

Overview of Planning Enforcement Responsibilities

October 2016



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

1.0 Introduction

- 1.1 Planning permission is required for all development that takes place, although some minor works may be granted planning permission by virtue of a development order (Planning (General Permitted Development) Order (Northern Ireland) 2015), known as permitted development. Sometimes, however, developers or householders undertake works without planning permission (commonly referred to as ‘unauthorised development’) or fail to keep to the permission they have been granted i.e. a breach of planning control.
- 1.2 A fundamental element of the planning system is the range of powers available to councils to enforce planning control. However, such powers are only useful if they are used effectively by planning authorities. Effective enforcement is therefore essential to ensure that the credibility and integrity of the planning system is not undermined.
- 1.3 This document provides an overview of planning enforcement responsibilities in Northern Ireland. It seeks to inform users of the planning system, that, following the transfer of most planning functions to councils on 1st April 2015, a council¹ has the primary responsibility for planning enforcement in its given administrative area.
- 1.4 The Department² has also produced a number of Enforcement Practice Notes³ (EPNs), which are primarily designed as a tool to assist councils in their planning enforcement role.

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 Department means the Department for Infrastructure unless otherwise stated.

³ Practice Notes are available via the Northern Ireland Planning Portal at www.planningni.gov.uk.

2.0 Legislative context

2.1 **The Planning Act (Northern Ireland) 2011**, [the 2011 Act], provides planning enforcement powers⁴ which are set out in **Part 5 Enforcement**, whereby if a council considers that there has been a breach of planning control it may take enforcement action, if it is expedient to do so, having regard to the provisions of the local development plan and any other material considerations. The powers to take enforcement action are at the discretion of a council⁵. Other associated enforcement provisions are included in subordinate planning legislation⁶.

2.2 The 2011 Act provides reserve enforcement powers that allow the Department (and the Department for Communities⁷) to take enforcement action and these powers are also set out in Part 5 Enforcement. The reserve powers to take enforcement action at the discretion of the Department⁸ are only intended to be exercised in exceptional circumstances⁹.

Time Limits

2.3 Under **section 132** of the 2011 Act there is a standardised period of 5 years within which enforcement action must be commenced. In relation to 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, the 5 years begins on the date when such operations were substantially completed. In relation to a breach of planning control consisting in the

⁴ Refer to Annex A to see list of the planning enforcement powers of a council.

⁵ Refer to section 4.0 Unauthorised development and European Union legislation (of this document).

⁶ The 2011 Act and subordinate planning legislation are available via the Planning Portal at www.planningni.gov.uk.

⁷ The Department for Communities has the reserve power to take enforcement action in relation to a listed building, i.e. issuing and serving a listed building enforcement notice under The Department (Transfer of Functions) Order (Northern Ireland) 2016.

⁸ Refer to section 4.0 Unauthorised development and European Union legislation (of this document).

⁹ Refer to section 8.0 The Department's reserve powers to take enforcement action (of this document).

change of use of any building to use as a single dwelling house, the 5 years begins on the date of the breach. In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.

3.0 Policy context: A Strategic Planning Policy Statement (SPPS)

3.1 The Department's publication 'A Strategic Planning Policy Statement' (SPPS)¹⁰ is a statement of the Department's policy on important planning matters that should be addressed across Northern Ireland. The provisions of the SPPS must be taken into account in the exercise of planning functions. It contains a section on Planning Enforcement, which includes the key objectives of the planning system for planning enforcement¹¹.

3.2 The SPPS supersedes previous Departmental policy and associated documents relating to planning enforcement¹².

4.0 Unauthorised development and European Union legislation

4.1 EU law confers rights and obligations on the authorities in each member country, as well as individuals and businesses. The authorities in each member state are responsible for implementing EU legislation in national law and enforcing it correctly.

¹⁰ The SPPS is available via the Planning Portal at www.planningni.gov.uk.

¹¹ Refer to the SPPS, paragraphs 5.54 to 5.58.

¹² Planning Policy Statement 9 The Enforcement of Planning Control was cancelled by the SPPS. Information Leaflet 10 A Guide to Planning Enforcement in Northern Ireland (Sept 2012) is no longer relevant. The Department's Enforcement Strategy (October 2009) is no longer relevant.

4.2 There are certain types of developments such as mineral workings and waste disposal activities which, by their very nature, have the potential to significantly impact on the natural environment. In considering the impact of these activities, through the planning application and / or enforcement process, a planning authority must comply with the relevant EU Environmental Directives and associated Regulations including:

- **The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015** (the EIA Regulations)¹³ prohibits a planning authority from granting any planning permission for EIA development or any subsequent consent without first considering environmental information; and
- **The Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995** (the Habitats Regulations)¹⁴ prohibit a planning authority from giving any consent or approval without first making an appropriate assessment and in the light of the assessment determining that it will not adversely affect the integrity of European designated sites (Natura 2000 sites) i.e. Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

4.3 Part 8 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 contains provisions regarding unauthorised development with respect to EIA development.

