

Appendix 1: Derry City and Strabane District Council Enforcement Strategy

1. Introduction

- 1.1 Derry City and Strabane District Council places great importance on protecting and enhancing the environment. The Council's function as the local planning authority for Derry City and Strabane District 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.
- 1.2 Although planning enforcement is a discretionary function it is recognised that the integrity of the development management process depends upon the Council's commitment to take effective action against unauthorised development. This Enforcement Strategy sets out how the Council deals with complaints relating to breaches of planning control.

2. General Approach to Enforcement

- 2.1 Under the provisions of The Planning Act (Northern Ireland) 2011 the Council has discretionary powers to take enforcement action when it considers expedient to do so, having regard to the provisions of the local development plan and any other material considerations.
- 2.2 Derry City and Strabane District Council is committed to resolving all cases involving unauthorised development, including any consequent enforcement action.
- 2.3 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, 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.

3. Objectives of Planning Enforcement

- 3.1 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.
- 3.2 The Council is committed to securing these objectives in order to ensure that the credibility and integrity of the planning system is not undermined.

4. What is a breach of Planning Control?

4.1 A breach of planning control occurs when building works or a material change of use of 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 breached to be put right. 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 we think it is acceptable.

4.2 Examples of planning breaches include:

- Not building in accordance with 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.

4.3 Actions which are not a breach of planning control include:

- Internal works to a non-listed building;
- Clearing land of overgrowth, bushes or tree (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-these are a civil matter and cannot be controlled by planning legislation.

5. Guiding Principles for Investigating breaches of planning control

5.1 All alleged breaches of planning control will be investigated, with the exception of anonymous complaints unless the breach relates to unauthorised works to a listed building or works to trees which are in a Conservation Area or protected by a Tree Preservation order. However, because of the legal test of 'expediency' formal enforcement action will only be taken where it is fair and reasonable to do so. In reaching this decision the main issue is whether the breach would unacceptably affect public amenity or use of the land that should be protected in the public interest. Any enforcement action should be proportionate to the breach of planning control. The Council would not be acting lawfully if it enforced against every 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.

- 5.2 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 (EIR).
- 5.3 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.
- 5.4 As enforcement is a discretionary power the council, 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.
- 5.5 A decision to proceed with enforcement action must be agreed by one of the senior officers authorised to operate 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.
- 5.6 Enforcement action may be held in abeyance while a planning application or appeal is being determined, depending on the degree of harm and nature of 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.
- 5.7 Council will only proceed to prosecution following agreement of the Planning Committee and if necessary, legal advice.
- 5.8 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 the information.
- 5.9 Complainants will be advised when a case has been concluded.
- 6.0 Enforcement officers will liaise closely with colleagues within the Council, and other central government departments if necessary to the case, e.g. DRD Transport NI in relation to roads/access issues, Northern Ireland Environment Agency in relation to listed buildings.
- 7.0 Procedures for Investigating Enforcement Complaints**
- 7.1 When received, complaints will be registered on the system and acknowledged within the proposed timescales outlined in Section 9
- 7.2 Name and address of all complainants will be kept confidential. In some cases, for legal reasons the complainants details are required to be disclosed. In such instances, prior approval will be obtained from the complainant.
- 7.3 Enforcement case will be assigned to an officer to check site history, make a site visit if necessary and then establish whether a breach of control has occurred. If, following the site visit it is considered there is no breach, the case will be closed.
- 7.4 Where it has been established a breach of control has occurred, the case officer will try to identify the person(s) responsible for the breach. This may require a Planning Contravention Notice to be issued, which is a formal request for information. The officer will then inform the person responsible that they are in breach of planning control/consent and may invite a retrospective planning application to regularise the development on a without prejudice basis. This requires the issuing of Submission Notice, and a period of 28 days is normally given to submit. If the application is not submitted a decision will be made if it is expedient

to take formal enforcement action. If so, the next stage is to serve an Enforcement Notice. This can be served under the Scheme of Delegation, by the appointed planning officers.

- 7.5 Where a retrospective application is submitted, it will be considered and determined on its own merits, having regard to the provisions of the local development plan, relevant planning policy and any material considerations. Unless the application is unlikely to get approval, or the breach is causing serious harm, or there is a risk of the unauthorised development becoming immune due to the time period involved, it is normal practice to await the determination of the application before deciding to take formal enforcement action. If the retrospective application is approved, the enforcement 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.
- 7.6 As enforcement is a discretionary power, those breaches considered to be minor in nature with no harm to the public/amenity/locality will attempted to be resolved through negotiation for a period of no longer than 6 months.
- 7.8 An Enforcement Notice will be issued by the Planning Enforcement team. The Enforcement Notice includes the requirements for remedying the breach and a period for compliance. Failure to comply with the requirements specified in the notice within the specified time period is a criminal offence, liable to prosecution in the Magistrates Court, subject to a maximum fine of £100,000.00.
- 7.9 The recipient of an Enforcement Notice has the right to lodge an appeal to the Planning Appeals Commission 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.
- 7.10 It is important to note that in relation to Enforcement Notices there are two separate offences-one as owner of the land, and second as 'the person in control' of, or who has an estate on the land to which the notice relates (other than the landowner).
- 7.11 The Council has the powers to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as 'Discontinuance Orders'). 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 so in most cases the preferred method is to secure compliance to prosecute the landowner.
- 7.12 In cases of severe harm the Council can apply for an injunction in the County or High Court.
- 7.13 If a breach of planning control is considered to be causing immediate harm, a Stop Notice or Temporary 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 any costs incurred by the developer by having to stop works are fully taken into account and weighed against the harm being caused.

8.0 Enforcement Priorities

- 8.1 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.
- 8.2 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, 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 work/uses which causes loss of amenity or any other significant public or private impact.

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).

Priority 4- Minor breaches that can be regularised for domestic sheds, fences, extensions.

- 8.3 The above list is for guidance only. It is ultimately the responsibility of 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.
- 8.4 The priority given is reflected in the timescales against which performance is measured i.e. high priority cases have shorter timescales.
- 8.5 It is important to note that the vast majority of breaches of planning control are resolved initially through negotiation with the owner/occupier or through the submission and consideration of a retrospective planning application.
- 8.6 The speed at which a breach can be resolved will vary depending on the complexity of the individual case. However, officers aim to confirm whether there is a breach and set out the Council's position in writing to the land owner/developer and the complainant within eight weeks of a complaint being received.

9.0 Performance Targets

- 9.1 Statutory performance indicators for each council have been proposed and drafted by DOE in The draft Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015. This legislation is currently in draft and the consultation period closed 2nd March 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.**

For the purposes of this strategy and as set out in the draft legislation, target conclusion means case closure, submission of a retrospective planning application, formal enforcement action or summons to court.

10.0 Appeals

10.1 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 Section 164 Notice (replacement of trees). The timeframe 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

11.0 Legislative Timescales

11.1 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 Act.

11.2 Where there has been a breach of planning control consisting in 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.

11.3 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 period of 5 years beginning with the date of the breach.

11.4 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.

12.0 Communication

12.1 Members of the planning committee will be sent lists of enforcement cases that have been closed and currently live cases on a quarterly basis.

12.2 Any queries on specific cases should be direct to the Planning Enforcement team