# PLANNING, HOUSING AND BUILDING CONTROL ‘ENFORCEMENT TOOLKIT’

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## Version History

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<td>14/01/2013</td>
<td>0.1</td>
<td>Stuart Kenney</td>
<td>First draft for consultation.</td>
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<tr>
<td>13/05/2014</td>
<td>0.2</td>
<td>Stuart Kenney</td>
<td>Second draft for SMT</td>
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<tr>
<td>18/06/2014</td>
<td>0.3</td>
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<td>Amendments following consultation with SMT</td>
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<tr>
<td>07/07/2014</td>
<td>0.4</td>
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<td>08/08/2014</td>
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<tr>
<td>29/09/2014</td>
<td>0.6</td>
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<td>13/10/2014</td>
<td>0.7</td>
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## Document retention

**Document retention period**: 5 years in electronic copies.

## Current Document Status

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<td>Stuart Kenney Private Sector Housing Manager</td>
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THE PLANNING HOUSING AND BUILDING CONTROL ENFORCEMENT POLICY

This policy document sets the general enforcement principles for the Planning Enforcement, Private Sector Housing and Building Control team.

Summary
This policy sets out the enforcement principles for the Planning and Enterprise Service (the service).

The service has three teams that have enforcement responsibilities; planning enforcement, private sector housing and building control.

This policy provides guidance for inspectors, businesses and members of the public, and is intended to clearly set out the aims, standards and values that will be applied in an enforcement situation. Specific details of how this service chooses to enforce the relevant planning, housing and building control legislation can be found in the ‘Planning, Housing and Regeneration Service - Local Enforcement Plan’.

Distribution
Planning and enterprise service staff
The general public (website)

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1. INTRODUCTION

The Planning, Housing and Regeneration Service aims to be recognised as an excellent, integrated and cost effective regulatory service that engages and involves our communities, businesses and partners to continually improve our environment, local economy and public health.

We strive to create the right balance between advice, assistance and enforcement to allow good business to thrive and to discourage illegal/unauthorised activity. This policy sets out the enforcement principles which the Planning, Housing and Regeneration Service subscribe to.

This policy provides guidance for inspectors, businesses and members of the public, and is intended to clearly set out the aims, standards and values that will be applied in an enforcement situation. Specific details of how this service chooses to enforce the relevant planning, housing and building control legislation can be found in the ‘Planning, Housing and Regeneration Service - Local Enforcement Plan’.

2. ABOUT OUR TEAMS

What is planning enforcement?
The planning enforcement team investigates complaints about alleged breaches of planning control. The team also assists in the monitoring of development and s106 matters for sites that have received planning permission.

The Council can investigate complaints about development (building and engineering works, changes of use of building or land, and matters relating to the mining and working of minerals) that may have been carried out without permission or consent. In the vast majority of cases planning permission or consent is required before a new use begins or activities are carried out. However, there are some important exceptions because they are either not considered development or they do not need permission or consent because they are considered to be permitted development.

Town & Country Planning Acts give discretion to the Local Planning Authority (LPA) and Minerals and Waste Planning Authority (MWPA) in the exercise of their powers to control unauthorised development.

Permitted Development
At the early stage of any investigation it is important to clarify if the work undertaken is development, permitted development or already has permission.

Where a breach of planning control has been confirmed, the enforcement team will investigate the matter. It is important, however, to realise that enforcement action is taken at the discretion of the Council.

Planning enforcement work includes the investigation of:

- Building, or engineering work and the change of use of land without a planning permission;
- Unauthorised work to trees protected by a tree preservation order or in a conservation area;
- Breach of conditions attached to planning permissions or the terms of a Section
106 obligation;
- Non-compliance with approved plans attached to planning permissions;
- Unauthorised advertisements or signs;
- Unauthorised change of use of land/buildings;
- Land or buildings in such poor condition that it adversely affects the amenity of the area;
- Unauthorised works to a listed building;
- Unauthorised demolition work in a conservation area;
- Unauthorised deposit of waste or mineral extraction.

**What is Private Sector Housing?**
The Private Sector Housing Team is responsible for regulating housing conditions, licensing certain types of Houses in Multiple Occupation (HMO), and returning long term empty properties back into use.

The Housing Act 2004, places a statutory duty on the Local Housing Authority (LHA), to keep housing conditions in Cornwall under review, and places mandatory duties on the Council to regulate housing conditions.

Private Sector Housing work includes:
- Improving the standard of privately rented housing using a range of tools such as advice, assistance, enforcement and licensing.
- Improving the energy efficiency of dwellings and reduce fuel poverty.
- Improving the health & wellbeing of our residents and reduce health inequalities.
- Making best use of the existing housing stock by ensuring houses are fit for purpose, and empty properties are brought back into use to alleviate housing demand pressures;
- To ensure standards in emergency temporary accommodation are acceptable and not a risk to occupiers.
- Engaging with key strategic partnerships such as Health & Wellbeing Board, Cornwall Fire & Rescue Service, Police and the Border Inspection Agency. Ensuring that houses used by the Council are suitable for occupation to discharge homelessness duty.
- Delivering the empty property strategy.

**What is Building Control?**
The Building Control team ensures that buildings are designed and constructed in accordance with The Building Regulations and associated legislation. All building work carried out should meet current Building Regulation requirements. Building Regulations are minimum construction standards laid down by Parliament to secure the health, safety and convenience of people in or around buildings. They are concerned with the design and construction of buildings as well as the provisions of services, fittings and equipment. The Building Control service ensures that buildings are structurally sound, safe in the event of fire, have adequate drainage, ventilation and toilet facilities, are accessible for people with disabilities, are energy efficient to heat and light, together with water efficiency.

