

Consultation Draft Planning Enforcement Plan 2025

Council of the Isles of Scilly
Planning Department



Council of the
ISLES OF SCILLY

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If you require any of the documents in an alternative language, in larger text, Braille, easy read or in an audio format, please contact the Council at diversity@scilly.gov.uk or telephone 0300 1234 105.

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Contents

Introduction.....	4
Our principles	5
Discretion.....	5
Proportionality.....	6
Consistency and Fairness	6
Transparency.....	6
The Enforcement Process	6
Prioritising Enforcement Cases.....	6
Handling an Enforcement Investigation	8
What is a Breach of Planning Control?.....	10
What is not a Breach of Planning Control?.....	10
Specific examples of planning use breaches.....	11
Existing houses converted to long term rental.....	11
Subdivision of houses to two houses.....	11
Existing houses converted to short term weekly self-contained rental.	12
Existing houses converted to B&B, no kitchens in rooms.....	12
Existing B&B acquires additional kitchens.....	12
Other Breaches.....	13
Enforcement Powers Available to the Council.....	13
A Planning Contravention Notice.....	14
Enforcement Notice	14
Breach of Condition Notice.....	15
Stop and Temporary Stop Notices	16
Appeals.....	16
Listed Building Enforcement Notice.....	17
Section 215 Notice	17
Prosecution.....	18
Direct Action.....	18
Planning Obligations	18
Injunction	18
Appendix A – Form for Reporting a Breach of Planning Control.....	19
Appendix B -Enforcement Diary Sheets	21

Introduction

1. Planning plays an important role in managing development to ensure a high-quality environment, facilitating a better pattern of land use and securing the efficient use of resources. An effective planning enforcement service is an important means of achieving these goals and maintaining the integrity of the planning system.
2. As part of its commitment to the delivery of an efficient and effective planning enforcement regime, the Council has prepared this Local Enforcement Plan, in adherence with the National Planning Policy Framework.
3. The plan sets out our approach to planning enforcement; it explains how we will investigate alleged cases of unauthorised development, the basis on which our decisions are made, and our approach to pro-active monitoring.
4. The majority of building works and changes of use need planning permission. The display of adverts or works to protected trees also require consent. Undertaking development without getting permission or consent or carrying out the work without complying with the conditions of a permission is described as a breach of planning control.
5. The whole of the Isles of Scilly is a designated Conservation Area. The duties and implications following designation are set out here: [Heritage, Conservation & Environment | Council of the ISLES OF SCILLY](https://www.scilly.gov.uk/planning/heritage-conservation-environment)¹. For planning enforcement purposes the most important effects of the conservation area designation are that²:

Notice must be given to the Council before works are carried out to any tree.



Planning permission must be obtained before **demolition of a building*** takes place.

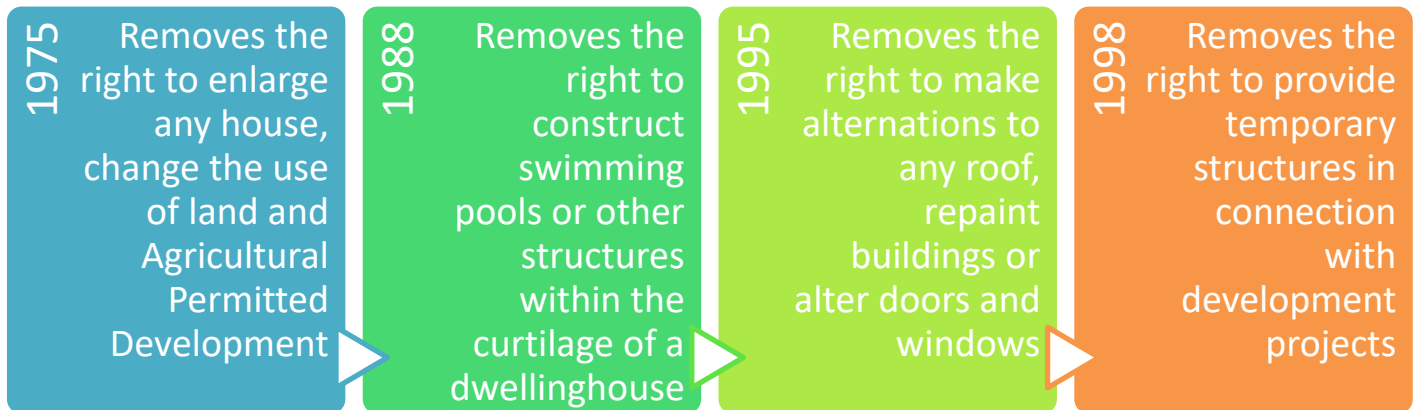


¹ <https://www.scilly.gov.uk/planning/heritage-conservation-environment>

² Without planning permission these works are classed as a criminal offence

* (where more than 115 cubic metres) or of any gate, fence, wall or other means of enclosure (more than 1m where next to a highway, waterway or open space, or 2 metres elsewhere)

6. There are currently a number of Article 4 Directions (A4D) that cover all of the islands. The effect of these A4Ds is that express planning permission is required for other specific minor developments and changes of use because general permitted development rights have been removed:



7. As part of our Conservation Area Review work during 2024, these existing A4Ds are being reviewed to update them in line with the most recent Order³ for Permitted Development.

