

A Guide to Planning Enforcement in Northern Ireland

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This information note provides guidance on how the Department carries out the enforcement of planning control. It sets out the procedures the Department may adopt when taking enforcement action, as well as its priorities for taking action.

This information note seeks to provide clarity on planning enforcement but is for guidance only, and can not be regarded as definitive or having any legal effect.

Introduction

The Department of the Environment is responsible for planning control in Northern Ireland. Planning and Local Government Group within the Department administers this function. One of the fundamental elements of the process is the power to take action against breaches of planning control. The Department's general policy approach to dealing with breaches of planning control is contained within Planning Policy Statement (PPS) 9 "The Enforcement of Planning Control".

The Department's key objectives for planning enforcement are:

- To bring unauthorised development under control;
- To remedy any 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.

What constitutes a Breach of Planning Control?

A breach of planning control occurs when 'development' or certain other activities take place without the necessary planning permission or consent from the Department.

The Planning (NI) Order (as amended) defines a breach of planning control as being:-

- The carrying out of development without planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted.

It is not a criminal offence to carry out development without planning permission, or fail to comply with any condition or limitation subject to which planning permission has been granted. However, where an enforcement

notice has been served (see Formal Action) and the offender has not complied with the requirements of the notice, he/she is then guilty of an offence.

What is not a Breach of Planning Control?

Article 11 of the Planning (NI) Order 1991 sets out the meaning of 'development'. Certain types of minor works or activities do not fall within the meaning of 'development' and do not require planning permission.

Certain types of building works, changes of use or activities do fall within the meaning of development but are defined as 'permitted development'. Detailed guidance on what constitutes permitted development is set out in the Planning (General Development Order) (NI) 1993.

Further information on what constitutes permitted development in the domestic situation can be found in the Department's publication 'Your Home and Planning Permission' available at www.planningni.gov.uk.

What constitutes an Offence?

The following are immediate offences and where they occur the Department will normally pursue court action, which often results in the conviction of and a criminal record for the offender.

- Unauthorised works to or demolition of a listed building

- Unauthorised demolition of an unlisted building within a Conservation Area
- Non-compliance with conditions attached to listed building consent
- Non-compliance with conditions attached to conservation area consent
- Unauthorised display of an advertisement
- Unauthorised works to trees protected by a Tree Preservation Order and/or within a conservation area
- Non compliance with a submission notice, enforcement notice, breach of condition notice, stop notice, listed building enforcement notice or hazardous substances contravention notice

Making a Complaint

The Department will investigate all complaints about alleged breaches of planning control and may carry out a site visit. Written complaints are preferred as this avoids ambiguity, and provides the Department with an accurate basis on which to proceed with an investigation. Written complaints should include: -

- the precise site location of the alleged breach;
- details of the alleged breach;
- details of any harm being caused by the alleged breach; and

- any other relevant information.

Anonymous complaints will also be investigated. However, failure to provide an adequate level of detail in relation to an alleged breach can result in the Department being unable to take enforcement action due to unsatisfactory evidence.

All written complaints are placed on an enforcement file. Under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Department may receive a request to release details of complainants. Normally such personal information will not be released without the permission of the complainant.

The Department's Enforcement Policy

PPS9 sets out the general approach that the Department will follow in considering whether or not to take enforcement action. It also provides advice on the Department's approach to the enforcement of additional aspects of planning control over listed buildings, conservation areas, hazardous substances, trees and advertisements.

The Department's Enforcement Priorities

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

is being 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 in a conservation area, and commencement of building operations without permission.
- Priority 2 – Unauthorised works/uses which cause 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 example domestic sheds, fences, extensions.

This list is **for guidance only** and is not an exhaustive list.

Harm resulting from a breach of planning control could concern environmental amenity or safety issues and include for example, noise nuisance, loss of daylight or danger from increased traffic flows. In some instances these breaches may fall under the control of the local council e.g. noise pollution.

Harm resulting from a breach of control does not include, for example, competition to another business or trespass onto someone

else's land. It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and not a planning matter.

It is important to note, however, that in the event enforcement action is taken as a result of a breach of planning control, that action will be taken against the owner(s) or occupier(s) where the breach has occurred.

Investigating Alleged Breaches

The purpose of the investigation is to establish if a breach of planning control or an offence has occurred and if so, who is responsible. The subsequent action in each case will depend on the nature of the breach/offence and its consequences/effects.

The Department has the power to seek further information regarding alleged breaches:-

- Where the Department requires details on the ownership of the land in question an information notice may be served; and
- Where the Department suspects a breach of planning control has occurred, a planning contravention notice may be used to gain information about the suspected breach.

Both of these are discretionary procedures and do not constitute enforcement action. However, they do represent what might become formal action and may act as a clear warning that further action is being considered.

Where there is genuine doubt as to whether

planning permission is required, and the owner is actively pursuing an application for a Certificate of Lawful Use or Development, any consideration of enforcement action may be deferred pending the determination of the application. However, where it considers a breach of planning control to be clearly unacceptable, there is no obligation on the Department to delay enforcement action pending the outcome of an application or subsequent appeal.

If the works/change of use do not require permission/consent, or are permitted by planning legislation, then no enforcement action can be taken.

Remedying the Breach

The Department has a general discretion on whether to take enforcement action against a breach of planning control. It does so when it regards it as expedient, having regard to the provisions of the development plan and any other material consideration.

Where a breach of planning control has been established, the Department may attempt to remedy it by issuing a warning letter. The letter will advise the recipient of the breach, what needs to be done to remedy it and how much time they have to carry out what needs to be done. This gives the recipient the opportunity either to rectify the breach or contact the Department and explain how the unauthorised development has occurred. If there is no reasonable prospect of the situation being resolved through negotiation the Department may move directly to formal action.

Where an initial assessment indicates that it is likely that unconditional planning permission would be granted for the development, the Department may serve a submission notice. This requires the submission of a retrospective planning application to attempt to regularise the unauthorised development. Where an application is submitted it will be processed in the normal manner, without prejudice. However, this does not imply that it will be granted planning approval. Where the retrospective application contains unacceptable elements, it may be refused or amendments may be sought, or approval may be granted subject to conditions.

Formal Enforcement Action

Where a breach of control has been established and the Department has tried but failed to resolve the breach, formal enforcement action may be taken.

Depending on the nature of the breach, the Department may serve:-

- an enforcement notice; or
- a breach of condition notice.

The enforcement notice requires a breach of control to be remedied, and will specify what needs to be done to remedy the breach and the period of time for compliance. The notice does not take effect until at least 28 days after the date it is served.

Where planning permission has been granted subject to conditions, and one or more of these conditions has not been complied with, a breach of condition notice can be served. The notice will specify what needs to be done to remedy the breach and a period of time for compliance. At least 28 days will be allowed for compliance with the notice. The notice becomes effective immediately when it is served.

Where the Department feels that immediate action is required to remedy a breach of control which is causing serious harm to public amenity it may serve a stop notice. The stop notice may either accompany the enforcement notice or may be served at a later date but before the enforcement notice has taken effect. A stop notice is essentially a supplement to an enforcement notice and cannot be served independently.

Alternatively, the Department has the power to seek an injunction to restrain any actual or perceived breach of control at any stage of the enforcement process, regardless of whether the Department has exercised or proposes to exercise any of its other enforcement powers. An injunction is only likely to be used where there is an immediate threat to the environment.

The Department's use of its enforcement powers is discretionary and any action taken against a breach of planning control will be commensurate with the harm being caused

and whether it regards it expedient to do so. The Department will also take into account the potential effects of enforcement action on both local and regional economies.

Penalties

As stated above, where it has been established that a breach of planning control has taken place, the Department has the discretion to take enforcement action where it regards it as expedient to do so. The action that will be taken will be commensurate with the harm being caused. Where the proposed works/development cause significant harm to the environment, the notice served may require the cessation of works or the removal of buildings and the restoration of land to its original state. Contravention of such a notice is an offence.

Where an offence has occurred, the Department will normally pursue court action. On summary conviction, the owner/occupier of the land is liable to a fine with the potential for continuing daily fines. At present, the maximum level of fines that may be imposed on summary conviction is £30,000. The Department will also seek to recover legal costs.

Appeals

Any person who owns, occupies or controls land which is the subject of an enforcement notice, may appeal to the Planning Appeals Commission¹ before the date the notice

becomes effective. When an appeal has been made, the requirements of the notice are suspended until the appeal has been either determined or withdrawn.

An appeal may also be made against a submission notice, listed building enforcement notice or hazardous substances contravention notice.

There is no right of appeal against a breach of condition notice. However, the validity of the notice or the validity of the decision to serve the notice may be challenged by application to the High Court for Judicial Review.

There is no right of appeal against a stop notice. However, the validity of the stop notice can be challenged either by way of an application to the High Court for Judicial Review, or it can be raised as a defence in the event of any prosecution by the Department for contravention of the notice.

Timescales

Enforcement cases can be a lengthy and complex process and if a person decides to appeal an enforcement notice this may add many months to the time taken to resolve the case. It is therefore difficult to set down time scales for dealing with enforcement cases.

¹The Planning Appeals Commission is a statutory body independent of the Department. Further information regarding the appeals process can be obtained from the Planning Appeals Commission website www.pacni.gov.uk

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Ballymena	County Hall 182 Galgorm Road BALLYMENA Co Antrim BT42 1 QF	Phone: 0300 200 7830 (NI Only) or (028) 9151 3101 Fax: (028) 2566 2127 E-mail: ballymena.planning@cbeni.gov.uk
Belfast	Bedford House 16-22 Bedford Street BELFAST BT2 7FD	Phone: 0300 200 7830 (NI Only) or (028) 9151 3101 Fax: (028) 9025 2828 E-mail: belfast.planning@cbeni.gov.uk
Craigavon	Marlborough House Central Way CRAIGAVON Co Armagh BT64 1 AD	Phone: 0300 200 7830 (NI Only) or (028) 9151 3101 Fax: (028) 3832 0004 E-mail: craigavon.planning@cbeni.gov.uk
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