Building Control service delivery includes:
- Encouraging innovation to produce energy efficient and sustainable buildings
- Supporting local, regional and national businesses
- Educating and informing building professionals, contractors and trades people
Defending vulnerable communities and householders
Identify rogue traders
Safeguard the investments of individuals and companies
Protect the community from dangerous structures
Provide advice in support of the emergency services

3. OUR SHARED ENFORCEMENT OBJECTIVES
Our core aims and objectives for this enforcement plan are as follows:

- To empower people to resolve issues through advice and information.
- To combine skills of different disciplines to make places better, serving the needs of all of the people of Cornwall.
- To help find the best possible solutions to secure thriving and resilient communities. We will actively encourage and facilitate development and regeneration where this is necessary for sustainable economic growth, community infrastructure and people’s housing needs.
- To work together to remedy the undesirable effects of unauthorised development and unsatisfactory housing conditions where it causes, or has the potential to cause genuine harm;
- We aim to strike a balance between protecting the natural and built environment and enabling acceptable development to take place;
- To use enforcement to ensure that the credibility of the planning system is not undermined;
- To influence the standard of dwellings so they meet the needs of the population;
- We will safeguard against, and reduce the risk of poor housing impacting on people’s health and wellbeing;
- To be both pro-active and reactive in the investigation of breaches of Housing and Planning law;
- To work with other agencies and organisations, both internally and externally.
- To adhere stringently to the Councils policies for the safeguarding of adults, children and vulnerable people.

4. WHEN WILL WE COMBINE OUR RESOURCES?
There are certain areas of our work where we know that by working together across our multi-skilled and multi-disciplinary teams we can achieve improved and more efficient outcomes. We will work with in a co-ordinated way to solve problems in the following priority areas:

- Empty properties.
• Untidy sites and properties that are causing an eyesore.
• Houses in Multiple Occupation operating without planning permission.
• HMOs that fulfil Housing Act 2004, Section 257 definition (poorly converted flats) or flats converted prior to the 1991 Building Regulations.
• Dealing with the undesirable effects of unauthorised caravan sites.
• Undertaking works in default of statutory notices.
• Ensuring works undertaken in compliance with a statutory notice has necessary planning and building control approvals in place (where required).
• Listed buildings and buildings in a conservation area.
• Unsafe or derelict buildings.

5. OUR PRINCIPLES
The service believes that enforcement should be proportionate to risk, and efficient. We believe that by combining the expertise of our multi-skilled workforce we can provide an enhanced, efficient service and where possible recover our costs from the people who are enforced against.

We aim to provide a consistently high quality service in relation to our planning, housing and building control enforcement duties. Our activities will be targeted and based on risk of harm occurring and will be in accordance with the Enforcement Concordat and the statutory requirements of the Regulators Compliance Code.

We believe in open, transparent enforcement. We will be clear about how we operate and provide clear information to manage expectations against those being enforced against.

We will support emerging, improving and good business through provision of advice and guidance. When appropriate we will distinguish advice and best practice from statutory requirements.

We will take robust action against the people who place others and place in Cornwall at risk of serious harm.

We will be cost efficient and recover our enforcement costs whenever possible.

6. PROPORTIONALITY
We believe in applying the law proportionately. We will not take action when the level of risk to the environment, and/or public is low and likely to remain so, but when action is required we will be robust in our actions to secure compliance.

Our inspections and interventions will be based on risk assessment methodologies and we will only intervene when there is a clear case for protection. Inspections will take place when there is a sound reason for doing so.

The service will endeavour to minimise the cost of compliance for business by ensuring
that any action taken, or advice offered, is proportionate to the risk or breach.

7. CONSISTENCY  
The service will carry out its duties in a fair, equitable and consistent manner. Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar goals.

Our inspectors/Officers will exercise their professional judgment to deal effectively with specific matters but, where possible, we will adhere to standards and guidance to promote consistency.

8. STANDARDS  
We will support good business by encouraging ‘self-regulation’. Where appropriate we will set standards and provide helpful guidance that will encourage improvement and growth but where standards are ignored, or ignorance is pleaded and the environment or people are left at risk, action will be taken to secure compliance.

We will place an emphasis on the priority areas of compliance which are often unique to places in Cornwall.

We will focus our support and advice activities where we have intelligence to suggest that high risk hazards are: a) prevalent, b) failure to comply poses a serious risk of harm; and c) there is a high likelihood of non-compliance.

9. OPENNESS  
The service will provide information and advice on standards that it applies and will distribute this as widely as possible.

We will clearly communicate our fees, charges and method of cost recovery when taking enforcement action.

10. HELPFULNESS  
The service is of the opinion that ‘prevention is better than cure’ and that its role therefore actively involves working with business, especially small and medium sized businesses, to advise and assist with compliance.

We will provide a courteous and efficient service and our staff will identify themselves by name.

We will provide contact points and telephone numbers for further communication with staff, and we will encourage business to seek advice/information.

We will co-ordinate our services effectively to minimise unnecessary overlaps and time delays.

We will support emerging, improving and good businesses and we will provide helpful advice prior to, and after taking enforcement action.

11. FAIRNESS  
The service will treat all people equally and fairly;

We will provide advice and guidance that is aimed at helping good business meet
minimum standards and meet their obligations to negate the need for enforcement.

12. TRANSPARENCY
We will provide suitable advice and guidance to those we enforce against to ensure they fully understand the enforcement process, what they need to do, and what they can expect to happen if they do not comply.

We will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory to meet the legislation.

We will enforce and apply penalties in a transparent manner and when we successfully prosecute a person or business if it is within the interests of public to do so we will issue a press release.

We will endeavour to record the outcomes of our interventions so we can monitor success and our contribution to other Council priorities for example; our contribution to public health.

13. ACCOUNTABILITY
The service is accountable to the public for its actions.

We will ensure that our inspectors are able to interpret and apply relevant legal requirements and we will require them to apply this policy and the ‘local enforcement plan’ in a fair, helpful and consistent manner.

