will be sought to take formal enforcement action through service of an [Enforcement Notice](#) or other appropriate Notice.

In line with PPW, enforcement action taken by the council will always be commensurate with the breach of planning control to which it relates. In addition, the council will only take action where it is appropriate to do so – for example, it would normally be inappropriate to take formal enforcement action against a trivial or technical breach of planning control.

Where formal action is to be taken against small businesses and self-employed persons, such action will in normal circumstances only be taken once informal discussions have been unable to remedy the breach. When setting periods for compliance with formal Notices, the Council will seek to be reasonable having regard to individual circumstances, weighed against the harm to the public interest.

In all cases of formal enforcement action, careful consideration will be made of the impact on the human rights of affected parties.

The most appropriate Notice will be used to remedy the harm being caused. Where authorised, this could take one of the following forms: -

- Enforcement Notice (Operational Development or Material Change of Use)
- Stop Notice (including Temporary Stop Notice)
- Section 215 Notice ('Amenity Notice')
- Breach of Condition Notice
- Listed Building Enforcement Notice

See [Appendix 2](#) for more detail of the enforcement powers available to LPAs.

Details of Enforcement Notices, Breach of Condition Notices, Temporary Stop Notices and Stop Notices are entered into an Enforcement Register. The Register is available for inspection on request at:

The Quays, Brunel Way, Baglan Energy Park, Neath SA11 2GG

- C. Planning permission is subsequently granted through an application (or following an appeal against service of an Enforcement Notice);**
- D. By Taking Prosecution Action (e.g. against unauthorised display of an advertisement, or Unauthorised Works to a Listed Building)**

Please note that in a small number of cases a complainant may be asked to assist the Council by providing evidence at an appeal or in Court. Before this happens the Case Officer will ask for their consent. If they are unwilling to give consent it is possible that the Authority would be unable to take further action.

- E. By the Authority taking Direct Action to remove the breach of control.**

Although the costs of 'direct action' can be placed as a charge on land, it is often difficult to recover such costs. Therefore any decision to take such action will always be a final resort, and will have regard to the costs involved weighed against the degree of ongoing harm

**SERVICE TARGET 4:** The Council will strive to ensure that 'Positive Action' (as defined above) is taken in no less than 80% of cases where action has been deemed expedient within 180 days of the 'investigation date'. Where such action has not been possible, the complainant will be notified in writing of the reasons for any delay in taking action.

## **STAGE FOUR: Closure of Case**

For positive actions (A) (C) and (E) above, the case will be formally closed and the complainant notified in writing.

For all other cases, the Breach of Planning will only be resolved once any formal Notice has been complied with through removal of the breach or, for example, an unauthorised advertisement has been removed.

Unfortunately, the timescale for 'final resolution' of such cases can take a considerable amount of time, and is often dependent on factors outside the control of the Authority, such as the time taken for determination of an appeal and subsequent compliance periods. It can also need the Authority to take Prosecution Action against an offence.

For this reason, the Welsh Government indicators for enforcement no longer set 'target dates' for closure of enforcement cases. The Authority will, however, always seek to ensure final resolution of enforcement cases at the earliest opportunity, and will pursue all appropriate and reasonable action to secure resolution.

The Authority will also always notify a complainant in writing once the enforcement case has been resolved / closed.

**SERVICE TARGET 5:** The Council will ensure that all complainants are notified in writing within 5 working days of a decision being made to close an enforcement investigation.

## **6. Making a Suggestion or Complaint about the Service**

We hope that those involved in our enforcement investigations will always be happy that Officers have strived to investigate and resolve breaches of planning control efficiently and in accordance with this Charter. We appreciate, however, that this may not always be possible, and there may be concerns about the way in which an enforcement investigation has been handled.

In the first instance, if a person is dissatisfied with the service we have offered, the Case Officer should be contacted to discuss such concerns and see if they can help. However, in the event a person remains dissatisfied, contact should be made with one of the following: -

- Steve Ball                      Development Manager – Planning  
[s.ball@npt.gov.uk](mailto:s.ball@npt.gov.uk) or 01639 686727
- Chris Davies                    Team Leader (West)  
[c.j.davies@npt.gov.uk](mailto:c.j.davies@npt.gov.uk) or 01639 686726
- Nicola Lake                      Team Leader (East)  
[n.lake@npt.gov.uk](mailto:n.lake@npt.gov.uk) or 01639 686737

It is emphasised that not everyone will agree with the outcome of an enforcement investigation, whether it be a complainant or alleged offender. That, however, is not in itself a reason for a complaint to be upheld.

Written complaints about the service (as opposed to the outcome of an investigation) will be acknowledged and investigated in accordance with the [Council's Complaints Procedures](#).

