

Brecon Beacons National Park Authority

Planning Enforcement Charter

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Introduction

This document describes the National Park Authority's procedures for enforcing compliance with planning controls. It is a guide for those affected by breaches of planning and listed building control who may wish to know what steps the Authority can take and the timescale involved in achieving a result.

The Authority recognises the importance of an effective planning enforcement service within the National Park and has established a dedicated Enforcement Team which is responsible for investigating reported breaches of planning control.

However, enforcing compliance with planning controls can be both time consuming and complex. In many cases the Authority will try to negotiate compliance rather than pursue formal action although in those cases where serious environmental damage or demonstrable harm is being caused on the local amenity of the area, or where damage is being caused to protected landscapes, trees and listed buildings, the Authority will use the full range of its enforcement powers to bring the matter speedily under control.

Whilst it is a criminal offence to carry out unauthorised works to a listed building or a protected tree, it is not illegal or an offence to carry out a development or use that does not have proper planning permission. It is merely unauthorised and no criminal offence has been committed. Only when the Authority has served formal enforcement or similar notices, all avenues of appeal have been exhausted and time periods for compliance have expired, does the person responsible for the unauthorised use or development become liable to prosecution and, if found guilty, acquire a criminal record.

The person against whom an enforcement notice is served has rights of appeal which must be respected and this can result in some delay in securing a resolution of the matter.

The Authority can only use its enforcement powers effectively if there is sufficient robust evidence available to demonstrate clearly that a breach of planning and/or listed building control has occurred.

What is a breach of Planning Control?

There are two main ways in which a breach of planning control can occur:

- Building works or engineering operations or changes in the use of land or buildings that are carried out without the necessary planning permission.

However, not all building/engineering work or changes of use require planning permission. Many are either considered not to be development at all or are defined as 'permitted development', meaning that an application for planning permission is not necessary. For example, the erection of a small house extension or a garden shed within specified limits may not need planning permission (being classed as 'permitted development').

- Where planning permission has been granted but the approved plans and/or the conditions attached to the approval have not been followed properly.

For example, a building may be larger than shown on the approved plans or a condition that specifies the working hours of a business may have been breached. To assist in identifying such breaches the Authority liaises with the local authority building control and environmental health departments. Where a breach is suspected, a site visit will be carried out to ensure the development is in accordance with the approved plans.

The Brecon Beacons National Park Authority's Policies on Planning Enforcement

This charter should be read in association with Welsh Government Policy as set out in section 3.6 of Planning Policy Wales and the national policy guidance in Section 14 and Section 14 Annexe of the Development Management Manual and Circular 24 197 (Enforcing planning control: legislative provisions and procedural requirements), which will in due course be incorporated into Section 14 Annex 'Enforcement Tools'.

Policies

Who can report a breach of planning control?

The Brecon Beacons National Park Authority Planning Services gives equal access to members of the public and does not discriminate against age, gender, race or disability.

ENF 1 - The Brecon Beacons National Park Authority Planning Enforcement Service is available to all sections of the community, regardless of age, gender, race or disability.

What constitutes an Enforcement Complaint

The Brecon Beacons National Park Authority requires that all complaints relating to possible breaches of planning control should be submitted on a complaint form using the electronic complaints system on the Authority's website or otherwise made in writing (more information provided further in this document). If a complaint is reported via the telephone, officers will complete a complaint form on the complainant's behalf and send them a copy. The complaint form will indicate what information is required by the complainant in order that consideration can be given to warrant an investigation. The information required to be accompanied by the complaint form or uploaded with the electronic complaints system will include the full name, address and a contact telephone number of the complainant in the first instance. To manage complaints effectively the complaints form must include an address, a grid reference and/or a site location plan and the nature of the alleged breach of planning control, Photographs, and diary logs would also be very useful if they are available. The Brecon Beacons National Park Authority will not process anonymous complaints. Without sufficient information provided, the Authority will not register a complaint until it is satisfied the matter warrants an investigation.