14. COMPLAINTS
Before making a formal complaint about the Planning Service check out the following common feedback scenarios to see if this answers your complaint:


If the above does not answer your query, Cornwall Council has in place a complaints/compliments and comments procedure. Please visit the webpage: Cornwall Council Complaints Procedure for further information.

This is not to be confused with reporting an enforcement breach. Details of how to report a breach can be found at


15. LOCAL ENFORCEMENT PLAN AND ENFORCEMENT PROCEDURES
Our teams have enforcement plans, which set out our general application of planning, housing and building control law where discretion allows.

We have identified areas where our teams work well together to achieve efficient and better outcomes, and areas where our teams have opportunity to make enforcement decisions to achieve greater outcomes in accordance with the principles set out in this policy.
16. EVALUATION AND REVIEW
This enforcement policy will be subject to review 12 months following implementation to establish whether the policy is effective and having the required impact.

17. CONTACTS
Stuart Kenney, Private Sector Housing Manager. Tel. 01209 614285
Email: stuart.kenney@cornwall.gov.uk

FURTHER INFORMATION
Further information can be found on the Cornwall Council Website: www.cornwall.gov.uk

ALTERNATIVE FORMATS
If you would like this information in another format please contact: Cornwall Council,
County Hall, Treyew Road, Truro TR1 3AY
Telephone: 0300 1234 100 email: enquiries@cornwall.gov.uk
www.cornwall.gov.uk

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THE PLANNING, HOUSING AND BUILDING CONTROL LOCAL ENFORCEMENT PLAN

1.0 INTRODUCTION

The Planning and Enterprise Service (the service) has responsibility for Planning, Housing and Building Control regulation.

The service has a diverse and wide-ranging set of enforcement powers to tackle the undesirable effects of substandard buildings/ living conditions and structures. We have reflected upon and agreed our shared values as a service and created an enforcement policy which sets the principles and values of our regulatory activities. Our enforcement policy is attached as Annex A.

This ‘local enforcement plan’ sits below our service enforcement policy, and sets detailed policy decisions for our core regulatory activity. By creating a detailed local enforcement plan we are able to:

- Make the best use of our multi-disciplinary workforce and realise the benefits of integrated working
- Provide a single answer for customers with cross-team issues
- Provide a service that is value for money
- Work together to achieve better outcomes
- Create unique solutions for local problems

The plan sets the approach that the Council will take in investigating and remedying breaches of planning, housing and building control legislation and provides a clear and consistent means of applying the law where discretion allows in accordance with the principles of the service enforcement policy.

We will follow the principles of the Regulators’ Compliance Code and the voluntary enforcement concordat. This means that we will endeavour to support improving and good business and use the principles of risk assessment to target serious offenders and rogue operators.

The regulators compliance code states that a regulatory body should have an enforcement policy and that enforcement should be applied in a consistent and transparent manner. The Code is a statutory code of practice intended to encourage regulators to achieve their objectives in a way that minimises the burdens on business. The purpose of the Code is to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators to which it applies. By adopting this approach we will ensure that we are efficient, effective, consistent and proportionate in our use of enforcement interventions, without imposing unnecessary burdens on those we regulate.
2.0 THE PLANNING ENFORCEMENT PLAN

The main breaches of planning control include:
- Building, or engineering work and the change of use of land without a planning permission
- Unauthorised work to trees protected by a tree preservation order or in a conservation area
- Breach of conditions attached to planning permissions or the terms of a Section 106 obligation
- Non-compliance with approved plans attached to planning permissions
- Unauthorised advertisements or signs
- Unauthorised change of use of land/buildings
- Land or buildings in such poor condition that it adversely affects the amenity of the area
- Unauthorised works to a listed building
- Unauthorised demolition work in a conservation area

Situations that do not involve a breach of planning control such as land ownership disputes and breaches of a covenant attached to deeds will not be investigated as these are civil issues.

2.1 – General planning enforcement
The Council will operate its planning enforcement activities within the statutory requirements and in accordance with the Council’s policies and procedures. This means that:
- The LPA must decide whether the breach of planning control unacceptably affects amenity.
- Action will not be taken just because development has started without planning permission.
- The LPA does not always have to take action but the particular circumstances of the case must always be considered.
- We will consider whether the development impinges on housing or building control legislation.

2.2 – Minor breaches of planning control
The planning enforcement team will not take formal action against a minor breach of control that causes no real planning harm having assessed the matter against all material planning considerations. However, any breach of planning control will be recorded and may be drawn to the attention of the developer and/or land owner, as appropriate.

2.3 – Formal enforcement action
Formal action may be instigated once the alleged breach has been investigated and it has been established that sufficient harm is being caused and it is expedient to take enforcement action, in accordance with the policies herein.

The Council will only take enforcement action when it is considered expedient to do so in the public interest.
Planning laws are designed to manage, and where necessary control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.

Formal enforcement action will not be instigated solely to regularise breaches in planning control or seek a planning fee. In taking formal enforcement action the Council will be prepared to use whichever available enforcement power or combination of powers that are appropriate to deal effectively with an identified breach of planning control.

In deciding whether to take enforcement action the Council will have regard to the development plan and to any other material considerations. These may include (but are not limited to):

- Emerging planning policies
- Highway safety issues
- Noise nuisance and pollution
- Design appearance and layout
- Flood risk
- Loss of privacy and daylight
- Planning history of the site
- Impact on the historic environment
- The need for the development
- Protection of species or the countryside

Matters that are not considered to be material considerations include:

- Private property rights such as covenants
- The developer’s identity, morals, motives or past record
- Loss of value to a neighbouring property
- Loss of private view
- The fact that the development has started
- Competition to another business
- Loss of an individual’s view or trespass onto someone else’s land
- Private neighbour disputes

It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the LPA would be involved.

