

## Planning Enforcement Strategy

### 1.0 Introduction

- 1.1 Causeway Coast and Glens Borough 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.
- 1.2 The Council's function as the local planning authority for Causeway Coast and Glens 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.
- 1.3 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.

### 2.0 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 it expedient to do so, having regard to the provisions of the local development plan and any other material considerations.
- 2.2 Causeway Coast and Glens Borough 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, Causeway Coast and Glens District 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.

### 3.0 What is a Breach of Planning Control?

- 3.1 Most types of building works, changes of use, works to listed buildings, works to trees within a Conservation Area or Protected by a Tree Preservation Order, demolition of buildings within Conservation Areas and advertisement signs require planning permission or consent. If these have not been obtained and works have been carried out or uses implemented, a breach of planning control is said to have occurred. A breach also

occurs when conditions attached to a planning permission are not complied with, where a formal Notice or Order is not complied with, or the contravention of a Hazardous Substance Control.

**3.2** A breach is not a criminal offence, except for

- unauthorised works to and demolition of a listed building,
- advertisements displayed without consent
- demolition of a building within a conservation Area without consent
- unauthorised works to trees covered by a Tree Preservation Order

A criminal offence in all other cases only arises when an Enforcement Notice has been served and has not been complied with.

**4.0 Guiding Principles**

- 4.1** 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.
- 4.2** 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.
- 4.3** 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.
- 4.4** 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.
- 4.5** A decision to proceed with formal enforcement action must be agreed by one of the appointed officers listed 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.
- 4.6** 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.

- 4.7 The decision to proceed to prosecution will only be taken following legal advice.
- 4.8 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 information.
- 4.9 Complainants will be advised when a case has been concluded.
- 4.10 Planning Enforcement Officers will liaise closely with colleagues within the Council, and also within central government departments such as Northern Ireland Environment Agency in relation to Listed Buildings and waste management; and, DRD Transport NI in relation to road safety issues.

## **5.0 Procedure for Investigating Enforcement Complaints**

- 5.1 When an enforcement complaint is received it will be registered on the Council's planning database system and the complaint acknowledged. Anonymous complaints will only be investigated if the alleged breach relates to unauthorised works to a Listed Building, or works to tree(s) in a Conservation Area or protected by a Tree Preservation Order.
- 5.2 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.
- 5.3 The enforcement case will be assigned to a Planning Enforcement Officer (PEO) 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 PEO can determine whether there has been a breach of planning control. 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.
- 5.4 Where it is clear that development has taken place without the relevant permission or consent, the PEO will establish the identity of the person(s) responsible for carrying out the breach, if not the landowner. This may require the PEO to issue a Planning Contravention Notice (a formal request for information). The PEO will then inform the person responsible that they are in breach of planning control/consent and may invite an application to regularise the development on a without prejudice basis (Submission Notice). Normally a period of 28 days will be given for the submission of the retrospective application.
- 5.5 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 the authority to serve an Enforcement Notice is delegated to appointed officers.

- 5.6** If an application is not submitted, a decision will be taken as to whether it is expedient to take formal enforcement action. In making this decision, an assessment will be made of whether the breach of planning control unacceptably affects public amenity or the use of land or buildings meriting protection in the public interest. A planning assessment will be made of the significance of the breach before a decision is made on the best course of action.
- 5.7** As enforcement action 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 PEO may attempt to resolve the breach through negotiation. This negotiation period will normally be no longer than 9 months. This may mean agreeing a compromise or partial change that secures compliance with a planning condition or 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.
- 5.8** 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.
- 5.9** 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).
- 5.10** 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).
- 5.11** Depending on the type of Notice the recipient may have the right to lodge an appeal to the Planning Appeals Commission before the Notice takes effect. This will suspend the effect of the Notice until the outcome of the appeal.
- 5.12** If no appeal is lodged the Notice takes effect on the date specified in the Notice. The PEO 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 may be sought to inform the decision of whether or not to prosecute.
- 5.13** The Council has the power 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 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.

- 5.14** In cases of severe harm, the Council can apply for an Injunction in the County or High Court.
- 5.15** 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 by having to stop the works are fully taken into account and weighed against the harm being caused.

## **6.0 Enforcement Priorities**

- 6.1** The Council will investigate all alleged breaches of planning control, 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, 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.
- 6.2** 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; 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 – Minor breaches that can be regularised, for example, domestic sheds, fences and extensions.
- 6.3** 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.
- 6.4** The priority given is reflected in the timescales against which performance is measured.
- 6.5** 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.

**6.6** 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 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.

## **7.0 Performance Targets**

**7.1** For the purpose of measuring performance, 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
- Bring 70% of cases to a target conclusion within 40 weeks of receipt of initial complaint. For the purpose of this Strategy, target conclusion means case closure, submission of a retrospective planning application, formal enforcement action, or summons to court
- Notify complainants of case closure in 95% of cases within 4 weeks of the date of closure.

**7.2** 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.

## **8.0 Appeals**

**8.1** 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 64 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](http://www.pacni.gov.uk)

## **9.0 Legislative Timescales**

**9.1** 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 Planning Act.

**9.2** 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.

- 9.3** 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 end of the period of 5 years beginning with the date of the breach.
- 9.4** 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<sup>th</sup> December 1978.
- 9.5** 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.

## **10.0 Communication**

- 10.1** Members of the Planning Committee will be sent lists of enforcement cases that have been closed and current live cases on a bi-monthly basis. Updates will be provided on specific cases if requested by a Planning Committee Member.
- 10.2** Any queries on specific cases should be directed to the Planning Enforcement Team.