While the Authority will always strive to resolve a complaint locally, if this is not possible and dissatisfaction remains following the conclusion of the Council's formal complaint process, a complaint may be sent to the Public Services Ombudsman for Wales at: 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ or [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk).

## 7. Freedom of Information

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 give a general right of access to information / environmental information held by public authorities. While the presumption will always be in favour of disclosure of such information, having regard to the wider principles of promoting accountability and transparency in the planning process, in respect of enforcement complaints details will be treated in strictest confidence.

Accordingly, while requests to disclose the identity of a complainant are likely to be resisted because it would discourage others from reporting alleged breaches of planning control to the Council, thereby prejudicing the proper enforcement of planning laws, each request will be considered individually to establish whether an exemption applies.

Where the Council does refuse a request to disclose information under the Act, a written explanation will be provided setting out the exemptions relied on by the Council for withholding the information and the relevant appeal procedures.



## 8. Contacts

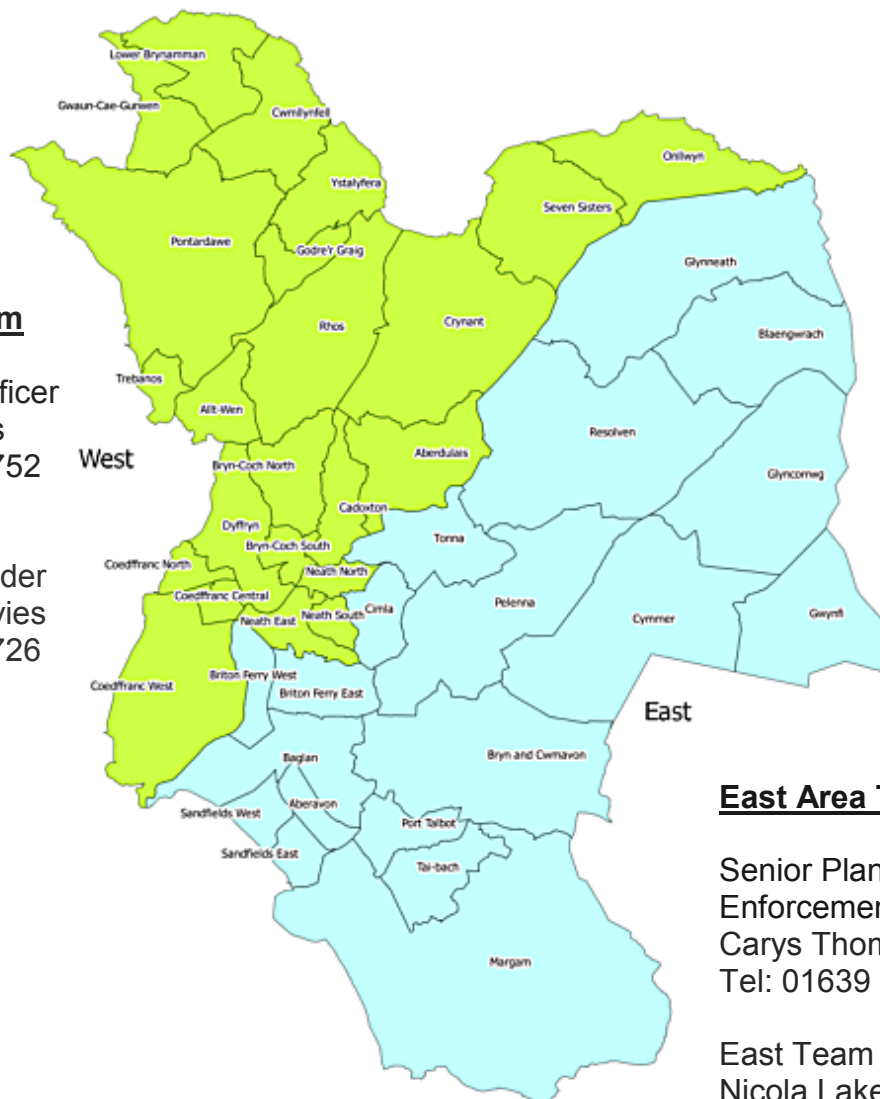
Should you wish to contact the Planning Enforcement team, please review the map to see which team covers your area, and use the following contacts:

**Email:** [PlanningEnforcement@npt.gov.uk](mailto:PlanningEnforcement@npt.gov.uk)

### West Area Team

Enforcement Officer  
Richard Howells  
Tel: 01639 686752

West Team Leader  
Christopher Davies  
Tel: 01639 686726



### East Area Team

Senior Planning  
Enforcement Officer  
Carys Thomas  
Tel: 01639 686711

East Team Leader  
Nicola Lake  
Tel: 01639 686737

## APPENDIX 1: Prioritisation of Complaints

Due to the large number of enforcement complaints received by the Planning Enforcement team, as part of a review into the effective operation of the team it has been determined that with effect from January 2018, at registration stage complaints will be prioritised.

