

DEVELOPMENT & PLANNING AUTHORITY
STATEMENT OF PLANNING ENFORCEMENT POLICY

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DEVELOPMENT & PLANNING AUTHORITY

STATEMENT OF PLANNING ENFORCEMENT POLICY

Introduction to this statement

Our commitment to enforcing the planning law

The planning system is intended to regulate the use and development of land in the public interest. Building control ensures that construction works are carried out to a minimum standard set out in Building Regulations. For the avoidance of doubt, the term 'breach of planning control' includes a breach of the Building Regulations as well as the planning provisions.

Action in relation to unauthorised development is an important part of planning. The vast majority of development on the Island takes place in accordance with planning rules. However, there are a number of cases each year where breaches of planning control take place. Unauthorised development can have a serious and adverse impact upon the local environment and residents, and the Authority has a duty to investigate possible breaches of planning control and take action when appropriate.

Effective enforcement is necessary to protect the integrity of the planning system and deliver high quality, sustainable development in accordance with the relevant planning policies. The current Island Development Plan comprises a single plan which encompasses the whole island. The Island Development Plan was adopted on the 2nd November 2016 and replaces the Urban Area Plan and Rural Area Plan. It also promotes public confidence by ensuring that development is carried out in accordance with the relevant planning and building control permissions.

This document forms the Authority's Statement of Planning Enforcement Policy. It provides the framework for dealing with all breaches of planning control.

The role of enforcement

The primary role of planning enforcement is to investigate complaints about possible breaches of planning law and bring about remedial action, where appropriate.

Breaches of planning control can for example include:

- Work being carried out without planning permission or a building licence
- Departures from the approved plans of a planning permission or building licence
- Non-compliance with conditions imposed by a planning permission or building licence
- Unauthorised material change of use

- Unauthorised advertising or signs
- Unauthorised works to protected trees
- Unauthorised works to protected buildings and monuments

Planning enforcement in Guernsey is regulated by the Land Planning and Development (Guernsey) Law, 2005 ('The Law'), and the Land Planning and Development (Enforcement) Ordinance, 2007 ('The Enforcement Ordinance').

A breach of planning control is a criminal offence. However, criminal proceedings are a last resort, where other means of resolving the breach have failed. The normal way of dealing with breaches of planning control is by the service of a formal Notice. This will require steps to be taken to remedy the breach.

Exceptions to this approach include cases where unauthorised works are carried out to a Protected Monument, Protected Building or Protected Tree. In such cases, the harm caused may justify immediate legal action.

In very serious cases, we may seek an injunction from the Royal Court to prevent unauthorised work starting or continuing.

The enforcement team

The Planning Enforcement Team comprises an Enforcement Officer and an Enforcement Assistant. They work closely with planning officers and building control surveyors in the Planning Service.

In addition, we have two dedicated support staff dealing with related matters including Immunity Certificates and Property Searches.

How to contact us

To ask someone to investigate possible unauthorised development you can:

- **Write to us:** Planning Service, Sir Charles Frossard House, La Charroterie, St Peter Port, Guernsey, GY1 1FH
- **E-mail:** planning@gov.gg
- **Call:** If the matter is urgent, call 01481 717017

Complaints

Making a complaint

All allegations of possible breaches of planning control are taken seriously and investigated as quickly as possible. For the most part, the Authority relies on the public to help identify breaches of planning control.

Complaints are usually only accepted in writing unless the complaint relates to an urgent matter (e.g. where a protected tree is being felled or damaged, unauthorised

Work to a protected building, demolition works proceeding without consent, or it relates to a life safety issue under the Building Regulations).

We ask for any complaint to be made in writing to discourage frivolous or arbitrary complaints. In addition, it allows us to report back with our findings and seek further information if needed.

Timescales for dealing with complaints

We will aim to acknowledge a complaint, if made in writing, within three working days of its receipt. We will then try to keep a complainant informed, normally in writing, of any significant developments concerning the matters raised in their complaint and of the outcome of that complaint.

The time taken to deal with a complaint will vary according to the nature of the complaint and investigation process required.

Where a breach of planning control is confirmed, we will normally seek to resolve the breach through informal discussion with the developer in the first instance. The Law sets out time limits for taking formal enforcement action by issuing a Notice. Unless the breach relates to a material change of use, the time limit for any action is 4 years from the date of the alleged breach or 4 years from the date on which the facts alleged to constitute that breach are first known by the Department, whichever is the sooner. For change of use, the relevant time limits are 10 years and 4 years respectively.

This means that the Authority has an obligation to pursue complaints and, where necessary, take formal enforcement action promptly, as failure to do so may mean the breach becomes immune from any enforcement action.

