

# **Department of Environment, Food and Agriculture**

## **Operational Policy on Planning Enforcement**

**August 2018**

# 1. INTRODUCTION

## 1.1 Purpose of this Policy

Under Manx Legislation primary responsibility for the implementation of the Town and Country Planning Act 1999 and Control of Advertisements Regulations 2013 rests with the Department of Environment, Food & Agriculture (the Department). It is carried out by the Development Management Team, which sits within the Planning and Building Control Directorate. The Team deals with planning applications and investigates alleged breaches of planning control.

This Enforcement Policy sets out the Department's approach to dealing with suspected breaches of planning control. It builds on the following extract of the Strategic Plan, which was approved by Tynwald in 2016.

*Under Part 4 of the Town and Country Planning Act 1999, the Department has duties in respect of breaches of planning control. In any case, the objectives of this Plan would be thwarted without an effective development control system, part of which is, of course, enforcement against breaches of control.*

*The Department will rectify breaches of control firstly by negotiation, but where this fails and (a) a regularising application is unsuccessful; and (b) the breach is clearly contrary to any of the policies of this Plan; the Department will consider the commencement of enforcement action in accordance with Part 4 of and Schedule 4 to the 1999 Town and Country Planning Act.*

**General Policy 5:** *Where breaches of planning control occur, and where the Department considers it expedient to do so, enforcement action will be taken in accordance with Part 4 of, and Schedule 4 to the 1999 of the Town and Country Planning Act.*

### ***Isle of Man Strategic Plan (2016) section 6.5***

The Department of Environment, Food and Agriculture contains a number of regulatory functions. In 2012 a broad Enforcement Policy Statement was adopted. Due to the nature of Planning Enforcement, a specific policy is required. However, to ensure that the Planning Enforcement Policy and its implementation will align with the wider Department policy, it is set out below how each of the 6 key principles set out in the broad policy will be reflected in the Planning Enforcement Policy and its implementation.

- *Openness and Transparency*  
We will ensure that any enforcement action taken or in-action is easily understood by residents, businesses and the public. We will keep anyone making an allegation or subject to an allegation informed of the progress of any investigation so far as is reasonable.
- *Helpfulness*  
We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we encourage business to seek advice/information from us. We will ensure that wherever practicable, our enforcement services are effectively coordinated, both within our Department and with other Government Departments, to minimise unnecessary overlaps and delays.
- *Proportionality*  
We will ensure that any enforcement action taken in regard of any breach of planning legislation is in proportion to the actual or potential harm.
- *Consistency*  
We will ensure that similar enforcement issues are dealt with in a similar way. While there is expected to be a level of judgement in each case, there will be arrangements in place to promote consistency. To ensure a fair and even handed approach and that decisions are

not influenced by gender, ethnic origin or religion, political or any other beliefs of any potential offender or victim.

- Targeting  
Targeting of enforcement action means prioritising and directing regulatory effort effectively. This may mean concentrating on the activities which create the most serious risk, either because the nature of the activity is inherently high-risk, or because the nature of the activity results in serious environmental and/or visual harm.
- Enforcement Procedures  
This Enforcement Policy sets out the procedures for planning enforcement. Given the breadth of complaints that might be received, detailed timescales and targets are set out within this document rather than applying the generic 5 day target set out in the general DEFA policy.

## **1.2 Broad Approach**

The Town and Country Planning Act provides for formal enforcement action to be taken where the Department considers it expedient to do so. It is at the Department's discretion whether action will be taken – many breaches may be unintentional and any action proposed must be in proportion to the alleged offence.

Where formal action is required in order to ensure compliance each case will be considered on its own merit and any action taken should be proportionate to the offence. The integrity of the planning system and the public's confidence in it relies on effective enforcement action being taken where necessary. However, it is important to note that the legislation provides discretionary enforcement powers and not all breaches of planning control will result in formal enforcement action being taken.

The Department believes that the purpose of planning enforcement is to ensure development supports the implementation of adopted policies and does not result in material harm. The desired outcome is compliance and not punishment. Therefore, the main objectives of the enforcement process are:

- to remedy undesirable effects of unauthorised development;
- to bring unauthorised activity under control; and
- to ensure that the credibility of the Planning System is not undermined.

The enforcement function is normally carried out in a reactive manner by responding to requests to investigate. Alleged breaches of planning control can be brought to the Team's attention in a variety of ways including from members of the public, Local Authorities, other Government officers and Members of Tynwald. However, the Team may also carry out its own monitoring of the implementation of planning approvals.

We will always investigate any alleged breach reported to the Team. However, the extent of that investigation and what action is taken (if any) is based on the consideration of the points set out below.

- Has a breach of planning control taken place?  
If there is no breach of planning control, the activity is not within the remit of the Development Management Team.
- Is the nature of the breach and potential harm such that it warrants prioritising?  
Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Department's response is fair and proportionate to both the context and the nature of the breach.

- *Is there any demonstrable harm resulting from the breach?*  
It is important to consider whether there is a significant loss of amenity to an interest of acknowledged importance and whether it is unlikely that planning permission would be granted for the breach. Trivial or technical breaches causing no significant harm are unlikely to warrant formal enforcement action.
- *Can the situation be resolved without formal action?*  
The Department will endeavour to avoid taking formal action unless it is necessary. Such action will normally only be contemplated if it is satisfied that it has explored all available means of securing compliance. Sometimes a retrospective application is appropriate and forthcoming. However, negotiations over remedial action should not delay formal enforcement procedure being instigated where it is appropriate and necessary.
- *What is the likelihood of formal action succeeding?*  
Planning enforcement is a technically and legally complex component of the planning system, which means that taking action is not always as straightforward as it seems.

PHYSICAL AND VERBAL ABUSE TOWARDS OFFICERS - The Department will not tolerate any physical or verbal abuse towards its officers. Where necessary we will use legal action to prevent abuse, harassment or assaults on its Officers.

## 2. IDENTIFYING BREACHES OF PLANNING CONTROL

### 2.1 What is a breach?

A breach of planning control is the carrying out of development without the grant of planning approval. Development is defined by Section 6(1) of the Town and Country Planning Act 1999 as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land' or a breach of condition attached to a planning approval.

If there has been no 'development' then there can be no breach of planning control and the planning enforcement team cannot take further action. Section 6(3) of the Town and Country Planning Act 1999 identifies some uses and operations that do not constitute development.

Some development is given approval by Government Development Orders, such as the Town and Country Planning (Permitted Development) Order 2012. Where development is given approval in these circumstances there will not be a breach of planning control and we are unable to take any action.

The ability of the Department to take enforcement action is limited by legislation to a timeframe within which the unauthorised development has been significantly completed. These are summarised below. Once the relevant time has passed, and where no formal action has been initiated by the Department, the development or use is deemed to be immune from action (but remains unlawful unless a certificate of lawfulness has been successfully applied for).

- Where development has not got planning approval or advertisement consent, the following apply.
  - For erection of advertisements and associated structures the time limit is four years from the date on which the operations were substantially completed.
  - For operational development, i.e. building works, engineering works, mining or other operations the time limit is four years from the date on which the operations were substantially completed.
  - For change of use of buildings to residential use the time limit is four years from the date on which the operations were substantially completed.
  - For changes of use relating to land and buildings to anything other than residential use the time limit is 10 years.

- For Breaches of Conditions attached to a Planning Approval, the time limit is 10 years.
- No time limits exist for enforcement cases involving Registered Buildings or demolition of buildings in a conservation area.

## **2.2 What type of breaches can be investigated?**

Residents often report issues to the Department which, although they relate to buildings or land, are not always covered under planning enforcement powers. Below is a guide to the alleged breaches which can, and cannot, be investigated by planning enforcement. Where appropriate, the guide also includes contact details for the relevant Department which may be able to assist if the issue is not planning related.

The Planning Enforcement Service can deal with:

building without planning approval (e.g. residential development – unauthorised extensions/fences etc.);

- material changes of use (e.g. use of land for unauthorised storage or use of land as unauthorised extension to residential curtilage);
- non-compliance with planning conditions (e.g. hours of operations or implementation of planting schemes);
- enforcement of the Control of Advertisement Regulations;
- unauthorised works to Registered buildings and buildings within Conservation Areas; and
- development not built in accordance with approved plans.

Planning enforcement is restricted to matters associated with Town and Country Planning Legislation. For this reason it is not possible to deal with matters relating to:

- Neighbour disputes;
- Land ownership and boundary disputes; The Land Registry
- Legal Covenants;
- Destruction of property during the building process;
- Noise or smell or air pollution nuisance caused by approved development;
- Devaluation of property;
- Competition to other business;
- Squatting;
- Trespass;
- Unsafe structures;
- Fly tipping; or
- Loss of view.

## **2.3 How to report an alleged breach**

All members of the public have a vital role in reporting breaches of control. If you suspect that a possible breach of planning control has taken place, you are encouraged to contact the Planning Enforcement team. The most efficient way to do this is by means of the online request to investigate form which can be found on the Planning Enforcement pages of the Isle of Man Government website under request to investigate suspected breach of planning ([Link to Reporting Form](#))

## **2.4 Processing a Request to Investigate**

In completing the request to investigate form we ask you to provide the following as a minimum:

- your name and address and contact number - anonymous enquiries and requests will not generally be taken;
- details of the site where the suspected breach is taking place i.e. give the address of the site of the alleged breach, and the name of the owner/developer if known;
- description of the suspected breach - information should include what the alleged activity is, the nature of the work being carried out or the use of the land or buildings and why you believe the development is a breach of planning control; general issues such as

'development is not being carried out in accordance with the plans' will not be acceptable, the nature of the breach should be established, for instance 'the building is higher than approved';

- when did the breach commence? (if known);
- state what harm you consider it is causing. What concerns you about the development and why; and
- any other background knowledge that may assist the Department in investigating the enquiry.

Upon receipt of the form we will:

- write to acknowledge your request to investigate an alleged breach, normally within three working days of receiving it;
- contact you if we need further information at any point in the investigation;
- keep you updated on the investigation as appropriate (Please note that at times the Department may not be able to provide any update or information that you aspire to receive as this may compromise progress with the investigation or any potential action);
- where appropriate, let you know the likely course of action we will be taking and how long this might take; and
- let you know the final outcome of your request to investigate an alleged breach.

A request to investigate should only be made when someone feels the development is unlawful, and harmful or unacceptable. Requests to investigate an alleged breach made simply because someone thinks planning approval should have been sought, take up valuable officer time and prevent officers concentrating on harmful breaches.

## **2.5 Data Protection**

The Department will seek to maintain the confidentiality of complainants at all times and we will not reveal the identity of the complainant. However the substance of the requests to investigate themselves are not confidential and sometimes the subject of the alleged breach will be able to deduce who the complainant is by the very nature of the allegation. Furthermore, we may be asked to reveal the identity of a complainant under the Freedom of Information Act however any decision to reveal this information would need to show that there is a public interest in doing so.

In some circumstances the complainant may be asked to assist the Department by giving evidence at any trial arising out of the enforcement case. However, most enforcement cases are managed without the need for formal action, so in most cases confidentiality can be maintained. Enforcement Notices that are served, along with a list of all those people served with that notice, are also public documents.

The Development Management Team routinely shares information with other parts of Government in order to more effectively investigate alleged breaches, and to assist in fulfilling other functions. However, informants' identities will not be divulged to staff outside the Department's Planning & Building Control Directorate without consent.

The Planning & Building Control Directorate's Privacy Notice can be viewed on-line (<https://www.gov.im/about-the-government/departments/environment-food-and-agriculture/planning-and-building-control/privacy-notice/>)

### 3. RESPONDING TO ALLEGED BREACHES OF PLANNING CONTROL

#### 3.1 Categorisation and Prioritisation

The Development Management Team receives a high number of requests to investigate regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Each case will be dealt with on its own merits taking into account the often unique circumstances, along with the level of harm created as well as any history of previous breaches. In some circumstances, breaches causing little or no harm may receive a low priority and investigation may be postponed until resourcing allows. The priorities for investigation that the Department have assigned to different types of alleged breaches are set out at later on in this section.

As set out in section 2, we aim to acknowledge receipt of a request to investigate within 3 working days. Where possible, this acknowledgment will include the result of an initial, rapid desk based assessment of the priority of the alleged breach, based on the categories set out below. It is possible that following the initial site visit by an officer of the Department an alleged breach may be upgraded or downgraded in terms of its priority dependent upon what has been found and established in the visit.

Category	Timescale for Site Visit	Definition
High Priority (Type A)	Wherever possible cases will be visited on the first working day after receiving the request to investigate.	Unauthorised Development that results in immediate, serious, irreversible and lasting harm to: <ul style="list-style-type: none"> <li>neighbourhood facilities, amenities, other acknowledged interests; and/or</li> <li>policies and proposals of the Development Plan (Strategic Plan<sup>1</sup>, Area Plans<sup>2</sup> or Local Plans<sup>3</sup>); or</li> <li>where failure to remedy may set an undesirable precedent for the future.</li> </ul>
Medium Priority (Type B)	Wherever possible cases will be visited within 15 working days of receiving the request to investigate.	Development that results in widespread and significant harm to neighbourhood facilities or amenities.
Low Priority (Type C)	Wherever possible cases will be visited within 30 working days of receiving the request to investigate.	<ul style="list-style-type: none"> <li>Development that only has a localised impact.</li> <li>Breaches where minimal harm to Development Plan policies is expected;</li> <li>Breaches where planning approval is likely to be granted, with no or minor amendments, following the receipt of a retrospective application.</li> <li>Advertisements</li> <li>Breaches of conditions not covered by priority A or B</li> <li>Development that falls outside of the above priorities A or B.</li> </ul>
Very Low Priority (Type D)	Wherever possible cases will be visited within 60 working days of receiving the request to investigate.	<ul style="list-style-type: none"> <li>Development that does not appear to constitute a breach of planning control.</li> <li>Development with negligible impact or harm.</li> </ul>

Type D cases are of the lowest priority and in the majority of cases the property involved will receive an initial inspection and then the case will be closed without further action. Details of the matter will be retained on Department's files in the event that the situation changes in anyway and requires further attention.

<sup>1</sup> See [www.gov.im/strategicplanning](http://www.gov.im/strategicplanning)

<sup>2</sup> Area Plan for South – see [www.gov.im/taps](http://www.gov.im/taps)

<sup>3</sup> Various local plans see [www.gov.im/localplans](http://www.gov.im/localplans)

### **3.2 Initial Investigation**

When investigating a potential breach of planning control, the investigating officer will firstly try to establish the facts surrounding the alleged breach. This will initially mean undertaking desk based research as well as carrying out a site visit. The following questions need to be addressed:

Does the work constitute development?

- Is there a breach of planning control?
- Is the breach causing harm?
- Can the breach be resolved without formal action?

The Team aims to visit sites regularly to monitor compliance and investigate alleged breaches, and its officers will therefore make unscheduled site visits for this purpose. The Department has statutory powers of entry under planning legislation to enter land for the purpose of investigating potential breaches, and to serve notices. Where it is appropriate and the relevant internal authorisations are in place, these powers may be used by DEFA officers outside of Planning & Building Control (e.g. Arboricultural Officers where the issues relate to trees). Where access to land is refused, a warrant of entry may be obtained from a justice of the peace where it is necessary to effectively investigate and resolve alleged breaches. All officers carry identification which can be produced for inspection upon request. Access may be requested to nearby properties where this is necessary to fully investigate an alleged breach. If you are unsure and wish to check that the person visiting your property is authorised to do so, you may call 685950 during office hours.

Normally, once we have carried out the first visit to the site, we will make an assessment of what further action may be needed. However, where the alleged breach of control relates to a change of use of land the investigator should visit the site a number of times over a month (the number of visits will be influenced by the nature of the request to investigate) to establish if a breach of control is occurring (if the initial or second visit are inconclusive).

Use of investigatory powers will be recorded. Whatever the assessment, the complainant will be informed and advised of the next course of action. Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. When these occur, the Investigating Officer will endeavour to keep original complainants informed.

Where it is confirmed that there is a breach of planning control, the Development Management Team will then consider whether the breach constitutes harm. For more significant breaches (normally Type A and B) a detailed assessment of the breach, including the level of harm, will be carried out, having regard to the provisions of the development plan and to any other material planning considerations. In making this assessment the Department will gather evidence regarding the nature and scale of the breach, and whether it unacceptably affects public amenity and or the built or historic environment. In deciding whether it is appropriate to take enforcement action the degree of harm that the unauthorised development is causing, or is likely to cause will be carefully considered. In reaching such a decision we balance the harm being caused against the likely success of any formal action, the availability of resources, and other cases that might be causing a greater level of harm but whose progress might be delayed as a result.

For other breaches (normally for type C and D breaches), this will entail completion of the "Harm Assessment Form" (appendix 2).

Where no or minimal harm is identified the case will normally be closed. However, the decision that it is not expedient to pursue formal enforcement action is not the same as giving Planning Approval (i.e. the breach remains unlawful unless it becomes immune due to the passage of time) and the developer will be advised that they may wish to submit a retrospective application to regularise the situation.



When a breach which is causing harm is established, officers will first seek compliance through negotiation (unless significant and irreparable harm is being caused) and will normally only resort to formal action when all other routes have been exhausted. Where it is considered that the breach might be made acceptable through the imposition of conditions, a retrospective application will be sought. Retrospective applications will be dealt with on their planning merits. The applicant will neither gain advantage nor be disadvantaged by the fact that the application is retrospective.

The person who has caused the breach will be given the opportunity to remove the breach by ceasing the unauthorised use/removing the development or by seeking planning approval. Normally no further planning enforcement action will be taken pending the determination of the application.

The levels of negotiation will depend on the type of breach, for example deposit of waste in the countryside may only be afforded a short time to rectify the breach before moving to more formal action.

It is important to note that the Department does not have powers to require retrospective applications or the completion of Section 13 legal agreements, but these can be invited as a way of resolving some breaches.

### **3.3 Considering Formal Action**

The powers available to the Department are summarised in appendix 1. In some instances it may be decided that it is not appropriate to pursue action. In assessing whether to instigate enforcement action the following 'tests of expediency' will be considered, using the assessment method set out in appendix 2:

- the proposed action must be in the public interest;
- the breach must be sufficiently harmful to justify taking action (taking into account whether or not the development is in accordance with planning policies);
- the proposed action must be reasonable, proportionate and commensurate with the breach in planning control to which it relates; and
- the action undertaken should be cost effective.

The Department will only take formal enforcement action where it is fair and reasonable to do so, this means that the Department will not enforce against every breach of planning control on the Island. This may be because the breach may be minor or technical; or even when the breach is clear, the harm it causes may not be significant, or that formal action may not be in the public interest. In reaching the decision the balance of harm must be weighed against the likely success of any formal action; the availability of resources, and other cases that might be causing a greater level of harm, but whose progress may be delayed as a result.

If a case is to go to court the Attorney General must be satisfied that there is sufficient evidence to substantiate the breach. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious the allegation may be. This means that in some cases that action cannot be justified i.e. it is not expedient to pursue the case.

### **3.4 How decisions are made**

A number of delegations are in place in relation to the planning enforcement functions of the Department, and decisions are normally made as set out below.

- The officer that carries out the initial investigation will make a recommendation as to whether formal action is required.
- Where it is proposed to close a Type A or B case without taking formal action, delegated powers exist for this decision to be made by Senior Officers, this will not normally be the same officer who makes the initial investigation.

- Where it is proposed to close a Type C or D case without taking formal action, delegated powers exist for this decision to be made by senior officers, this could be the same officer who made the initial investigation (where that officer is a senior officer).
- Where it is considered that formal enforcement action is necessary, a recommendation will be made to the Department Member with responsibility for Development Management (or other elected member with appropriate authority).
- Where it is considered that prosecution is necessary, and this has been agreed as per above, the Attorney General's Chambers have the discretion to decide whether or not to action this.

### **3.5 Potential Outcomes to an Investigation**

The conclusion to an investigation will be logged - the potential outcomes are listed below.

- No breach  
Case is closed because the investigation identifies that no breach of planning control has occurred (no development, or development permitted by virtue of the Permitted Development Order).
- No further action – Breach Immune from Action  
A breach in planning control has been identified but is now immune from enforcement action. The investigation revealed that the breach has been occurring for so long it has now become immune from enforcement (see below).
- Breach Resolved through alteration of works  
Case is closed because an alleged breach of planning has been identified but then resolved by negotiation, activity ceasing, development removed or rendered Permitted.
- Breach Resolved through retrospective application  
A retrospective planning application or other form of application has been submitted following the investigation and been approved.
- No further action – Action not Expedient  
A breach in planning control has been identified. An assessment has been made determining that it is not expedient to take formal enforcement action in this case (this will include a harm assessment). Where this is because no significant harm has been identified, the case will be closed and the developer advised they may wish to submit a retrospective application to regularise the situation.
- Undertake Formal Action  
A breach in planning control has been identified. An assessment has been made determining that it is expedient to take formal enforcement action in this case (See Appendix 2).

All complainants will also be contacted at the conclusion of the investigation to inform them that the file is being closed and the reasons for that.

### **3.6 How long does it take after the initial site visit?**

As planning enforcement can be a lengthy and legally complex process, it is not possible to give an average time for dealing with a request to investigate. The time taken for a satisfactory resolution can vary from one case to another.

In many cases it is appropriate to allow for the submission of a retrospective planning application, and allow time for a subsequent appeal before issuing an enforcement notice. During this time it is not normally considered expedient to pursue enforcement action and in essence the case is put on hold pending the outcome of the application. Consequently some cases may take a few months, or longer, to reach a conclusion. If an enforcement notice is served, a reasonable time must be given for compliance. However in certain circumstances, such as Type A breaches, consideration will be given to prosecution for a breach of planning control and the person carrying out the breach will be notified of this from the outset.

It should be noted that unfortunately due to the often complex nature of planning enforcement which can involve legal challenges and appeals against statutory enforcement notices, some cases can take several months, or even years, to resolve and it is impossible to give a specified time period that cases will be resolved within. However, we will ensure there is a monitoring framework in place to record and regularly review open cases.

There is no right of appeal again a decision not to take enforcement action, although it is open to any party to seek a judicial review, through a Petition of Doleance to the High Court. Such a judicial review should only be progressed where it is believed there has been a procedural or legal error.

You are advised to seek your own legal advice in relation to the above potential remedies.

#### **4. WHAT IF IT IS ALLEGED THAT YOU HAVE BREACHED PLANNING CONTROL?**

The Department recognises the anxiety that is caused by finding out that someone has submitted a request to investigate alleged development or activity on your property. It is therefore important to us to make sure that those the subject of a planning enforcement investigation are treated fairly and given the opportunity as part of the investigation to explain the situation from their perspective. If you have received a visit or letter from an enforcement officer explaining that an allegation has been made -

**DO** make contact at the earliest opportunity to discuss the matter. In many cases a short meeting or even a telephone conversation can be sufficient to clear up whether or not a planning breach has occurred. If you make contact with the Development Management Team they will;

- advise you of what the allegation is (but not who made it) and the name of the officer carrying out the investigation;
- seek your cooperation and investigate the alleged breach thoroughly including undertaking a site visit, and give you the opportunity to explain your side of the case, before making any decision on what action to take;
- write to you explaining our conclusions (if you are not involved in the case, then no action will be taken against you);
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen; and
- inform you if we decide to issue an Enforcement Notice or start legal action.

**DO NOT** ignore the issue and pretend you are not aware of the investigation. When a request to investigate is received the Department is obliged to carry out all necessary investigations. The law provides the Department with a series of tools in order to make sure this happens. This means that the matter will not go away if you ignore the correspondence you have received regarding the request to investigate. Lack of engagement may result in a formal notice being served.

If formal enforcement action is taken against you, the potential to appeal this (and potential defences in the case of prosecutions) are set out within the Town and Country Planning Act 1999.

## **5. COMPLAINTS ABOUT THE ENFORCEMENT SERVICE**

It is important to draw a distinction between alleged breaches of planning control, which are sometimes called Enforcement 'Complaints', and complaints which are made about the way the Development Management Team has acted. If you have a complaint which relates to customer care or a failure to act (e.g. you feel officers have been unhelpful or have not acted within the relevant timescales) this can be dealt with through the DEFA complaints process -

<https://www.gov.im/media/1348647/defa-making-a-complaint-august-2018.pdf>

If you remain unhappy with a customer care complaint, or you feel the Department has failed to act, such complaints can be escalated to the Tynwald Commissioner for Administration.

## **APPENDIX 1: SUMMARY OF FORMAL ENFORCEMENT POWERS**

### **Investigate tools**

The Town and Country Planning Act 1999 and Control of Advertisement Regulations 2013 provide the Department with a number of legislative powers. Where it is satisfied that a breach of planning control has occurred, the Department may consider using its statutory powers to seek to remedy the breach. These powers are discretionary and will only be used where it is considered expedient to do so.

The formal actions that can be undertaken in respect of an unresolved breach are:

### **Requisition of Information**

This is a formal means of seeking information where there is a suspected breach. The Department may, where appropriate, require by notice (under section 25 of the Town & Country Planning Act 1999), information relating to the use or development of land or buildings.

It is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply.

### **Formal caution**

In some instances it will be necessary to invite an alleged contravener for an interview under caution to give them the opportunity to place on record any information which might have a bearing on our investigations and to provide any information which they may wish to place on record. This will normally take place prior to prosecution for breach of planning control or the issue of a planning enforcement notice.

### **Enforcement Notice**

This is the most commonly used power once it has been established that a breach has occurred and it has not been able to resolve this through negotiation. So where we serve Enforcement Notices this may be at least six to nine months from when the request to investigate was first received.

Enforcement notices are formal legal documents that will require the owner or occupier to take specific steps to remedy the planning breach in a specified time. It is served by the Coroner or an Officer of the Department and states clearly the subject of the breach, the actions required and the period for compliance.

If the notice is not complied with the planning breach will become an offence which can be prosecuted in the Courts. However the notice may be appealed through the Courts (in which case the effect of the Enforcement Notice is suspended whilst the appeal is ongoing.) The Court can decide to uphold the notice, amend it or have it quashed.

Should the Enforcement Notice not be complied with this is a further offence and the case is likely to be referred to the Attorney General's Chambers for prosecution. A case can be referred to the Courts on more than one occasion should the breach not be satisfactorily resolved.

### **Stop Notice**

A Stop Notice requires immediate cessation of activity. It can only be served together with, or following, an Enforcement Notice. It will only be used in exceptional circumstances. Failure to comply with the requirements of a Stop Notice is an offence. A Stop Notice cannot be used to cease activity while the Department investigates a matter, it must only be served once the Department is satisfied that there is a breach.

## **Prosecution**

In most cases we do not prosecute until we have taken formal enforcement action through the service of an enforcement notice.

Prosecution does not bring about the remedying of a breach; rather it can be seen as the courts "punishing" the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect. This tool may be used in certain breaches or where informal negotiation has been unsuccessful.

## **Injunction**

In exceptional cases where there is a necessary and serious need to restrain an actual breach of planning control, the Department can apply to the High Court for an injunction. Such action can be very costly and will usually only be considered as a last resort, where other action is unlikely to resolve a breach.

## **Direct Action**

In certain exceptional instances, where an Enforcement Notice has not been complied with in the time specified by that Notice, legislation allows the Department to take 'Direct Action'. These 'Direct Action' powers authorise the Department, on the expiration of the deadline for compliance set out in the relevant Notice, to enter the land which is in breach of the Notice and carry out any of the steps required to bring the land into compliance with that Notice.

When carrying out 'Direct Action', the manner in which the remedial action is carried out will be 'proportionate', and will go no further than necessary to bring the property into compliance with the Notice. Prior to 'Direct Action' being taken the Department will notify the owner and/or occupier of the land where the action is to take place, in writing of their intention to carry out the works.

In every case where 'Direct Action' takes place, the Department will endeavour to recover the costs of that action from the responsible person or party. The Department will secure the costs of those works by registering a legal charge against the affected property on the Deeds Register. Such a charge will prevent the sale or transfer of the affected property, and could result in the forced sale of that property to allow the Department to recover its costs.

## **Other action**

In addition there are other powers that relate to enforcement control of Registered Buildings and Advertisements.

## **Proceeds of Crime Act 2008**

Where required the Department will consider the use of the Proceeds of Crime Act 2008 where someone benefits financially from their unlawful activity.

## **APPENDIX 2: ASSESSMENT OF HARM**

### **Purpose**

This document sets out a process to assess the “planning harm” of an alleged breach and provides a process for the “closure” of some breaches, most likely some of those categorised as Low Priority (Type C) or Very Priority Low (Type D), depending on their nature.

It will be applied to all incidents involving development. Advertisement Control has different legislative requirements and will be dealt with separately.

Fifteen planning “harm” factors have been identified and are set out in the harm assessment form dealing with factors such as, the nature of the breach, safety issues, policy matters, degree of harm etc. The scheme grades the “harm” of that breach against these and where the agreed level of harm (the score) is 6 and above (i.e. breaches of planning control that attract a score of 6 or more) the matter will be investigated further.

Where the cumulative score is 5 and under it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be negligible. The case will be closed and advisory letters will be sent to both the offender and complainant. The property owner will also be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, as the breach that has occurred could affect any future sale of the property. The submission of an application will not, however, be monitored or pursued. Once all parties have been notified the Directorate will take no further action. The Department may, however, take action under other legislation.

This will not apply to those cases with a Harm Score of 5 or less where it is agreed by the Officer with the relevant delegated authority that the breach would not receive an unconditional grant of planning permission. In these instances the breach will be investigated further.

The result of the harm assessment will allow the decision on “harm” to be incorporated in the letter to complainants informing them of the Services findings and intended action or, where applicable, that no additional action is to be taken.

This method provides;

- A quantitative and qualitative assessment of harm to public amenity/interest
- A procedure that is open and transparent
- A quick and effective processing of incidents
- A flexible system to make efficient use of resources
- Equality of treatment of dealing with incidents

It is useful in identifying minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the Team.

## HARM ASSESSMENT FORM

**All retrospective refusal of planning permission will automatically receive a full investigation and report – do not complete form.**

Each new alleged breach will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based.

Where there is no breach of planning control found, the file will be closed accordingly.

Harm Factors		Points Allocation	Score
1	Is the breach:	Worsening/ongoing (1) Stable(0)	
2	Is the breach a Highway safety issue?	Yes (2) No (0)	
3	Does the breach relate to another safety issue?	Yes (2) No (0)	
4	Is the breach causing a statutory or serious environmental nuisance?	Yes(1) No(0)	
5	Is the breach:	Immediate neighbour/staff(2) Other/Parish Council (1) Anonymous/malicious(0)	
6	Age of breach:	Within 6 months of immunity (2) Less than 3 month old(1) More than 3 month old(0)	
7	Major Plan Policy Breach	Yes (1) No (0)	
8	Is there harm:	Widespread(2) Local(1) None(0)	
9	Irreversible harm:	Yes(2) No(0)	
10	Breach of a planning condition	Yes(1) No(0)	
11	Conservation Area (or adjacent to)	Yes(1) No(0)	
12	Registered building (or affecting the character or setting of)	Yes(1) No(0)	
13	Special areas (such as airport or prison) (please provide details)	Yes(1) No(0)	
14	Particularly sensitive site e.g. ASSI, Scheduled monument Archaeological importance	Yes(1) No(0)	
15	Undesirable precedent (please provide details)	Yes(1) No(0)	
<b>TOTAL POINTS (HARM SCORE)</b>			