Our principles

8. We recognise that carrying out unauthorised development without first obtaining the necessary planning permission or consent, can have a harmful impact upon our residents, businesses and visitors. Effective planning enforcement is important for public confidence and for the perception of fairness to those who follow the rules and those experiencing the impacts of construction. However, we must also operate within the law and remember that the legal framework is initially about removing harm caused by those breaching the rules.

Discretion

9. Planning enforcement investigations will generally be conducted only when complaints are received, whether those complaints are received from outside or within the Council.
10. We will seek to remedy all breaches of planning control that are harmful using all the tools at our disposal, and where there is serious harm, we will act swiftly and robustly to resolve it.
11. We may issue an enforcement notice if we consider that it is expedient to issue the notice, having regard to the local plan and any other material considerations. We must consider whether the breach of planning control is harmful in making our decision.

³ The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024
<https://www.legislation.gov.uk/ukSI/2024/579/contents/made>

Proportionality

12. The action we take must be proportionate to the degree of harm caused by the unauthorised development. We will not hesitate to take swift, firm enforcement action where there is serious harm. In cases where the harm is not so serious, we will first try to resolve it through negotiation, in a cost effective and timely manner, before issuing an enforcement notice if required.

Consistency and Fairness

13. We are committed to ensuring that all enforcement related allegations are dealt with in a consistent and fair manner. We will take into account other similar cases and where possible, we will adopt a similar approach.

Transparency

14. We will identify ourselves by name and provide our contact details in all of our correspondence. We will explain our decisions clearly, in plain English and try to avoid jargon.
15. We will monitor our performance and publish the results annually in the Council's Monitoring Report.
16. We will maintain our enforcement register.

