

TUESDAY, 18 JANUARY 2022

TO: THE CABINET MEMBER FOR PUBLIC PROTECTION

I HEREBY SUMMON YOU TO ATTEND A **VIRTUAL MEETING OF THE CABINET MEMBER DECISIONS MEETING FOR PUBLIC PROTECTION** WHICH WILL BE HELD AT **2.00 PM**, ON **MONDAY, 24TH JANUARY, 2022** FOR THE TRANSACTION OF THE BUSINESS OUTLINED ON THE ATTACHED AGENDA.

Wendy Walters

CHIEF EXECUTIVE

Democratic Officer:	Emma Bryer
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Wendy Walters Prif Weithredwr, *Chief Executive*,
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A G E N D A

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Note:- The press and public are not entitled to attend the meeting. The decision record will be published normally within 3 working days.

CABINET MEMBER DECISIONS MEETING FOR PUBLIC PROTECTION

17 SEPTEMBER 2021

PRESENT: Councillor: P.M. Hughes (Cabinet Member).

The following officers were in attendance:

N. Daniel, Interim Head of Planning;
S.E. Watts, Environmental Protection Manager;
J. Owen, Democratic Services Officer.

Virtual Meeting: 9:00am - 9:30am

1. DECLARATIONS OF INTEREST

There were no declarations of personal interest.

2. DECISIONS RECORD - 2ND SEPTEMBER 2021

RESOLVED that the decision record of the meeting held on 2nd September, 2021 be signed as a correct record.

3. PLANNING ENFORCEMENT - CASE CLOSURE PROTOCOL

The Cabinet Member considered a report which sought the approval of a protocol which would support the closure of historic planning enforcement cases.

The Cabinet Member noted that a recent Wales Audit Office review of the Council's Planning Services had highlighted the significant backlog of unresolved complaints within Carmarthenshire's Planning Enforcement service.

It was reported that research into understanding the nature of this backlog had identified that there was potential to close a significant number of cases as they were considered no longer appropriate/and or feasible to further investigate the complaint. To determine which cases could be closed, the report included a proposed Case Closure Protocol for approval.

In response to a query, it was clarified that the time limits cited within section 2(b) of the proposed protocol was in accordance with section 171B of the Town and Country Planning Act 1990 which enables an Authority to take enforcement actions:-

- four years where the breach comprises either operational development or the change of use of a building to use as a single dwelling house; and
- ten years for all other breaches of planning control.

For clarity, the Cabinet Member requested to amend section 2(b) to read:-

'In accordance with section 171B of the Town and Country Planning Act 1990, cases resulting in immunity from enforcement action due to expiry of 4/10 year time periods where no notice has previously been served.'

Resolved that the protocol to support the closure of historic planning enforcement cases, as set out within the report, be approved, subject to the amendment of section 2(b) to read:

'2(b) - In accordance with section 171B of the Town and Country Planning Act 1990, cases resulting in immunity from enforcement action due to expiry of 4/10 year time periods where no notice has previously been served.'

CABINET MEMBER

DATE

CABINET MEMBER DECISIONS MEETING FOR PUBLIC PROTECTION

24/01/2022

Cabinet Member:	Portfolio:
Cllr. PHILIP HUGHES	COMMUNITIES

REGULATION OF INVESTIGATORY POWERS ACT

- RECOMMENDATIONS / KEY DECISIONS REQUIRED:**
- 1. To review the covert surveillance activity undertaken by the authority in 2021**

 - 2. To approve the corporate procedure on the conduct of such surveillance for 2022.**

REASONS:

Guidance recommends elected members maintain an overview of the use of covert surveillance by the authority and annually review the policy and procedures governing those activities

<p>Directorate CHIEF EXECUTIVES</p> <p>Name of Head of Service LINDA REES JONES</p>	<p>Designation</p> <p>HEAD OF ADMINISTRATION & LAW</p>	<p>Tel No. 01267 224012</p> <p>E Mail Address: LRJones@carmarthenshire.gov.uk</p>
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Declaration of Personal Interest (if any):

None

Dispensation Granted to Make Decision (if any):

N/A

(If the answer is yes exact details are to be provided below:)

DECISION MADE:

Signed:

CABINET MEMBER

Recommendation of Officer adopted	YES / NO
Recommendation of the Officer was adopted subject to the amendment(s) and reason(s) specified:	
Reason(s) why the Officer's recommendation was not adopted:	



EXECUTIVE SUMMARY

24/01/2022

REGULATION OF INVESTIGATORY POWERS ACT

Directed Surveillance

During 2021 no authorisations have been issued under this Act for the conduct of directed surveillance

Covert human Intelligence Sources

No authorisations have been issued for the use of Covert Human Intelligence Sources during 2021.

