

Planning and Building Compliance

The purpose of this practice note is to explain how we deal with breaches of development controls under the Planning and Building (Jersey) Law 2002. This document sets out the matters we consider when we receive a complaint about alleged unauthorised works and what actions may result.

What is Planning and Building Compliance?

The planning and building system aims to control and manage development and the use of buildings and land, as well as protect the historic and natural environment, and secure the health, safety and welfare of people in or about buildings – all in the public interest. It is not intended as a mechanism to protect the private interests of one person against the activities of another.

The compliance function seeks to ensure that the principles of the Planning and Building Law, and its associated Orders, Bye-Laws and the policies of the Jersey Island Plan are not undermined by unauthorised development. In doing so the compliance function strives to achieve a fair balance in all cases and to only take action that is proportionate to the impact of a breach.

The majority of building, engineering works and changes of use of land and buildings require planning permission and approval under the Building Bye-Laws. Where such works are carried out without the necessary approvals in place, or where the approved plans are not followed, the result may be a danger to the public, be harmful to the amenities of residents or to the character of a building or area in general. The compliance team will ensure that any such harmful activities that are unauthorised are dealt with effectively, and fairly.

The compliance team also deals with dangerous buildings, pre-commencement conditions not discharged, unauthorised advertisements, works to protected trees or buildings, and untidy land.

The compliance team don't have the remit, nor the authority, to intervene in civil matters such as land and boundary ownership disputes, breaches of covenants or disturbances caused during construction works.

Objectives

The objectives of the Planning and Building Compliance team are to:

- 1) remedy harmful, or undesirable, effects of breaches of control within an agreed framework of priority and decision-making

- 2) operate in accordance with adopted guidance and laws, such as the Planning and Building Law, its Orders, Bye-Laws as well as other legislation including Freedom of Information and Data Protection Laws, and the department's Customer Charter
- 3) remain impartial in the investigation of complaints and to undertake all investigations in a fair, equitable, timely and consistent manner
- 4) be pro-active in the monitoring of developments to ensure compliance with any conditions attached to consents

Proportionality

The compliance team ensure that harmful breaches of control are remedied before irreversible damage to the environment or to the health and welfare of the community is caused. However we must also ensure the best use of resources and it will not always be appropriate to take formal action for all breaches of control.

We'll only take formal action when it is considered necessary in the public interest. Action may not be taken where a breach is considered to be of a minor nature or where it constitutes a technical breach of little consequence.

Any action taken to rectify a breach of control will be proportionate to the breach itself and will not, normally, reflect the planning history of a site, previous breaches by an individual or the origin or nature of a complaint received. However, we may take into account repeated breaches by the same individual when deciding whether to refer a matter for prosecution.

Where possible, we'll consider informal solutions to achieve a satisfactory conclusion to a breach of control. The use of formal action will usually be a last resort, following failure to reach resolution through other means such as negotiations or the submission of a retrospective application.

In deciding whether to take action, we'll have regard to the Island Plan and other material considerations that have relevance in terms of the Law, Orders, Bye-Laws or adopted guidance notes.

Prioritisation

On the receipt of an allegation of a breach of control, all compliance cases will be given an initial priority ranking of 1 to 4, as described in table 1 below. Whilst the compliance team will make every effort to visit all sites where an alleged breach has been reported, initial site inspections will take place in accordance with the priority level set and where safe and lawful access can be gained to the site.

Initial site inspection will occur within 1 to 20 working days, depending on the priority as indicated within table 1.

A decision will be made within 5 to 40 working days as to whether it is beneficial to take formal action or whether it would be more advantageous to enter into discussions with the land-owner to secure an outcome that remedies any harmful breach of control. In any event, the person who reported the breach to us will be advised, with reasons given, of the action or non-action taken, within the decision timeframes specified within table 1.

TABLE 1

Level	Priority	Definition	Site inspection	Decision within
1	Immediate	<ul style="list-style-type: none"> ○ Serious harm to health or safety ○ All dangerous building allegations ○ Significant harm to registered buildings, Sites of Special Interest or protected trees 	1 working day	5 working days
2	High	<ul style="list-style-type: none"> ○ Significant public concern ○ Possible harm to health or safety ○ Serious harm to the character or amenity of a building or land ○ Strategic or political implications 	3 working days	10 working days
3	Medium	<ul style="list-style-type: none"> ○ Possible harm to neighbour amenity ○ Unauthorised adverts etc. 	10 working days	20 working days
4	Low	<ul style="list-style-type: none"> ○ No clear breach apparent ○ Vexatious complaint ○ Planning permission likely to be given 	20 working days	40 working days

A priority rating may change after a site visit has taken place or as a case progresses. Where the priority rating changes the compliance team will notify the person who made the complaint.

In investigating complaints we may liaise with other regulatory teams, such as Environmental Protection, Environmental Health, or other departments such as Housing, or the Parishes.

