

Enforcement

Practice Note 1

PRACTICE NOTE

01

Introduction to Planning Enforcement

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Department for

Infrastructure

An Roinn

Bonneagair

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Preamble

This Enforcement Practice Note provides an introduction to planning enforcement in Northern Ireland and forms part of a series of new practice notes stemming from the **Planning Act (Northern Ireland) 2011 [the 2011 Act]** and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- relevant legislation;
- procedural guidance;
- definitions; and
- best practice examples / relevant case law.

This practice note is not intended to replace the need for judgement by planning officers and those involved in planning enforcement. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between this Enforcement Practice Note and legislation, the provisions of the legislation will prevail.

It is important to note that councils have the primary responsibility for exercising the function of planning enforcement in their given administrative area.

Please ensure you are considering the most up to date version of this Enforcement Practice Note.

1.0 Introduction

- 1.1 On the 1st April 2015 a two tier planning system was introduced in Northern Ireland. Under these new arrangements, councils¹ in Northern Ireland are responsible for local plan-making, development management and planning enforcement. The Department for Infrastructure² (the Department) has responsibility for determining regionally significant applications and call in applications together with the production of regional planning policy and planning legislation. The Department also has oversight, guidance, audit, governance and performance management functions.
- 1.2 Development management is a key part of an effective planning system in that it regulates the development and use of land, contributing to the objective of furthering sustainable development and promoting and improving well-being³. Essentially, formal planning enforcement is the taking of enforcement action when it is considered that there has been a breach of planning control⁴. On many occasions this may occur after an attempt to resolve the problem by negotiation has not resulted in a satisfactory outcome.

2.0 Enforcement and planning control

- 2.1 Under the 2011 Act, enforcement powers within the Planning (Northern Ireland) Order 1991 have been largely revoked, re-enacted and transferred to councils who have the primary responsibility for exercising the function of planning enforcement in their given administrative area. The Department, however, has retained certain reserve powers e.g. to issue an enforcement notice or serve a stop notice, which it only envisages using in exceptional

¹ "Council", except in Schedule 5 of the Planning Act (Northern Ireland) 2011, means a district council (Part 15 Section 250 of the 2011 Act).

² The Department for Infrastructure came into being on the 8th May 2016 and on the same date the Department of the Environment was dissolved.

³ Refer to section 1 of the 2011 Act and the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015.

⁴ Refer to sections 4.0 and 5.0 (of this document).

circumstances. The Department's reserve powers are not an alternative to the councils much broader enforcement powers.

- 2.2 There is an expectation that each council should develop an enforcement strategy which sets out their own enforcement policies and procedures for their given administrative area. All complaints alleging a breach of planning control must be raised with the appropriate council.

Key Objectives

- 2.3 The key objectives⁵ of the planning system for planning enforcement are:
- to bring unauthorised development under control where necessary;
 - 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.
- 2.4 It is important that councils secure these objectives in order to ensure the credibility and integrity of the planning system is not undermined.
- 2.5 Planning permissions may be granted with or without conditions. There are six tests that should be satisfied when a planning authority is imposing planning conditions on a planning permission⁶. One of the tests is that planning conditions should be enforceable, which places an onus on a planning authority to write and impose conditions so that an identified breach of condition can be subject to successful enforcement action.

⁵ These key objectives are as stated in paragraph 5.57 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015.

⁶ Refer to SPPS September 2015, paragraph 5.65 and Development Management Practice Note 20 Use of Planning Conditions, Section 3.0.

European Convention on Human Rights

2.6 The provisions of the European Convention on Human Rights (ECHR), such as Article 1, Article 8 and Article 14 of the convention and of the First Protocol, are relevant when considering enforcement action.

- 1) Article 1 – Peaceful enjoyment of possessions;
- 2) Article 8 – Right to respect for private and family life; and
- 3) Article 14 – Prohibition of discrimination.

2.7 There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, a council may have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control. A balance has to be struck between the right and the public interest.

3.0 What enforcement powers do councils have?

3.1 The enforcement powers available to a council are contained within the 2011 Act. A 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 considerations⁷.

3.2 A council has the power⁸ and responsibility to:

- serve a completion notice (**section 64**);
- issue and serve a temporary stop notice (**section 135**);
- issue and serve an enforcement notice (**section 138**);

⁷ Includes The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and The Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995 as transposed from EU Directives, namely the EIA Directive 2011/92/EU and Wild Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC respectively.

⁸ Enforcement Practice Notes 2 and 4 provides further information on these enforcement powers and can be found at <http://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-11.htm>

- vary and withdraw an enforcement notice (**section 141**);
- serve a stop notice, which can prohibit, almost immediately, any activity to which the related enforcement notice refers (**section 150**);
- serve a breach of condition notice (**section 152**);
- serve a fixed penalty notice following non compliance with an enforcement notice or breach of condition notice (**sections 153 & 154**);
- apply to the courts for an injunction to restrain the breach (**section 156**);
- apply to the courts for an injunction to restrain any actual or apprehended breach of planning control; any actual or apprehended contravention of sections 85(1) or (5) regarding listed buildings, 126 or 127 regarding trees; or, any actual or apprehended contravention of hazardous substances control (section 156)
- apply to the courts for an injunction to enforce a restriction or requirement imposed under a planning agreement (**section 76**);
- issue and serve a listed building enforcement notice (**section 157**);
- vary and withdraw a listed building enforcement notice (**section 141 as applied by section 157 (6)**)
- issue and serve a conservation area enforcement notice (**section 157 (applied by section 105(6)) and modified by Regulation 15 and Schedule 2 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**);
- vary and withdraw a conservation area enforcement notice (**section 141 as applied by section 157 (6) (as applied by section 105(6)) and modified by Regulation 15 and Schedule 2 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**).
- issue or vary a hazardous substances contravention notice for a contravention of hazardous substances control (**sections 162 & 163**);
- enforce measures in respect of the protection of trees that are subject to a Tree Preservation Order (i.e. to replant a tree or trees in relation to the Tree Preservation Order) (**section 164**);