ENF 2 - The Brecon Beacons National Park Authority will only investigate complaints which have been made in writing and where the complainant has provided sufficient information and/or evidence required.

How the Authority will treat information which is held in relation to enforcement cases

We accept that many people do not like to make formal complaints to the Authority; however Planning Enforcement is mainly a complaint driven department. Your details will remain confidential and will not be publicly available.

The Brecon Beacons National Park Authority recognises the importance of confidentiality. Personal information provided by complainants will not be disclosed to any other parties without the complainant's authority.

ENF 3 - Any personal Information disclosed to the Brecon Beacons National Park Authority Enforcement Team will remain confidential.

How the Authority will consider the alleged breach of planning control

When the Authority receives a valid complaint the Authority will initially consider whether the complaint constitutes unauthorised development that requires planning permission ('development' as defined by Section 55 of the Town and Country Planning Act 1990).

Where it is identified that the complaint is not 'development' the Authority will write to the complainant informing them of the decision.

Where it is identified that development is unauthorised because it is not being carried out in accordance with a planning permission the Authority will consider whether the changes are acceptable in policy terms. In making decisions on planning applications the Authority considers the proposed development against the policies of the current development plan and to the requirements of national planning policy. The policies of the development plan are a material consideration for determining planning applications and should be equally relevant for enforcement action. There are no specific policies in the Brecon Beacons National Park Local Development Plan (adopted December 2013) which relate to enforcement action; it is therefore appropriate for this policy to affirm the importance of the Local Plan.

ENF 4 - The Brecon Beacons National Park Authority will use enforcement powers against unauthorised development, when and where it is necessary, in order to reinforce Local Development Plan Policies, and to ensure the unauthorised development complies with national planning policy.

How the National Park approaches planning enforcement

The Brecon Beacons National Park Authority will initially aim to resolve breaches of planning control by negotiation with the owner or occupier of the land.

The aim of negotiating will be to resolve the breach of planning control voluntarily, with the owner or occupier of the land to take steps, if any are available, to reduce any adverse effects on public amenity to an acceptable level.

However, Brecon Beacons National Park Authority will consider the statutory time limits for taking enforcement action and prompt initiation of enforcement action may be necessary to prevent an unacceptable breach of planning control from becoming well established and more difficult to remedy.

ENF 5 - The Brecon Beacons National Park Authority will negotiate with the owners or occupiers of the land in an attempt to resolve the breach of planning control. Only in instances where negotiations have resulted in breaches not being reduced to acceptable levels or it is imperative that the breach cease immediately, will the Authority consider taking formal enforcement action.

Where acceptable, but unauthorised, development has been carried out

During the course of the enforcement investigation the Brecon Beacons National Park Authority will assess whether it is likely that unconditional planning permission would be granted for development which has already taken place if a retrospective application were submitted.

Where it is considered that the unauthorised development is acceptable in terms of national policy and the policies set out in the Brecon Beacons National Park Authority Local Development Plan, the enforcement team will invite the person responsible for the unauthorised development to submit a retrospective application for planning permission.

In these circumstances, the Brecon Beacons National Park Authority will inform the owner or occupier of the land that if in the future they wish to dispose of their interest in the land and have no evidence of any permission having been granted for its development, this may be reflected in the valuation and give rise to uncertainty about the rights they have over the land.

ENF 6 - The Brecon Beacons National Park Authority will not issue enforcement notices in cases where, in its opinion, there is no significant planning objection solely to remedy the absence of a valid planning permission.

Where unauthorised development could be made acceptable through the imposition of conditions

Where the Brecon Beacons National Park Authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions, the Authority will invite the owner or occupier of the land to submit an application for planning permission. This may take the form of the issue of an Enforcement Warning Notice under Section 173ZA of the Town and Country Planning Act 1990.

The Brecon Beacons National Park Authority will make it clear to the owner or occupier of the land that it does not wish the development to cease, but that it has a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and relevant planning policies.