In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity or the environment. Any action taken will be proportionate with the breach of planning control to which it relates. This reflects the approach to enforcement set out in the National Planning Policy Framework and the Governments Planning Practice Guidance.

In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national and local policy on planning and enforcement has been taken into account.
Subject to the receipt of consultations that may be required in some circumstances, the Council will generally endeavour to adhere to the following timescales:

(a) For confirmed breaches of planning control in the ‘High Priority’ categories the LPA will seek to determine either that it is not expedient to take formal action or commence the process of formal action within 8 weeks of the complaint being received.

(b) For confirmed breaches of planning control in all other categories the LPA will seek to determine either that it is not expedient to take formal action or commence the process of formal action within 13 weeks of the complaint being received.

2.4 – Responding to requests for service
All validated complaints falling within the gambit of planning control, from a named person or persons regarding breaches of planning control will be investigated.

Allegations about breaches of planning control will be investigated in accordance with the following:

A) All high priority breaches of planning control (as defined below) will normally be subject to a site inspection or desk top assessment within five working days.

High priority are generally categorised as follows:

- Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area.) or any other development that causes irreversible demonstrable harm.
- Unauthorised works to trees covered by a tree preservation order (TPO) or in a Conservation area.
- Any priority case which relates to development which is within 3 months of becoming immune from enforcement action.
- Complaints about high impact but short-lived nuisance in quarries and waste management sites such as dust, noise and odour.
- Any unauthorised development/activity which, causes clear, immediate harm or danger to the locality including the living conditions of adjoining residents.

B) All other breaches of planning control will be subject to a site inspection or desk top assessment as soon as is practicable.

2.5 – Complainants confidentiality
Complainant’s identities will be kept confidential, unless legislation or subsequent Court action dictates otherwise. Complainants will be kept informed of progress of investigations and of eventual outcomes, as considered necessary by the Council.

2.6 – Supportive compliance
The LPA will be flexible and consider genuine solutions to address confirmed breaches of planning control.
Although not desirable, the carrying out of work or changing the use of land or buildings without planning permission is not a criminal offence. In many cases the Council will give the opportunity to apply for retrospective planning permission or provide an alternative remedy.

Where possible, any reasonable alternative solution will be considered to achieve a satisfactory conclusion when assessing a confirmed breach of planning control. The use of formal enforcement action will usually be used as a last resort following the failure of negotiations to secure a remedy.

2.7 – Reasons for not taking action
Decisions not to take enforcement action will only be made by a designated officer as agreed through the LPA adopted delegation arrangements. Reasons for not taking action will be recorded in writing.

2.8 – ‘Significant’ enforcement decisions
Decisions to take enforcement action in respect of “significant” cases will be reported to the relevant Planning Committee.

In accordance with the adopted delegation arrangements any recommendation to take formal action against a breach of planning control in respect of a ‘significant’ case must be referred to the relevant divisional area planning committee. ‘Significant’ in this context is defined as any case where to secure compliance through use of ‘direct action’ powers would be likely to result in expenditure on the on site works in default of over £100,000.

It is in the public interest that decisions whether or not to take enforcement action are properly recorded.

The Divisional Member Protocol for Enforcement will be followed in all other cases.

2.9 – Targeted projects
The LPA will undertake targeted pro-active projects where resources allow.

Such projects could include targeting illegal advertisements in a specific area or targeting untidy sites within a specific conservation area or checking a sample of occupancy conditions (agricultural/holiday). This will be reviewed on an annual basis.

2.10 – Advertisements
The LPA should not normally take action against advertisements displayed without consent unless they cause significant harm to amenity or public safety.

The Council will generally support groups advertising local agricultural shows and similar events. Generally speaking not more than one advertisement should be displayed at any location and these should be restricted to within a five mile radius of the event venue.

However, the Council does reserve the right to use its discretion not to take action if the number of this guidance is exceeded where there is justification for it.
2.11 – Charging for Discretionary Services
The Council receives a number of these requests each month from Solicitors, and the general public/individuals in respect of such matters as to whether Enforcement Notices, planning conditions have been complied with etc. These questions are usually requested to be answered at short notice as part of the conveyance process. If the answer is known because it is recorded on Public Access, the requestor has the option of self-service. However, the Council can offer an expedited service for a fee with a guaranteed response within 10 working days from receipt.

A further expedited service is offered to assist in resolving issues of unauthorised works which are discovered through the sale process of a property. Due to time pressures of the sale a quick response is required from the Council as to whether the works are considered to be acceptable or not. The Council will provide a quick decision as to whether the works constitute a breach of planning control and if so, what action, if any, the Council would require to be taken to resolve the matter.

Where the Council have no statutory duty to provide enforcement functions it will look to recover its costs of providing such a service where it is able to do so.
3.0 THE PRIVATE SECTOR HOUSING ENFORCEMENT PLAN

The Private Sector Housing Team has a statutory responsibility to operate its enforcement activities in accordance with Housing Act 2004, regulations and other public health legislation. This includes a duty to:

- Keep housing conditions under review and consider appropriate methods of regulating the housing stock
- If there is any reason the Council considers it appropriate to inspect a residential premises to determine whether a Category 1 or 2 Hazard exists; and inspection must be undertaken
- Take the appropriate action where ‘Category 1 Hazard(s)’ are identified
- Consider appropriate action in relation to a ‘Category 2 hazard’
- Inspect, regulate and licence (where appropriate) Houses in Multiple Occupation (HMOs)
- Respond to complaints or intelligence that suggests a statutory nuisance may be present, or breach of other public health legislation

The Private Sector Housing team will use a variety of statutory powers to perform its duties, including provisions under the following acts:

- Housing Act 2004
- Environmental Protection Act 1990
- Building Act 1984
- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Housing Act 1985
- Law of Property Act 1925
- Land Charges Act 1975

The Private Sector Housing Team will consider the following factors in all enforcement decisions:

- Previous enforcement action undertaken on the responsible person including history of non-compliance
- The landlord or agent representatives conduct
- The responsible persons property portfolio
- Demonstratable disregard of requirements
- The vulnerability of the occupiers.
- Financial gain of actions
- Safety of occupiers detrimentally effected
- The severity of an offence
- The likelihood of a reoccurrence
- Planning and building control compliance
3.1 – We will encourage tenants to resolve issues with landlords and agents prior to agreeing to an inspection.

