

Planning Enforcement Strategy

Version 2 January 2023
Version 1 April 2015



**Ards and
North Down**
Borough Council

1.0 Introduction

1.1 Ards and North Down Borough Council places great importance on protecting our communities, our heritage and the natural environment from unauthorised development that causes harm, or which shows a disregard for the planning system. To ensure that we can take action when it is right to do so, we provide a Planning Enforcement service which investigates complaints and provides professional advice on enforcement matters.

1.2 The Council's function as the planning authority for Ards and North Down borough is set out in the Planning Act (Northern Ireland) 2011 ("the Planning Act"). The Council's Planning Service administers most of these planning functions including the discretionary power to take action against breaches of planning control.

1.3 Section 131 (1) of the Act states that a breach of planning control is:

- a) carrying out of development without the planning permission
- b) failing to comply with any condition or limitation subject to which planning permission has been granted

1.4 Section 131 (2) of the Act states that:

- a) the issue of an enforcement notice; or
- b) the service of a breach of condition notice

constitutes taking enforcement action.

1.5 The main enforcement powers available to the Council in relation to planning are contained in Part 5 of the Act.

1.6 The purpose of the policy is to:

- explain the key objectives of the enforcement of planning control in Ards and North Down Borough;
- explain how breaches of planning control will be investigated;
- set out the Council's priorities for investigating breaches of planning control.

2.0 Guiding statement

2.1 Under the provisions of the Planning Act (Northern Ireland) 2011 a council has a general discretion to take enforcement action when it regards it as expedient to do so, having regard to the provisions of the local development plan and any other considerations.

2.2 The Council's approach to planning enforcement is set out in the following statement:

“Ards and North Down Borough Council attaches great importance to the protection and enhancement of the natural and built environments of the borough through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone willful breaches of planning control.

While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the courts.

Every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective planning applications. More serious breaches (including those considered to be willful) are likely to result in formal enforcement action.”

3.0 Objectives for 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 the removal or cessation of unacceptable development
- to take legal action, where necessary, against those who ignore or flout planning legislation

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

4.0 What is a breach of planning control?

4.1 A breach of planning control occurs when building works or a material change of in use of land, or a building, takes place without planning consent. In most cases, it is not an offence to undertake development without consent. The Council has powers to require these breaches to be put right. We can do this by requiring changes to be made to the development, by requiring 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 advertisement consent
- changing the use of land without planning permission

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

- internal works to a non-listed building
- clearing land of overgrowth, bushes or trees (provided these 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', it does not require the Council's express consent
- parking commercial vehicles on the highway
- boundary disputes – these are a civil matter and cannot be controlled by planning legislation

5.0 What happens if we are told about a breach of planning control?

5.1 If someone believes that a breach of planning control has occurred, they should:

- a) contact the Council's Planning Enforcement team (in person, by telephone, in writing or by email planning@ardsandnorthdown.gov.uk, or online via the Planning Portal at <https://planningregister.planningsystemni.gov.uk/enforcement>
- b) give the address of the site or directions (we may need a plan so that we know exactly where the site is)
- c) detail exactly what has happened and when it first occurred
- d) provide the name and address of the landowner or landowners or the person responsible for carrying out the works, if known.

5.2 We don't investigate anonymous complaints. We require the name and contact details of the person reporting a breach of planning control. Their contact information will remain confidential unless we need to use their evidence to support our case, for example, if the matter goes to court. We will ask for their consent to use their evidence.

6.0 How will we respond to the information we are given?

6.1 When processing a complaint about a planning breach, we will:

- a) acknowledge the complaint in writing (or by email) and provide a case reference within five working days of receipt
- b) check the site planning history
- c) visit the site within the requisite time period (priorities are shown in 10.2 below)
- d) establish whether we believe there is a breach of planning control
- e) identify the landowner
- f) identify the person(s) responsible for carrying out the breach (if not the landowner)

- g) issue a Planning Contravention Notice (a formal request for information) if necessary
- h) inform the complainant if there will be any formal action following the investigation (without prejudice to the case) – in many cases we cannot provide information until the case is closed

6.2 After investigation we may decide that there has not been a breach of planning control. When we make this decision, we will close the case immediately. We will not re-open the case unless there is significant new information or a change on site. We may also decide that although there has been a breach, it is not causing enough harm to justify taking further action. We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

6.3 Not every complaint about a breach of planning control justifies further action. We use our judgement based on experience, case law and the likelihood of success.