If after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application which would enable the Brecon Beacons National Park Authority to consider granting conditional planning permission, then the Authority will issue an enforcement notice if, in its view, the unauthorised development has resulted in any unacceptable injury to public amenity, or damage to a statutorily designated site, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development.

ENF 7 - Where unauthorised development is seen to be acceptable if conditions to control the development were in force, then the Brecon Beacons National Park Authority will invite the owner/occupier to submit a planning application. If a planning application is then not submitted, the Brecon Beacons National Park Authority shall consider whether it is expedient to pursue further enforcement action.

Where unacceptable unauthorised development warrants immediate action

Where the Brecon Beacons National Park Authority receives a complaint that an unauthorised development is causing unacceptable harm to public amenity, and there is little likelihood of the matter being resolved through negotiations or voluntarily, the Authority will take vigorous enforcement action to remedy the breach urgently, or prevent further serious harm to public amenity.

ENF 8 - The Brecon Beacons National Park Authority will take formal enforcement action to resolve an unauthorised development, only when and where the Authority considers that the unauthorised development is causing an unacceptable harm to public amenity and there is little likelihood of resolution through negotiations.

Unauthorised development by private householders

Where the householder appears to have relied on permitted development rights as authorisation for the development, but a specified limitation has been exceeded in carrying it out, in considering whether it is expedient to take enforcement action, the Brecon Beacons National Park Authority will have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. The Brecon Beacons National Park Authority will not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) provisions.

ENF 9 - The Brecon Beacons National Park Authority will only pursue enforcement action where, an unauthorised development is grossly in excess of what would have been permitted by the relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995(as amended).

Unauthorised development relating to listed buildings and conservation areas.

Unauthorised development that is carried out without the necessary listed building or conservation area consent, or by failing to comply with a condition attached to any such consent, is an offence under Section 9 and 59 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In this instance, the Brecon Beacons National Park Authority consider that any unauthorised development, which it considers to have a seriously detrimental effect on a listed building or conservation area, should be enforced against. The National Park will consult with the National Park Building Conservation Officer and if necessary CADW prior to taking any formal enforcement action.

ENF 10 - The Brecon Beacons National Park Authority will take enforcement action against unauthorised developments or breaches of conditions where it is considered to have a serious detrimental effect to a listed building or conservation area.

Control over mineral working

Mineral planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised mineral working. The general policies and principles applicable to enforcement apply equally to mineral cases.

Unauthorised mineral working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused as well as the fact that there may well be no arrangements for restoration and aftercare of the land or even an agreed after use.

While the powers available to local planning authorities are helpful in preventing damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings, it is clearly preferable for there to be effective liaison and contacts between local planning authorities and minerals operators, which would avoid contraventions of planning control or conditions attached to planning permissions and enable any problems to be resolved through discussion and co-operation.

ENF 11 - The Brecon Beacons National Park Authority will take formal enforcement action against unauthorised mineral workings and breaches of conditions relating to mineral related planning permissions, when and where they consider it necessary in order to safe guard public amenity and/or where the special qualities of the park are threatened.

Control over waste disposal

Unauthorised waste disposal and landfill sites sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused

as well as the fact that they may well no arrangements for restoration and aftercare of the land or even an agreed after use.

While the powers available to local planning authorities are helpful in preventing damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings, it is clearly preferable for there to be effective liaison and contacts between local planning authorities and waste operators, which would avoid contraventions of planning control or conditions attached to planning permissions and enable any problems to be resolved through discussion and co-operation.

ENF 12 - The Brecon Beacons National Park Authority will take formal enforcement action against unauthorised waste disposal and breaches of conditions relating to authorised waste disposal sites, when and where they consider it necessary in order to safe guard public amenity and/or where the special qualities of the park are threatened.