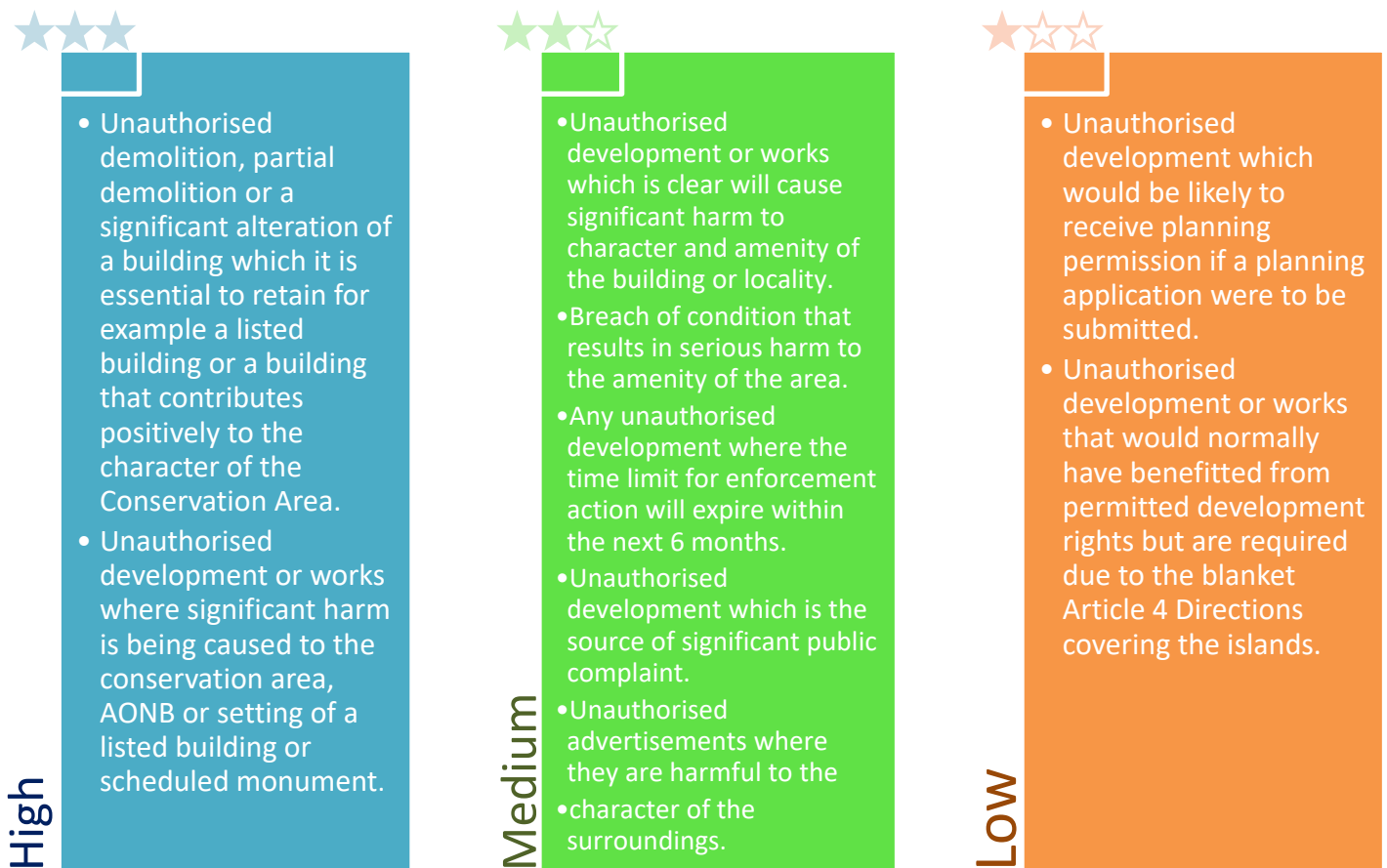
The Enforcement Process

17. It is important to note that Planning Enforcement powers are discretionary, to be used only when it is appropriate to do so. Breaches of planning control are often resolvable without resorting to formal enforcement action or prosecution and as such, any action taken should be proportionate to the alleged breach.
18. It is not a criminal offence to carry out development or change the use of land or a building without first obtaining planning permission (unless it is a listed building). It is merely unauthorised and therefore, in considering whether to take enforcement action, weight should generally not be given to the fact the development may have already commenced. Furthermore, the Town and Country Planning Act 1990 ("Planning Act") allows for the submission and consideration of retrospective applications. Only when the Council has served enforcement or similar notices and all avenues of negotiation and appeal have expired, does a development or use become illegal and a criminal offence. Enforcement action should not be taken simply to correct the absence of planning permission. In essence, enforcement action will be taken in those cases where the breach of control would unacceptably affect public amenity or the use of land and buildings merits protection in the public interest.

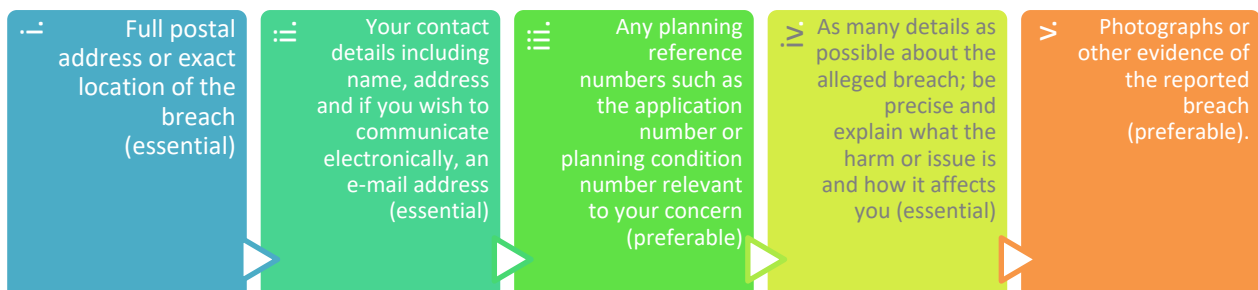
Prioritising Enforcement Cases

19. The investigation of alleged breaches of planning control will be made in

accordance with the following scale:



20. Planning enforcement complaints should be submitted by a form, as shown at Appendix A and downloadable from the Councils website: <https://www.scilly.gov.uk/planning/planning-enforcement>. This should be sent by post or email to planning@scilly.gov.uk. We will require the following information:



21. We will **not** investigate anonymous complaints. We will **not** disclose complainants' identity to others, but we need to know who they are as we need to understand the impact of the reported breach on the complainant and may need to engage with them to observe a reported breach from their property.

22. The complaint will then be dealt with in the following manner:



Handling an Enforcement Investigation

23. As a result of preliminary investigations, the Council may be able to conclusively establish that an activity does not amount to a formal breach of planning control as a result of, for example, the following:

It is not a matter which can be controlled by planning legislation. Although an activity may not contravene planning legislation, it may breach other legislation e.g., the Environmental Protection Act, the Health and Safety Act or Building Regulations.

Planning permission has been granted by the Council.

Formal planning permission is not required as the development has the benefit of “Permitted Development” rights.

The activity is lawful for some other reason. A breach may, for example, be immune from enforcement due to the length of time it has been carried out. Where this is suspected to be the case a Certificate of Lawfulness may be invited to formally establish this immunity.

24. In cases where the activity does not amount to a formal breach of planning control, the Council will inform all relevant parties of its decision and not pursue further courses of action.
25. Where a material breach of planning control is identified, the Council will initially attempt to rectify it through negotiation without immediate recourse to formal enforcement action. The methods used may include requesting the submission of a retrospective application. The submission of an application is no guarantee that permission will be granted. Any application will need to be processed and assessed taking into account all the relevant material planning considerations. Whilst no formal enforcement action would be taken during this consideration period, no further work should be carried out whilst an application is being considered.
26. Not all breaches of planning control are significant enough to justify enforcement action. Where planning permission is likely to be granted unconditionally, but no application is actually submitted, or where there has been only a minor breach which will have no significant effect, the Council will need to consider whether it is in the best interest of the public to pursue the matter further.

What is a Breach of Planning Control?

27. A breach of planning control occurs where development or a change of use is carried out without the required planning permission or consent or where it does not comply with any condition or limitation subject to which planning permission has been granted. Such a breach could include, but is not limited to, any of the following:

Unauthorised building works such as an extension or erection of a shed or fence.

