



CHELTENHAM  
BOROUGH COUNCIL

# Local Planning Enforcement Guide

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[cheltenham.gov.uk](http://cheltenham.gov.uk)



# Foreword

## from Cllr Mike Collins, cabinet member for planning and building control

Cheltenham is the most complete Regency town in Britain and overflowing with history. In 1788 it began to gain its national and international reputation when King George III visited to take the mineral waters. This accelerated the town's expansion, bringing iconic buildings that we still see today such as Pittville Pump Room and Royal Crescent.

Cheltenham continues to change and evolve. We are developing a new rich heritage through our 70-year association with GCHQ. Their doughnut-shaped home is a modern building that is unique to Cheltenham. As our town expands, our aim is to ensure that it has high quality developments that will stand the test of time.

We live in a unique place, and this is why our approach to enforcement is so important. We all have a moral duty to care for our historic buildings and respect the planning process by building homes, offices and commercial properties that meet with the conditions and permissions.

Sadly, not everyone follows this view, with some choosing to let listed buildings fall into disrepair and some by breaking the planning rules.

This policy sets out a fair approach to planning enforcement and clearly explains how we will act with those that break the rules.

We will use our legal powers to take action - and we will issue unlimited fines or orders to demolish buildings to those that breach our planning regulations.

I encourage everyone to play their part to protect the unique character of our borough. We are custodians of this beautiful place, and we must ensure that future generations can enjoy everything our town has to offer.



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# Introduction

This plan sets out how planning enforcement is addressed in the borough and how our planning enforcement team deals with breaches of planning control.

It is important that everyone is aware of the council's approach when there has been a suspected breach of planning control. The team also deals with works to listed buildings, buildings and land in poor condition and unauthorised advertisements.

A breach of planning control happens if development is carried out without the required planning permission, or if development is not carried out in line with the approved plans and conditions.

Breaches of planning regulations will be dealt with quickly, effectively, and consistently. This is to safeguard Cheltenham's distinctive character and preserve the attributes that make it special.

We are focussed on finding solutions and constructively addressing issues, however all measures - including legal action - will be used where necessary to uphold planning standards.

This is a shortened guide to the revised **Local Enforcement Plan** which should be read alongside our **Corporate Enforcement Policy** which can be found on our website:

[cheltenham.gov.uk/planning-enforcement](https://cheltenham.gov.uk/planning-enforcement)

Read on to find out more about:

- our priorities for investigation
- what will be investigated and what will not be investigated
- our general discretionary powers regarding planning enforcement
- the priorities for responses to complaints and explaining the considerations that are undertaken and outcomes that may result.



# What is a breach of planning control and what will be investigated

The planning enforcement team can only investigate breaches of **planning** control; the team is not able to deal with any other unauthorised works or actions.

'Development' includes building and engineering operations as well as any material change of use of land or buildings.

Many developments benefit from a deemed planning permission granted by legislation – often referred to as 'permitted development' or simply 'PD'. In these circumstances a planning application is not required as permission is already automatically in place.

Other actions/works which constitute a breach of planning control which will be investigated include:

- Unauthorised works to a listed building
- Unauthorised demolition in a conservation area
- Unauthorised advertisements
- Unauthorised works to trees protected by Tree Preservation Orders (TPO) and trees within conservation areas
- Breaches of s106 Agreements
- High hedges
- Untidy land where it affects the amenity of the building
- Deliberate concealment of unauthorised building works or changes of use

Some breaches of planning control become exempt from enforcement action over time.

Unauthorised operational development become exempt from enforcement action **ten years** from the date that it was substantially complete, if formal enforcement action has not been taken during that period.

Unauthorised changes of use and breaches of conditions also become exempt from enforcement action after **ten years** – if no formal enforcement action has been taken.