Tipping and Land adversely affecting the amenity of a neighbourhood

The depositing of refuse or waste material on land is development by reason of a material change of use because of specific reference in Section 55(3)(b) of the Town and Country Planning Act 1990

The rural and isolated landscape of the National Park provides opportunity for tipping to discreetly take place away from the public eye. It is often very difficult to identify the individual who has tipped; however where possible the Authority will identify the owner of the land where the tipping has taken place and seek to resolve the matter through negotiation. Where this is not possible the Authority will take formal enforcement action to resolve the unauthorised material change of use of land. The decision to take enforcement action will follow liaison with the Local Unitary Authority, Natural Resources Wales and/or the Police who may have more effective powers to deal with the matter.

In instances where complaints relate to land which is adversely affecting the amenity of a neighbourhood, the Brecon Beacons National Park Authority has powers under Section 215 of the Town and Country Planning Act 1990 to secure proper maintenance of the land. This power can also relate to the state of private gardens which adversely affect the amenity of a neighbourhood. However each complaint will be investigated and only when negotiations have failed will Brecon Beacons National Park Authority consider taking formal action under Section 215.

ENF 13 - The Brecon Beacons National Park Authority will take formal action against unauthorised tipping and land which is adversely affecting the amenity of a neighbourhood, when and where they consider it expedient to do so.

Tree Enforcement

Trees play a unique role in enhancing the quality of life in urban and rural areas by the provision of aesthetic, environmental and amenity benefits. The National Park recognises this and seeks, where appropriate, to protect its trees with tree preservation orders. These orders can be placed on individual trees, groups of trees or trees identified on an area of land.

Where planning permission has been granted for a development where a protected tree is to be removed, then the planning permission grants permission for the tree to be removed, there is no need for any further permission being granted from the National Park Authority.

Where unauthorised works have been undertaken to a tree which is protected by a tree preservation order, the National Park will take formal enforcement action, when and where it is considered expedient to do so.

ENF 14 - The Brecon Beacons National Park Authority will take enforcement action against breaches of planning control related to protected trees, when and where the Authority consider it expedient to do so.

Unauthorised Advertisements

An advertisement is a poster, placard, a fascia sign, a projecting sign, pole sign, canopy sign, model and device, advance sign and directional sign, estate agents boards, captive balloon advertisements (not balloons in flight), flag advertisements, price displays, traffic signs and place name signs. Memorials and railway signals are not advertisements.

The standard conditions in the Town and Country Planning Control of Advertisements) Regulations 1992 require all advertisements to be kept clean and tidy and in a safe condition. They must have the permission of the site owner which includes the Highway Authority if it is sited on highway land. They must not block the view of road, rail, waterway or aircraft signs and they must not be so permanent that they cannot be removed if required.

The Brecon Beacons National Park is a protected landscape; this protected landscape can be harmed by the erection of unauthorised signs and advertisements. Signs that require advertisement consent which are being displayed without the benefit of advertisement consent and are considered a harm to either the visual amenity of an area or to the safety of highway users will be pursued through enforcement action.

ENF 15 - Where unauthorised signs or adverts are erected or displayed which cause unacceptable harm to the visual amenity or highway safety the Brecon Beacons National Park Authority shall take formal enforcement action to secure the removal of the unauthorised advertisement.

Where enforcement action will not be considered

Some complaints and requests for enforcement action received by the Brecon Beacons National Park Authority are malicious or are as a result of conflict between neighbours or land owners.

The Brecon Beacons National Park Authority will screen anonymous complaints, complaints which are potentially private disputes and non-planning issues. If there are private or civil law solutions to these complaints the Authority will not become involved. Similarly, if other regulatory agencies have been contacted and are more empowered to control a situation, the Authority will not duplicate such enforcement action.

ENF 16 - The Brecon Beacons National Park Authority may not consider taking enforcement action if a complaint is:

- **Anonymous**
- **Malicious in nature**
- **A Neighbour dispute**
- **A civil matter**
- **A non-planning related matter**
- **Being enforced by a more empowered agency and the complaint is a duplicate**

However, in respect of complaints relating to irreplaceable assets, anonymous complaints may be investigated.