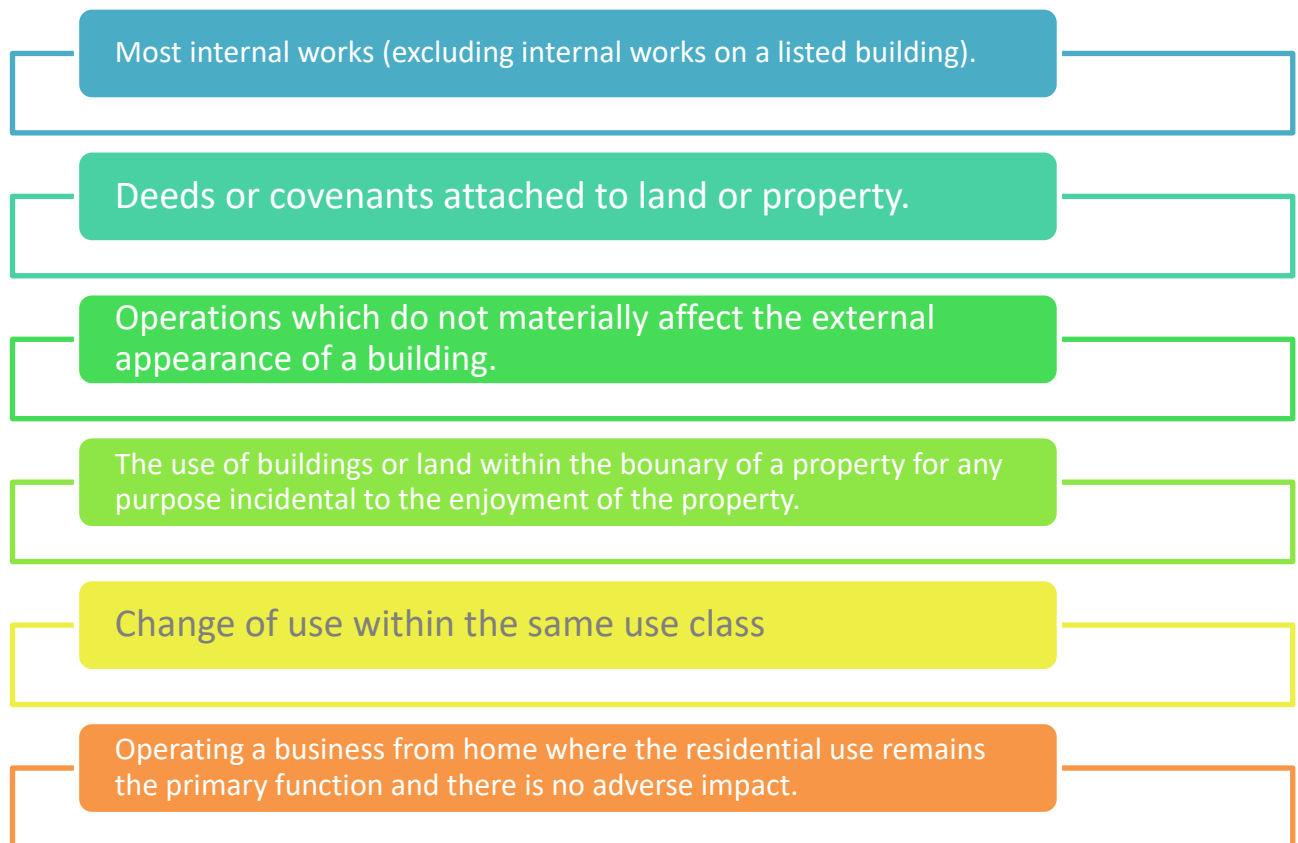
The unauthorised change of use of land or a building such as the subdivision of a dwelling to create a new self-contained unit of accommodation.

Unauthorised engineering works such as the creation of a new access.

A breach of a condition attached to a planning permission.

What is not a Breach of Planning Control?

28. The following are examples of works or operations that do not amount to development and do not therefore amount to a breach of planning control under planning legislation:



Specific examples of planning use breaches

29. The Council recognises that residents and landowners often find it difficult to know whether planning permission is required for a specific use. The law around different residential uses depend on matters of fact and degree and accordingly it is not possible to provide hard and fast rules. However, the following examples should provide some guidance:

Existing houses converted to long term rental.

30. Where existing self-contained residential dwellings change to long term rental, this change would not usually represent a material change of use that requires planning permission. Planning law does not differentiate between owned and tenanted residential property. There is no change in the character of the use and as such there is no scope to consider its materiality. As there is no development, there is no opportunity to consider the effect on local housing supply.
31. Where there is a section 106 agreement, the occupiers may be in breach of the terms of that agreement.

Subdivision of houses to two houses

32. Subdivision of an existing self-contained residential dwelling into two dwellings is a material change of use for which planning permission is required

(subdivision of a dwelling is specified as such in s55(2) TCPA 1990).

Existing houses converted to short term weekly self-contained rental.