This will ensure that the resources of the Planning Enforcement team are appropriately and proportionately targeted, having regard to the likely level of harm being caused to the local community and public amenity. It also ensures that expectations of complainants can be managed, notably during periods of high workload and holiday periods.

All complaints will be prioritised in accordance with the following protocol:-

### **PRIORITY 1: HIGH PRIORITY CASES**

In general, 'Priority 1' cases will be restricted to those cases where the likelihood of harm being caused to the environment or amenity is significant, immediate and potentially irreparable, and there is a likelihood that urgent action may be needed to prevent or mitigate existing or potential immediate harm.

This is likely to relate to serious breaches such as:

- Unauthorised works to a Listed Building, archaeological site or Scheduled Ancient Monument (SAM) (contact will be made with Cadw in respect of SAM)
- Demolition of important unlisted buildings in a Conservation Area,
- Development Works affecting a European Protected Species (EPS) Site of Special Scientific Interest (SSSI) or other designation
- Unauthorised development that is causing severe disturbance to neighbours or poses a threat to public safety.
- Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation Area.
- Unauthorised display of advertisements which appear likely to be causing significant harm to public safety

### **PRIORITY 2: MEDIUM PRIORITY CASES**

'Priority 2' will normally be given to those cases which the Authority consider there is a potential likelihood of a serious or significant effect on the environment or local amenity, which could merit formal enforcement action being taken, but no short-term harm would arise from a minor delay in investigation.

This is likely to relate to serious breaches such as:

- Breaches of planning contrary to the policies of the Local Development Plan (e.g. Unauthorised residential use in the countryside)
- Complaints where the time limit for taking formal action may be about to expire.

- Serious breach of conditions on planning permissions, including non-compliance with 'conditions precedent'<sup>4</sup>
- New Building works of medium-large scale
- Complaints of significant harm being caused to amenity, for example, extensions to residential property that result in serious overlooking or other amenity problems, unauthorised uses of land which cause amenity problems to neighbouring properties.
- Unauthorised display of advertisements which appear likely to be causing significant harm to visual amenity

### **PRIORITY 3            LOW PRIORITY CASES**

'Priority 3' will be assigned to all other cases, these cases being those which, while potentially of significance to a complainant, are nevertheless (based on the information available at registration stage: -

- Likely to have a limited degree of harm, and thus may be cases where it will not be expedient to take positive action; or
- Deemed unlikely to represent a breach of planning;

This is likely to relate to complaints relating to:

- Householder development such as small-scale extensions, boundary enclosures etc.
- Advertisements (other than those identified under Priority 2)
- Minor development where there may be a breach of planning control but there is little or no immediate harm to amenity, for example incidental minor developments that only just exceed permitted development rights.
- Material Change of Use of a property
- Minor Breaches of Planning Conditions

### **Assigning a Priority to a Case**

The priority of a case will normally be assigned by the Enforcement Officer in liaison with the Team Leader and/or Development Manager – Planning.

In all cases it will be for the Council to determine whether and to what level any harm to public amenity results from an alleged breach, and which priority is assigned to an enforcement case.

#### Please note:

1. A Priority will be assigned to a case irrespective of the source of the complaint
2. Although a Priority rating will be given to each case as it is received, the rating may change during the investigation
3. Notwithstanding the priority given to a complaint, the Council remains committed to investigating every alleged breach of planning in accordance with the guidance and targets within this Charter.

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<sup>4</sup> A condition which require approval of details or actions to be undertaken prior to development commencing

## **APPENDIX 2 : The Enforcement Powers**

The Town and Country Planning Act 1990 defines taking formal "enforcement action" as the issue of an Enforcement Notice or the service of a Breach of Condition Notice. Failure to comply with either constitutes an offence.

There are also a number of supplementary powers granted to the Local Planning Authority (LPA) that allow other types of notice to be served. Failure to comply with these notices is also an offence.

A summary of the main enforcement powers available to the Local Planning Authority are detailed below: -

### **1. Planning Contravention Notice (PCN)**

A Planning Contravention Notice can be served in respect of any suspected breach of planning, and enables the Authority to require detailed information to inform its investigation, including: -

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

The service of a PCN does not stop the Authority taking other formal action against a breach of planning control.