Enforcement and other government bodies or agencies

It is often essential to liaise with other local authorities, departments and external agencies, for example Natural Resources Wales, local Environmental Health Authorities, local Highway Authorities, , when investigating breaches of planning control. The Brecon Beacons National Park Authority will consider liaising with third parties as an integral part of the investigation of planning enforcement where it is considered appropriate.

ENF 17 - The planning enforcement function of the Brecon Beacons National Park Authority will be integrated with the regulatory functions of other Local Authority departments or external agencies when and where it is considered appropriate.

Proactive planning enforcement

The Brecon Beacons National Park Authority believes that “prevention is better than cure” and as such will proactively seek to inform members of the public and local Community Councils of the different types of breaches of planning control, what to do if a breach is identified, how to report a potential breach of planning control and how the Town and Country Planning (General Permitted Development) Order 1995 (as amended) affects planning enforcement. This will be provided within the Brecon Beacons National Park Authority publication “A Guide to Planning Enforcement”. Enforcement Officers of the National Park Authority may also be available to attend Community Council Meetings to provide further information if resources allow.

Enforcement Officers of the National Park Authority may also carry out proactive planning enforcement as and when resources allow to check compliance with planning regulations.

ENF 18 - Proactive enforcement of regular or anticipated breaches of planning control will be undertaken by the Brecon Beacons National Park Authority as and when resources permit.

Hedgerows

Hedgerows, like trees, can make an important contribution to the character of an area and may be historically (and occasionally archaeologically) important as indications of land use and previous ownership. They also contribute significantly to biodiversity. The Hedgerow Regulations 1997 apply to all hedges which are:

more than 20 metres in length or which join other hedgerows providing that they adjoin agricultural land, forestry, paddock, common land, village greens, a site of special scientific interest or a local nature reserve.

The regulations do not apply to hedges which are within or marking the boundary of the curtilage of a dwellinghouse.

Any landowner who wishes to remove a hedgerow which is not exempt must serve a Hedgerow Removal Notice in writing on the Authority in order for the removal to be considered under the Regulations.

The removal of a qualifying hedgerow which has not been notified to the Authority in accordance with the Regulations is unauthorised. Under Regulation 7 of the above Regulations, a person who intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow in contravention of regulation 5(1) or (9) is guilty of an offence. The Authority will consider the expediency of pursuing action and if expedient will either prosecute or serve a hedgerow replacement notice. Factors taken into consideration when determining the expediency and subsequently what enforcement action to take will include:

the scale and reasons for the hedgerow removal; the historic and archaeological importance of the hedgerow; the impact of the removal of the hedgerow upon biodiversity and the landscape and whether there are any overriding public interests best served by the hedgerow removal (such as public safety).

The Authority does not investigate high hedge complaints.

ENF 19 - The Brecon Beacons National Park Authority will take enforcement action against breaches of the Hedgerow Regulations 1997 when and where the Authority consider it expedient to do so.

How do we take formal action?

Formal action by the Brecon Beacons National Park Authority shall be undertaken in accordance with the following procedure:-

- The Authority will notify the transgressor that enforcement action is being considered - this allows a further chance for a negotiated settlement.
- Some actions are undertaken under delegated powers granted to the Director of Planning, but other actions, for a variety of reasons, may need a decision by the Members of the Authority.
- The Authority will then begin preparing the formal Notices or legal proceedings if necessary.
- Serve the Notices on all relevant interested parties in the site, as defined under the Town and Country Planning Act 1990.
- The Notice will specify the steps that need to be undertaken to remedy the situation within an appropriate timescale.
- In the case of unauthorised works in relation to advertisements, listed buildings and/or to protected trees, the Authority has powers to proceed to instigate prosecution proceedings (as such matters are offences under the law)

What happens after notices are served?

The recipient of a Notice will either:

- comply with the Notice (in which case the matter is closed);
or
- contest the Notice by way of an appeal to the Planning Inspectorate Wales or challenge in a Court of Law, where this is appropriate.

