

Planning Enforcement

Planning Enforcement Strategy



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Introduction

Wiltshire is a diverse area, with extensive chalk downlands, the World Heritage sites of Avebury and Stonehenge, the market towns of Chippenham, Trowbridge and Devizes, Salisbury Cathedral and the fringes of the New Forest in the south. Much of the natural and built environment is protected.

The planning system regulates the use and development of land in the public interest. Fair and effective planning enforcement where development is undertaken without permission is essential to protect the quality of the natural and built environment and the quality of life for people who live, work and enjoy visiting Wiltshire. The council receives about 1800 planning enforcement enquiries each year. Enforcement is high on the list of council priorities.

The council is committed to adopting a more proactive approach to enforcement. However, the public will always play an important role in bringing suspected breaches of planning control to our attention. This document sets out what you can expect from the council when you report a potential breach of planning control, explains how we will investigate your concerns, how we prioritise enquiries and our timescales for investigation.

This document has been developed following consultation with councillors, town and parish councils and other users of the service. The consultation exercise included a series of seminars as well as user surveys.

More information on enforcement including examples of breaches of planning control and matters which the council cannot investigate, can be found in the planning enforcement leaflet: www.wiltshire.gov.uk/planningenforcement

The purpose of planning enforcement

Planning enforcement ensures that where harmful development is carried out without permission, it is remedied, either by its removal or its modification, for example by attaching conditions to planning permission.

Enforcement action is discretionary and should only be taken where it is “expedient”. Expediency considers whether the unauthorised development causes planning harm, having regard to the Development Plan and other material considerations, such as the emerging Local Development Framework. The existence of a breach is not, in itself, a good reason to take enforcement action.

Government advice is that ordinarily, formal action against a breach of planning control is the last resort and that the council should first give those responsible an opportunity to put things right. The council’s approach will always be commensurate with the seriousness of the breach. When there are serious harmful effects, protracted negotiations will not normally delay formal action.

The developer has a right to submit a retrospective planning application which must be considered no more or less favourably than if the development had not already been carried out. In the event an application is refused or an enforcement notice issued an appeal can be made to the Planning Inspectorate, an executive agency of the Government.

If the council's actions are considered unreasonable or legally unsound then its decisions can be overturned by the Planning Inspectorate or the courts and it can be ordered to pay costs.

Enforcement therefore can take a long time due to the need for thorough investigation, the legal processes involved, the nature of the breach, the site and the people involved.

Our enforcement priorities and targets

The council has finite resources and to ensure they can be used in the most effective manner, enforcement cases are prioritised according to the seriousness of the harm caused by the breach.

<p>Priority 1- we aim to visit 80% of these sites within 24 hours of your enquiry being registered.</p>
<p>Immediate threat to public safety, substantial damage to or loss of statutorily protected buildings, trees or areas.</p>
<p>Priority 2- we aim to visit 95% of these sites within 5 working days of your enquiry being registered.</p>
<p>Adverse impact on protected areas and residential amenity. Breaches of conditions and legal agreements resulting in serious harm to neighbours, affected parties and/or the environment. Unlawful adverts in protected areas. Unauthorised development where it is possible that the time for taking enforcement action could expire within the next 6 months.</p>
<p>Priority 3- we aim to visit 95% of these sites within 10 working days of your enquiry being registered.</p>
<p>The breach is of a minor nature which does not cause immediate/long term harm or loss of amenity.</p>

We also aim to:

- **Register 95% of new enquiries within 3 working days of receipt.**
- **Respond to 95% of enquirers within 10 working days of initial site visit.**
- **Complete 80% of priority 1 cases within one year.**
- **Complete 80% of priority 2 &3 cases within 6 months.**

Notes:

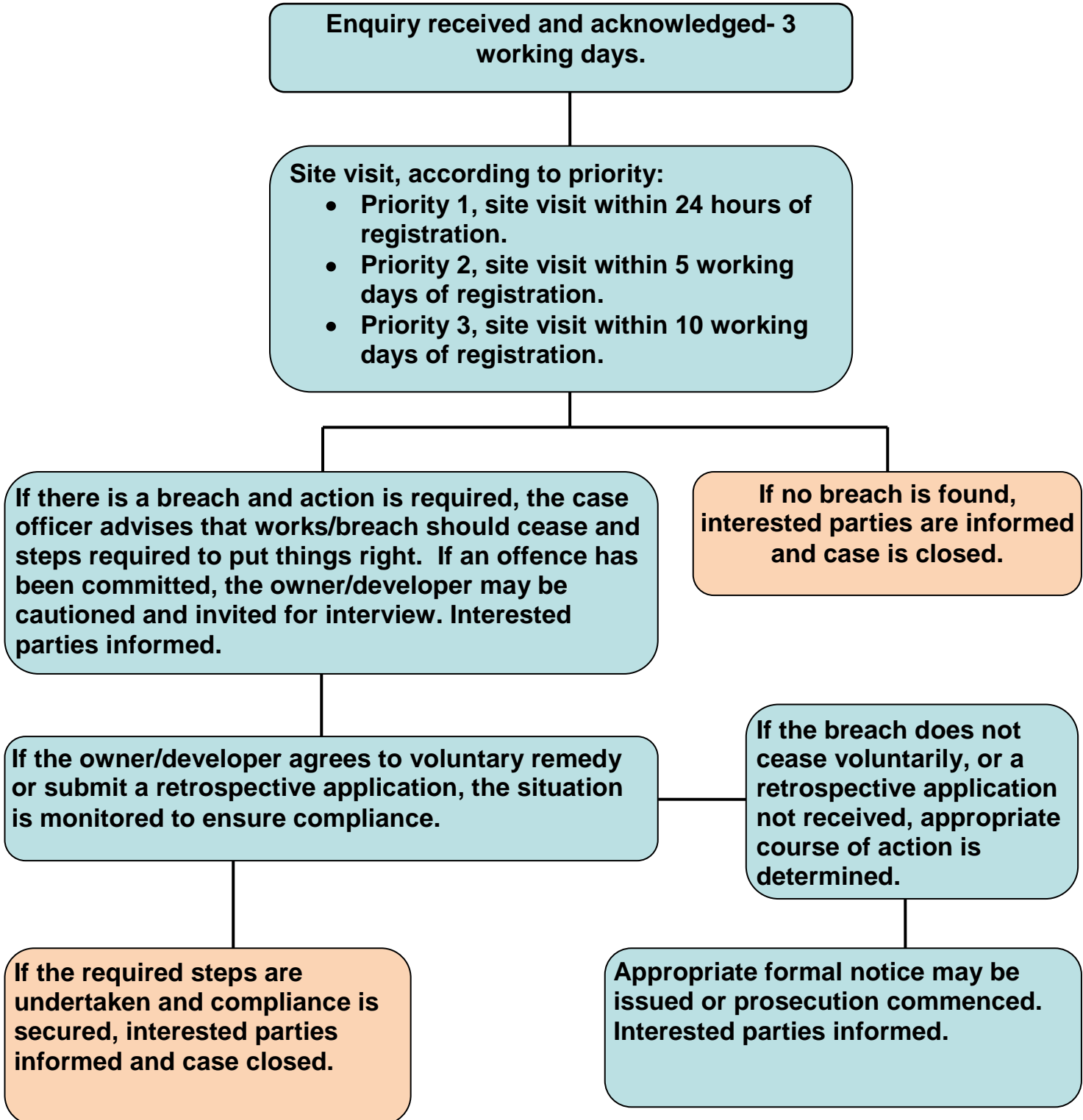
Protected buildings are listed buildings and unlisted buildings in Conservation Areas.

Protected trees are trees subject to a Tree Preservation Order, in a Conservation Area or protected by a condition of planning permission.

Protected areas include Conservation Areas, Historic parks and gardens, Areas of Outstanding Natural Beauty, World Heritage Sites, The Green Belt, Sites of Special Scientific Interests, Special Areas of Conservation and land at high risk of flooding.

The priority afforded to the investigation may change following an initial site visit or at any other time during the investigation, if for example new information comes to light.

Key stages in the enforcement process



How we aim to deal with your enquiry

You are welcome to telephone us, however we also need you to write in, so we know exactly what to investigate and so we can substantiate the case in future.

There is an online form you can complete and return to us found at :

www.wiltshire.gov.uk/planningenforcement

Anonymous enquiries will not normally be investigated. Any investigation of such enquiries will be at the council's discretion.

We aim to treat enquirers' personal details in confidence but if formal action results, we may ask you to help the council's case. A successful outcome could depend on your support.

If you are concerned about providing your name and address, you should contact your local councillor or parish council who may agree to act on your behalf.

We aim to acknowledge receipt of your enquiry and provide you with future contact details.

We aim to deal with all enquiries in a fair and equitable manner and treat all parties with dignity and respect.

Our site visits will take place as far as possible in accordance with our enforcement priorities (see above).

We aim to advise you what action the council proposes to take.

If a retrospective application is received, we aim to notify you so you have the opportunity to make comments.

If by week 13 following receipt of your enquiry, we have not completed the investigation, we aim to contact you and explain why.