¹³ Transposed into Northern Ireland planning law from EIA Directive 2011/92/EU.

¹⁴ Transposed into Northern Ireland planning law from the Wild Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC.

5.0 Planning Enforcement Strategy by an individual council

5.1 There is an expectation that each council should develop and publish a planning enforcement strategy setting out how it will exercise its planning enforcement responsibilities and include details of the following matters¹⁵:

- how and to whom a complaint about an alleged breach of planning of planning control should be made;
- how the council will deal with alleged breaches of planning control; and
- the timescales for dealing with different types of breaches of planning control depending upon their severity.

6.0 Making a complaint about an alleged breach of planning control

6.1 All complaints alleging a breach of planning control must be directed to the appropriate council¹⁶ in whose district council area the breach of planning control is alleged to have taken place.

7.0 Planning permission granted by the Department

7.1 Councils have the primary responsibility for enforcement regarding an alleged breach of planning control in relation to planning permission granted by the Department, even where the Department had granted planning permission before the transfer of planning powers. The Department's reserve

¹⁵ This list is not exhaustive and will be at the discretion of each council to develop.

¹⁶ A list of councils and links to their websites having contact details can be found on the Planning Portal homepage at www.planningni.gov.uk.

powers to take enforcement action apply equally to such a planning permission where it is considered appropriate to do so, but they are only intended to be exercised in exceptional circumstances.

8.0 The Department's reserve powers to take enforcement action

- 8.1 The primary responsibility for taking enforcement action lies with the council for its given administrative area. The reserve powers to take enforcement action¹⁷ at the discretion of the Department are only intended to be exercised in exceptional circumstances. The Department may take enforcement action where it believes a council has failed to issue enforcement or stop notices, i.e. where a council has failed to discharge its responsibility for taking enforcement action set out in planning legislation. This does not mean, however, that the Department will take enforcement action simply because a council decides not to. The Department's reserve powers are not an alternative to the councils much broader enforcement powers. A council must ensure that it has discharged its planning enforcement responsibilities correctly.
- 8.2 In the event that the Department considers using its reserve powers it must not serve a completion notice, issue an enforcement notice or serve a stop notice without consulting the appropriate council.
- 8.3 Under **section 185** of the 2011 Act (Compensation for loss due to stop notice), where a stop notice has been served by the Department under section 151 (Service of stop notices by Department), claims for compensation under section 185 shall be made to and paid by the council.

¹⁷ Refer to Annex B to see list of the Department's reserve powers to take enforcement action.

9.0 Review

- 9.1 This Overview of Planning Enforcement is subject to review, updating and re-publishing by the Department as, and when, required.

Annex A

A council has the primary enforcement power¹⁸ 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)**;
- 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 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 (as applied by section 105(6)) and modified by Regulation 15 and Schedule 2 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015)**;

¹⁸ EPN 2 and 4 provides further information on enforcement powers.

- 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**);
- serve a planning contravention notice (**section 133**);
- request the submission of certain information as to estates in land e.g. 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 as applied by 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)**).

Annex B

The Department for Infrastructure has reserve powers to take enforcement action, which are only intended to be exercised in exceptional circumstances, to:

- serve a completion notice (**Section 66**);
- apply to the courts for an injunction to enforce a restriction or requirement imposed under a planning agreement (**section 76**);
- issue and serve an enforcement notice (**Section 139**);
- execute works and recover costs of works required by enforcement notice (**Section 139(5) and 146**);
- vary or withdraw an enforcement notice issued by the Department (**Section 142**);
- serve a stop notice, which can prohibit, almost immediately, any activity to which the related enforcement notice refers (**Section 151**);
- issue and serve a conservation area enforcement notice (**Section 158 as applied by section 105(6) as modified by Regulation 15 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**);
- execute works and recover costs of works required by a conservation area enforcement notice (**section 146 as applied by section 158(4) (as applied by section 105(6)) and as modified by Regulation 15 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**);
- vary or withdraw a conservation area enforcement notice issued by the Department (**section 142 as applied by Section 158(4) as modified by Regulation 15 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**);
- rights to enter land for enforcement purposes without warrant (**section 176 and 178**) and under warrant (**section 177 and 178**);
- serve a notice to an occupier of premises requiring the submission of certain information, including details of ownership and use of premises (**Section 240**);
- request the submission of certain information as to estates in crown land from an appropriate authority (**Section 241**).



Department for
Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Planning Guidance Team

Planning Policy Division

Clarence Court

10-18 Adelaide St

Belfast

BT2 8GB

Tel: 0300 200 7830

Email: planning@infrastructure-ni.gov.uk



**INVESTORS
IN PEOPLE**