When development becomes immune from enforcement action due to the passage of time, this does not give planning permission or approval under the Building Regulations, or imply that any such permission has been granted for the development concerned. Such development remains unlawful in planning terms. In such instances developers may try to regularise the unlawful development by applying for planning permission.

Anonymous complaints

We will not normally act on anonymous complaints, although we may do so if the alleged breach is particularly serious or harmful.

Confidentiality of complaints

Enforcement complaints are treated as confidential between the person making the complaint and the Authority. Complainants can be assured that their details will not normally be released by the Authority, unless they agree.

If the Authority subsequently serves a compliance notice and there is an appeal, a developer may be given the opportunity to comment on the substantive, but anonymised, complaint made. In addition, the complainant may be asked to attend a hearing if their complaints are central to the case. In such cases the identity of a complainant will not be divulged without their written permission.

Other information

We have published specific guidance regarding Planning Enforcement – ‘Making a complaint under the compliance Provisions’ - (Practice Note 6):

Web link: https://www.gov.gg/unauthorised_development under the “Notify us of a Suspected breach of Planning or Building Regulations” section.

The planning enforcement policy

General policy principles

We will apply the following principles at all times:-

- We will act professionally and answer all reasonable questions relating to the enforcement matter in question, provided that confidentiality is not breached. We will use plain language and always treat people courteously.
- The officer investigating the complaint will do so in a fair and objective manner. They will not deal with a complaint where the complainant or developer are well known to them personally or they or their family have had any personal or business dealings with those persons.
- Complaints are treated in confidence, and the identity of a complainant will not be divulged without their written permission.
- We aim to acknowledge a complaint, if made in writing, within three working days of its receipt.
- We aim to ensure that developers and complainants are kept informed about the progress of our investigations.
- We will prioritise our investigations to ensure that breaches of planning control with the greatest significance and potential impact on the community are tackled first.
- In addition to responding to complaints, where resources allow, we will proactively monitor planning permissions to ensure that conditions attached to permissions granted are complied with and that development accords with the approved plans.
- Before formal enforcement action is taken, we will provide an opportunity to discuss circumstances of the case and seek to resolve points of difference,

unless immediate action is required or there is no likelihood of an informal resolution.

- Where a breach of planning control has been identified, the developer has a right to submit a retrospective application to seek to regularise the matter; we will assist the developer to do so where, in our view, an application is likely to be considered favourably but will not encourage an application where, in our view, it is likely to be refused. Our view in such a case will be without prejudice to the outcome of a formal application, and it will be a matter for the developer whether or not they apply.
- We believe that prevention is better than cure, and will work with business to advise on and assist with compliance.
- Where there are rights of appeal against formal enforcement action these will be clearly set out.
- Where disputes about service cannot be resolved there is the right to make a complaint using the Customer Complaints Procedure.

Priorities for tackling enforcement

The enforcement team deals with all forms of planning enforcement work. The team deals with around 300 complaints alleging unauthorised development a year.

To make the most effective use of available resources, we will investigate alleged breaches of planning control in accordance with the priorities listed below.

The priorities take account of the significance and impact of the alleged breach, the likely level of harm caused and the need to act expediently. For example, unauthorised works to a Protected Building or Monument may result in irreplaceable loss and thus require immediate investigation. Similarly, complaints concerning unauthorised works to a protected tree, significant demolition in a conservation area or life safety issues may require an urgent response. It may be necessary to change the priority level as an investigation proceeds.

High priority (Urgent cases)

Investigation of alleged breaches of planning control involving:-

- Unauthorised works to a Protected Building or Monument
- Unauthorised works to a Protected Tree,
- Significant demolition in a conservation area
- Unauthorised development causing an immediate threat to protected ecology
- Unauthorised development causing serious danger to the public or life safety issues under the Building Regulations

- Unauthorised development which may become immune from enforcement action within 6 months

Medium priority (Important cases)

Investigation of alleged breaches of planning control involving:-

- Unauthorised development having a clear adverse impact on neighbour amenity
- Unauthorised development having a clear adverse visual impact
- Unauthorised development involving a clear breach of approved planning policy
- Unauthorised development which may become immune from enforcement action within one year
- Breaches of pre-commencement conditions attached to planning permissions (i.e. those that require further information to be submitted and agreed before works start on site or approved permitted use is implemented)
- Breaches of conditions/non-compliance with approved plans causing serious harm to amenity

Low priority (Routine cases)

Investigation of alleged breaches of planning control involving:-

- Unauthorised development causing no serious harm to amenity
- Breaches of conditions/non-compliance with approved plans causing no serious harm to amenity

Procedure for enforcement

When received, complaints are registered on the enforcement database, and a preliminary investigation is carried out. This may confirm that the matter that has been raised does not involve a breach of planning control, in which case the complainant will be informed of this and no further action will be taken. Alternatively, it may be evident that a breach of planning control is likely to be involved, and the matter will then proceed to formal enforcement investigation.