# Issues that do not fall under planning enforcement

The following issues fall outside of planning control powers and cannot be investigated by the team:

- Concerns about unauthorised waste, mineral extraction or planning applications determined by Gloucestershire County Council. These are matters for county council and any breaches are considered under their [enforcement plan](#).
- Land ownership disputes
- Neighbour disputes (unless directly relating to a planning enforcement matter)
- The enforcement of legal covenants
- The behaviour of builders and their contractors including parking practices
- Party wall issues
- Structural issues and other building control matters

Non-planning enforcement matter		Where to go instead for help
Unauthorised deposit of waste	➤	<a href="#">Gloucestershire County Council planning enforcement</a>
Concerns relating to mineral extractions	➤	<a href="#">Gloucestershire County Council planning enforcement</a>
General property disputes	➤	<a href="#">GOV.UK - housing tribunal</a>
Land ownership disputes	➤	<a href="#">Citizens Advice - boundary advice</a> <a href="#">HM Land Registry</a>
Construction noise and similar nuisance	➤	<a href="#">CBC statutory nuisance advice</a> <a href="mailto:envhealth@cheltenham.gov.uk">envhealth@cheltenham.gov.uk</a>
Builders/contractors poor parking	➤	<a href="mailto:parking@gloucestershire.gov.uk">parking@gloucestershire.gov.uk</a>
Party wall issues	➤	<a href="#">GOV.UK - party walls</a>
Structural issues and concerns	➤	<a href="#">Cheltenham &amp; Tewkesbury Building Control</a>

# Prioritising cases

We receive many reports of planning enforcement matters and these need to be prioritised according to the amount of harm that may be being caused.

When assessing whether formal action should be taken, we need to weigh up the merits of each case before deciding what to do, making sure that any actions are reasonable and in the public interest. This is known as the 'expediency test'.

The timescales for resolving a breach of planning control depend on how complex the case is and officer workloads. Some cases can take significant time due to the investigation process.

## Priority 1 (high)

**Investigation open within 5 working days (24 hours for active work to listed buildings and protected trees)**

**Priority 1 includes:**

- Unauthorised works, demolition, or alteration to a listed building, or the demolition of a building within a conservation area causing immediate or irreparable harm
- Unauthorised development which leads to substantial and/or permanent damage to a scheduled ancient monument, Sites of Special Scientific Interest (SSSI) or other nationally or locally designated sites of nature conservation
- Works being undertaken in contravention of the requirements of an extant enforcement and/or stop notice
- Unauthorised advertisements on listed buildings or where public safety is being put at risk (public safety has a broad definition but includes road safety and impacts on other forms of transportation)
- Unauthorised works to a tree subject to a Tree Preservation Order or a tree within a conservation area

## Priority 2 (medium)

**Investigation open within 20 working days**

**Priority 2 includes:**

- Unauthorised building work, engineering operations or uses of land
- Breach of planning conditions or legal agreements where demonstrable harm is being caused to the neighbourhood amenity
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action is imminent
- Unauthorised householder development
- Unauthorised engineering operations
- Deliberate concealment of unauthorised building works or changes of use
- Untidy land and buildings (section 215 notices – see below)
- Advertisements in a conservation area

## Priority 3 (low)

**Investigation open within 30 working days**

**Priority 3 includes:**

- Minor unauthorised works
- Breaches of a technical nature
- Advertisements outside of a conservation area (unless on a listed building)



# The council's approach

When a complaint of a possible breach of planning control is received, it is logged and prioritised as above.

In the early stages of investigations, it may be necessary to serve notices on those alleged to be responsible to obtain further information or clarity.

## **Option 1: no further action**

Investigations may determine that no breach of planning control has occurred. If this is the case the council has no authority to take further action and the case will be closed. The council may also decide not to act when a breach is minor.

## **Option 2: informal action - negotiate a solution**

If there is a clear breach of planning control and action is needed, an informal resolution is preferred. Formal action is only taken when informal action is unsuccessful.

## **Option 3: informal action – invite a retrospective application**

Unauthorised development is often not in conflict with planning policy or causing unacceptable harm. In such cases a retrospective application will be asked for to regularise the breach.

## **Option 4: formal action**

If an unacceptable breach has occurred, it is necessary to act, and formal action is likely to follow.

### **Freedom of Information**

Any information supplied to us may be subject to an FOI request. However, personal information and confidential information that would not be in the public interest, will not be released to the public.

# Formal action

The priority is to resolve any breaches of planning control through negotiation. Only when negotiations fail should formal action be considered.

Long and protracted negotiations will be avoided where there is a need to make the development acceptable or where there is a requirement for a particular use to stop.

