



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Fermanagh and Omagh District Council Enforcement Strategy

June 2015

1.0 Introduction

1.1 Fermanagh and Omagh District 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, the District Council provides a planning enforcement service which investigates complaints and provides expert advice on enforcement matters.

1.2 The Council's function as the planning authority for Fermanagh and Omagh is set out in The Planning Act (Northern Ireland) 2011. The Council's Planning Department 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) Carrying out of 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.

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 at the Council;
- Explain how breaches of planning control will be investigated;
- Set out priorities we have for investigating breaches of planning control.

2.0 Guiding Statement

2.1 Under the provisions of The Planning Act (Northern Ireland) 2011 the 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:

“Fermanagh Omagh District Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful 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 wilful) 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, where necessary, the removal or cessation of unacceptable development; and
- To take legal action, where necessary, against those who ignore or flout planning legislation.

3.2 The Council is committed to securing these objectives in order 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 use of land or a building takes place without planning consent. In most cases, it is not an offence to undertake development without consent, but 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 the benefit of 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 tree (provided they 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', i.e. where it does not require the consent of the Council;
- 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) Notify the Council's Planning Enforcement Team (either in writing, by telephone, email or in person);
- 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(s) and / or the person responsible for carrying out the works, if known.

5.2 They will be asked to give their name and contact details. We will not investigate anonymous complaints. These details will remain confidential unless we need to use their evidence to support our case, for example, if the matter went to court; however, we would obtain consent to do so.

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

6.1 We will handle the case in the following way:

- a) Acknowledge the complaint in writing (or by email) and provide a case reference, the name of the investigating officer and level of priority within 5 working days of receipt;

- b) Check the site planning history;
- c) Visit the site within the requisite time period (see priorities below);
- d) Establish whether or not we believe there is a breach of planning control;
- e) Find out the details of the landowner;
- f) Establish the identity of 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) Update the complainant at key stages in the investigation.

6.2 After investigation we may decide that there has not been a breach of planning control. If that is what we decide then we will close the case at that point. We will not re-open the case unless there is a significant new piece of information or 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 must 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 then in the first instance 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 giving 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 Where a retrospective planning application has been asked for, we will normally wait a reasonable period for it to be submitted and for its determination before taking further enforcement action. However, where it appears that the progress of the application is being deliberately held up by the applicant or there is no prospect of planning permission being granted, enforcement action may be initiated without delay.

7.3 Under the planning legislation, breaches of planning control that have been in existence 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. 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, usually by the granting of a Certificate of Lawfulness, that the development is lawful, the alleged breach of planning control remains open to the possibility of enforcement action being taken.
- 8.0 If a breach of planning control is not resolved through negotiation, is refused permission or the invitation to submit an application is declined, the Council will initiate formal action through the service of an enforcement notice.**
- 8.1 If further enforcement action is necessary:
The Enforcement Team will draft instructions to the Council's solicitors;
Aim to issue an Enforcement Notice or other relevant notice within 28 days of sending those instructions.
- 8.2 The recipient of an Enforcement Notice has the right to lodge an appeal to the Planning Appeals Commission within 28 days following receipt of the notice. It may be a matter of months before the appeal can be heard.
- 8.3 If no appeal is lodged, the Notice takes effect of 28 days following its date of issue.
- 8.4 The Enforcement Notice includes requirements for remedying the breach of planning control and a period for compliance. Failure to comply with the requirements of an Enforcement 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).
- 8.5 It is important to note that in relation to Enforcement Notices there are two separate offences – one as owner of the land, and second as 'the person in control' of, or who has an estate in the land to which the notice relates (other than the owner).
- 8.6 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 so in most cases the preferred method to secure compliance is to prosecute the landowner.
- 8.7 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 the Council considers is causing serious harm to public amenity, the Council will normally take vigorous enforcement action. This may include the service of a Stop Notice or Temporary Stop Notice with, or on the foot of, an enforcement notice, which should bring about the immediate cessation of certain types of unauthorised works.

10.0 The Council's Enforcement Priorities

- 10.1 The Council will investigate all alleged breaches of planning control. 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.
- 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 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, 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/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.

- 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 i.e. high priority cases have shorter timescales.
- 10.5 It is important to note that the vast majority of 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 the complexity of the individual case and general workloads. However, officers will, in general, aim to confirm whether there is a breach of

planning control and set out the Council's position in writing to the land owner/developer and the complainant within eight weeks of a complaint being received.

11.0 Performance Targets

11.1 For the purposes of measuring performance, the Council will adhere as far as possible to the range of Performance Targets as set out below.

11.2 The Council will aim to:-

- acknowledge receipt of 75% of complaints within 3 working days and 95% of complaints within 6 working days.
- site inspect 90% of High Priority cases within 3 working days and 100% within 5 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 2 working weeks of receipt of the initial complaint.
- discuss and agree a course of action for 60% of all other cases within 8 working weeks and 95% within 12 working weeks of receipt of the initial complaint.
- bring 70% of cases to a target conclusion within 39 working weeks (9 months) of receipt of complaint. For the purposes of this strategy 'target conclusion' means case closure, submission of a retrospective planning application, enforcement action or summons to court.
- notify complainants of case closure in 75% of cases within 2 working weeks, and 95% of cases within 4 working weeks of the Group Decision.

11.3 This simplified method of performance measurement reflects the Council's approach to enforcement in that it focuses on those breaches of planning control where the greatest harm is being 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 an Enforcement Notice, a Listed Building Enforcement Notice, Hazardous Substances Contravention Notice and a Section 164 Notice (replacement of trees). The timescale for hearing an appeal and issuing a determination is a matter for the Planning Appeals Commission. Additional information on the

Planning Appeals Process can be obtained from the PAC website www.pacni.gov.uk.

- 12.2 When an appeal is pending, the decision on whether or not 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 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 5 years beginning with the date on which the operations were substantially completed.
- 13.3 Where there has been a breach of planning control consisting in 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.
- 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 5 years beginning with the date of the breach.

14.0 Communication

- 14.1 Councillors are given a monthly update on enforcement which will include numbers of cases opened and closed and details of any Notices served. We will provide updates on particular cases if we are asked but we will not provide a routine commentary on progress of individual cases.
- 14.2 Any queries on specific cases should be directed to the Planning Enforcement Team.