We may return to the site for further investigation if other matters arise. However this will be undertaken proportionately and appropriately relative to the breach itself.

Anonymous complaints

All complaints from named persons regarding breaches of planning or building control will be registered and investigated. Anonymous complaints will be investigated at the discretion of the department. Complaints that appear to be of a vexatious nature will not be investigated, although they will be registered.

Communications

All written and verbal communications will be clear and precise in specifying breaches, and will include the steps required to secure compliance and, where appropriate, the reasons for taking, or not taking action. Compliance officers will remain impartial at all times during investigations and in communication with all the parties concerned.

Decision making

Under the law, a notice may be served where there has been a breach of development controls during the previous 8 years.

A decision will be made within 5 to 40 working days according to the priority level as indicated in table 1. All decisions are recommended by a compliance officer and agreed by an authorising officer. The decision will be either:

A) Decision not to take action

Where a breach of development controls has been reported but is considered to be of a minor or insignificant nature, it is likely that a decision not to take any further action will be made. Reasons for not taking action will be recorded in writing, agreed by an authorised officer and both the person who made the complaint and the owner of the land/property to which the complaint relates will be notified.

B) Decision to request a retrospective application

Where it is considered that an unauthorised development may be made acceptable through imposing conditions or a legal agreement attached to a planning or building permit the department may, without prejudice, request that a retrospective application be submitted.

Any such request will be made in writing and will specify a reasonable timescale within which the application must be made. If an application is not made within the requested timescale, then the case will progress to a more formal stage, such as compliance notice.

In the event that a retrospective planning application is refused and the department considers the breach serious enough, a compliance notice will be issued in order to seek removal of the unauthorised development.

C) Decision to take action

With the exception of cases relating to dangerous structures, the decision to serve a compliance notice will be made by an authorised officer on the basis of a recommendation from the case officer. A notice will only be issued where other means of reaching a suitable outcome have been exhausted or where the breach is considered to be serious enough to warrant formal action.

Copies of all notices issued will be publicly available on the Minister's register
<https://www.gov.je/PlanningBuilding/AppealsComplaints/Pages/UnauthorisedWorkComplaint.aspx>

Notices will always contain the site address, location plan, description of the breach, steps required to secure compliance with the notice, clear reasons for serving the notice, compliance period and rights of appeal.

D) Decision to refer case for Prosecution

Decisions to refer any breach of development controls to the Attorney General for consideration of prosecution will be taken by the Head of Building Control or Development Control in accordance with the Attorney General's guidance note for Officers of Regulatory Departments.

If a decision is made not to refer a case for prosecution, we'll record the reasons why, and in the case where an enforcement notice has been served will make a decision to withdraw or modify the Notice, or will direct that the case be held pending, with an agreed extension of the period of compliance.

Record keeping and Data Protection

Accurate records, including photographs and emails will be kept for all compliance cases in accordance with the department's records management policies and procedures.

Key compliance records, such as notices, photographs, and Court judgements, will be held indefinitely in the department's systems. Other records, such as telephone notes, and emails, will be destroyed after 10 years, in accordance with the department's retention policy.

The department will disclose the information it holds when asked to as part of a Freedom of Information or Subject Access request, unless the information is exempt from disclosure under the Freedom of Information (Jersey) Law 2011 or Data Protection (Jersey) Law 2018.

We may hold personal information for the purposes of investigating a complaint. Depending on the circumstances we may keep confidential the details of the person who made the complaint. In some cases, it may not be necessary to keep this information confidential.

About Supplementary Planning Guidance

The Minister for the Environment may publish guidelines and policies (supplementary planning guidance) in respect of; development generally; any class of development; the development of any area of land; or the development of a specified site¹.

Supplementary planning guidance may cover a range of issues, both thematic and site specific, and provides further detail about either, policies and proposals in the Island Plan, or other issues relevant to the planning process. It can also be used to provide information about how the planning system operates.

Where relevant, supplementary planning guidance will be taken into account, as a material consideration, in making decisions.

Supplementary planning guidance is issued in a number of different forms including:

- **Advice notes**, which offer more detailed information and guidance about the ways in which Island Plan policies are likely to be operated, interpreted and applied in decision making;
- **Policy notes**, which can be issued by the Minister, following consultation with key stakeholders, in-between reviews of the Island Plan, to supplement and complement the existing planning policy framework;
- **Masterplans, development frameworks and planning briefs** provide more detailed information and guidance about the development of specific sites and areas of the Island; and
- **Practice notes**, which aim to provide information about how the planning system's protocols and procedures operate.

The current supplementary planning guidance is listed and can be viewed on the States of Jersey website at www.gov.je/planningguidance.

¹ Under Article 6 of the Planning and Building (Jersey) Law 2002, as amended.