Interception of Communications Data

No applications have been made by the authority for the interception of communications data during 2021

Unauthorised Covert Surveillance

There have been no reports of unauthorised surveillance during 2021

RIPA Advice

As at the date of writing this report advice was sought from council officers on 7 occasions during 2021 regarding the use of covert surveillance powers. On each occasion advice was given which rendered the use of those powers unnecessary.

Statistical Returns

Annual returns reflecting the above have been provided to the Office of the Surveillance Commissioner and the Interception of Communications Commissioner when requested

Covert Surveillance Procedure Document

The Councils procedure document has been reviewed and no changes are required at this time. The procedure document therefore remains as approved by the Executive Board member on the last occasion.

Training

There is a need to provide refresher training to relevant staff. This will be organised for 2022.

DETAILED REPORT ATTACHED ?

NO



IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy and Crime & Disorder	Legal	Finance	ICT	Risk Management Issues	Organisational Development	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Linda Rees Jones

Head of Administration & Law

1. Local Member(s)

Not applicable

2. Community / Town Council

Not applicable

3. Relevant Partners

Not applicable

4. Staff Side Representatives and other Organisations

Not applicable

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

NONE

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal file	CCIP-0000	County Hall Carmarthen



CABINET MEMBER DECISIONS MEETING FOR PUBLIC PROTECTION

24th January 2022

Cabinet Member:	Portfolio:
Cllr. Philip Hughes	Public Protection

PLANNING ENFORCEMENT STATEMENT

Purpose:

To consider and approve the Planning Enforcement Statement

Recommendations / key decisions required:

To approve the Planning Enforcement Statement

Reasons:

The Audit Wales review of Carmarthenshire’s Planning Service published in August 2021 highlighted the significant backlog of unresolved cases within Carmarthenshire’s Planning Enforcement service.

In response to the findings of the report, the Council has reviewed how it carries out its enforcement responsibilities. The current Enforcement Policy was developed in 2015. Subsequently, an overarching Corporate Enforcement Policy was adopted in April 2018, therefore there is a need to review the original Planning Enforcement Statement to take account of changes within both the internal and external environment and to re-establish as the Planning Enforcement Statement.

In response to an increasing demand being placed on their services, a number of authorities have reviewed their approach to planning enforcement to ensure that they are able to respond to key Council priorities.

Directorate - Environment	Designation	Tel No. / Email
Name of Head of Service: Rhodri Griffiths	Head of Place and Sustainability	rdgriffiths@carmarthenshire.gov.uk
Report Author: Sue Watts		E Mail Address: swatts@carmarthenshire.gov.uk

Declaration of Personal Interest (if any):

None

Dispensation Granted to Make Decision (if any):

N/A

DECISION MADE:

Signed:

DATE: _____

CABINET MEMBER

The following section will be completed by the Democratic Services Officer in attendance at the meeting

Recommendation of Officer adopted	
Recommendation of the Officer was adopted subject to the amendment(s) and reason(s) specified:	
Reason(s) why the Officer's recommendation was not adopted:	

EXECUTIVE SUMMARY

CABINET MEMBER DECISIONS MEETING FOR PUBLIC PROTECTION

24th January 2022

PLANNING ENFORCEMENT STATEMENT

1. BRIEF SUMMARY OF PURPOSE OF REPORT.

Background

- The recent WAO review of Planning Services has highlighted the significant backlog of unresolved service requests within Carmarthenshire's Planning Enforcement service.
- In response to the findings of the report, the Council has reviewed how it carries out its enforcement responsibilities.
- The current Enforcement Policy was developed in 2015. Subsequently, an overarching Corporate Enforcement Policy was adopted in April 2018, therefore there is a need to review the original Planning Enforcement Policy to take account of changes within both the internal and external environment and to re-establish as the Planning Enforcement Statement.
- In response to an increasing demand being placed on their services, a number of authorities have reviewed their approach to planning enforcement to ensure that they are able to respond to key Council priorities.