33. Converting an existing self-contained residential dwelling into a short term let may constitute a material change of use if the character of the use has changed. It may be material because of the increased comings and goings of visitors, privacy for neighbours and loss of local housing supply. It is likely to be expedient to take formal enforcement action because of the harms identified and because of the need to uphold the integrity of the planning system.
34. There is also scope for possible enforcement by Section 106 (s106) injunction where there is a s106 agreement.

Existing houses converted to B&B, no kitchens in rooms.

35. Converting an existing house into a B&B where there are no kitchens in the B&B rooms *may* be a material change of use, due to the increased comings and goings of visitors, privacy for neighbours and loss of local housing supply (the local house accommodates fewer people).
36. There is no rule that planning permission is not required as long as there are 2 remaining rooms in the main dwelling. Every case will need to be determined on its own merits.

Existing B&B acquires additional kitchens.

37. Installing kitchens into the rooms of an existing B&B is not development and does not require planning permission. However, in some circumstances, the installation of kitchens can be an indicator of a material change of use if it results in a part of a building becoming a self-contained dwelling.
38. The inclusion of kitchens, particularly small ones with a fridge and microwave only, is not usually sufficient to render a B&B room self-contained. That is particularly the case where there continues to be a breakfast room serving breakfast, so the in-room kitchen has limited use.
39. Where the in-room facilities become the only cooking facilities and the room is let as a self-contained room, it is likely that there will be a material change of use for which planning permission is required. It is likely to be material as the room is likely to be too small to be a self-contained dwelling; there may also be overdevelopment of the site.
40. There is no permitted development right to change use of part of a building to a self-contained dwelling use. Absent express planning permission, there will be a breach of planning control.
41. It will be necessary to consider whether the self-catered element is truly its own planning unit, rather than, for instance, part of a mixed use of the property overall.

Other Breaches

42. The Council has other enforcement powers that it can use against a range of other planning related breaches including the following:

Unauthorised works to a listed building which is a criminal offence.

Unauthorised advertisements or signs which are liable to fines if convicted in a magistrates court.

Unauthorised works to trees within the Conservation Area.

Unauthorised demolition works within the Conservation Area

Failure to properly maintain land that results in harm to the environment.

Removal of a hedgerow without serving a Hedgerow Removal Notice or in contravention of a Hedgerow Retention Notice

Enforcement Powers Available to the Council

43. The main legislation governing the enforcement of planning control is contained in the Town and Country Planning Act 1990 (as amended) which empowers the Council to:

Enter land to make necessary site inspections

require owners and occupier to provide information about the ownership and use of land and buildings

Serve enforcement and other notices on landowners and responsible persons to ensure breaches of planning control are stopped or made acceptable or both..

44. If the submission of a planning application or negotiation fails to resolve the problem, the Council has a number of different Notices that can be used to obtain further information or specify what steps are required to remedy the breach within a specified time period. Set out below is a list of Notices and possible action that is available to the Council.

A Planning Contravention Notice

45. A Planning Contravention Notice may be served in order to obtain more information about development or activities on land. The Planning Contravention Notice requires the recipient to provide information and establish a number of facts such as the exact use of the land and any works taking place, and when those uses or works commenced. The information provided on the Notice is used to assess whether enforcement action is required. The recipient has 21 days from the date of service to respond to the Notice. Failure to respond to a Planning Contravention Notice without reasonable justification is an offence and could result in a fine. It is also an offence to knowingly provide false or misleading information.