- serve a notice to replant a tree or trees of an appropriate size and species at the same place in conservation areas (**section 167**);
- deal with the enforcement of advertisement control (**section 175**);
- issue and serve a submission of planning application notice (**section 43**);
- issue a planning contravention notice (**section 133**);
- request the submission of certain information as to estates in land i.e. regarding the ownership or use of premises (**section 240**);
- enter any land for enforcement purposes (**sections 176, 177 & 178**);
- enter land, following the landowner's non-compliance with an enforcement notice to carry out any remedial work required by the notice. The authority may also recover from the landowner any expenses reasonably incurred by it in that behalf (**section 146**);
- enter land, carry out and recover any costs for work required by a listed building enforcement notice (**section 146 as applied by section 157(6)**);
- carry out and recover the costs of urgent works to a listed building or to a building which the Department for Communities has directed that this section shall apply e.g. buildings in a conservation area (**section 161 (1) and (2)**);
- enter onto land, carry out and recover the costs of works required by a hazardous substances contravention notice (**section 146 as modified by Regulation 22 and Part 2 and 3 of Schedule 3 of the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015**);
- enter onto land, replant tree / trees subject to a Tree Preservation Order and recover any costs (**section 166**);
- enter onto land, replant tree / trees in a conservation area and recover costs (**section 164 and 166 by virtue of reference to section 167 (3)**); and
- enter land and carry out any works required by a Section 73 order (i.e. orders requiring the discontinuance of use or alteration or removal of building or works) and recover costs (**section 168 (5)**).

4.0 What constitutes a breach of planning control?

4.1 **Section 131 (1)** of the 2011 Act states that;

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

constitutes a breach of planning control.

5.0 What constitutes formal enforcement action?

5.1 **Section 131(2) of the 2011 Act** states that:

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

constitutes taking enforcement action.

6.0 Offences under planning law

6.1 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 or a breach of condition notice is in effect and the requirements of the notice have not been complied with, the owner of the land shall be guilty of an offence. Additionally, a person carrying on an activity prevented by the notice shall be guilty of an offence⁹.

⁹ These are known as indirect offences are considered further in Enforcement Practice Notes 2 and 4.

6.2 It is a criminal offence¹⁰ to carry out any of the following:

- carrying out of almost any works, including demolition, to a listed building without having obtained listed building consent
- failing to comply with any conditions attached to a listed building consent
- demolition of a building in a conservation area without having obtained conservation area consent
- failing to comply with any conditions attached to a conservation area consent
- contravention of a tree preservation order by undertaking works likely to destroy a tree / trees
- undertaking works likely to destroy a tree / trees in a conservation area where no tree preservation order is in place
- contravention of hazardous substances control
- displaying of advertisements without consent.

7.0 Assessing breaches of planning control

7.1 There are a number of issues that are relevant in considering whether formal enforcement action is a remedy for a breach of planning control. It is anticipated that councils will detail these in their own individual Enforcement Strategies and may include matters such as: whether the breach of planning control would be clearly contrary to planning policy or unacceptably affect public amenity (including road safety and nature conservation issues) or the existing use of land and buildings meriting protection in the public interest; the extent of the breach; the willingness of the offender(s) to remedy the breach of control voluntarily or through negotiations; and the statutory time limits for taking enforcement.

¹⁰ These are known as direct offences and are considered further in Enforcement Practice Notes 2 and 4.

8.0 Concept of Expediency

8.1 Enforcement action against a breach of planning control may be taken when a council regards it as expedient to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. It would be appropriate for councils, in determining what (if any) enforcement action is to be taken, to give priority to those breaches where in a council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate to the breach¹¹.

9.0 Significant Harm

9.1 Where a breach of planning control is likely to cause significant harm to the environment and / or public amenity, the appropriate council should consider taking immediate enforcement action and to remedy any adverse impacts on the environment and / or public amenity.

9.2 There are certain types of development such as mineral workings and waste disposal activities, which by their nature, have the potential to significantly impact on the natural environment. In considering the impact of such development should it be unauthorised (i.e. considered to be a breach of planning control through the enforcement process), a council must ensure it complies with Environmental Impact Assessment (EIA) and Habitats Regulations¹².

¹¹ Councils must comply with the requirements of EU Directives and their transposition into Northern Ireland law (The Planning (Environmental Assessment) Regulations (Northern Ireland) 2015 and the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995).

¹² The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and The Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995 as transposed from EU Directives, namely the EIA Directive 2011/92/EU and Wild Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC respectively.

- 9.3 The integrity of the development management process depends upon the readiness of a council to take effective enforcement action when and where it is appropriate to do so.



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