Hearing a case on appeal will take time and can often delay proceedings particularly if a public inquiry has to be arranged.

If the appeal against the Notice does not succeed the formal Notice comes into force, although there can be further challenges to the Authority's action. If the appeal is successful and/or planning permission is granted, then this is normally the end of the matter.

If the Notice is upheld or there is no appeal but it is still not complied with, the Authority may then consider prosecuting the perpetrator in the criminal courts.

The Authority will keep complainants advised of progress at key stages during these proceedings, for example, when an appeal is received or when a case is to be heard in the local Magistrates Court.

The Enforcement Powers

Listed below is a brief description of the various enforcement powers available to the Authority. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Authority will seek to use the most effective power available to remedy a breach of planning control.

Planning Contravention Notice

This Notice enables the Authority to require detailed information about suspected breaches of planning control.

A Planning Contravention Notice may require the person on whom it is served to give information such as:

- 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 Planning Contravention Notice does not stop the Authority taking other formal action against a breach of planning control. The recipient of a Planning Contravention Notice has 21 days to respond to it, but if there is no response a legal offence has been committed which can be subject to prosecution by the Authority in a Court of Law.

The penalty for non-compliance with a Planning Contravention Notice can result in a fine of up to £1,000. Similarly, if any person makes a false or misleading statement he/she shall be guilty of an offence on conviction (maximum penalty £5,000).

A Planning Contravention Notice cannot be served in respect of any suspected breaches of listed building control.

Similar tools to the Planning Contravention Notice are Requisitions for Information under Section 330 of the Town and Country Planning Act 1990 and Section 16 of the Local Government (Miscellaneous Provisions) Act 1976

Enforcement Warning Notice

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 Enforcement Warning Notice (EWN), giving a specified period within which the application must be made, can be issued. The issue of an Enforcement Warning Notice will 'stop the clock' in terms of the unauthorised development gaining immunity from enforcement action.

Enforcement Notice

This is the principal form of Notice used to deal with unauthorised development. As in all other forms of action it is subject to the Authority and its legal advisors being satisfied that a breach of planning control has occurred.

Above all, the Authority must be satisfied that it is expedient to serve an Enforcement Notice having regard to the development plan and to any other material considerations.

Such a 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 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.

Non-compliance with the requirements of an Enforcement Notice is a criminal offence against which the Authority can instigate prosecution proceedings. The maximum fine in the Magistrates Court is £20,000 and is unlimited in the Crown Court. 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.

Listed Building Enforcement Notice

This is similar to an Enforcement Notice. The Notice 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.

Breach of Condition Notice

If any conditions imposed on a grant of planning permission or listed building consent have not been complied with, the Authority can serve a Breach of Condition Notice to require the recipient to secure compliance with the condition/s.

The Breach of Condition Notice will specify the steps which the Authority considers should be taken or the activities which the Authority considers ought to cease, in order to secure compliance with the condition/s specified in the Notice.

There is no right of appeal against a Breach of Condition Notice although the Authority's decision to issue a Breach of Condition Notice can be challenged in the Court.

If the requirements of the Notice have not been met within the prescribed period, the person responsible is in breach of the Notice and shall be guilty of an offence on conviction (maximum penalty £1000), should the Authority decide to prosecute the matter.

Injunctions

Where the Authority considers it necessary or expedient for any actual or apprehended breach of planning or listed building control to be restrained, it can apply to the Court for an injunction. Such action would normally only be sought if the breach was particularly serious or protracted and was causing, or was likely to cause, exceptional harm to the local environment. Failure to comply with an injunction may result in imprisonment.

Stop Notice

The Authority can serve a Stop Notice at the same time as an Enforcement Notice where it considers it expedient to take urgent action, in order to bring a particularly offensive activity to stop sooner than an Enforcement Notice.

The exercise of the power to serve a Stop Notice is discretionary, and the fact that it is expedient to issue an Enforcement Notice, will not automatically mean that it will be expedient to serve a Stop Notice. If a Stop Notice is served it will have effect either immediately or within a few days and even if an appeal is made against the accompanying Enforcement Notice, the Stop Notice must be complied with or otherwise the Authority can prosecute the offender.