Enforcement Notice

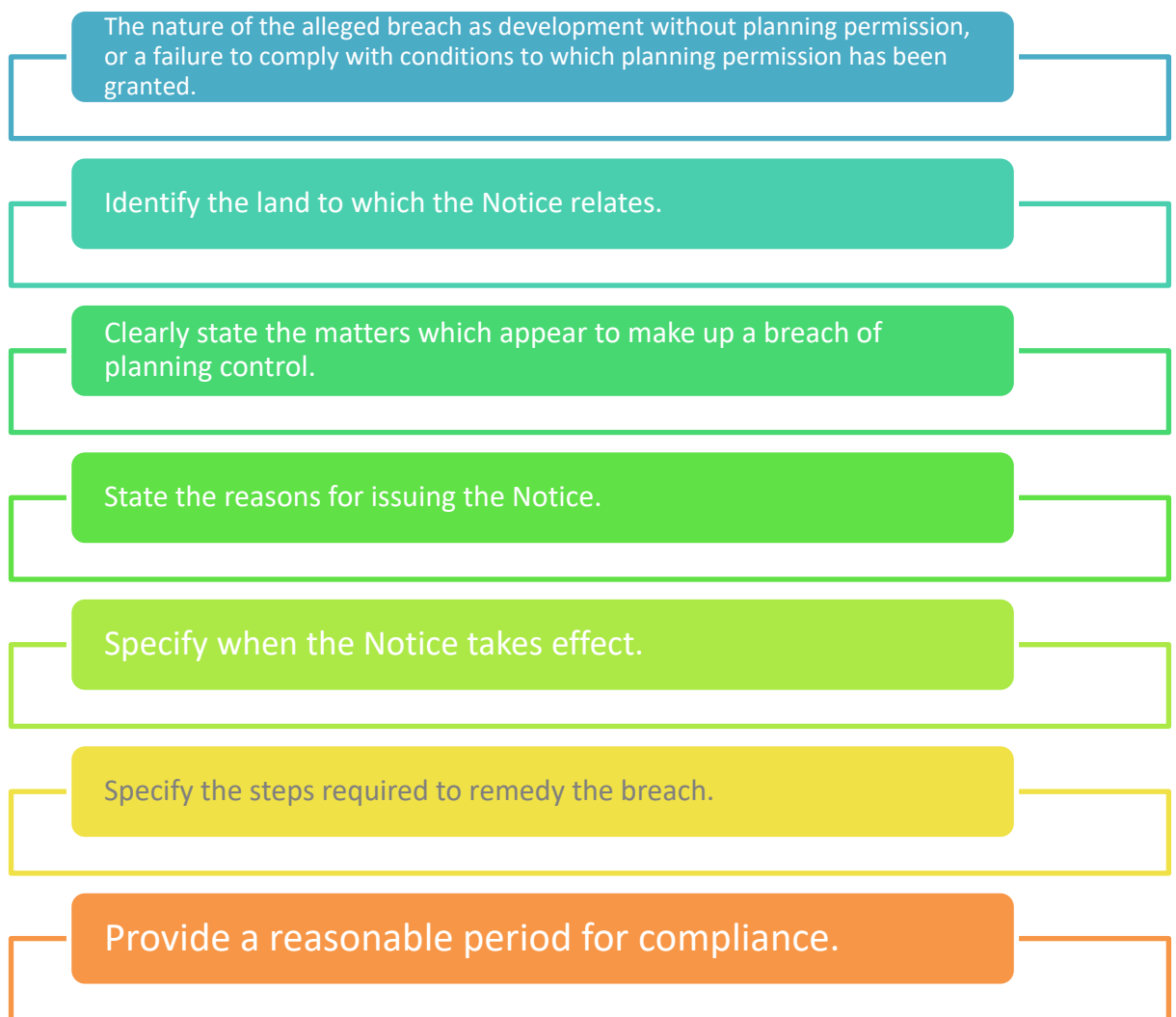
46. Taking enforcement action will result in the issuing of an Enforcement Notice or a Breach of Condition Notice. The decision on whether it is appropriate to take action is a matter for the Council to decide in the circumstances of each particular case. That decision must be reasonable and taken with proper consideration of the relevant facts and the planning merits of the case. Before serving an Enforcement Notice the Council must be satisfied that:

a breach of planning control has occurred.

There is sufficient evidence to support formal action being taken.

It is expedient to serve an Enforcement Notice.

47. An Enforcement Notice must specify:



48. It is an offence to fail to comply with the terms of an Enforcement Notice that is in force.
49. The steps required by an Enforcement Notice should not exceed what is necessary to correct any breach of control or damage caused. There is a right of appeal against a notice to the Secretary of State. If an appeal is lodged, no further action can be taken by the Council until the appeal has been determined. If an Enforcement Notice is served, it will be issued within **eight weeks** of the receipt of notification of the breach. An inspection will normally be made within **five working days** of the end of the compliance period. Both the offender and complainant will normally be advised of the outcome of this visit within **five working days**. If further steps are required, then the offender may, at the discretion of the Council, be given an extension of time to correct the matter. Compliance with the Enforcement Notice will not clear the Notice. It will remain as a charge on the land to prevent the breach recurring.

Breach of Condition Notice

50. Most planning permissions are granted subject to conditions. When a condition is not complied with the Council can serve a Breach of Condition Notice (BCN).

The Notice must specify the steps that the Council consider ought to be taken or the activities that the Council consider ought to cease and the time within which this must be done (this must not be less than 28 days). There is no right of appeal to the Secretary of State against a BCN. It is an offence to be in breach of a BCN.

