



Derry City & Strabane
District Council
Comhairle
**Chathair Dhoire &
Cheantar an tSratha Báin**
Derry Cittie & Strabane
Destrict Council

Your Ref:

Our Ref: EIR / 456

Mr [REDACTED]
Michael Burroughs Associates
33 Shore Road
Holywood
BT18 9HX

Date: 25th April 2016

Dear M [REDACTED]

**Environmental Information Regulations 2004 Request
Enforcement Notices and letters for Council area between
4 January - 29 January 2016 and 29 January – 25 February 2016**

Further to your recent correspondence and our response dated 8th March 2016, may I advise that Derry City and Strabane District Council are required to apply the EIR 2004 regulations when requests for information on Planning matters are received. This regulation has been applied to your requests in respect of the dates listed above. The Public Enforcement Register is available for public viewing and is held in Planning Orchard House, Derry.

We have undertaken a search of the Public Enforcement Register and can advise you that no enforcement notices/cover letters for the period of 4 January – 29 January 2016 are held. However, one enforcement notice/cover letter dated 8 February 2016 is held and I have enclosed a copy for your convenience.

Derry/Strabane
C/o Planning Office
Orchard House
40 Foyle Street
Derry
BT48 6AT

0300 200 7830
planning@derrystrabane.com
www.derrystrabane.com

f Derry City & Strabane District Council
@dcscouncil



Derry City & Strabane
District Council
Comhairle
**Chathair Dhoire &
Cheantar an tSraitha Bain**
Derry Cittie & Strabane
Destrict Council

I hope this clarifies matters for you

Yours faithfully

Head of Planning

Derry/Strabane
O/o Planning Office
Orchard House
40 Foyle Street
Derry
BT48 6AT

0300 200 7830
planning@derrystrabane.com
www.derrystrabane.com

f Derry City & Strabane District Council
t @desdcouncil

RECORDED DELIVERY

Mr William John Creggan
Secretary of the Limited Company
Foyle View Builders
Having its registered office at:
28 Griffith Park
Culmore Road
Derry
BT48 8PE

Derry City & Strabane District
Council
Comhairle
Chathair Dhoire & Cheantar an tSraitha B ain
Derry City & Strabane District
Council

Derry and Strabane
Local Planning Office
Orchard House
40 Foyle Street
Londonderry
BT48 6AT

Date: 8th February 2016
Your Ref:
Our Ref: A/2014/0010/CA
(Please quote at all times)
EN/2016/0018
Please Contact: Shauna Doherty
Contact Number: 02871 253253 Ext 8424

Dear Mr Creggan

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Land at Buncrana Road, Shantallow, Londonderry, BT48 8AB,

Issued By: Derry and Strabane

1. The Council hereby serves on you an Enforcement Notice relating to the above land of which you are the owner.
2. Unless an appeal is made to the Planning Appeals Commission, as described below, the Notice will take effect on 22nd March 2016 and you must then ensure that the required steps for which you may be held responsible are taken within the period specified in this Notice. Failure to comply with an Enforcement Notice which has come into effect within the times specified for compliance is an offence and a person found guilty of such an offence is liable on conviction to a fine.
3. If you wish to appeal against the Notice you should first read carefully the enclosed Explanatory Notes. You or your agent should complete an appeal form and send it, together with the PAC Appeal fee, a copy of the Enforcement Notice and map to the Planning Appeals Commission. Your appeal must be received by the Planning Appeals Commission before the date given in Paragraph 2 above as the date when the Notice takes effect.

4. You will note that if you appeal against this Enforcement Notice you will be deemed to have made an application for planning permission for the development to which this Notice relates. In these circumstances you will also be liable to pay the appropriate fee which in this case would appear to be £831.

Yours sincerely



Authorised Officer

On behalf of: Derry City & Strabane District Council
Planning Department
Orchard House
40 Foyle Street
Derry
BT48 6AT



BUNCRANA ROAD

11

12

7

4

1

1:10000



ENFORCEMENT NOTICE – MATERIAL CHANGE OF USE
IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY
PLANNING ACT (NORTHERN IRELAND) 2011

Issued By: Derry and Strabane

1. **This Notice** is served by the Council because it appears that there has been a breach of planning control, under section 131(1)(a) of the above Act, at the land described below. It considers that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations.
2. **The Lands to which this Notice relates**
Land at Buncrana Road, Shantallow, Londonderry, BT48 8AB, shown edged in red on the attached map.
3. **The Matters which appear to constitute the Breach of Planning Control**
Unauthorised change of use of the said land to a builders storage yard
4. **What you are required to do**
 - a) Cease the unauthorised use of the said land for the storage of materials, machinery and equipment associated with a construction company.
 - b) Permanently remove from the land all materials, machinery, equipment, rubble and waste from the land for the purposes of that use.
 - c) Comply with (a) and (b) above within 84 days from the date on which this Notice takes effect.
5. **This Notice takes effect** on 22nd March 2016 unless an appeal is made against it beforehand.

Signed:



Authorised Officer

Dated:

9-2-16

On behalf of: Derry City and Strabane District Council
Local Planning Office
Orchard House
40 Foyle Street
Londonderry
BT48

6AT

Your Right of Appeal

You can appeal against this notice under section 143 of the Planning Act (Northern Ireland) 2011. An appeal must be received, or posted in time to be received, by the Planning Appeals Commission before the date on which this Notice takes effect. The accompanying Explanatory Note gives details on the appeal procedure.

Warning: What happens if you do not Appeal

If you do not appeal against this Enforcement Notice it will take effect on the date specified in paragraph 5 of the Notice and you must ensure that the required steps for complying with it for which you may be held responsible are taken within the period(s) specified in paragraph 4 of this Notice. Failure to comply with an Enforcement Notice which has taken effect is an offence. A person found guilty of such an offence shall be liable to a fine. The maximum penalty for such an offence is £30,000 on summary conviction in the Magistrate's Court. The fine on conviction on indictment is unlimited. Continuing failure to comply with the Notice following a conviction will constitute a further offence.

Where any steps required by the Enforcement Notice are not taken within the period allowed for compliance with the Notice, a person authorised in writing by the Council/Department may enter the land and take the required steps and recover from the person who is then the owner of the land any expenses incurred in so doing. Those expenses shall be a civil debt recoverable summarily.

EXPLANATORY NOTE

This note is **NOT** part of the Enforcement Notice but it sets out in full in section 143 on the Planning Act (Northern Ireland) 2011 to which reference has been made in the Notice.

APPEAL AGAINST ENFORCEMENT NOTICE

143. (1) A person having an estate in the land to which an Enforcement Notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the Notice as the date on which it is to take effect, appeal to the planning appeals commission against the Notice, whether or not a copy of it has been served on him.
- (2) This subsection applies to a person who—
- (a) on the date on which the Enforcement Notice is issued occupies the land to which it relates by virtue of a licence; and
 - (b) continues to occupy the land as aforesaid when the appeal is brought.
- (3) An appeal may be brought on any of the following grounds –
- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
 - (b) that those matters have not occurred;
 - (c) that those matters (if they occurred) do not constitute a breach of planning control;
 - (d) that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - (e) that copies of the Enforcement Notice were not served as required by Article section 138;
 - (f) that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - (g) that any period specified in the Notice in accordance with section 140(9) falls short of what should reasonably be allowed.
- (4) An appeal under this section shall be made by serving written notice of the appeal on the planning appeals commission before the date specified in the Enforcement Notice as the date on which it is to take effect and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

- (5) (5) Before determining an appeal under this section, the planning appeals commission shall, if either
- (a) the appellant;
 - (b) or the Council or as the case may be, Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.
- (6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.
- (7) Where an appeal is brought under this section, the Enforcement Notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (8) Subject to subsection (9), the validity of an Enforcement Notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
- (9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—
- (a) has held an estate in the land since before the Enforcement Notice was issued;
 - (b) was not served with a copy of the Enforcement Notice; and
 - (c) satisfies the court that—
 - (i) that person did not know and could not reasonably have been expected to know that the Enforcement Notice had been issued; and
 - (ii) that persons interests have been substantially prejudiced by the failure to serve him or her with a copy of it.

APPEAL AGAINST ENFORCEMENT NOTICE-GENERAL SUPPLEMENTARY PROVISIONS

144. (1) On an appeal under section 143 the planning appeals commission shall quash the Enforcement Notice, vary the terms of the Notice or uphold the Notice.
- (2) On such an appeal the planning appeals commission may correct any mis-description, defect or error in the Enforcement Notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council/Department.
- (3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the Enforcement Notice was not served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

APPEAL AGAINST ENFORCEMENT NOTICE - SUPPLEMENTARY PROVISIONS RELATING TO PLANNING PERMISSION

145. (1) On the determination of an appeal under section 143, the planning appeals commission may –
- (a) grant planning permission in respect of the matters stated in the Enforcement Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the Notice relates;
 - (b) discharge any condition or limitation subject to which planning permission was granted;
 - (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 169.
- (2) The provisions of sections 169 to 172 mentioned in subsection (3) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 169, but as if –
- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
 - (b) references to the Council were references to the planning appeals commission.
- (3) Those provisions are section 169(5) to (7), 171(4) (so far as it relates to the form of the certificate), (6) and (7) and 172.
- (4) In considering whether to grant planning permission under subsection (1), the planning appeals commission shall have regard to the development plan, so far as material to the subject matter of the Enforcement Notice, and to any other material considerations; and planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part 3; and where under that subsection the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.
- (5) Where an appeal against an Enforcement Notice is brought under section 143, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the Enforcement Notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under subsection (1) –
- (a) any planning permission granted under that subsection shall be treated as granted on that application;
 - (b) in relation to a grant of planning permission or a determination under that subsection, the decision of the planning appeals commission shall be final; and

(c) subject to paragraph (b), any planning permission granted under that paragraph shall have the like effect as a permission granted under Part 3.

(6) Where –

- (a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid, then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

NB: You will note from section 145 (5) that if you appeal against this Enforcement Notice you will be deemed to have made an application for planning permission for the development to which this Notice relates. In these circumstances you will also be liable to pay the appropriate planning application fee which would appear to be £831 and the planning appeals commission Appeal fee.