The Council will actively encourage and support tenants who contact the Council with concerns about their housing conditions to try and resolve the matter with the responsible landlord or agent prior to agreeing to an inspection. An inspection service will only be offered if:

- The complainant has attempted to resolve the matter with the responsible landlord or agent and those attempts have failed. Support will be given to tenants if required and evidence of this action will be requested.

- The Council will triage the request for service to determine whether the defect to which the complaint originates is likely to be a Category 1 or Band D, Category 2 hazard (as defined by the Housing Act 2004 and relevant guidance). If this is likely and it considered appropriate to do so inspection of the dwelling will be arranged with the complainant.

Exemptions to this include situations when:

- There is a history of persistent or serious non-compliance;
- There is likely that there is a hazard present in the home that has potential to cause imminent risk of serious harm to occupiers (typically fire, gas, electrical and structural collapse hazards).
- There is evidence to suggest the landlord or agent is aggressive or is harassing the tenant.
- The tenant is vulnerable for some other reason that would make informal resolution unsuitable.

3.2 – How we will fulfil our statutory duties

The Council has a statutory duty to act when Category 1 type hazards are found and a discretionary power to act in respect of Category 2 type hazards. Where hazards are found at a dwelling the Council may take one or more of the following courses of action:-

- Serve an Improvement Notice requiring remedial works to be undertaken;
- Make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or type of permitted occupants;
- Serve a ‘Suspended Improvement Notice’ or ‘Prohibition Order’;
- Serve a ‘Hazard Awareness Notice’
- Take ‘Emergency Remedial Action’*;
- Undertake works in default of a statutory notice
- Serve an ‘Emergency Prohibition Order’*;
- Make a ‘Demolition Order’*;
- Declare a ‘clearance area’.

*Only in respect of Category 1 hazards.
Category 2 Hazards
Category 2 hazards are those that are within the HHSRS hazard bands D to J. Hazard band D, category 2 hazards are the highest risk category 2 hazard and hazard band J hazards are the lowest risk category 2 hazard.

The Council has a power conferred upon it to take enforcement action in relation to Category 2 hazards, but no specific duty is imposed upon it to do so. It is therefore important that the use of discretionary powers is proportionate to risk and is consistently applied.

To provide a consistency of approach with our enforcement activity, (having regard to the Regulators Compliance Code), and to ensure that enforcement responses are proportionate to the risk identified, the Private Sector Housing Team will only take action against Category 2 hazards when the following criteria applies:

a) Where a Band D, Category 2 Hazard exists the Council will normally take enforcement action to remedy (or reduce) the hazard. Enforcement action would not be taken if for a valid reason enforcement is not deemed the most appropriate course of action.

b) Where a number of hazards are present in combination, and due to their association present a greater, cumulative risk of harm occurring to the occupier a Senior Officer may authorise the most appropriate course of action to be taken.

3.3 – Deciding the most appropriate course of action to take.

For the purpose of determining the most appropriate course of action, the Council will consider a range of influencing factors. These will include:

- Extent, severity and location of hazard
- Proportionality - cost and practicability of remedial works
- Multiple hazards
- Vulnerability of current occupiers
- Likelihood of occupancy changing
- The views of the current occupiers
- Whether action is in the interest of the public
- The views of the property owners, managers or persons in control of the dwelling
- The compliance history of the responsible person to which the notice maybe served
- Statutory guidance
- Non-statutory guidance/ standards/ research
- Conservation and listed building status and building situated in an area with any other local restrictions

3.4 – Enforcement across different tenures

The Private Sector Housing Team will have regard to the ownership and extent of control that an owner has over works required to the dwelling. In normal circumstances, this will mean requiring a landlord (including a Registered Housing
Provider) to carry out works under an appropriate course of action outlined in 3.2 and 3.3.

Owner-occupiers will not normally be required to carry out works to their own home unless there is an imminent risk to the occupiers’ health, safety or wellbeing or deficiencies at the property are adversely affecting another property or any other person.

3.5 - Dealing with overcrowding
The Council recognises that in a stressed housing market overcrowding can occur without blame to the landlord. Furthermore the psychological risk of harm to those living in an overcrowded household is often a long term exposure risk.

As a result our enforcement responses will be proportionate, as follows:

- The Council will take action against overcrowding cases that constitute a Category 1 hazard only;
- The Council will serve Hazard Awareness Notice routinely when a Category 1, HHSRS Band C hazard is identified in the private rented sector which is likely to be a reasonable response to a less serious crowding issue;
- The Council will deal with unintentional (to no fault of the landlord) overcrowding cases in Register Provider Housing (RP) housing strategically and will work with the providers through Cornwall Housing Ltd to resolve the housing situation;
- The Council will serve a Hazard Awareness Notice on the RP to discharge our legal duty to act but our enforcement charges will be waived in lieu of our strategic/ co-ordinated approach;
- If there is evidence that a RP has knowingly caused an overcrowding situation then alternative formal enforcement action will be considered;
- If informal negotiations with RP’s fail then the Council will consider use of appropriate enforcement action.

3.6 – Houses in Multiple Occupation (HMOs)
The Council will proactively seek out, investigate and regulate HMOs that require a HMO mandatory licence but are operating without one.

HMO Mandatory licensing applies to properties that are 3 or more stories in height, housing five or more unrelated persons. All premises satisfying this definition must licence with the authority in order to legally operate.

The Private Sector Housing Team will consider the following matters for the purposes of deciding whether a mandatory licence is applicable:
• All storeys specified in Statutory Instrument 2006 No.371; The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) Order 2006.

• Any self-contained flat does not comply with the 1991 Building Regulations as these present a safety risk to the occupiers of the rest of the building due to the standard of the dwellings conversion in the storey count

• Any converted building of 3 or more storeys, accommodating 5 or more unrelated persons containing a non-self-contained dwelling is licensable and the premises as a whole is determined to meet the definition.

For a licence application to be validated the following items are required:

• A signed and fully completed application form

• Designated licence fee

• Periodic certificates in relation to the fixed installations, appliances and fire precautions

• Accurate floor plans (including dimensions) of the property

Invalid applications.
When an application is invalid the applicant will be sent a letter outlining what they need to do to make the application valid. The applicant will need to submit the require information within a 14 day period.

If the required information is not submitted after the expiry of 14 days, the applicant will be sent a second letter requiring the missing items within 7 days and will be warned of the offence of operating a licensable HMO without a licence.

Where this second letter fails the licence application (if paper rather than electronic) will be returned to the applicant. The licence fee is non-returnable.

A letter will be sent advising the applicant of this action and that they are operating a licensable HMO without a licence, constituting an offence. A final opportunity to submit a valid licence is available at this stage of the application process.

An inspection will be scheduled to determine the premises licensable status where the above attempts fail. From the evidence gathered one of the options specified below will be taken.

Failure to licence a mandatory licensable HMO:
Where it is believed that a HMO meeting the mandatory licensing definition is operating without a licence and an application has not been submitted, the Private Sector Housing Team will gather all available information and investigate. From the evidence gathered an appropriate course of action will be taken.

Where there is evidence that a licensable House in Multiple Occupation (HMO) premises is operating without a mandatory licence and the management and/or property conditions are poor, placing the health and safety of the occupiers at risk;
the Private Sector Housing Team will give legal instruction to instigate formal proceedings for the offence of operating a licensable HMO without a licence.

Where there is evidence that a licensable HMO premises is operating without a mandatory licence but the health safety and welfare of the tenants are being protected as both the condition of the property and management of the premises are good, the owner will be invited to make a valid application to the Council within a 14 day period and be required to pay the tracing activity licence application fee. Failure to do so will result in the Private Sector Housing Team passing a case file to Cornwall Council’s Legal Department to consider instigating formal legal proceedings for the offence of operating a licensable HMO without a licence.

Maintaining a good standard in Licenced HMOs
It is important that licenced HMOs in Cornwall operate to a good standard. The PSH team will respond to complaints from occupiers of licensed HMOs and proactively test the quality of these properties. The following areas will be assessed as part of this process:

- Compliance with the Management of Houses in Multiple Occupation Regulations 2006
- Correct certification in place
- No serious hazards present in the HMO

Any HMO licence holder failing to pass any such assessment will be advised of two actions:

1. If the PSH team proposes to act on the deficiencies identified
   That the HMO licence will be varied to a 1 year licence to enable closer supervision and monitoring of the property by the PSH team (Note where the licence is already within its last year the licence will be revoked and the Licence holder will have to apply for a new licence where new licence conditions will be set to help to maintain the appropriate standards in the property).

   Is standards within the HMO are not improved or maintained following this procedure then further action will be taken in accordance with the powers contained within the Housing Act 2004 (see 3.10).

3.7 – Rent Repayment Orders
The Council will apply for a Rent Repayment Order following conviction of a landlord for the offence operating a licensable HMO without a licence.

The Council will seek from the Residential Property Tribunal a Rent Repayment Order requiring the landlord to pay back Housing Benefit payments received for the period in which the property has operated without a licence.

Tenants who are not in receipt of benefits will be signposted to advice on how to pursue their own Rent Repayment Orders.

3.8 – Enforcing HMO licence conditions
The Council will enforce the conditions and terms of a HMO licence in order to protect the health, safety and welfare of tenants.
Where a licence holder fails to comply with the conditions of the HMO licence the Private Sector Housing Team will take an appropriate course of action in reference to their non-compliance. In making the decision consideration will be given to the severity and number of breaches and their effect on the tenants of the HMO in addition to the factors outlined in plan 3.3. (see section above ‘Maintaining a good standard in Licenced HMOs’ for further potential action on these circumstances)

3.9 – Revocation of a HMO licence where the licence holder is no longer fit to hold a licence.
The Council will revoke all HMO licences where either the licence holder or manager are found to no longer be fit and proper persons

Where anyone involved in the running of the HMO is found to no longer be fit and proper the HMO licence will be revoked and the owner required to reapply for a licence providing alternative arrangements to ensure that the management arrangements at the HMO are suitable and that anyone involved in the operation of the HMO are fit and proper persons as determined by section 66 of the Housing Act 2004.

3.10 – HMO Management Orders
The Council will make application to the Residential Property Tribunal for an Interim Management Order where required by statute and where necessary a Final Management Order where a licence is still unable to be granted on expiry of the Interim Order.

Where a property is a licensable HMO the Council will make an application for an Interim Management Order either where there is no prospect of the property being licensed in the near future or where the health and safety condition is satisfied in order to protect the occupiers.

Where after the expiry of the Interim Management Order the Council are still unable to grant a HMO licence and there is risk to occupiers a Final Management Order will be sought.

3.11 – Enforcement of the HMO Management Regulations

Where breaches of these requirements are identified in premises the “person managing” will be notified in writing of the breaches of the regulations identified and will be required to carry out prescribed works within specified timescales to remove breaches. Failure to remove these breaches as instructed may result in a case file being prepared for formal legal proceedings for the summary convictions of failing to comply with the requirements of the HMO Management Regulations.