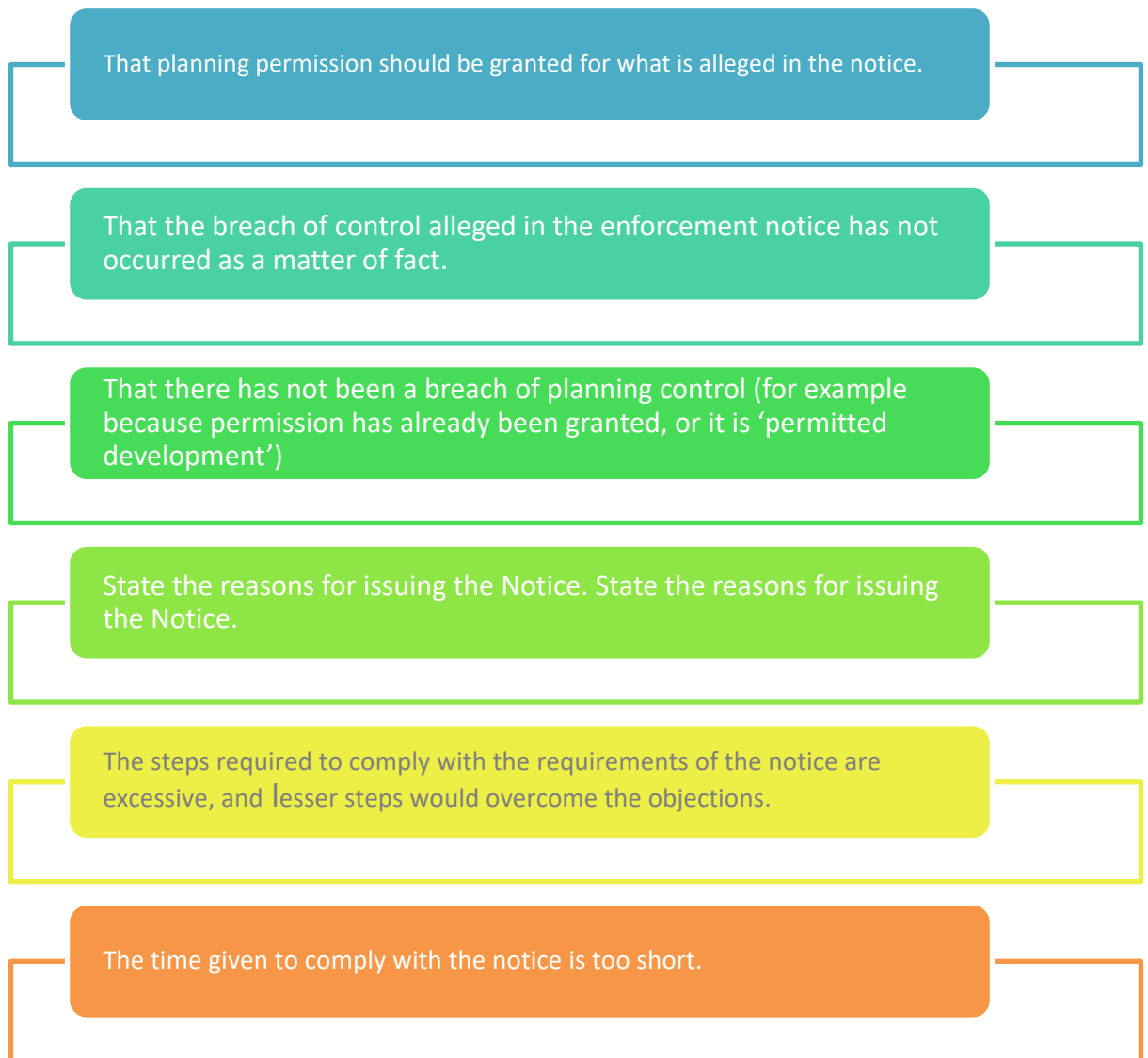
51. Whether a condition is appropriate or reasonable can only be tested at appeal following a refusal to remove or modify it. The removal or modification of a planning condition involves the submission of a planning application together with a fee that will be assessed on its planning merits by the Council.

Stop and Temporary Stop Notices

52. A Stop Notice can only be served in conjunction with an Enforcement Notice, and this may prohibit any activity on the land to which the Enforcement Notice relates. A Stop Notice will normally take effect three days after it has been served, although in cases where the activity to be prohibited is causing irreversible damage, it may take effect immediately. The Notice will remain in force until the period for compliance has expired or the Notice is withdrawn. There is no appeal against a Stop Notice. However, if an appeal is made against the Enforcement Notice, the merits of the Stop Notice may be considered.
53. A Temporary Stop Notice can be served where there has been a breach of planning control and it is necessary to safeguard the amenity of the area immediately. As such, a Temporary Stop Notice takes immediate effect and does not require an Enforcement Notice to be issued.
54. Stop Notices are only served where it is essential that unauthorised works or activities cease immediately to safeguard amenity or public safety or to prevent serious and irreversible harm to the environment. In some circumstances, Stop Notices may give rise to valid claims for compensation. Contravention of a Stop Notice or a Temporary Stop Notice is an offence.

Appeals

55. An appeal may be lodged against an Enforcement Notice before the date it comes into force on any or all of the following grounds:



55. Appeals are considered by the Planning Inspectorate in line with the procedural guide for Enforcement Appeals: [Enforcement appeals: procedural guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide)⁴

Listed Building Enforcement Notice

56. This Notice is similar to an Enforcement Notice but used where works have been carried out to a Listed Building without the benefit of Listed Building Consent or in contravention of a condition of such consent. It is a criminal offence to alter a Listed Building without the necessary consent.

Section 215 Notice

57. This Notice can be served on an owner or occupier where the poor condition and appearance of a property or land is harming the surrounding area or

⁴ <https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide>

neighbourhood. The Section 215 Notice requires proper maintenance of the property or land in question. It specifies what steps are required to remedy the problem within a specified time period. An appeal may be lodged against the Section 215 Notice to the Magistrates' Court. The non-compliance with a Section 215 Notice is an offence.

Prosecution

58. A number of offences are created in the 1990 Act, the most common of which is the non-compliance with an Enforcement Notice. The decision whether or not to prosecute will be made by the Senior Manager for Infrastructure & Planning in consultation with the Chairman and Vice Chairman of the Planning Committee following legal advice on the basis of the available evidence and the public interest in pursuing such a prosecution.