The outcome of your enquiry

There are several possible outcomes to your enquiry, depending on the circumstances.

Negotiated remedy

The developer agrees to cease the breach. However we will not allow negotiations to unduly hamper or delay formal action where it may be required to make the development more acceptable in planning terms, or compel it to cease.

Retrospective application

An application would be invited where there is a reasonable prospect of obtaining permission. We will pursue submission where there is a need to impose conditions on a permission to restrict the development or modifications to the development may be considered acceptable. It must be noted however that anyone has the right to submit a retrospective application, regardless of the likelihood of it not obtaining council support.

No breach

This would be where, for example, the matter is 'permitted development' or outside planning control.

The breach is not expedient to pursue

An example is a householder development slightly larger than that which would have been allowed under 'permitted development', where in the absence of significant harm to public amenity enforcement action would be disproportionate.

The development is immune from enforcement action

The statutory time limits for enforcement action are set out below. The council is unable to take formal action if the time has expired.

Breach	Immunity
Operational development (e.g. building works, new access, fences)	4 years after substantial completion.
Change of use to a single dwelling	Continuous occupation for more than 4 years
Material change of use	Continuous use of similar nature/scale/extent for more than 10 years
Breach of condition	Continuous non-compliance for more than 10 years.

n.b.: These time limits do not apply to works to listed buildings

Formal action

Where negotiations do not secure an acceptable outcome in planning terms, the owner/ persons responsible may be legally required to remove building work and/or cease an activity and clear the site.

The council has a range of formal powers. Those most used are described below. The nature of the breach will determine which powers are used:

- Breach of Condition Notice-requires compliance with specified conditions within a set timescale.
- Enforcement Notice-requires certain steps to be carried out to remedy matters, again within a set timescale. Can be served together with a Stop Notice (see below).
- Stop Notice/Temporary Stop Notice –requires specified activities to cease (but cannot undo unauthorised works).
- ‘Untidy Land’ Notice- requires steps to be taken to secure the proper maintenance of land and buildings within a set timescale.

In the event of continued non-compliance, the persons responsible may be prosecuted, fined and get a criminal record.

Alternatively the council may take direct action to undertake the required remedial works and recover its costs from those responsible, or seek an injunction.

Complaints

If you are unhappy about the advice given, action taken or the level of service you have received, you will be given the opportunity to discuss the matter with the relevant team leader, who will:

- Listen;
- Consider whether our service has fallen below expected standards;
- Give you a written / verbal response.

If the problem cannot be resolved, you will be informed of the council’s Corporate Complaints Procedure

Appendix A

The following have been taken into account in the preparation of this document:

National legislation and guidance

- Town and Country Planning Act 1990 (as amended).
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Police and Criminal Evidence Act 1984.
- Criminal Procedure and Investigations Act 1996.
- Human Rights Act 1998.
- Regulation of Investigatory Powers Act 2000.
- Freedom of Information Act.
- Environmental Information Regulations 2004.
- Planning Policy Guidance Notice 18 “Enforcing Planning Control.”
- Circular 10/97 “Enforcing Planning Control.”
- Enforcement Concordat DTI 1998.
- Enforcement Concordat: Good Practice Guide DTI 2006.
- Enforcing Planning Control: Good Practice Guide DETR 1997.
- Best Practice Guidance on Listed Building Prosecutions: DCLG 2006.
- The Road Ahead: Final Report of the Independent Task Group on Site Provision and Enforcement For Gypsies and Travellers (published December 2007).
- The Statutory Code of Practice for Regulators published by the Department for Business Enterprise and Regulatory Reform, December 2007.

Local planning policies

- Adopted Wiltshire Structure Plan 2016.
- Salisbury District Local Plan 2003.
- North Wiltshire Local Plan 2011.
- Kennet Local Plan
- West Wiltshire Local Plan

Appendix B - Key enforcement principles

We promise to adhere to the principles of good enforcement set out in the government's enforcement concordat.

Standards - we will publish standards and our performance against them.

Openness - we will give advice and information in plain language.

Helpfulness - we believe prevention is better than cure, so actively working to assist compliance. We will give a courteous and efficient service.

Complaints - we will have a well publicised, effective and timely complaints procedure.

Proportionality- any action taken will be commensurate with the seriousness of the breach.

Consistency- we will carry out our duties in a fair, equitable and consistent manner.

Information about Wiltshire Council Services can be made available on request in other languages including BSL and formats such as large print and audio.

Please contact the council by telephone, 0300 456 0100, by textphone 01225 702500, or email customerservices@wiltshire.gov.uk