

Agenda 21 e)

16/05/24



Mrs C Southworth  
Town Clerk and RFO  
Torpoint Town Council

Your ref:  
My ref: EN24/00424  
Date: 2 May 2024

Dear Mrs Southworth

**Buildings operations on the land without compliance with planning conditions and in addition to PA20/02211  
Land At Figgard Way Trevol Business Park Torpoint Cornwall PL11 2TB**

Thank you for your enquiry into the above. The matter has been formally registered under reference EN24/00424 and allocated to a Development Officer for investigation. If the description above is incorrect or if you no longer require the Council to investigate the matter please let us know.

**What we will do**

The enforcement investigation process is set out in our flowchart and can be accessed via the following link <https://www.cornwall.gov.uk/media/2dvfbqrc/enforcement-investigation-flowchart-v6.pdf>

- We will assess whether the matter constitutes a breach of planning control. If it is not, our case will be closed and you will be notified of the outcome.
- If the matter is a breach of planning control, we will undertake further work to obtain the necessary facts to make an informed decision (see step 4 of the flowchart).
- Once we have all the necessary information we will make a planning assessment of the development.
- We will consider your comments in our assessment of the development, in particular the harm that you have identified in your complaint.
- Once our investigation has concluded and a decision has been made, we will notify you of the outcome of the matter with a brief summary of our findings.

**What we are unable to do**

- Respond to questions or acknowledge further letters or submissions. Please note that only planning related issues can be considered when making a decision on how to proceed.
- Due to the General Data Protection Regulations we are unable to provide you with updates during the course of the investigation. Therefore, please be aware that case officers are not available to discuss the enforcement case in detail with you.
- We can't just tell people to knock something down – it might not be a breach of planning control

**What are the possible outcomes and how long does it take?**

Planning enforcement action is discretionary. Councils should not take planning enforcement action as a punitive measure or purely to regularise development which is otherwise acceptable in planning terms.

In determining whether it is expedient to take planning enforcement action it is necessary to consider whether the breach results in any planning harm.

If no harm is caused then no further action will be taken, however investigations and assessments are still required which can take an average of 28 weeks but can be longer. In some cases we will negotiate amendments to make the development acceptable or we will invite a planning application. Where formal action is necessary please be aware that it is a lengthy legal process which will take a significantly longer period of time than the 28 week average.

Yours sincerely

**Claire Hawke**  
**Development Technical Officer**  
**Development Management Service**  
Email: [planning.enforcement@cornwall.gov.uk](mailto:planning.enforcement@cornwall.gov.uk)

## Frequently Asked Questions

### **Why is the average time so long?**

Initial investigations will reveal whether the matter is a breach of planning control, however, there are lots of steps that the Council must go through to ensure that we have all the facts to make the right decision. For example, we will need to establish when the development started, the previous use(s) of the land, who owns the land, any occupiers or other people with a legal interest in it, the personal circumstances of the occupiers in order to comply with Human Rights legislation, what the planning policies would allow etc. There are a number of ways in which we can obtain this information but as you can imagine it can be a very lengthy process. We must be sure of our facts because any formal action can be challenged and the Council can be found at fault if we have not undertaken full investigations. Therefore, please bear with us and don't worry if you haven't heard from us – we will be progressing the matter as quickly as we can!

### **What will the Council do?**

We cannot just tell people to knock something down, it is not a criminal offence to undertake development without planning permission and the planning system is not in place to punish people. Government guidance states that Council's should not take formal action merely to regularise a technical breach of planning control that causes no harm in planning terms. Harm could be risk of flooding, harm to highway safety, excessive overlooking from windows or substantial harm to heritage assets for example, but it will not directly include issues such as loss of property value, breach of covenant, land or boundary disputes.

There are a number of possible outcomes to a case where a breach of planning control has been found, the main outcomes are :

#### Request a planning application

The Law allows for planning applications to be submitted retrospectively. If it is considered that the development could be acceptable a planning application can be invited. However, it is important to remember that the Council cannot make someone submit an application, therefore, if an application is invited but not submitted, the Council must decide whether the development causes planning harm and if it doesn't, no action should be taken.

#### Request a Certificate of Lawfulness

The Law states that development can become lawful if it has been in situ for a period of time (4 years or 10 years depending on the what type of development has occurred). The developer may decide to submit an application for a Certificate of Lawfulness to prove that the development has existed for the required period of time, but again, the Council cannot make them do so. If an application is not submitted but we have evidence that the development has existed for the required period of time, the matter will be closed because the development is immune from enforcement action.

#### No further action (not expedient)

If the development is acceptable in planning terms (no harm is caused) the Council cannot take formal action against it. The officer will consider the development against local and national planning policies and will assess whether the development causes harm; if it doesn't the case will be closed and no further action will be taken. This is in accordance with the government guidance.

### Negotiate remedial works

If it is considered that the development could be made acceptable with some amendments we could seek to achieve the amendments by negotiation in order to remedy any harm that is being caused. Negotiating a solution will always be quicker than taking formal action; it takes 16 weeks on average.

### Formal action

If the development is unacceptable the Council must seek to remedy the matter amicably first by requesting its removal. If that is not successful, the Council will consider what type of formal action is appropriate to remedy the matter. If at this stage you have crucial evidence that the Council needs to rely on, we will contact you to request that you provide formal statements to support the Council in formal action and attend any appeal/court hearing as a witness. When taking formal action there are legal and procedural steps that have to be followed and this can be a lengthy process, on average it takes about 30 weeks from receiving a complaint to serving a formal notice.

More information can be found on the Council's website : <http://www.cornwall.gov.uk/environment-and-planning/planning/enforcement/>

The government guidance can be found at : <https://www.gov.uk/guidance/ensuring-effective-enforcement>