7.0 Where there is a breach of planning control that needs resolving

7.1 If we decide that there has been a breach of planning control that we are going to pursue further, we will:

- ask for things to be put back the way they should be; or
- without prejudice, invite an application for the unauthorised development if it is considered possible that planning permission might be granted, normally allowing 28 days for its submission; or
- try to resolve the situation through negotiation without allowing the matter to become protracted. This may mean agreeing a compromise or partial change that we are happy with. It is at our discretion to decide whether this would be sufficient.

7.2 When we ask for a retrospective planning application, we will normally wait a reasonable period for this to be submitted and for its determination before taking further enforcement action. Where it appears that the applicant is deliberately delaying progress of the application or there is no prospect of planning permission being granted, we may take immediate enforcement action.

7.3 Under planning legislation, breaches of planning control that have existed for many years can be immune from enforcement action, i.e., are lawful. If, through discussions with the landowner and other interested parties, it appears that the alleged breach might be lawful, then we will normally invite the submission of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD). Such applications are based on fact and the relevant test is 'the balance of probabilities'. Applications can be delayed due to difficulties in obtaining evidence, although the Council will not allow the matter to become protracted.

- 7.4** Until the council is satisfied that the development is lawful, usually by the granting of a CLEUD, the alleged breach of planning control remains open to possible enforcement action.
- 8.0** **If a breach of planning control is not resolved through negotiation, is refused permission (or an appeal against refusal dismissed) or the invitation to submit an application is declined, we will:**
- consider the expediency of taking further enforcement action;
 - take into account the government's advice in the Strategic Planning Policy Statement.
- 8.1** Sometimes we will decide not to remove or change everything about an unauthorised development. There may be certain elements of the development that can be brought under control, such as hours of use or the position of a window, without further delay. If these are the things that are really important, we may agree these but not pursue other less important matters.
- 8.2** If further enforcement action is necessary, the Planning Enforcement team will:
- instruct the Council's Planning solicitors
 - issue an Enforcement Notice or other relevant notice within 28 days of sending those instructions
- 8.3** When someone receives an Enforcement Notice, they may elect to lodge an appeal to the Planning Appeals Commission (PAC) within 28 days. It may be a matter of months before the PAC hears the appeal.
- 8.4** If they don't lodge an appeal, the Notice takes effect 28 days after the date it was issued.
- 8.5** An Enforcement Notice includes requirements for remedying the breach of planning control and provides a period for compliance. Failure to comply with an Enforcement Notice is a criminal offence. We can prosecute someone in the Magistrates' Court for their failure to comply. If convicted, the maximum fine is £100,000.
- 8.6** In an Enforcement Notice there are two separate offences – one as landowner and one as 'the person in control of', or who has an estate in the land to which the notice relates (other than the owner).
- 8.7** The Council has authority to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as 'Discontinuance Orders'). The council will claim the costs of undertaking the works from the landowner by taking the landowner to court to recover this debt immediately. This can be an effective way to secure compliance with an Enforcement Notice, but the Council incurs costs. In most cases the Council prefers to prosecute the landowner to secure their compliance.

8.8 In cases of severe harm, the Council can apply for an injunction in the County or High Court.

9.0 Immediate action

9.1 When we consider there is a clear-cut breach of planning control which is causing immediate harm, we may issue a Stop Notice or Temporary Stop Notice, which should bring about the immediate cessation of certain types of unauthorised works.

9.2 Before taking such action, the Council must carry out a cost/ benefit analysis so that any costs incurred by the developer/operator by having to stop works are taken into account and weighed against the harm being caused.

10.0 The Council's enforcement priorities

10.1 The Council investigates all alleged breaches of planning control. To determine if any action should be taken, we prioritise those breaches which we believe will cause the greatest harm.

10.2 The priority given is determined by the guiding principle that any action in response to a breach of planning control should be proportionate to the harm it causes. The priorities which reflect this principle are:

Priority 1: Work 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, and commencement of building operations without permission;

Priority 2: Unauthorised work/use 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 breach that can be regularised, e.g., domestic sheds, fences, extensions.

10.3 The above list is not exhaustive and is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement officers to prioritise cases taking account of the nature of the breach and the harm being caused or likely to be caused.

10.4 The priority given is reflected in the timescales against which performance is measured. High priority cases have shorter timescales.

10.5 Most breaches of planning control are resolved informally through negotiation

with the owner/occupier or through the submission and consideration of a retrospective planning application.

10.6 The speed at which a breach of planning control can be resolved will vary depending on individual cases and general workloads. Usually, officers will confirm whether there is a breach of planning control and explain the Council's position in writing to the landowner/developer within eight weeks of receiving a complaint.