The recipient of a PCN has 21 days to respond to it. Failure to reply to a PCN (or making a false or misleading statement within a response) is an offence against which prosecution action can be taken.

### **2. Enforcement Warning Notice (EWN)**

Introduced in Wales by the Planning (Wales) Act 2015, an Enforcement Warning Notice can be issued by a LPA where the Authority considers that, subject to the imposition of conditions, there is a reasonable prospect that, if an application for planning permission in respect of the unauthorised development were made, planning permission would be granted.

An EWN will give a specified period within which time an application must be made, after which time enforcement action may otherwise be pursued.

The issue of an Enforcement Warning Notice will 'stop the clock' in terms of the unauthorised development potentially gaining immunity from enforcement action.

### **3. Enforcement Notice (EN)**

Where the LPA determines that it is expedient to take formal enforcement action against a breach of planning in the wider public interest, it may issue an Enforcement Notice.

An Enforcement Notice may allege an unauthorised material change of use of land or buildings, operational development or breach of a condition.

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

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

Once a Notice comes into effect, there is a further period of time to allow for compliance. The length of time depends on the nature of the breach.

Failure to comply with an Enforcement Notice is a criminal offence and can lead to a fine of up to £20,000.

### **4. Listed Building Enforcement Notice**

Similar to an Enforcement Notice, such Notice relates to unauthorised works to a Listed Building and may:-

(a) require the building to be brought back to its former state; or

(b) if that is not reasonably practicable or desirable, require other works specified in the Notice to alleviate the effects of the unauthorised works; or

(c) require the building to be brought into the state it would have been in if the terms of any listed building consent had been observed.

The Notice must specify time constraints for securing compliance with the requirements of the Notice.

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

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

## **5. Breach of Condition Notices (BCN)**

A BCN may be served where a condition attached to a planning permission is not being complied with. The BCN will specify the steps which the LPA require to be taken in order to secure compliance with the condition as is specified in the notice.

There is no right of appeal against a BCN (although the Authority's decision to issue a Breach of Condition Notice can be challenged in the Courts) and failure to comply constitutes a criminal offence which can be prosecuted, which can lead to a significant fine.

## **6. Stop Notices (SN)**

In certain cases, a Stop Notice can be served in order to cease an unauthorised activity on the land. A Stop Notice can only be served at the same time as, or after, the service of an Enforcement Notice, and is usually restricted to the most urgent and harmful breaches of planning control, with a LPA at risk of compensation if it is used in inappropriate cases.

There is no right of appeal against a Stop Notice, only the Enforcement Notice to which it is attached.

Failure to comply with a Stop Notice can lead to a substantial fine of up to £20,000.

## **7. Temporary Stop Notice**

Since June 2015<sup>5</sup> LPAs in Wales have been able to issue Temporary Stop Notices which can require that an activity which is a breach of planning control should stop immediately.

A Temporary Stop Notice does not have to be issued with an Enforcement Notice, and ceases to have effect after 28 days. Such Notice should only be issued when the LPA believes that the breach should be stopped immediately.

## **8. Section 215 'Amenity' Notices (s215)**

Where the condition of land is adversely affecting the amenity of the area, the LPA may serve a notice under s215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land.

The s215 Notice will specify the steps that the LPA require to be taken in order to remedy the condition of the land.

There is a right of appeal to the Planning Inspectorate against a s215 Notice.

Failure to comply with a s215 Notice is an offence

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<sup>5</sup> *Planning and Compulsory Purchase Act 2004 (Commencement No. 14 and Saving) Order 2015.*

## **9. Injunction**

If an authority considers that a breach of planning control is sufficiently serious, and is causing or likely to cause exceptional harm, it may apply to the Courts for a restraint injunction. Those in breach of an injunction can be imprisoned.

## **10. Prosecution Action**

As referred to above, where someone is in breach of the requirements of an Enforcement Notice, Breach of Condition Notice, or a Stop Notice, they are guilty of an offence and the planning enforcement service can initiate prosecution proceedings.

In addition, the LPA may also instigate prosecution proceedings against offences such as:-

- Display of Advertisement without Express Consent
- Unauthorised Works to Protected Trees
- Unauthorised Works to a Listed Building
- Non-Compliance with a PCN or s215 Notice

Prosecution action will always be dependent on legal advice that there is a reasonable prospect of success, and that it is in the public interest to pursue such action.

In some cases, it may be determined that a 'Simple Caution' can be issued, where there is evidence of an offence, the offender has admitted the offence, and mitigation is taken into account having regard to the public interest test.

## **11. Direct Action**

The Authority can also enter the site and carry out the works required by the Notice in default and then seek to recover its costs from the owner/occupier.