

Enforcement Policy

The decision to take enforcement action is discretionary. Where it appears to the Division that there has been a breach of planning control and it is expedient to take enforcement action then action will be taken.

When a serious breach of control occurs, the most appropriate notice will be served to remedy the breach or bring about necessary improvements.

Enforcement action will only be taken, having regard to the policies of the Development Plan and any other material considerations and it is in the public interest to do so.

The areas for prioritisation are listed below.

Enforcement will normally be in the public interest when one or more of the following criteria are satisfied:-

- i) The unauthorised development or activity, would result in unacceptable harm to a Listed Building or its setting or result in development which neither preserved or enhanced the character or appearance of a Conservation Area or other statutory designated land (Site of Special Scientific Interest, Area of Outstanding Natural Beauty, Area of Great Landscape Value etc.).
- ii) The breach of control would unacceptably harm the living conditions of residents or visitors to the Bay either through activity or physical development.
- iii) Unauthorised work to trees either protected by a Tree Preservation Order or within a Conservation Area.
- iv) The condition of land is adversely affecting the amenity of land within the Bay.
- v) Unauthorised works relating to Listed Buildings and Advertisements displayed in contravention of the Advertisement Regulations
- vi) The breach of planning control is not capable of resolution by way of a retrospective planning application and imposition of planning conditions (e.g. limiting hours of operation, noise level controls, type of use carried on, or by action by other Divisions (eg Environmental Health, Highways).
- vii) Where no regularising application is submitted under vi) enforcement action would be taken to achieve the objectives of the possible conditions, in terms of the steps to remedy the breach.
- viii) Where no mutual agreement on a reduced level of activity or development can be achieved.
- ix) Enforcement Action will always be commensurate with the breach of planning control.

For more information please contact:

Planning and Development Services, Enforcement section - (01803) 207802.

Alternatively, if you require further information on the planning process please call (01803) 207801.

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This document can be made available in other languages, on tape, in Braille, large print and in other formats. For further information, please contact Planning & Development Services on (01803) 207776



Planning

Planning & Development Services Enforcement Policy

Enforcement of
Planning Control
safeguarding Torbay's built
and natural environment
and protecting
the living conditions
of Torbay's residents
and visitors

The Planning & Development Services Division has statutory duties for the Council's Development Control function. This covers processing Planning, Listed Building, Conservation Areas, Advertisement and Tree applications. Other important aspects of its work include the condition of land and monitoring development to ensure compliance with approved details and any conditions attached to permissions.

Where development takes place without the necessary consent, the Council must consider whether it is expedient or not to take enforcement action in the performance of its statutory duties. In other words enforcement action is discretionary not mandatory.

- Such action must be in the public interest and have regard to the provisions of the Town and Country Planning Act 1990 (as amended), Planning Policy Statements, Planning Policy Guidance Notes and Circulars, the Development Plan and any other material considerations.
- Unlike other legislation operated by the Council generally speaking, no criminal offence is committed by breaching planning control. The offence occurs when an enforcement notice becomes actionable and has not been complied with.
- The only criminal offences under planning legislation relate to unauthorised alterations to Listed Buildings and breaches of Tree Preservation Orders and the Advertisement Regulations.
- Where Notices become actionable it is normal Council policy to prosecute with the aim of preventing any ongoing breach of planning control and securing compliance with the requirements of the Notice.
- The Division contributes to this process by providing verbal or written advice. The latter includes policies in the Development Plan, advisory leaflets and by ensuring that the legal powers are used appropriately to improve and safeguard the Built and Natural Environment and residents/visitors living conditions.
- The Division can negotiate to avoid enforcement action by:
 - i) securing voluntary compliance;
 - ii) the submission of a regularising application whereby planning conditions can be attached to alleviate the harm;
 - iii) only where these negotiations fail will the Council, having considered it to be in the public interest, take enforcement action.
- Where expedient, however the Division will institute appropriate enforcement action.

In using enforcement powers the Division will:

- seek to achieve compliance in a fair, consistent, proportional, transparent and targeted manner.
- seek to be clear, open and helpful in its approach to enforcement.
- seek to target enforcement resources where they are most needed and will be informed by its other Policies, Aims and Objectives.
- the Authority has signed up to the Enforcement Concordat and underlying this policy of firm but fair regulation are the following principles:-

Clear Standards and Consistency

Officers will always explain clearly the purposes of their visits, and seek the cooperation of the owner or occupier.

Decisions on enforcement action will be impartially taken in accordance with the relevant Provisions of the Town and Country Planning Act 1990 other Government advice including Planning Policy Guidance Note 18. 'Enforcing Planning Control'; the policies of the Development Plan and other material considerations.

Where action is required, instructions and recommendations will be provided in writing, stating the action required, by whom and, where appropriate, identifying a timeframe in which remedial actions will be taken.

We will put into place procedural documents and quality monitoring procedures to promote consistency and fairness.

We will distinguish in written correspondence those matters which the law requires must be dealt with, from recommendations which provide advice on good practice but do not require compliance (notwithstanding that failure to comply may prejudice any defence which may be available should prosecution ensue).

Where there is a shared enforcement role, with other Council Departments, the Division will ensure that liaison takes place at an early stage to promote a Corporate approach.

Openness and Helpfulness

We will provide information and advice in plain language. Appropriate translated material will be provided where necessary and practical help will be provided for people with impaired hearing, vision or other disabilities.

We will be open about how we set about our work, including any charges required by statute.

We will consult our customers, key stakeholders and the community in our endeavours to be open and clear in our approach.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

We will offer the opportunity to put your point of view before action is taken unless immediate action is necessary for instance by using Planning Contravention Notices.

We will provide a courteous and efficient service and our staff will identify themselves by name. If necessary officers will advise an owner occupier of their right of entry and, any subsequent necessary action in this respect.

We will provide a contact point and a telephone number for further dealings with us and we will encourage complainants and those complained against to seek advice/information from us. Retrospective applications will be dealt with efficiently and promptly.

We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Targeting and Proportionality

We have set response times for dealing with complaints and requests for advice or assistance and aim to achieve those targets.

We will respond to representations, where unauthorised development is observed and it is considered expedient we will take action. The source of any complaint will not be disclosed except in the case of court proceedings where written statements or attendance at formal proceedings is involved.

We will always make ourselves available to advise whenever our other priorities permit.

Enforcement action will be proportional to the breach and will be taken only when it is in the public interest. If a minor breach occurs and the party responsible has given written confirmation or their intention to comply with the required remedial action within a reasonable agreed time scale no immediate action will be initiated. Only if this does not occur will formal enforcement action be considered.

Procedures and Appeals and Complaints against the Service

Whenever possible we will make clear what the next action, if any, will be, for example a further inspection, service of a notice or prosecution.

In cases where immediate enforcement action is considered necessary then we will provide you with a written explanation as to why enforcement action is taken against you. We will ensure that advice from an Officer is put clearly and simply and where remedial work is required, will explain why it is necessary.

Where action is taken by other Council Divisions, this may not preclude us from pursuing our own action. Where statutory provisions exist for you to appeal against any action we will inform you of those provisions.

If you are dissatisfied about the action taken by the Division or where the Council has not taken any action and you want a further response a Corporate Complaints System is available to you.