Context

- There are currently 640 unresolved Planning Enforcement Cases. This has reduced from nearly 1000 cases in May 2021
- The numbers of cases received by the service has been increasing in recent years and increased again as a result of period of Covid pandemic.
- Since June 2021 and the work of the Intervention Board there has been a steady decline in the number of cases being submitted each month from an average of 50 per month to 25 in December 2021. The service has 6 members of staff, an increase of two since September 2021.
- The current commitment to investigate lower risk complaints means that there is insufficient resource to adequately investigate/progress high risk cases and some cases are not being investigated at all.
- Other authorities have decided to prioritise its enforcement resources by for example, no longer investigating anonymous complaints.

The Statement will provide;

1. Clarification on what constitutes a breach and what does not.
2. Review on current reporting mechanisms including the policy on service requests from anonymous complainants
3. Information on the various stages of investigation and what to expect
4. Identification of the Service Targets that the section is aiming to achieve
5. Identifying the 3 Priorities depending on the seriousness of the alleged breach and the time scales that the service will aim to visit.
6. Information on how the authority manage compliments and complaints

DETAILED REPORT ATTACHED ?	YES
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IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Rhodri Griffiths

Interim Head of Place and Sustainability

Policy and Crime & Disorder	Legal	Finance	ICT	Risk Management Issues	People Management	Physical Assets
YES	YES	YES	NONE	YES	YES	NONE

1. Policy, Crime & Disorder and Equalities

The statement outlines proposed changes to the Council's approach to planning enforcement, and the type of issues that will no longer be investigated as a case. This will allow the Council to focus its resources on more high risk cases and adopt a more proactive approach in supporting the wider strategic planning agenda. This could have implications for other services such as Development Management linked to an increase in planning applications received.

2. Legal

Planning Enforcement is a discretionary function. However, it is recognised that it plays a key role in development management and all Wales Planning Policy. The Statement outlines the objectives of the Authority in relation to Planning Enforcement. The adoption of a more proactive approach to planning enforcement could have implications for the Council legal services in respect of more prosecution related work.

3. Finance

The adoption of a more proactive approach to planning enforcement could result in additional costs relating to remedial action to address enforcement breaches, some of which the Council may not be able to recover. Active and timely enforcement will result in planning /retrospective application and associated additional revenue.

4. People Management

The Planning Enforcement Statement aims to ensure that the Council is able to prioritise its resources to address high risk cases and a result some lower level enquiries will no longer be investigated. If the Council decides to continue with the investigation of these type of cases this will require further financial investment in the Planning Enforcement team. Planning Enforcement will create demands on other sections within the Authority such as the Development Management Section in relation to increase planning applications and the Legal Section in relation to pursuing relevant enforcement action.

5.Risk Management Issues

Planning Enforcement is noted as significant risk on the Corporate Risk Register. Our failure to resolve enforcement cases in a timely manner can lead to increase complaints from the public and increased costs to the Authority.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Rhodri Griffiths

Head of Place and Sustainability

- 1. Scrutiny Committee – December 22nd**
- 2.Local Member(s) - N/A**
- 3.Community / Town Council - N/A**
- 4.Relevant Partners - N/A**
- 5.Staff Side Representatives and other Organisations - N/A**

The Statement was discussed at the Elected Members Seminar on September 27th 2021

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

THERE ARE NONE

Planning Enforcement Statement

A guide to Planning Enforcement in Carmarthenshire

December 2021

DRAFT

carmarthenshire.gov.wales

Cyngor **Sir Gâr**
Carmarthenshire
County Council



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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 breaches of control 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 Statement is therefore to establish a framework against which the public can expect from the delivery of the Planning Enforcement service by Carmarthenshire County Council.

This Statement 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 Carmarthenshire's 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. WHAT IS PLANNING ENFORCEMENT?

Objectives

The planning system operates to regulate development and the use of land in the public interest. Development plans, development management and enforcement make up the statutory planning process in Wales.

Carmarthenshire County Council 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 monitor major developments to ensure compliance with relevant conditions
- To investigate valid reports of 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.

Planning Enforcement Officers

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

Framework and Guidance

Planning legislation empowers the council to control and manage development and use of land and buildings in the public interest. These powers are set out, principally, in the Town and Country Planning Act 1990 (as amended) ("the Act") and The Planning (Listed Building and Conservation Areas) Act 1990. The legislation defines what can be considered as 'development' and sets out the processes for enforcing against unauthorised development.

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.

* <https://gov.wales/development-management-manual>

The Council has a discretionary role for taking whatever enforcement action is necessary within its area as the Local Planning Authority. The Section will consider

enforcement under the Town and Country Planning Act 1990 and legislation made thereunder. Further to this, any action taken by the planning enforcement team must be led by the Council's Development Plan (presently the Carmarthenshire Local Development Plan adopted in December 2014).