Direct Action

59. Where the owner or occupier of the land fails to carry out the requirements of the Enforcement Notice, the Council will consider using its default powers to enter the land and carry out the required steps itself. Any expenses will be recovered from the offender.

Planning Obligations

60. Restrictions or requirements set out in a Planning Obligation or Agreement under Section 106 of the Planning Act is usually only enforced by injunction. When considering this remedy for alleged breaches, the Council will have regard to the general principles contained in this Plan.

Injunction

61. Where the Council considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained, they may apply to the courts for an injunction. Such action will normally only be used in exceptional circumstances.

Appendix A – Form for Reporting a Breach of Planning Control



COUNCIL OF THE ISLES OF SCILLY

Planning Department
Old Wesleyan Chapel, Garrison Lane, St Mary's, Isles of Scilly, TR21 0LD
01720 424455
planning@scilly.gov.uk

REPORTING A BREACH OF PLANNING CONTROL

Your Name:

Your Address:

Your Email Address:

WHERE:

Address/Location of Breach:

Name of the Person causing the breach (if known):

The reason you believe there to be a breach:

The date the breach commenced:

THE NATURE OF THE HARM* (please describe)

To you: and/or

The Character of the area: and/or

Highway safety:

**Please describe the nature of the harm being caused*

Is the harm (please tick):

☐ Continuing and ongoing

☐ Likely to get worse.

☐ limited to a specific development and will likely cease once complete.

☐ intermittent

What would you like the Council to do about the alleged breach (please describe):

Please provide photographs of the alleged breach.

☐ I have included photographs of the alleged breach.

☐ Tick if you would like to get updates on the progress of this investigation.

We cannot investigate alleged breaches of planning if you have not fully completed the above.

Please email this form to Planning@scilly.gov.uk titled *Reporting a Breach of Planning Control* or print and post a copy to:

Delivered by Royal Mail:

*Planning Department
Planning Enforcement
Old Wesleyan Chapel
Garrison Lane
St Mary's
Isles of Scilly
TR21 0JD*

Delivered by Hand:

*Planning Department
Planning Enforcement
Council of the Isles of Scilly
St Mary's Library
Porthcressa
St Mary's
Isles of Scilly*

Appendix B -Enforcement Diary Sheets



COUNCIL OF THE ISLES OF SCILLY

Planning Department
Old Wesleyan Chapel, Garrison Lane, St Mary's, Isles of Scilly, TR21 0JD
01720 424455
planning@scilly.gov.uk

Breach of Planning Control diary – To be used for breaches of condition(s) relating to noise, operating hours, construction management /travel plans or any other relevant breach of condition or breach of planning control where evidence of a pattern of activity needs to be established.

Your Details

Name of the Person completing statement:

Age if under 18: (if over 18, insert over 18)

Occupation:

Address:

Telephone Number:

I consent to having these confidential details passed to other agencies who may need to be involved or that may have an interest.

This statement recorded by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed:

Date:

Details of the Breach

Location of the alleged breach of planning control (name of occupier/owner and address):

Planning Reference(s) (if known): P/

Condition(s) Breached (if known):

Breach of Planning Control Diary Guidance Notes

The completion of the attached diary sheet(s) is very important, and it must be completed throughout the duration of your complaint. It enables valuable information to be gathered about the time, frequency and duration of the alleged breach of condition. These are essential factors in determining whether or not a breach of planning control exists. The information may also reveal a pattern to the nuisance which will assist in the investigation of your complaint. The information will also be used as evidence in any enforcement proceedings, which is likely to require your testimony at either an Appeal or in Court. It is therefore vital that they are **comprehensive, accurate and relevant**.

1. Events should only be recorded from receipt of the diary. If you have kept a previous record of the alleged breach, please send it to us in its original format if you wish to have it included as evidence.
2. Don't record every event, only those that are excessive and unreasonable.
3. If you are complaining about noise or any other breach from more than one premises, please use a separate sheet for each.
4. Ensure the date and time is correct, and make sure that they correspond.
5. For intermittent events such as noise from explosives blasting at a quarry, try to give as accurate an indication of the problem as possible. For example, if blasting takes place for a few minutes on and off throughout the day, indicating "blasting, 8am – 6pm" will not give an accurate picture. It is not necessary to note each incident, but try to give an indication of the pattern, frequency and duration of the noise.
6. Keep the diary entries short, to the point, and restricted to the breach of planning only. If you have additional information to provide, please do so in a letter.

You should send your completed diary sheets to planning@scilly.gov.uk (please mark the subject as Planning Enforcement). The diary sheets should be returned after 2 weeks.

If we have not received it within 6 weeks, it will be assumed that the complaint has been resolved and no further action will be taken.

It may be necessary to keep diary sheets for a considerable period of time. In many cases, it may be necessary for you to keep ongoing nuisance diary until the problem is resolved. Even if enforcement action has been taken, problems can recur, and further action may require proof that the problem is continuing.

Diary – Record of Incidents

[illegible]

E.G.

Diary – Record of Incidents

Diary – Record of Incidents

Notes: