



Planning Enforcement Strategy

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Introduction

1. Lisburn & Castlereagh City Council [‘the Council’] places great importance on protecting and enhancing the environment and recognises that the integrity of the development management process depends upon the Council’s commitment to take effective action against unauthorised development. This Planning Enforcement Strategy sets out how the Council will deal with complaints relating to breaches of planning control.
2. The Council’s function as the Local Planning Authority for Lisburn & Castlereagh City Council is set out in the Planning Act (Northern Ireland) 2011. The Council’s Planning Department will administer most of these planning functions including the discretionary power to take action against breaches of planning control.

General Approach to Enforcement

3. Under the provisions of the Planning Act (Northern Ireland) 2011 the Council has discretionary powers to take enforcement action when it considers it expedient to do so, having regard to the provisions of the Local Development Plan and any other material considerations.
4. The Council is committed to resolving all cases involving unauthorised development, including any consequent enforcement action.
5. 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 in response to alleged breaches of planning control, 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.

Objectives of Planning Enforcement

6. The Council's key objectives for planning enforcement are:
 - To bring unauthorised activity under control;
 - To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development; and
 - To take legal action, where necessary against those who ignore or flout planning legislation.

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

What is a Breach of Planning Control?

8. A breach of planning occurs when building works or a material change of use of the land or a building takes place without planning consent. In most cases, it is not an offence to undertake development without consent, but the Council has powers to require these breaches to be remedied. The Council can do this by requiring changes to be made to the development, by requiring the removal of the development, or by giving the development approval if it is considered acceptable.

9. Examples of **actions that are a breach of planning control include:**

- Not building in accordance with the approved plans (following grant of permission);
- Failing to comply with conditions attached to an approval;
- Unauthorised works to a listed building;
- Removing or lopping trees protected by a Tree Preservation Order or in a Conservation Area;
- Display of an advertisement without the benefit of advertising consent;
- Changing the use of land without planning permission.

10. Examples of **actions that are not a breach of planning control include:**

- Internal works to a non-listed building;
- Clearing land of shrubs or trees (provided they are not protected);
- Operating a business from home, where the residential use remains the primary use and there is no adverse impact;
- Where development is 'permitted development', i.e. where it does not require the consent of the Council;
- Parking commercial vehicles on the highway;
- Boundary disputes as these are a civil matter and cannot be controlled by planning legislation.

Guiding Principles for Investigating Breaches of Planning Control

11. All alleged breaches of planning control will be investigated. As a result of the legal test of expediency (having regard to the development plan and all other material considerations) formal enforcement action will only be taken where it is fair and reasonable to do so. In making this decision, an assessment will be made as to whether the breach of planning control unacceptably affects public amenity or the use of land or buildings meriting protection in the public interest. Any enforcement action should be appropriate 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.
12. Personal information will not be released without the permission of the complainant in accordance with the principles of the Data Protection Act 1998; The Freedom of Information Act 2000; and the Environmental Information Regulations 2004.

13. 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, in the Council's opinion, the greatest harm is being, or is likely to be caused.
14. As enforcement is a discretionary power, the Council will not pursue those minor breaches of planning control where there is no significant harm being caused, or where it is not considered expedient to do so.
15. A decision to proceed with formal enforcement action (i.e. the issue of an Enforcement Notice or service of a Breach of Condition Notice) must be agreed by an appointed officer referred to in the Scheme of Delegation. All actions taken in response to a breach of planning control will be proportionate to the harm being caused and in accordance with the Council's priorities.
16. Enforcement action may be held in abeyance while a planning application or appeal to remedy the breach is being determined, depending on the degree of harm and nature and scale of the breach. However, if a case is approaching the date for immunity or the breach of planning control is considered to be unacceptable, enforcement action may proceed.
17. The decision to proceed to prosecution will only be taken following legal advice.
18. Information which may prejudice consideration of a case or judicial proceedings will normally be withheld until the case is concluded or the Court orders disclosure of information.
19. Complainants will be advised when a case has been concluded.
20. Planning Enforcement Officers will liaise closely with colleagues within the Council and also within central government departments such as the Northern Ireland Environment Agency, for example, in relation to listed buildings and waste management and Transport NI in relation to road safety issues.

Procedure for Investigating Enforcement Complaints

21. When an enforcement complaint is received it will be registered on the Council's planning database system and the complaint acknowledged. The Council will also register all anonymous complaints.
22. The name and address of all complainants will be kept confidential. However, it may be necessary that the complainant's details are required to be disclosed for legal reasons. In such instances, prior approval will be obtained from the complainant.
23. The enforcement case will be assigned to a Planning Enforcement Officer who will investigate the planning history of the site and assess whether or not the complaint constitutes a breach of planning control. In some cases a site visit may be necessary before the officer can determine whether there has been a breach. If, following the site visit, it is evident that there has not been a breach of planning control, the case will be closed and the complainant advised.
24. Where it is clear that development has taken place without the relevant permission or consent, the Planning Enforcement Officer will try to establish the identity of the person(s) responsible for carrying out the breach. This may require the officer to issue a Planning Contravention Notice (a formal request for information). The person responsible will be informed that they are in breach of planning control/consent and may invite an application to regularise the development on a 'without prejudice' basis. This requires the issuing of a Submission Notice and a period of 28 days will normally be given for the submission of the retrospective application.
25. Where a retrospective application is submitted for determination, the application will be determined on its own merits having regard to the provisions of the Local Development Plan and other material planning considerations. Unless the breach is causing serious harm, unlikely to be granted permission/consent, or reaching the stage of immunity, it is normal practice to await the determination of the application before deciding whether to take formal enforcement action.

The enforcement case will remain open until the application is determined. If the retrospective application is approved the case will be closed. If the application is refused the case will remain open until the breach is resolved. This may require the serving of an Enforcement Notice and subsequent court action. Under the Scheme of Delegation already approved by this Council, the authority to serve an Enforcement Notice is delegated to appointed officers.

26. If an application is not submitted, a decision will be taken as to whether it is expedient to take formal enforcement action. A planning assessment will be made of the significance of the breach before a decision is made on the best course of action.
27. As enforcement is a discretionary power, where the breach of planning control is of a minor nature or a technical breach which causes no harm to the amenity in the locality of the site, the Planning Enforcement Officer may attempt to resolve the breach through negotiation. This negotiation period will normally be no longer than 6 months. This may mean agreeing a compromise or partial change that secures compliance with a planning condition/permission/consent, or to negotiate changes to make it more acceptable in planning terms. These negotiations may negate the need to take formal enforcement action.
28. For cases where the unauthorised development is causing significant harm which cannot be satisfactorily overcome or mitigated by conditions or changes to the development, it may be appropriate to take formal enforcement action. The type of enforcement action will be dependent on the circumstances of the case and will be proportionate to the breach.
29. Once the decision has been made to take formal enforcement action, the relevant notice will be issued by the Planning Enforcement Team. The Enforcement Notice includes requirements for remedying the breach and a period for compliance. Failure to comply with the requirements of the Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrates Court (subject to a maximum fine of £100,000).

30. It is important to note that in relation to Enforcement Notices, there are two separate offences – one as owner of the land, and the second as the person in control of, or who has an estate in the land, to which the Notice relates (other than the owner).
31. The recipient of an Enforcement Notice has the right to lodge an appeal to the Planning Appeals Commission (PAC) within 28 days following receipt of the Notice. If no appeal is lodged, the Enforcement Notice takes effect immediately after the 28 day period has passed.
32. If an Enforcement Notice, Listed Building Enforcement Notice, Hazardous Substances Contravention Notice, or Replacement of Trees Notice is issued, the recipient has the right to lodge an appeal to the PAC before the notice takes effect. This may suspend the effect of the Notice until the outcome of the appeal.
33. If no appeal is lodged the Notice takes effect on the date specified in the notice. The Planning Enforcement Officer will check whether the notice has been complied with. If the Notice is complied with no further action will be taken and the case will be closed. The complainant will be advised of the decision. If, however, the Notice has not been complied with, legal advice will be sought to inform the decision of whether or not to prosecute.
34. The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as a Discontinuance Order). The Council will seek to recover the costs of undertaking the works from the landowner and those expenses shall be a civil debt recoverable summarily. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and therefore the preferred method to secure compliance will be to prosecute the landowner and/or the person in control of or who has an estate in the land to which the Notice relates.

35. In cases of severe harm, the Council can apply for an Injunction in the County or High Court.
36. If a breach of planning control is considered to be causing immediate harm, a Stop Notice or Temporary Stop Notice may be issued which would bring about the immediate cessation of certain types of unauthorised works. Before taking such action, the Council is required to carry out a cost/benefit analysis so that the costs incurred by the developer in having to stop the works are fully taken into account and weighed against the harm being caused.

Council Enforcement Priorities

37. The 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.
38. The priority given is determined by the guiding principle that any action in response to a breach should be proportionate to the harm it causes. The priorities which reflect this principle are as follows:
 - **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; unauthorised works to trees protected by a Tree Preservation Order; demolition of a building in a Conservation Area; Contravention of Hazardous Substance Control;
 - **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** – non-compliance with conditions of a planning approval (unless they relate to serious amenity issues in which case it may fall into Priority 1 or 2); and

- **Priority 4** - minor breaches that can be regularised, for example, domestic sheds, fences and extensions.

39. The above list 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.
40. The priority given is reflected in the timescales against which performance is measured i.e. higher priority cases have shorter timescales.
41. 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.
42. The speed at which a breach can be resolved will vary depending on the complexity of the individual case. However, officers will aim to confirm whether there is a breach of planning control/consent and set out the Council's position in writing to the land owner/occupier and the complainant within eight weeks of a complaint being received.

Performance Targets

43. Statutory performance indicators for each council have been proposed in the draft 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 a target conclusion within 39 weeks of receipt of initial complaint.**
44. For the purpose of this Strategy, target conclusion means case closure, submission of a retrospective planning application, formal enforcement action, or summons to court.

45. In addition, the Council's Planning Enforcement Team will aim to:
- Acknowledge receipt of 95% of complainants within 5 working days;
 - Site inspect 100% of Priority 1 cases within 5 working days of receipt of the initial complaint;
 - Site inspect 95% of all other cases within 30 working days of receipt of the initial complaint;
 - Discuss and agree a course of action for 95% of Priority 1 cases within 2 weeks of receipt of the initial complaint;
 - Discuss and agree a course of action for 95% of all other cases within 12 weeks of receipt of the initial complaint; and
 - Notify complainants of case closure in 95% of cases within 4 weeks of the date of closure.
46. 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 greatest harm is being or is likely to be caused.

Appeals

47. Under the provisions of The Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, Listed Building Enforcement Notice, Hazardous Substances Contravention Notice and Replacement of Trees Notice. The time frame for hearing an appeal and issuing a determination is a matter for the PAC. Additional information on the planning appeals process can be obtained from the PAC website www.pacni.gov.uk.

Legislative Timescales

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

49. Where there has been a breach of planning control consisting of the carrying out without planning permission of 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.
50. Where there has been a breach of planning control consisting of the change of use of any building to use as a dwelling house, no enforcement action may be taken after the end of the period of **5 years** beginning with the date of the breach.
51. In relation to unauthorised works to listed buildings, including demolition and non-compliance with a condition attached to a consent, no enforcement action can be taken in relation to works which occurred before 9 December 1978.
52. In the case of any other breach of planning control, no enforcement action may be taken after the end of **5 years** beginning with the date of the breach.

Communication

53. As set out in the Council's Protocol for the Operation of the Planning Committee, Members will be informed of progress on cases and can request a report from officers to the Committee on any enforcement matter (but the Committee should not take any decisions on enforcement action.)
54. Planning Officers will prepare a quarterly report on the progress of formal enforcement cases which will be circulated to all Councillors, detailing the number of notices issued, and convictions obtained, as opposed to providing details of individual cases.
55. In addition, Members will be informed of the number of live Planning Enforcement cases, including cases closed, and new cases opened in the quarterly reporting period.

56. As set out in the Council's Scheme of Delegation, the formal reporting of planning enforcement matters to the Public Prosecution Service/ Commencement of proceedings in a magistrate's court will also be a matter to be considered and determined by the Planning Committee of the Council.
57. Any queries on specific cases should be directed to the Planning Enforcement Team www.planning@lisburncastlereagh.gov.uk.