2. WHAT IS, OR IS NOT A BREACH OF PLANNING CONTROL?

A breach of planning control could involve such matters as the unauthorised erection of a building or extension to a building, engineering operations, a 'material' change of use of land, or the display of unauthorised advertisements and works to listed buildings. Additionally, a failure to comply with a condition on planning permission may be relevant to planning enforcement. Residents often report issues to the Council which, although they relate to buildings or land, are not always covered under planning enforcement powers. Below is a guide to the complaints which can, and cannot, be investigated by planning enforcement. For the purposes of this Plan, a breach of planning control is used in the general sense and may include other matters which fall outside the Act.

Planning enforcement issues

- Unauthorised works to listed buildings;
- Unauthorised Demolition of buildings or structures in a conservation area;
- Unauthorised Works to trees subject of a Tree Preservation Order ("TPO") or any trees in a conservation area;
- Unauthorised Building works (i.e. extensions, outbuildings, fences, walls);
- Unauthorised Change of use of buildings and/or land without planning permission (inc. sub-division of houses to flats / Houses in Multiple Occupation or residential caravans) where the change of use is not permitted development*;
- Unauthorised advertisements and signage;
- Non-compliance with conditions attached to planning permissions;
- Not building in accordance with the approved plans of planning permissions;
- Unauthorised Engineering operations, such as raising of ground levels or earth bunds;
- Deliberate concealment of unauthorised building works or changes of use
- Unauthorised mineral extraction
- Unauthorised treatment or disposal of waste

Non-planning enforcement issues

- Internal works to a building. This does not include listed buildings; (possibly Building Regulations)
- Parking of commercial vehicles on the highway or on grass verges;
- Land ownership/boundary disputes or trespass issues; (Civil issue)
- Infringements of covenants in property deeds; (Civil issue)

- Temporary structures/fencing associated with building works; (Highways Section)
- Dangerous structures or other health and safety issues; (Building Regulations/HSE)
- Running a business from home where activities do not include employees and the main use is still residential;
- Devaluing of property; (Civil)
- Issues relating to party walls (Civil)
- Issues relating to damage of property or (potential) injury to persons (Housing/civil)
- Invasive non-native plants (civil unless the plants originate from Local Authority land)

3. THE COUNCIL'S APPROACH TO PLANNING ENFORCEMENT

Determining whether action should be considered

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 Council has a discretionary role for taking whatever enforcement action is necessary within its area as the Local Planning Authority. 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. Officers will have regards to the Council's Enforcement Policy.

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') or a breach of condition, 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 Statement explains how they may progress such complaint.

4. How can an enforcement issue be reported?

If you believe there to be a planning breach, in order for the planning enforcement team to investigate your complaint you must formally submit a complaint. This is necessary in order for us to obtain a full picture of the situation and avoid allocating resources to enquiries which cannot be taken further.

You may make a service request:

- Verbally by calling the Council's Customer Services Team
- Online via the Planning Enforcement online complaints submission page

All service requests are required to provide their full name, a phone number, postal address and email address.

Anonymous service request will not be investigated (unless the complaint is clearly of a serious service nature, including demolition in conservation areas, works to TPO trees, works to listed buildings). This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious service request. It is also important that, should legal action become necessary in relation to a complaint, the Council can state in court that the matter was reported by a local resident. All details provided by a complainant will always remain totally confidential, unless the information is required for use as evidence in court. If this does happen, the Council will make all reasonable efforts to inform you before disclosing any information. We may also need to contact you prior to any site inspection being carried out to seek further information or clarification from you regarding the details of the alleged breach.

It may be the case that the development in question does not require planning permission and therefore cannot be enforced against. You are strongly advised, prior to submitting any enquiry, to check whether the particular development or activity which is causing you concern already benefits from planning permission or falls within permitted development category. This information can be found on our website .

To help us deal with your case as soon as possible it is important to provide as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint:

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place and why they are cause for concern;
- Names, addresses, phone numbers and email addresses of those persons responsible for the alleged breach or the land owners;
- The date and times of when the alleged breach took place;
- Any other information or evidence (including photos) that may be able to assist;
- Your name and contact details as set out above.