When considering a complaint, we will only be able to take into account relevant considerations as set out in the planning Law and policies and cannot intervene in boundary disputes, or other matters irrelevant to planning.

If an enforcement investigation is warranted, the site is normally visited by our enforcement staff and the owner and/or developer is contacted.

Where the works concerned do not involve a breach of planning control, we will inform the complainant and we will take no further action.

Some minor matters, even if technically amounting to development, may not be pursued where it would not be in the public interest to do so.

Where we confirm a breach of planning control, we will normally try to resolve the breach through informal discussion with the developer in the first instance.

Where this is not possible, we are likely to take formal enforcement action by issuing one or more of the following Notices.

Enforcement powers

A **Challenge Notice** is used to gather further information about a suspected breach, and is issued when further information is required. The Notice can be served on any owner, occupier or person appearing to have an interest in land which is materially affected. There is no right of appeal against the Challenge Notice and it must be answered, in writing, within 21 days of its service.

In cases where unauthorised works have taken place or other works to remedy a situation are required, a **Compliance Notice** can be issued on anyone who has an interest in the land. This could include tenants, contractors or sub-contractors and not just land owners. This notice will specify the alleged breach of control and the steps required to remedy the breach. It will also set out a period or periods within which these steps must be taken. It will give a 28 day period before coming into effect; this is the period within which any appeal against the Notice must be lodged and made valid, after which there is a limited period of time in which to carry out the instructions on the Notice.

Where, for example, an activity or works carried out are causing serious harm or have life safety implications, an **Interim Compliance Notice** may be served in conjunction with the Compliance Notice. This Notice has the power to order work to cease within 24 hours or for other actions to be taken that will remedy the problem. An application to the Royal Court can be made to have the Notice set aside.

All the above Notices are legally binding and failure to comply can lead to prosecution.

Other information

Further information concerning Planning and Development Law and The Island Development Plan and Policies is available from the States Website on the following page.

<https://www.gov.gg/planningandbuilding>

Post-decision monitoring of planning permissions

As well as responding to complaints received concerning alleged breaches of planning control, we pro-actively monitor planning permissions. This involves both

Development Control and Building Control and is intended to ensure that conditions attached to permissions granted are complied with, and that development accords with the approved plans and details.

This focus also links with the processing of applications for Immunity certificates. Immunity certificates are a mechanism designed to provide purchasers of property with comfort when entering into an agreement to purchase a property that we will not be taking enforcement action against them for a known or suspected breach of planning control. Unauthorised development, or non-compliance with planning conditions, can jeopardise the granting of an Immunity certificate which can then delay or even prevent the sale of a property. The active post-decision monitoring of planning permissions assists this process by identifying any breach of planning control at an early stage.

Other information

We have published specific guidance regarding [‘Buying and selling of property’](#).

Register of enforcement notices

Section 61 of The Law requires a register of enforcement notices. This is kept at Sir Charles Frossard House and is available for inspection by the public free of charge at all reasonable times. We must provide copies of any details on the register to any person on written request, but a fee will be charged for this.

Appeals

There is a right of appeal to the Planning Tribunal against a Compliance Notice, on specific grounds. An appeal may prevent legal action being taken until it has been decided.

Where an Interim Compliance Notice has been served, an application can be made to the Royal Court to have the notice set aside.

Other information

Further information concerning Planning Appeals is available from the States Website at: <http://www.gov.gg/planningpanel>

Conclusions

We are committed to providing a planning enforcement service which is fair, efficient and responsive.

We will treat everyone courteously and with respect. We will act professionally and with the utmost propriety. Complaints are treated in confidence and we will not divulge the identity of a complainant without their written permission.

We aim to acknowledge a complaint, if made in writing, within three working days of its receipt, and to ensure that developers and complainants are kept informed about the progress of our investigations.

We will prioritise our investigations to ensure that breaches of planning control with the greatest significance and potential impact on the community are tackled first, whilst also focusing on post-decision monitoring of planning permissions to prevent conflict and problems at the earliest opportunity.

We will seek to resolve breaches of planning control informally through discussion and negotiation, unless immediate action is necessary, and will work with business to advise on compliance.

We will however have regard to the statutory time limits for enforcement action set out in The Law, and will ensure that we act efficiently and expeditiously to prevent unlawful development from becoming immune from enforcement action.

We will clearly identify rights of appeal against formal enforcement action where they exist and will advise developers about prospects for resolving a breach through the submission of a retrospective planning and/or building regulation application where appropriate.

Formal enforcement action will generally be taken as a last resort when other means of resolving the breach in a timely and effective manner have failed.

This Statement of Planning Enforcement Policy was adopted on 24 February 2015.

Amended: September 2018