If the breach of planning control cannot be rectified on an informal basis, formal action may be necessary.

Formal action can include the following:

- Enforcement notice (EN)
- Breach of condition notice (BCN)
- Stop notice
- Temporary stop notice (TSN)
- Planning enforcement order
- Injunction
- Section 106 notice

## What happens next?

In most cases there is a right of appeal. Planning appeals, including most planning enforcement related appeals, are dealt with by the Planning Inspectorate.

# Tree protection enforcement

Anyone who carries out unauthorised work to a protected tree is guilty of a criminal offence; this includes works to trees protected by a Tree Preservation Order (TPO) as well as those within a conservation area.

This includes: cutting down the protected tree, uprooting or wilfully destroying it, or topping, lopping or wilfully damaging a tree in a way that is likely to destroy it; a person causing or permitting such activities is also guilty of an offence.

Formal tree protection enforcement is carried out through the courts.

Unauthorised works to protected trees are **Priority 1** cases, see page 6. The council will inspect the site and investigate within five working days of receiving the complaint.

**Prosecution will be considered if there is felt to be a real prospect of a conviction and that it is in the public interest.**

There is a legal duty on those acting in breach of tree protection legislation, to replace any tree removed, uprooted or destroyed.





# Listed building enforcement

Owners of listed buildings should be aware that regular maintenance will often avoid the need for major remedial work and associated listed building consent.

Historic England provide a useful [maintenance checklist \(historicengland.org.uk/advice/your-home/maintain-repair/checklist\)](https://historicengland.org.uk/advice/your-home/maintain-repair/checklist) for listed and other historic buildings.

Alterations to listed buildings that affect the character or appearance as a building of special architectural or historic interest need listed building consent (LBC). This applies to internal and external work.

If you are not sure whether you need consent, please contact the council before beginning work. A **Certificate of Lawfulness of Proposed Works (CLPWs)** may be applied for.



# Prosecution

It is **not** a criminal offence to carry out works or make a material change of use to land or buildings without planning permission. However, once an enforcement notice has been served, non-compliance with that notice constitutes a **criminal offence**.

It is a **criminal offence** to carry out unauthorised work to listed buildings or to display adverts without consent if required. In these cases an offence is committed irrespective of whether an enforcement notice has been served.

Where we believe a criminal offence has been committed, prosecution will be pursued subject to:

1. **The evidential test**
2. **The public interest test**

## **The evidential test**

The council must be satisfied that there is enough admissible reliable evidence to provide a realistic prospect of conviction.

## **The public interest test**

The presumption is that a prosecution will be pursued unless public interest factors weighing against doing so, outweigh those in favour. The relevant factors will differ from case to case depending upon the circumstances.

# The proceeds of crime act 2002

Civil action can be used to recover property, debts and any costs incurred, and the council has the power to prosecute a wide range of offences.

The Proceeds of Crime Act 2002 (POCA) enables local authorities to obtain confiscation orders against those committing offences. The order allows the recovery of any financial benefit gained from criminal conduct. The prospect of action provides a deterrent to those intending to disregard the provisions of an enforcement notice.

Where the council has reason to believe that significant monetary gain has been achieved through a breach of planning control and subsequent disregard to an enforcement notice (or similar), action pursuant to the Proceed of Crimes Act will follow.

# Proactive compliance

As well as reacting to complaints about alleged unauthorised developments or breaches of conditions, we provide a proactive approach to ensure compliance with planning permissions and other consents.

In order to be proactive, a risk based approach is used to decide which cases are to be investigated or monitored, and any investigations must be targeted and focussed according to the resources that are available.

For further information visit [cheltenham.gov.uk/planning-enforcement](https://cheltenham.gov.uk/planning-enforcement), contact our team by email [planning@cheltenham.gov.uk](mailto:planning@cheltenham.gov.uk) or telephone 01242 264328.

## **Complaints about the service**

If you are unhappy about the service you have received or how the process has been managed, please discuss your concerns with your case officer or through our complaints procedure. You can find out more on our webpages [cheltenham.gov.uk/complaints-comments-compliments](https://cheltenham.gov.uk/complaints-comments-compliments).



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# Appendix - Enforcement Process Overview