11.0 Performance targets

11.1 To measure performance, the council adheres as far as possible to performance targets set out below.

11.2 The Council will:

- acknowledge receipt of 75% of complaints within three working days and 95% of complaints within six working days
- site inspect 90% of high priority cases within three working days and 100% within five working days
- site inspect 75% of all other cases within 20 working days and 95% within 30 working days
- discuss and agree a course of action for 95% of high priority cases within two working weeks of receiving the initial complaint
- discuss and agree a course of action for 60% of all other cases within eight working weeks and 95% within 12 working weeks of receiving the initial complaint
- bring 70% of cases to a target conclusion within 39 working weeks (nine months) of receiving a complaint. For the purposes of this strategy 'target conclusion' means case closure, submission of a retrospective planning application, enforcement action or summons to court
- inform complainants of case closure in 75% of cases within two working weeks, and 95% of cases within four working weeks of the Council's decision

11.3 To record statistical information and to measure performance against targets, Priority 1 cases, as referred to in paragraph 10.2 above, and any Contravention of Hazardous Substance Control, are categorised as 'high priority'. Cases with Priority rating of 2 to 4, are categorised as a single priority of 'all others'.

11.4 This simplified method of performance measurement reflects the Council's approach to enforcement, focusing on those breaches of planning control where the greatest harm is caused or is likely to be caused.

12.0 Appeals

12.1 Under the provisions of the Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning Appeals Commission (PAC) against a refusal of planning permission, an Enforcement Notice, a Listed Building Enforcement Notice, Hazardous Substances Contravention Notice and a Section 164 Notice (replacement of trees). The Planning Appeals Commission is responsible for hearing appeals about planning decisions and issuing determinations. There is more information about the planning appeal process on the PAC website: www.pacni.gov.uk

12.2 When an appeal is pending, the decision on whether to proceed with summons action will be based on the merits of the case and degree of harm caused by the development. The notices referred to above shall be of no effect pending the final determination or the withdrawal of an appeal.

13.0 Legislative timescales

13.1 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.

13.2 Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of five years beginning with the date on which the operations were substantially completed.

13.3 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 five years beginning with the date of the breach.

13.4 In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of five years beginning with the date of the breach (10 years for advertisements falling under Class 12 of The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015).

14.0 Communication

14.1 Please note that the Council is unable to provide any specific details of any ongoing and active planning enforcement cases to any interested parties, which includes complainants or site owners/occupiers/operators. This is not to be unhelpful, however, it should be emphasised that any release of information could prejudice the effectiveness of the Council's case should future enforcement action be taken.

- 14.2** The Council, nonetheless, wishes to assure all those involved in the enforcement process that this does not imply inactivity. As outlined previously in this Strategy the Council takes its responsibilities seriously and would reiterate that all cases are thoroughly, professionally and diligently investigated in line with planning legislation.
- 14.3** Under the Council's Planning Scheme of Delegation, all investigation of alleged breaches of planning control and decisions on enforcement are delegated to officers to include:
- Service of an Enforcement Notice;
 - Service of a Listed Building Enforcement Notice;
 - Service of Hazardous Substances Contravention Notice;
 - Service of a Stop Notice;
 - Service of a Temporary Stop Notice;
 - Service of a Breach of Condition Notice;
 - Service of Tree Replanting Notice;
 - Withdrawal/modification of any of the Notices specified above, as appropriate;
 - Service of Warning Letters and Planning Contravention Notices;
 - Determination of applications for Certificates of Lawfulness of Existing Use or Development;
 - Service of a Fixed Penalty Notice, except in circumstances where the person appointed considers the breach of planning control could result in immediate public danger or development which may result in permanent damage to the environment. Examples include: the demolition of, or works to, a listed building; the felling of protected trees; the demolition of a building in a conservation area; or the commencement of building operations without permission;
 - Service of a Discontinuance Order;
 - The instigation of court proceedings e.g., prosecution for non-compliance with a statutory notice or injunction proceedings.
- 14.4** The Planning Committee receive updates on enforcement activity on a quarterly basis.
- 14.5** To contact officers, write to the Planning Enforcement team: the Planning Service, Ards and North Down Borough Council, 2 Church Street, Newtownards, BT23 4AF or send an email: planning@ardsandnorthdown.gov.uk (type 'Enforcement' as the email subject), or report an alleged breach online via <https://planningregister.planningsystemni.gov.uk/enforcement>.

ⁱ 70% within 39 weeks is a statutory performance indicator as set out in The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015