

Newry, Mourne and Down District Council

Planning Enforcement Strategy

November 2019

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Introduction

Under the provisions of the Planning Act (Northern Ireland) 2011 the Council has a general discretion to take enforcement action against a breach of planning control when it regards it expedient to do so, having regard to the provisions of the local development plan and any other material considerations.

The Council is committed to resolving all cases involving unauthorised development, including any consequent enforcement action.

Objectives of Planning Enforcement

The Council's key objectives for planning enforcement are:

- To resolve enforcement complaints informally;
- To bring unauthorised activity under control;
- To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development;
- To take legal action, where necessary against those who ignore or flout planning legislation; and
- To operate in an equitable, proportionate and consistent manner.

Council is committed to securing these objectives in order to ensure that the credibility and integrity of the planning system is not undermined.

Categories of offence

Planning offences

Planning offences are specific offences under the Planning Act and associated regulations, namely:-

- (a) unauthorised works to a listed building;
- (b) demolition within a Conservation Area without consent;
- (c) contravention of a Tree Preservation Order;
- (d) wilfully damaging or carrying out works to trees within a Conservation Area without prior consent;
- (e) unauthorised display of advertisements; and
- (f) contravention of hazardous substances control.

Planning breach

The Planning Act defines a breach of planning control as:

- Carrying out development without the required planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted

A criminal offence in this case arises when an Enforcement Notice for a planning breach has been served and has not been complied with within the prescribed time period.

Penalties

On conviction the owner and/or any person with an interest in the land may be fined a maximum of £100,000. Council will also be able to recover the legal costs of the enforcement action.

Guiding Principles for investigating Enforcement Complaints

All alleged breaches of planning control will be investigated. However, on the basis of the legal test of 'expediency,' formal enforcement action will only be taken where it is fair and reasonable to do so. Any enforcement action should be proportionate to the breach of planning control. There will be cases where the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.

In exercising discretion, the Council will be mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action the Council will take into account the extent of the breach and its potential impact on the environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

Any request received by Council for information in relation to any breach of Planning Control or enforcement action, including Personal Information, will be dealt with in accordance with the principles of the General Data Protection Regulation (GDPR) the Data Protection Act 2018; the Freedom of Information Act 2000; and the Environmental Information Regulations 2004.

Council will rely, where necessary, on any lawful exemptions to the provision of information under the above Acts and Regulations This may result in information being withheld until a case is concluded or the disclosure of information is ordered by a Court.

All complaints will be prioritised on receipt in accordance with the priorities set out in this Strategy. Priority will be given to those breaches where the greatest harm is being or is likely to be caused.

A decision to proceed with formal enforcement action must be agreed by the authorised officer referred to in the current Scheme of Delegation.

Enforcement action may be held in abeyance while a planning application or appeal to remedy the breach is being determined.

It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the land owner/occupier or through the submission and consideration of a retrospective planning application.

Investigations are carried out in accordance with the provisions of the Police and Criminal Evidence (NI) Order 1989 and the Criminal Procedures and Investigations Act 1996.

Making a Planning Enforcement Complaint

To assist Council and for purposes of consistency, all complaints about alleged breaches of planning control should preferably be made in writing to the Planning Department. The Council will require as much information as possible in order to carry out an investigation and also to help keep complainants informed of the progress of the complaint. This information should include:

- the name, address and contact details of the complainant;
- full details of the precise nature of the complaint including the location and relevant dates;
- the name and address of the alleged responsible party, if known; and
- an explanation of the effect or consequence of the alleged breach.

The above information and identity of the complainant is treated as strictly confidential. Anonymous complaints are actioned by Council, however complaints of this nature make it difficult for staff to ask follow up questions or update customers on the outcome of cases. Should a case proceed to court action then details of complainants may be subject to disclosure.

Complainants concerned about their identity being revealed or having difficulties explaining the problems affecting them may wish to discuss the matter with their local councillor who can then raise the issue on their behalf. Details of Councillors for each individual District Electoral Area (DEA) can be obtained from Council's website.

Enforcement Priorities

Council will investigate all alleged breaches of planning control. However, when determining what (if any) action is to be taken, priority will be given to those breaches where, in the Council's opinion the greatest harm is likely to be caused.

Priority 1 – works resulting in public danger or development which may result in permanent damage to the environment. For example demolition of or works to a listed building, trees protected by a TPO, demolition of a building within a conservation area, unauthorised mineral extraction or waste disposal.

Priority 2 - commencement of building operations without planning permission, unauthorised works or uses which cause loss of amenity or any other significant public or private impact, non-compliance with conditions of a planning approval.

Priority 3 – minor breaches that can be regularised, for example, domestic sheds, fences and extensions.

The above list is not exhaustive and is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement Team to prioritise cases taking account of the nature of the breach and the harm being caused or likely to be caused.

It should again be stated that the vast majority of breaches are resolved informally through negotiation with the land owner/occupier or following the submission of a retrospective planning application.

Performance Targets

Statutory performance indicators for each council have been proposed in the Local Government (Performance Indicators and Standards) Order (NI) 2015. Within this legislation the statutory Key Performance Indicator (KPI) target for Enforcement agreed by this Council, is to bring 70% of cases to target conclusion with 39 working weeks of receipt of complaint. For the purposes of this strategy 'target conclusion' means case closure, submission of a retrospective planning application, enforcement action or summons to court.

The above method of performance measurement reflects the Council's approach to enforcement in that it focuses resources on those breaches of planning control where the harm is being or is likely to be caused.

In addition, the Council will adhere as far as possible to the following range of Performance Targets:-

- Acknowledge receipt of 75% of complaints within 3 working days and 95% of complaints within 6 working days.
- Site inspect 90% of Priority 1 cases within 3 working days and 100% within 5 working days.
- Site inspect 75% of all other cases within 20 working days and 95% within 30 working days.
- Discuss and agree a course of action for 90% of Priority 1 cases within 2 working weeks of receipt of the initial complaint.
- Discuss and agree a course of action for 60% of all other cases within 8 working weeks and 95% within 12 working weeks of receipt of the initial complaint.
- Notify complaints of case closure in 75% of cases within 2 working weeks, and 95% of cases within 4 working weeks of the Group Decision being made.

The above method of performance measurements reflects the Council's approach to enforcement in that it focuses resources on those breaches of planning control where the greatest harm is being or is likely to be caused.

Appeals

Appeals, to The Planning Appeals Commission for Northern Ireland, may be made against certain notices issued by Council as part of the enforcement action.

When an appeal is pending, the relevant notice shall be of no effect pending the final determination or withdrawal of the appeal. Further information on the planning appeals process, including the Commission's guide, "Enforcement Notice Appeals" can be obtained from the PAC website. The timescale for hearing an appeal and issuing a determination is a matter for the Planning Appeals Commission.

Legislative Timescales

When considering enforcement action, Council will have regard to the statutory time limits for taking enforcement action as set out in Section 132 of the Planning Act 2011.

Where there has been a breach of planning control consisting of carrying out, without planning permission, a building, engineering, mining or other operation in, on, over or under land, no enforcement action may be taken after the period of 5 years beginning with the date on which the operations were substantially completed.

In relation to unauthorised works to listed buildings, including demolition and non-compliance with a condition attached to a consent, no enforcement action may be taken in relation to works which occurred before 9 December 1978.

Unauthorised advertisement – Enforcement action may not be taken after 10 years from the date on which the breach began and where it has continued uninterrupted for the 10 years