In circumstances where the breaches of the Management Regulations are either so severe, numerous and/or having a significant, detrimental effect on the health, safety and welfare of the occupiers the Private Sector Housing Team will prepare a case file for formal legal proceedings for the summary convictions of failing to comply with the requirements of the HMO Management Regulations.
3.12 - Enforcement of the HMO Management Regulations in sub-standard self-contained flats.
The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) Regulations 2007 will be enforced in HMOs as defined by section 257 of the Housing Act 2004.

Where breaches of the management regulations are identified in these premises the “person managing” will be notified in writing and will be required to carry out prescribed works within specified timescales to remove the breaches. Failure to remove these breaches as instructed may result in a case file being prepared for formal legal proceedings.

In circumstances where the breaches of the Management Regulations are either so severe, numerous and/or having a significant, detrimental effect on the health, safety and welfare of the occupiers the Private Sector Housing Team will prepare a case file for formal legal proceedings for the summary convictions of failing to comply with the requirements of the HMO Management Regulations.

Where it is disputed that a property meets the definition of a s257 the Council will accept the submission of evidence from the property owner that the conversion works making the dwellings self-contained comply with the 1991 Building Regulations. Evidence must have been provided by a competent person who is approved to validate works under the requirements of the Building Regulations and reclassify the building as a block of self-contained flats.

The Private Sector Housing Team will liaise with the Planning Enforcement and Building Control teams when undertaking enforcement activity in HMOs that meet the section 257 definition.

3.13 – Applying the Housing Health & Safety Rating System (HHSRS) in HMOs
The HHSRS will be applied in all HMOs.

The HHSRS will be used in particular to deal with identified hazards posing serious or imminent harm, to assess licensed HMOs for hazards within the licence period and to tackle poor housing conditions that are not able to be addressed through the Management Regulations. Action will be carried out in accordance with 3.2. (see section above ‘Maintaining a good standard in Licensed HMOs’ for further potential action on these circumstances)

3.14 – Dealing with overcrowded HMOs
Overcrowding in HMOs will be enforced using the most appropriate course of action.

In licenced HMOs this will be enforced as outlined in 3.8.

In non-licensable HMOs a notice under section 139 of the Housing Act 2004 will be served to limit the number of persons able to live at the HMO in accordance with the Councils HMO Amenity Standard. Failure to comply with the requirements of the notice will result in a case file being passed to Cornwall Council’s Legal Department to instigate further legal action.

3.15 – What happens if it is unclear that a property is a HMO?
Where the Council needs to affirm that a dwelling is a HMO in accordance with section 254 of the Housing Act 2004 it will do so through the service of a HMO declaration notice.

A HMO declaration under section 255 of the Housing Act 2004 will be served in such circumstances where the Council are satisfied that the HMO definition is met allowing the owner of the premises; should they wish to do so to appeal to the Residential Property Tribunal regarding the declaration.

3.16 – Inspections of HMOs
Risk assessment methodology will be used in the prioritisation for inspection and taking of action in all HMOs.

3.17 – Enforcement decisions
To ensure consistency and appropriateness all enforcement action will be authorised by a senior officer before it is taken.

All enforcement notices/ orders/ emergency action/ works in default will be signed off by a senior officer after checking that procedures have been followed and that the formal notice is an appropriate response in the circumstances.

3.18 – Cost recovery
In accordance with Sections 49 and 50 of the Housing Act 2004, the Council will exercise the right to charge and recover the reasonable costs incurred in taking enforcement action when serving the following notices:

- an improvement notice;
- a hazard awareness notice;
- a prohibition order;
- a suspended improvement notice or suspended prohibition order;
- emergency remedial action notices;
- making an emergency prohibition order; and
- making a demolition order.

Costs will only be waived in exceptional circumstances such as deficiencies caused by tenant neglect and owner occupied premises and only at the discretion of a senior officer.

From the time that a ‘demand for payment’ becomes operative the sum will be recorded as a legal charge against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.

When enforcement costs exceed £500 the Council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes by deed
having powers of sale and lease, or accepting surrenders of leases and of appointing a receiver to recover our costs.

When enforcement costs do not exceed £500, the Council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.

The Council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the Council’s decision on a review and that charge will also be registered as a charge against the property.

All enforcement costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004, and will be charged at an hourly rate or part of an hour. The hourly rate will be based on the actual cost incurred to the Council for performing the chargeable activity.

3.19 – Works in default of a statutory notice
The Council will consider Undertaking Works in Default of a statutory notice, either with or without agreement, subject to conditions:

The conditions are as follows:

a) The person responsible for undertaking the improvement work has been successfully prosecuted for the offence (or accepted a simple caution) of not complying with the enforcement notice to which the improvement works relate; and
b) A ‘Category 1 Hazard’ or ‘Band D Category 2 hazard’ relating to the notices remains in the property; and
c) The Council will register a charge against the premises for the costs incurred in undertaking the works;

In the majority of cases the council will seek to recover the costs incurred in undertaking works.

3.20 – Charges for works undertaken in default of a notice.
In accordance with Schedule 3 (10) of the Housing Act 2004; expenses incurred by the Council by undertaking works in default of a statutory notice will carry a simple interest rate charge of 4.5% APR. The interest rate charge will commence from the date that the demand for payment notice becomes operative and will remain until payment of all sums due.

3.21 – Non-mandatory inspection charges
The Private Sector Housing team will charge for inspections that are non-statutory. These include inspections relating to fitness of dwellings for the purposes of immigration requests.
3.22 – Empty properties
Officers will endeavour to communicate and engage with owners of long term empty properties to encourage, assist and enable them to bring their properties back into habitable use through voluntary cooperation. However, should cooperation not be forthcoming, and the owner does not demonstrate a reasonable plan and timescale for remedial action, the Council will, where appropriate, intervene and use relevant enforcement powers to ensure a satisfactory resolution, e.g. improvement in the condition and re-use of the property. Such powers will be used fairly, proportionately, and consistently in accordance with other relevant strategies and procedures. The enforcement route taken will depend on consideration of the specific circumstances of a particular case, and will be decided following appraisal of the available options in order to maximize housing opportunities and ensure efficient and effective use of available resources.