5. How will the Council deal with your service request?

Our investigation into a service request can be broken down into the following stages. The appropriate service standards based on the Welsh Government's current expectations for delivery of the enforcement service are identified at each stage: -

STAGE ONE: Registration and Acknowledgement

Upon receiving a service request 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 service request and, if not, make further contact with the complainant
- Prioritise complaints based on the 'Prioritisation Scheme'.
- Acknowledge service request 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: Service request are registered and acknowledged within 5 working days of receipt – Target 100%.

STAGE TWO: Investigation Phase

Following registration and acknowledgement of a service request 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. Determine whether a site visit is necessary visit to gather information and evidence relating to the alleged breach of planning control. Where this is the case, the officer may take 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:** *Serious service request, including demolition in conservation areas, works to TPO trees, works to listed buildings. We will visit within 3 working days.*

• **Priority 2:** *All other service request, such as extensions to buildings and unauthorised changes in the use of a building. We will visit within 10 working days.*

• **Priority 3:** *Minor service request where planning rules may not have been kept to, such as minor alterations to the outside of a building, or other minor developments such as satellite dishes, advertisements, walls, gates and fences. We will visit within 15 working days.*

4. Where contact with either the complainant or the person who has carried out development without planning permission is necessary, officers will seek to contact the complainant / owner / developer by phone, letter or visit. Officers will utilise access powers where necessary.

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 ;

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, potential use of a breach of condition notice 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

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 until permission has been granted.

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: Enforcement cases complainants are notified in writing of the outcome of the 'Investigation Phase' within 12 weeks (84 days) of receipt – Target 80%

The remaining 20% will be presumed to be 'ongoing investigations' who will be notified of the position on the case and some advisory timeframe provided.

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 unlawful to carry out development but **not an offence** without first obtaining any planning permission required for it. In line with guidance in Planning Policy Wales (PPW), the Local Planning Authority should first attempt to resolve breaches of planning control informally through negotiation with the land owner, occupier or developer. Formal action by the Council will be used where it is an appropriate and proportionate response or used in situations where an immediate solution is necessary in the interests of public amenity.

B. Serve 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
- Injunctions

See below for more detail of the enforcement powers for the Local Planning Authority.

Details of Enforcement Notices, Breach of Condition Notices, Temporary Stop Notices and Stop Notices are entered into an Enforcement Register. The Register is available upon request.

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.

Prosecutions for not complying with the notice does not compel compliance, but rather punishes non-compliance. Where there has been financial gain as a result of a criminal act of not complying with an extant notice, the Council will consider taking further action under the terms of the Proceeds of Crime Act 2002 (“POCA”).

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 3: ‘Positive Action’ (as defined above) is taken on cases where action has been deemed expedient within 180 days of the ‘investigation date’. Target 80%. 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 complainant will be notified of the progress every 3 months where the cases are of longer duration.

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

SERVICE TARGET 4: Complainants are notified in writing within 5 working days of a decision being made to close an enforcement investigation – Target 100%.

6. What if I am dissatisfied with the way the case was managed?

If you are dissatisfied with the way the investigation is/has been managed (rather than being unhappy with the outcome if it has been decided that no action can be taken), you should, in the first instance, raise these concerns with the relevant manager within the planning service. If, having done that, you are still dissatisfied with the team's handling of your enquiry; you may submit a complaint using the Council's corporate procedure which is set out in two stages.

Complaints and Compliments Team

County Hall

Carmarthen

SA31 1JP

Click to copy email address: complaints@carmarthenshire.gov.uk
[01267 234567](tel:01267234567)

If, having received the Council's final response to your complaint, you are still not satisfied with the outcome; you can refer the matter to the Local Government Ombudsman via www.lgo.org.uk/make-a-complaint. Please note The Ombudsman will not investigate any complaint until the complainant has first followed the Council's own corporate complaints procedure and sought resolution directly with the council in the first instance.

7. Publicity of this plan and planning enforcement documents

This plan will be available on the Council's website. Hard copies and other formats and languages can be requested in writing.

8. Review and monitoring of this plan

In formulating this plan the Council recognises the need to make sure that it is reviewed periodically and updated as necessary to ensure that it remains fit for purpose in the future. The planning department will therefore undertake a review of the plan every time there is a significant change in the legislation (including caselaw) or the development plan policies.

APPENDIX 1 : 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 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.

5 Planning and Compulsory Purchase Act 2004 (Commencement No. 14 and Saving) Order 2015.

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.

Section 215 will be considered where untidy land is affecting 5 or more properties in that area. Where a property is found to be in disrepair, the Authority will seek to find an alternative option such as liaising with the owners to bring the home back into use. 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

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.