As a breach of listed building control is in itself a criminal offence, there is no need or provision for serving a Stop Notice in respect of a breach of listed building control.

Temporary Stop Notice

If it is expedient that unauthorised development should be stopped immediately, yet the Authority requires time to arrange an effective enforcement response, a temporary stop notice (TSN) can require an activity which is a breach of planning control to stop immediately.

Section 215 Notice

The Authority can serve a Section 215 Notice on the owner/occupier of any land or building which is considered to be in an untidy condition to the extent that it is having an adverse effect on the amenity of a neighbourhood. The Notice requires the person/s on whom the Notice is served to tidy up the site and if this is not undertaken legal proceedings can be taken by the Authority.

Advertisements

Some advertisements may not be displayed without prior approval by the Authority. In such cases, the Authority can prosecute persons responsible for displaying an illegal advertisement or serve a Discontinuance

Notice (in cases where an advertisement does not need express consent but where it causes “substantial injury” to the amenity of the locality or a danger to members of the public)).

Hedges

The Authority can serve a Hedgerow Replacement Notice requiring the replanting of a hedgerow which has been removed without compliance with the Hedgerow Regulations 1997.

Prosecution

In instances where a criminal offence has been committed (non-compliance with the above notices; unauthorised works to listed buildings; unauthorised hedgerow removal, unauthorised works to trees; unauthorised display of advertisements), consideration will be given to prosecution.

Why can enforcement action take so long?

Many of the reasons have been explained above but it is often frustrating to complainants that despite contacting the Authority, the activity which is causing concern still persists. Some of the factors which can result in apparently slow progress include:

- the gathering of satisfactory robust evidence;
- continuing negotiation to try to resolve the matter with the offender without pursuing formal action;
- consideration of an application seeking to remedy the matter; and
- awaiting determination of an appeal against formal Notices.

In line with Welsh Government Planning Performance Framework targets, the Authority will aim to complete an investigation regarding an alleged breach of planning control within 84 days. 'Investigation complete' means that the Authority has investigated the alleged breach and advised the complainant of one of the following outcomes: - that no breach of planning control has occurred; a breach has occurred but it is not expedient to pursue the matter or that a breach has occurred and enforcement action will need to be pursued.

The Authority will aim to 'resolve' an enforcement case within 180 days. Resolution is closure of the case as a result of the cessation of the breach in a number of ways. Either that: planning permission has been granted through a planning application or enforcement appeal; an enforcement or breach of condition notice has been complied with; the breach of control is ceased by the developer or direct action by the Authority removes the breach of control.

The timescale for 'resolution' 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. The Welsh Government indicators for enforcement have not been benchmarked.

How to report a breach of planning control

All suspected breaches of planning and listed building control should be reported to the Brecon Beacons National Park Authority using the electronic complaints system on the Authority's Website (www.breconbeacons.org) which is to be accompanied by supporting evidence (i.e. photographs, location plan, diary logs etc.). If completion of the online form is not possible the Authority will accept complaints made in writing by email or through the post. In the absence of internet access, you can ring and request an enforcement complaints form by ringing the Planning Services Helpdesk on **01874 620431** where a form will be sent to you. In exceptional circumstances the Authority will accept complaints made over the telephone whereby a complaint form will be completed by an officer on your behalf and a copy of the form will be sent to you. We rely upon the help of the public to bring such breaches to our attention.

What happens next?

Upon receiving a complaint with supporting evidence the Authority will:

- Acknowledge complaints within 5 working days from receipt.
- Assess whether the complaint and supporting evidence constitutes unauthorised development (defined under Section 55 of the Act) to warrant an investigation.
- If there is insufficient evidence to support the complaint, the complainant will be notified that the matter will not be registered until the necessary information has been supplied.
- Following receipt of sufficient documentation, the matter will be registered and categorised in line with prioritisation system.
- Complainants will be notified of the case reference and the name of the Officer assigned the case.
- Investigate the details of the complaint.
- Establish whether a breach of planning control or listed building control has taken place.

- Try to negotiate a solution with the “transgressor” if the development/use can be stopped or if there is a possibility that planning permission might be granted.
- Where there is no breach found, the complainant will be notified that no action is proposed.
- Where a breach has occurred, the Authority will gather sufficient robust evidence as necessary to be satisfied that formal action is justified.
- Consider the expediency of taking formal enforcement action having regard to the development plan and all other material considerations. If it is considered that formal action is required, the complainant shall be notified at this stage.
- In certain cases you 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 your consent. If you are unwilling to give your consent it is possible that the Authority would be unable to take further action.
- If the Authority does not consider that formal enforcement action is expedient then the complainant will be notified in writing of the reason/s why the Authority is not taking any further action.
- The complainant will be notified upon closure of the case.

Complaints about the Planning Enforcement Service

All complaints relating to the Planning Enforcement Service will be acknowledged by the Authority within 5 working days. All complaints will be fully investigated by the Authority and the complainant will receive a written response within 20 working days of receipt of the complaint.

In the first instance, all Planning Enforcement Service complaints should be addressed to:

Director of Planning
Brecon Beacons National Park Authority
Cambrian Way
Brecon
LD3 7HP

If a complainant remains dissatisfied with the written response from the Director of Planning, then details will be supplied for pursuing the complaint further through the Authority’s Formal Complaints System. The Authority will always strive to resolve a complaint locally but if this is not possible, the complainant will be advised on how to pursue the matter further with the Commissioner for Local Administration (the Ombudsman).

Freedom of Information

The Freedom of Information Act 2000 gives a general right of access to information held by public authorities. The Authority holds much information including information relating to pre-application advice, planning applications and appeals. The presumption will always be in favour of disclosure of such information. This is because it is important for the Authority to promote accountability and transparency in the planning process and to allow individuals to understand views expressed and the reasons underlying decisions that have been taken.

However, in respect of enforcement complaints, details will be treated in strictest confidence and are exempt from disclosure under section 30 of part II of the Freedom of Information Act. Where the Authority does refuse a request to disclose information under the Act, a written explanation will be provided setting out the exemptions relied on by the Authority for withholding the information and the relevant appeal procedures.



Planning Services Enforcement

Prioritising of Complaints

Due to the volume of complaints received, each case is categorised in order of High, Medium and Low priority¹. This is based upon the severity of the breach of planning control.

The following list is not comprehensive but it is a guide as to the types of cases that are categorised in each form of priority. The priority given to a case is identified in the final two digits given in the case reference and will be P1 for high priority, P2 for medium and P3 for low priority cases as follows:-

High

- Unauthorised works to Listed Buildings
- Unauthorised works to Scheduled Ancient Monuments
- Unauthorised works in sites of statutory designations, i.e. SAC's
- Unauthorised large scale engineering operations
- Unauthorised felling/works to trees subject to TPO's (Tree Preservation Orders) or within a Conservation Area

Target initial site visit to be undertaken on the next working day following the registration of the complaint.

Medium

- Serious breach of conditions
- New Building works of medium scale
- Significant number of complainants suggesting importance
- Non-compliance with conditions precedent conditions
- Unlawful advertisements suggesting significant visual detriment or highway safety

Target initial site visit to be undertaken within 5 working days of the registration of the complaint.

Low

- Civil Issues
- Minor or small scale developments or engineering operations
- Alleged material change of use - not impacting residential amenity
- Development of a material change of use – Not residential.

Target - Initial site visit to be undertaken within 20 working of the registration of the complaint.

NOTES

¹ Based on The Planning Officers Society for Wales (POSW) classification system

The list of priorities is not a definitive statement of the Authority's legal position on enforcement matters. The Authority reserves the right to enter a case into whatever level of priority is deemed expedient at the time, and to change that category at any time.