4.0 THE BUILDING CONTROL ENFORCEMENT PLAN

The Building Control team uses enforcement as a tool to ensure that people are safe in and around buildings. This enforcement plan is based on the national policy guidance produced by Building Control's national organisation, LABC (Local Authority Building Control). The legislative requirements generally being considered by Building Control when deciding on any form of enforcement will be:-

- Building Act 1984, Section 35 – Penalty for contravening Building Regulations
- Building Act 1984, Section 36 – Removal or alteration of offending work
- Building Act 1984, Section 77 – Dangerous buildings
- Building Act 1984, Section 78 – Dangerous buildings, emergency measures
- Building Act 1984, Section 80 – Intended demolition of building
- Safety at Sports Ground Act 1975
- Fire Safety & Safety of Sports Act 1987
- Regulatory Reform (Fire Safety) Order 2005

4.1 – Enforcement Decisions
Building Control staff will take all relevant information into account when reaching an enforcement decision. Having considered the appropriate facts and evidence, the relevant officer will decide on one of the following options:-

- Advice and guidance
- Informal action
- Statutory Notices
- Simple Caution
- Prosecution
- Works in default of a statutory notice
4.2 – Advice and information
The Building Control team will assist individuals, businesses and other organisations
to comply with their legal obligations. This will be achieved by providing both
information leaflets and the opportunity for face to face contact to discuss and help
resolve potential problems.

4.3 – Informal requests
This will include verbal and written requests and warnings for action. May include
advice, information and assistance to the person directly involved in the action, this
may be the builder, owner or any other person involved.

4.4 – Formal requests
When informal requests do not succeed or there is an imminent danger to the public
the issuing of a statutory notice will be considered. The following should be
considered before taking any action:-

- Do the consequences of non-compliance present a danger to the health and
  safety of the public;
- Are there significant legislative contraventions;
- Statutory timescales;
- Consider alternative legislation, communication difficulties.

4.5 – Cost recovery
The Building Control service will seek to recover all of their costs in relation to
enforcement action. This will particularly apply to Dangerous Building, Emergency
Measures as external contractors may have been used to make the structure safe.

From the time that a ‘demand for payment’ becomes operative the sum will be recorded as a
legal charge against the property which is a local land charge. The charge will remain on the
property until the sum is repaid in full. All enforcement costs incurred and recovered will be
charged at an appropriate officer hourly rate or part of an hour, plus the invoices costs of any
external contractor, which may a charge for this Authority to process the invoice.

5.0 SECURING COMPLIANCE – ALL TEAMS
The Planning, Housing and Regeneration Service will explain the requirements of
enforcement action clearly, and supporting advice and guidance will be issued where
appropriate to encourage compliance with enforcement action.

6.0 SIMPLE CAUTIONS AND PROSECUTIONS – ALL TEAMS
Simple Caution
Under certain circumstances, a “simple caution” may be used as an alternative to
prosecution and will usually be considered before making a decision to prosecute. A
simple caution is a serious matter and it may be used to influence any decision
whether or not to prosecute should the individual, organisation or business offend
again and it may be referred to in any subsequent court proceedings. Formal
cautions are intended to:-

- Deal quickly and simply with certain offences;
- Avoid unnecessary appearance in criminal courts;
- Reduce the chance of offenders re-offending.

Before issuing a caution the following conditions must be satisfied:-

- There must be evidence of guilt sufficient to give a realistic prospect of conviction;
- The offender must understand the significance of the formal caution and accept a caution by admitting the offence.

Where an individual chooses not to accept a formal caution the Council will normally prosecute.

**Prosecution**

If a responsible person fails to comply with the requirements of an enforcement notice, a licence condition or a regulation the Council will consider the offence against the Crown Prosecution Service – Code for Crown Prosecutors “full code test”.

The sanctions available, should people not comply with legislative requirements, include:-

- Initiating legal proceedings
- Formal caution
- Work in default

In the majority of cases following a thorough investigation and subject to the “full code test”, the Planning, Housing and Building Control teams will instigate legal proceedings through the law courts following non-compliance of a statutory notice. Authorisation to take legal proceedings will be given by a relevant team manager and the Council’s legal services.

Prosecution will in general, be restricted to those persons or companies who disregard the law, refuse to achieve basic minimum legal requirements or put the public at risk through their actions. Prosecution is likely in one following circumstances:-

- A major contravention of the legislation has occurred,
- The offence involves failure to comply with a statutory notice,
- There is a history of offences by the same person or organisation.
- There is a serious risk to the public,
- A conviction is likely to result in a significant sentence,
- There is evidence that the offence was premeditated,
- The offence was motivated by any form of discrimination against the victim’s ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics,
There is any element of corruption,

The defendant’s previous convictions or cautions are relevant to the present offence.

7.0 PROCEEDS OF CRIME
The service will consider the use of the Proceeds of Crime Act 2002, to recover the proceeds relating to a crime from a convicted individual where it can be proven that the defendant has financially benefitted from committing an offence under planning, housing or building control legislation.

8.0 – UNREASONABLE CUSTOMER BEHAVIOUR
The Council does not normally limit the contact people have with it, whether complaining, making requests for service, information or help and guidance. The Council is committed to dealing with these requests fairly and impartially and to providing a high quality of service to those who make them. It is keen to resolve any dispute and/or complaint as early as possible.

The Council understands that people sometimes feel frustrated, but the Council will not tolerate behaviour which is deemed unacceptable, threatening, abusive or unreasonably persistent towards Members, officers or any other person.

Listening & Learning Policy, including Unreasonably Persistent and Unreasonable Customer Behaviour Policy: