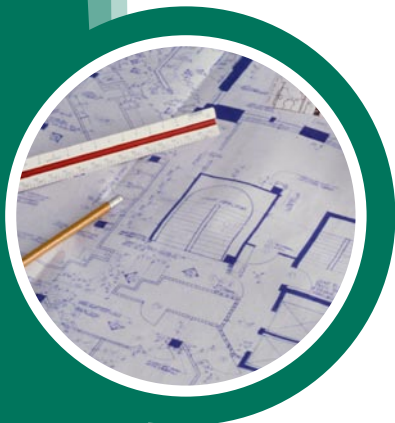


10

GWYNEDD PLANNING ENFORCEMENT POLICY



1. INTRODUCTION

This enforcement policy addresses the following issues:

- a) The main planning enforcement policies applicable;
- b) The type and incidence of planning enforcement problems encountered.

The enforcement policy has been produced having regard to the Model Planning Enforcement Standards For Wales (February 2005), produced by the Planning Officers Society (Wales). Appendix I to this enforcement policy sets out the Council's prioritisation of cases, Appendix II provides information notes on planning enforcement, Appendix III explains how the Council deals with complaints and Appendix IV provides information on performance indicators and targets.

2. THE COUNCIL'S APPROACH TO PLANNING ENFORCEMENT

The integrity of the development control process depends on our readiness to take enforcement action when it is considered expedient to do so. We accept that quick initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and more difficult to stop.

We recognise the importance of establishing effective controls over unauthorised development. In accordance with the advice contained in Planning Guidance (Wales) Technical Advice Note (Wales) 9 Enforcement of Planning Control (TAN 9) and Welsh Office Circular 24/97, the making of a Planning Enforcement Policy is essential to promote and maintain effective and efficient working practices in the enforcement of planning control.

We will not condone wilful breaches of planning law but we will exercise our discretion about taking enforcement action, and action will be taken if it is considered expedient to do so.

3. GENERAL POLICIES ON ENFORCING PLANNING CONTROL

a) Main Enforcement Policy Statement

POLICY PE I

- i) We recognise the importance of establishing effective controls over unauthorised development, to assist in the preservation and enhancement of the qualities of both the built and natural environment, and to protect public amenities.**
- ii) Reasonable resources will be committed to ensure effective implementation and maintenance of planning enforcement control.**

iii) **As local planning authority, the Council will exercise all reasonable powers granted under the provisions of the Town and Country Planning Act 1990, including all other subordinate legislation, to control unauthorised development effectively. In considering whether it is expedient to start enforcement action, we will take account of local planning policies, national planning guidance, the provisions of the Human Rights Act 1998 and any other material planning considerations.**

b) Initiating Enforcement Action

In considering enforcement action, we will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings.

We will attempt to persuade an owner or occupier of land to remedy voluntarily any harmful effects of unauthorised development. We will not however, allow discussions to hamper or delay any necessary formal enforcement action to make the development more acceptable on planning grounds, or to make it stop.

POLICY PE2

Planning enforcement action will be taken against any unauthorised development which unacceptably affects public amenity or causes harm to land or buildings.

c) Minor Or Technical Breaches Of Planning Control

Enforcement action must always be commensurate with the breach of planning control to which it relates. Formal enforcement action will not normally be taken against trivial or technical breaches of planning control that cause no harm to amenity.

POLICY PE3

Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm.

d) Slight Or Minor Variations To Works Carried Out Under 'Permitted Development' Rights

Development may be carried out under certain permitted development rights without the need for any specific permission from the Council. Where a specified limitation has been exceeded, we will not necessarily take enforcement action solely to counteract a slight variation over what would be permitted, unless the excess causes unacceptable harm to public amenity.

POLICY PE4

Formal enforcement proceedings will not normally be taken where development has been carried out and only a slight variation in excess of the specified permitted development limitations has occurred with no harm being caused to amenity.

e) Granting Unconditional Planning Permission For Unauthorised Development

Where development has been, or is in the process of being, carried out without planning permission, an investigation and assessment will be made to establish if it is likely that unconditional planning permission could be granted. If planning permission is likely to be granted, we will invite the submission of a retrospective planning application.

Where a retrospective planning application has been asked for but not submitted within a reasonable time, a planning contravention notice may be served as part of the investigation. Where there is no specific planning objection to the development, further enforcement action will not normally be considered expedient. However, in such cases the site owner and or occupier will be informed of the fact that failure to obtain the necessary planning consent will be declared by the Council, and may well cause problems with any future sale of the property.

POLICY PE5

Where development has been carried out without planning permission and unconditional planning permission could be granted, but no planning application has been submitted, a Planning Contravention Notice may be served to collect further formal information about the breach of planning control, in order to fully assess the implications of having carried out the development without planning permission.

f) Imposition Of Conditions To Make Development More Acceptable

Where development has been carried out without planning permission and the development could only be made acceptable by imposing conditions to overcome planning objections, we will ask for a retrospective application for planning permission to be submitted.

If after a reasonable period no application has been submitted, an Enforcement Notice may be issued. The notice will have the effect of granting planning permission subject to full compliance with those steps specified in the notice which will address any harm caused by the development.

POLICY PE6

Where development has been carried out without planning permission and it is considered permission could be granted subject to conditions, an enforcement notice may be served. This in effect would grant planning permission subject to conditions or the implementation of works to make the development acceptable.

g) Non Compliance With Planning Conditions

Where planning permission has been granted for development and conditions have been imposed that are designed to meet planning objectives and those conditions have not been complied with, consideration will be given as to whether it is appropriate to issue an Enforcement Notice or a Breach of Condition Notice.

There is no right of appeal to the Welsh Assembly Government against a Breach of Condition Notice and therefore, unlike an Enforcement Notice, its effect cannot be suspended by an appeal. The failure to comply with a Breach of Condition Notice or an Enforcement Notice is a criminal offence which is liable to prosecution in the Magistrates Court.

There is a right of appeal to the Welsh Assembly Government against the serving of an Enforcement Notice. The advantage of serving an Enforcement Notice is that the Notice can be corrected by the Planning Inspectorate on behalf of the Assembly if it contains some defect. Also, where an Enforcement Notice has not been complied with, the Council can go onto the land and carry out any works required by the Notice.

POLICY PE7

Where conditional planning permission has been granted for development but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice may be served, depending upon the circumstances of each case.

4. POLICY ON UNAUTHORISED BUILDING OR OTHER OPERATIONAL DEVELOPMENT

Planning permission will normally be needed for building or other physical works (“operational development”), unless the works are permitted development under the terms of the Town and Country Planning (General Permitted Development) Order 1995.

POLICY PE8

Where building or other operational development has been carried out without planning permission, formal enforcement proceedings will be considered in accordance with the general enforcement policies PE1 to PE7.

5. POLICY ON UNAUTHORISED CHANGES OF USE**a) Changes of use in General**

Certain changes of use are allowed to take place without the need for planning permission from the Council. However, where planning permission is needed and planning permission has not been granted, a breach of planning control may have taken place.

POLICY PE9

Where a material change of use has occurred which requires planning permission, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

6. POLICY ON UNAUTHORISED WORKS BY BUSINESSES**a) Unauthorised Development is Unacceptable on Site but Re-Location feasible:**

It is not the Council's responsibility to find alternative sites for unauthorised uses. However, if a suitable site is known it may be suggested and a reasonable time limit may be imposed for relocation. If a timetable for relocation is ignored an Enforcement Notice may be served with a compliance period which will allow relocation to take place within a reasonable time.

POLICY PE10

Where development has been carried out without planning permission and it is unacceptable on the site, an alternative acceptable site will be suggested if available, with a timetable to allow for re-location. If the timetable is ignored, an Enforcement Notice may be issued giving a reasonable time to allow re-location to take place.

b) Unauthorised Development is Unacceptable and Re-Location Is not feasible

Where unacceptable development has been carried out without planning permission and there is no realistic prospect of it being relocated to a more suitable site, we will not allow the operation or activity to continue in its present form.

Where there are exceptional circumstances, we may allow the unauthorised use to continue or to be reduced to an acceptable level. If agreement cannot be reached an Enforcement Notice may be issued allowing a realistic time for the unauthorised development to stop, or its scale to be reduced.

POLICY PE11

Where unacceptable development has been carried out without planning permission and there is no prospect of re-location to an acceptable alternative site, we may suggest how long we are prepared to allow the unauthorised development to continue. Where the activity continues after this period, an Enforcement Notice may be issued which will allow a realistic time for the activity to stop, or its scale to be reduced to an acceptable level.

c) Unauthorised Development Is Unacceptable and Immediate Remedial Action is Required

Where unauthorised development has been carried out without planning permission and we consider that serious harm is occurring, vigorous enforcement action to include, if appropriate, the service of a Temporary Stop Notice, Stop Notice or enforcement injunction, may be taken.

POLICY PE12

Where unauthorised development causes serious harm to a public interest, immediate enforcement action to include the service of a Stop Notice or an Injunction, if considered necessary will be taken.

d) Acceptable Unauthorised Development by Small Businesses

Where development has been carried out by a small business without planning permission, and it was carried out in good faith believing no planning permission was needed, we will assess whether the business continuation of use of the site at its current level of activity, or perhaps less intensively would comply with the relevant planning policies and other material planning considerations. If the development is considered acceptable we will request the submission of a retrospective planning application in order to regularise matters.

POLICY PE13

Where development has been carried out by a small business without planning permission, and the development complies with planning policies and any other material planning considerations at its existing level or less intensively, we will request the submission of a retrospective planning application.

e) Unacceptable Unauthorised Development by Small Businesses

If, following informal discussions (including the possibility of relocation), a satisfactory compromise cannot be reached, and formal enforcement action is considered essential, we will make clear our intentions to act.

When an Enforcement Notice has been served and serious attempts have taken place to comply with the requirements of the Enforcement Notice more time may be allowed for the small business to relocate or stop operating from the site.

POLICY PE14

If unauthorised activity by a small business cannot be allowed to continue, an Enforcement Notice may be issued giving a realistic time to stop the activity and allow for re-location if necessary. Where it is clear to us that serious attempts are being made to comply with the requirements of the Enforcement Notice, consideration may be given to extending the time for compliance.

7. POLICY ON UNAUTHORISED WORKS TO LISTED BUILDINGS AND NEGLECT/LACK OF MAINTENANCE OF LISTED BUILDINGS.

Works, to a listed building normally need Listed Building Consent, unless the works are repair and maintenance works undertaken on a like for like basis. Where works have been carried out without consent an offence is likely to have been committed. Subject to the extent and nature of the works, consideration will be given to whether to start criminal proceedings and/or serve a Listed Building Enforcement Notice to make sure that appropriate remedial works are undertaken. An application for listed building consent (and planning permission) will be requested if the unauthorised works are considered acceptable.

Furthermore, neglect and lack of maintenance of listed buildings can result in the buildings falling into disrepair to the extent that there is an adverse impact on the intrinsic fabric and integrity of the building. In these instances consideration will be given to serving urgent works notices and/or repairs notices under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In considering what action to take if works are carried out to a listed building without consent, we will have regard to the advice contained in Welsh Office Circular 61/96 and 1/98 -Planning and the Historic Environment.

POLICY PE15

Where works without consent have been carried out to a listed building and those materially affect its character and appearance either internally or externally, consideration will be given to issuing a Listed Building Enforcement Notice in accordance with policies PE1 and PE7 and/or starting criminal proceedings if no application for listed building consent is submitted.

POLICY PE16

Where listed buildings are neglected and are allowed to go into disrepair, consideration will be given to serving an Urgent Works Notice and/or Repairs Notice.

8. POLICY ON UNAUTHORISED DEVELOPMENT IN CONSERVATION AREAS

The Council has a statutory duty to make sure that any development that takes place within a conservation area preserves or enhances the character and appearance of the area. Where development takes place without planning permission and or conservation area consent, and we believe that it seriously affects the character and appearance of a conservation area, remedial steps will need to be taken either by negotiation or by formal enforcement action. If the unauthorised development preserves or enhances the character of the conservation, the Council will request the submission of a retrospective planning application.

POLICY PE17

Where development has been carried out in a conservation area without planning permission or conservation area consent, and the development does not preserve or enhance the character and appearance of the area, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

9. POLICY ON DISPLAY OF ILLEGAL ADVERTISEMENTS

The Town and Country Planning (Control of Advertisements) Regulations 1992

allows the display of some classes of advertisements and signs without the need to get permission from the Council.

In many instances, however, express consent is needed to display advertisements. Where an advertisement is being displayed without the appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to amenity or public safety we will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time, we may remove the advertisement and/or formal prosecution proceedings will be considered.

In considering what action to take to secure the removal of any advertisement, we will have regard to the advice contained in Technical Advice Note (Wales) 7 Outdoor Advertisement Control.

POLICY PE18

Where an advertisement has been displayed without express consent causes serious harm to amenity or public safety the Council will ask for it to be removed. Where the advertisement continues to be displayed, we may remove the advertisement and/or prosecution proceedings may be commenced.

Fly posting on buildings, street furniture and other structures and land usually has a visually detrimental effect. Fly posting is a criminal offence although it is recognised that controls to prohibit fly-posting are difficult to enforce, especially when fly posting is carried out as a clandestine activity, often late at night. Action can be taken either by removing the poster or by bringing prosecution proceedings against anyone responsible for its display. This can include prosecuting the owners of any venues for an event.

POLICY PE19

Where resources permit, all posters illegally displayed will be removed. Where fly-posting has been carried out on sensitive sites and it causes serious harm to the character or amenity of the area, prosecution proceedings may be commenced against all those responsible for its display.

Advertisements displayed on listed buildings may affect the character and appearance of the building and therefore may require listed building consent. Where an advertisement is displayed on a listed building without Listed Building Consent, consideration will be given to taking proceedings to secure its removal. This would be through the serving of a Listed Building Enforcement Notice or prosecution proceedings.

POLICY PE20

Where an advertisement has been displayed on a listed building without consent, and that advertisement adversely affects the character and appearance of the building or compromises its setting, the Council will ask for it to be removed. Where the advertisement continues to be displayed, action will be taken to secure its removal.

Where a retrospective application for express consent for an advertisement has been refused, the applicant will be given time to secure its removal. If the advertisement continues to be displayed after this time, proceedings may be started even if an appeal has been lodged.

POLICY PE21

Where a retrospective application for express consent has been refused, the applicant will be asked to remove the advertisement within a specified time. If the advertisement continues to be displayed, proceedings may be commenced even if an appeal has been lodged against the decision to refuse consent.

10. POLICY ON TREE PRESERVATION ORDERS AND TREES IN CONSERVATION AREAS

The Council can make an order in respect of individual trees, groups of trees or woodlands where it is considered expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. A Tree Preservation Order prohibits the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees without the formal consent of the Council (subject to any exemptions specified in the Act). The contravention of a Tree Preservation Order is an Offence which is liable to prosecution in the Magistrates Court. In addition to prosecution powers, the Council also has the power to serve a notice to require the planting of replacement trees. The protection given by tree preservation orders is in the main also given to any tree in a conservation area and the Council has the same enforcement powers. In dealing with such cases the Council will need to assess the impact of such works on the health and amenity value of the tree and consider whether it is expedient to prosecute and if there is sufficient evidence to prosecute. In cases where trees have been felled consideration will be given to serving a notice for the planting of a replacement tree(s).

POLICY PE22

In cases where unauthorised works are undertaken to trees covered by tree preservation orders and trees in conservation areas, the Council will

need to consider the expediency and evidence to instigate prosecution proceedings, and where trees have been felled the Council will in addition also need to consider serving a notice requiring the planting of replacement tree(s).

11. POLICY ON DERELICT OR UNTIDY LAND OR BUILDINGS

The condition of certain buildings or land can cause harm to the visual amenity of an area. Where the condition of land or buildings is causing significant harm to public amenity, consideration will be given to serving a notice (“untidy land notice”) under Section 215 of the Town and Country Planning Act 1990. The Notice will specify measures to improve the appearance of the land or buildings. If those measures are not taken within the specified time an offence has been committed. We can instigate prosecution proceedings and/or enter the land and carry out the works.

POLICY PE23

Where a building or land is in a condition which seriously detracts from, or affects the visual character of an area, we will ask for measures to be taken to improve the appearance of the land. Where no improvement works are carried out within a reasonable time, we may serve a Notice under S215 of the Town and Country Planning Act 1990. Where the Notice has not been complied with prosecution proceedings will be commenced and/or consideration will be given to taking direct action by entering the land and carrying out the works in default.

12. POLICY ON LAWFUL USES OR ACTIVITIES

Where we are considering enforcement action in respect of an unauthorised use or activity but it is claimed that the use is lawful, an application for a certificate of lawfulness may be invited to confirm conclusively that the use or activity is lawful.

If the applicant fails to submit an application or insufficient evidence is submitted with an application to allow us to grant a certificate, enforcement action will be considered if we are satisfied that the time in which to take enforcement action has not expired.

POLICY PE24

Where unauthorised development has taken place but it is claimed that the use or activity is lawful, the submission of an application for a certificate of lawfulness will be invited. A lawful use or activity will not be conclusively

accepted unless a certificate has been granted. Where a certificate has not been applied for or granted, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

13. DEVELOPMENT CARRIED OUT WHICH IS NOT IN ACCORDANCE WITH THE APPROVED PLANS, CONDITIONS OR LEGAL AGREEMENTS

Where development is carried out with planning permission, but it does not strictly accord with the approved plans, an assessment of the material impact of the changes will be made. Consideration will need to be given to the implications the recent House of Lords case (Sage V Secretary of State for the Environment, Transport and the Regions April 2003)

Where the changes are relatively minor and are not sufficiently material to alter the development as a whole, the changes may sometimes be considered as being “de-minimus” (i.e. so small that they are of no consequence) and no action will be taken.

Whilst we do not condone such works being carried out, we do recognise that in many instances minor variations do not cause any material harm. Therefore, in accordance with Policy PE3 planning enforcement action may not necessarily be taken against minor variations from approved plans. Any assessment of the situation will take account of the site and its surroundings, the scale and massing of the development and the consequences of those changes after the development has been completed.

POLICY PE25

Where development is being carried out which is considered to be materially different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Temporary stop Notice, Stop Notice or Enforcement Injunction to stop the unauthorised development. However, where no material harm is being caused or where the works are “de-minimus”, no further action will be taken.

Planning permission is normally granted subject to planning conditions which are included in order to make the development acceptable. Planning conditions can include the provision of landscaping details, the provision of car parking and turning facilities, the use of specific external materials and the restriction of operational hours. If there is evidence that there is a breach of a condition, the Council may serve a Breach of Condition Notice to secure compliance if it is considered expedient. This type of action may be taken as an alternative, or in addition to

issuing an Enforcement Notice and in such cases Policy PE7 will apply.

Sometimes a planning permission is also the subject of a legal agreement under Section 106 of the Town and County Planning Act. This Agreement may require certain works, conditions or payment of money before, during or on completion of development. Procedures are to be put in place to make sure that there is monitoring of Section 106 Agreements. A breach of a planning agreement is enforceable by injunction and therefore the Council will need to consider carefully the implications of the action and ensure that any action reflects the severity of the breach.

POLICY PE26

Where there is evidence of a breach of planning agreement, the Council must ensure that the enforcement action is reasonable, justified and reflects the severity of the breach.

14. POLICY ON REFUSAL OF RETROSPECTIVE APPLICATIONS

Nothing within our policies condones a wilful breach of planning control. The submission of a retrospective application will not be encouraged where the development is unacceptable and causes serious harm to amenity in circumstances where we are likely to take enforcement action. Therefore, the submission of a retrospective application will not necessarily stop us from taking enforcement action.

POLICY PE27

Where unauthorised development has been carried out which causes serious harm to amenity, the submission of a retrospective application will not be encouraged and will not necessarily stop enforcement action being taken.

When a retrospective application has been refused and enforcement action has not already been taken in accordance with our enforcement policies, the applicant will be advised that an enforcement notice is to be issued.

POLICY PE28

Where retrospective planning permission has been refused, enforcement action will still be taken and the appropriate Notices served even if an appeal has been lodged against the refusal of planning permission, when circumstances justify this.

15. POLICY ON HIGH HEDGES

Part 8 of the Anti-social Behaviour Act 2003 came into force on December 31st 2004 and introduced new procedures to enable local authorities in Wales and England to deal with complaints about high hedges. The Council has produced an Information Pack on high hedges which includes a general procedure note, a guide to dealing with high hedges, application for investigation form and guidance notes for its completion. The Welsh Assembly Government published guidance on the high hedges complaints system in November 2005. The Council will only investigate complaints which are submitted formally on the complaint forms which have been produced and in accordance with the guidance produced and such complaints will be determined having regard to the guidance produced by the Welsh Assembly Government.

Where it has been established that the complaint relates to a hedge as defined by the regulations and it is considered that the hedge as a result of its height, is acting (to some degree) as a barrier to light or access to the extent that the complainants reasonable enjoyment of their property is being adversely affected, the Council has the power to serve a remedial notice requiring works to reduce the height of the hedge. The Council will only consider this action if it is expedient and if it is clear that the offender has no intention of resolving the breach voluntarily.

POLICY PE29

The Council will only investigate complaints which have been submitted formally by the submission of application for complaint forms, which have been completed in accordance with the requirements of the Council's guidance.

POLICY PE30

In cases where a formal application for complaint form has been submitted in accordance with the guidance, and it is considered that the hedge due to its height has an adverse impact on the complainants reasonable enjoyment of his/her property, the Council will consider serving a remedial notice if the offender has no intention of complying voluntarily within a reasonable period of time.

16. COMMUNICATION WITH INTERESTED PARTIES

We are committed to providing the complainant or any other relevant third parties (Members, Town and Community Councils) updated on the progress of enforcement investigations and actions in order to provide the best possible service to the customer.

POLICY PE31

During the planning enforcement investigations every effort will be made to keep the complainant updated of the Authority's actions. Relevant Local Member(s) and Town or Community Councils will be notified of the service of all enforcement action notices.

17. JOINT WORKING

During planning enforcement investigations it is often the case that issues which cannot be enforced under the Town and Country Planning Act 1990 are the main issues relating to the complaint. It is therefore important that the Planning Enforcement Team works closely with other regulators within the Service and the Directorate and external regulators such as the Environment Agency. Effective joint working through joint investigations can ensure that all regulatory matters are addressed at the same time and thus provide the customer with the best possible service.

POLICY PE32

We are committed to working closely with other regulators within and outside the Council and to undertake joint investigations and joint action (if expedient) where possible and required.

18. RESOURCES

In order to have an effective planning enforcement function it is important that reasonable resources are dedicated to its implementation.

POLICY PE33

We will make sure that reasonable resources are committed where possible to the effective implementation and maintenance of planning enforcement control.

NOTES

1. The implementation of all policies specified in this document is subject to the professional assessment of the Team Leader (Planning Compliance, Minerals and Waste), in liaison with the Group Manager, the Planning Manager (Arfon) and the Head of Planning and Transportation.

APPENDIX I

Planning Enforcement Priorities

We will investigate all cases of alleged breaches of planning control but cases will be prioritised for action depending on the severity of the potential breach. Therefore, whilst we will be investigating all types of cases it is important that we give more priority to alleged breaches of planning control that may be serious and less priority to alleged breaches of planning control that may not be serious. Establishing priorities should assist in the provision of an efficient and consistent service. These are the priorities:

High Priority

Breaches of Listed Building and Conservation Area Control where it is alleged that damage or demolition taken place causing irreparable damage, breaches which have taken place (e.g. unauthorised alterations such as upvc windows doors etc) as well listed buildings that as a result of lack of maintenance are at risk of being lost.

Breaches relating to sites within statutory designations (Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest) which appear to have potential to be significantly detrimental to the area,

Breaches of existing Tree Preservation Orders or trees in Conservation Areas where trees are likely to be lost.

Breaches of planning control which are clearly contrary to policies as set out in the Development Plan, and causes significant demonstrable harm to interests of acknowledged importance (such as large scale engineering operations, cases where there is an immediate threat to public safety)

Existing cases that are subject to Welsh Assembly Government deadlines or court action.

Breaches of planning control relating to untidy land and buildings.

Medium Priority

Breaches relating to use of building reportedly adversely impacting on amenity by reason of noise and disturbance.

Breaches relating to new building work not included within the High Priority category.

Breaches relating to commencement of development in non-compliance with conditions, and non-compliance with conditions on previously developed sites.

Breaches relating to adverts suggesting detrimental impact on visual amenity.

Low Priority

Technical breaches of planning control where there is no significant harm to amenity or highway safety.

Matters which would be recommended for approval by officers if retrospective planning applications were submitted to regularise matters.

Temporary uses and buildings not falling within the high or low priority list.

Breaches where there is a reference to boundary disputes and landownership issues. (These are issues which are not ordinarily subject to planning legislation and relate to civil matters to be progressed by the affected parties. The Council will only investigate cases where there is an alleged unauthorised development)

NOTES:

1. We aim to acknowledge complaints within 5 working days and provide an update of the planning situation within 15 working days. On some occasions urgent items can be categorised as High Priority Cases immediately on receipt. In such cases site visits should be immediate.
2. The list of priorities is only a policy statement and is not a definitive statement of the Council's legal position on enforcement matters. The Council reserves the right to enter a case into whatever level of priority is deemed expedient at the time, and to change that category at any time.

APPENDIX II

INFORMATION NOTES ON PLANNING ENFORCEMENT

The Service

If you are concerned that there is a development being carried out without the benefit of planning permission or that conditions on a permission are not being complied with, you can make a complaint to the Planning Enforcement Team.

The Planning Enforcement Team is available to investigate alleged breaches of planning control, in an attempt to resolve those breaches by discussion and negotiation or by serving a formal legal notice if necessary.

What do we investigate?

Alleged breaches of planning control which include:-

- i) Building works and uses of land carried out without planning permission
- ii) Building works and uses of land being carried out not in accordance with planning permission.
- iii) Untidy land which adversely affects the amenity of an area.
- iv) Unauthorised alterations to listed buildings.
- v) Unauthorised advertisements on land and buildings and fly-posting.
- vi) Unauthorised works to buildings and trees in Conservation Areas.
- vii) Unauthorised works to a tree subject to a Tree Preservation Order.
- viii) Unauthorised mineral extraction and waste tipping.

What don't we investigate?

- i) Activities on the public highway.
- ii) Environmental health matters, such as noise disturbance, pollution and hygiene problems.
- iii) Dangerous buildings.
- iv) Disputes concerning ownership of land, including ownership of boundary fences.

How do I complain?

You may make a complaint either in writing, by phone, by e-mail or in person to the 3 area offices or in writing to the Team Leader (Enforcement, Minerals and Waste) at the Arfon Area Office address provided below.

Your complaint should contain the following information:-

Address / location of the activities.

Name of person / company if known.

Nature of complaint.

Your name, address and a contact telephone number.

All personal details that you give us will be strictly confidential.

In order to help the Enforcement Team to investigate your complaint effectively, please provide as much information as you can at an early stage and be prepared to assist as the investigation progresses.

What if I don't want to give my name?

Anonymous complaints are discouraged, and any investigation into such complaints will be at the discretion of Officers of the Enforcement Team.

What happens once I have made a complaint?

Once we have received your complaint you will receive an acknowledgment within 5 working days.

One of our officers will then check any relevant planning history and visit the site to ascertain if a breach of planning control has occurred.

Within 15 days of your complaint you will be advised of any initial findings and of the course of action the authority intends taking. This will normally be one of the following:-

- In cases where planning permission is likely to be granted, we will advise the owner/occupier of the land that a breach of planning control has occurred and that they should regularise it by submitting a planning application or complying with conditions as specified.
- In cases where planning permission is unlikely to be granted, we will advise the owner/occupier that a breach of planning control has occurred and that they should take the necessary steps to rectify the situation or possibly face the appropriate enforcement action, which would be likely to involve the serving of a legal notice.
- Advise the owner/occupier that a breach of planning control has occurred and that due to the minor nature of the breach, it would not be expedient to take any action.
- Advise the owner/occupier that having investigated the situation it has been found that no breach has occurred.

What happens if the problem has not been resolved?

Due to the nature of many unauthorised developments and the legal procedures which the authority has to follow, some cases can take considerably longer to resolve. If this is the case you will be kept informed of the progress in resolving your complaint.

These cases are normally those where the owner/occupier of the land is in disagreement with the authority and in such cases the only option available is to serve a notice which will specify the steps that the contravener has to take to remedy the breach and the time to comply.

There is however a right of appeal against most notices and it is not unusual for such cases to take in excess of 12 months to resolve.

It is emphasised that taking formal enforcement action by serving a legal notice is discretionary and is a last resort, and should not normally be taken merely to regularise unauthorised development which is acceptable in planning terms, but taken to remedy serious harm to amenity.

Do we only act on complaints from local residents?

In addition to responding to alleged breaches of planning control from the general public the Planning Enforcement Team also monitor development which has been permitted, including mineral extraction and waste related developments to ensure compliance with approved plans and relevant planning conditions.

CONTACT DETAILS FOR ENFORCEMENT TEAM

Planning and Transportation Service, Environment Directorate, Arfon Area Office, Penrallt, **Caernarfon**, Gwynedd, LL55 1BN.

Tel: (01286) 682765

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APPENDIX III

PROCESS FOR DEALING WITH COMPLAINTS

PURPOSE

The purpose of this note is to give an example of the planning enforcement process from start to finish in order to boost consistency within the County when dealing with planning enforcement complaints. The note includes the process likely to develop in general with enforcement cases rather than including all the examples of what may happen in an enforcement investigation.

RECEIVING A COMPLAINT

STAGE 1: Recording a Complaint

Every complaint should be recorded in the ENFIS system and a new hard copy enforcement file opened within two working days of receiving the complaint. (The complaints form may also be used for convenience).

STAGE 2: Acknowledging a complaint

A complaint should be acknowledged within five working days of receiving the complaint. A copy of the letter is needed in ENFIS and on hard file.

STAGE 3: Planning History of Complaint Site

The site's planning history must be investigated prior to the site visit and any relevant information noted on the file in ENFIS and on hard file.

STAGE 4: Inspection of Complaint Site

The site (along with any relevant planning history) must be inspected within 10 days of receiving the complaint.

ASSESSING THE COMPLAINT

STAGE 5: Is there any development?

Is there any engineering/operational development, or change of use? If not, then it is likely that there is no planning offence unless there are specific conditions restricting what can be done on site.

STAGE 6: If there is no development (and no restrictive planning conditions)

If there is no development or restrictive planning conditions, then a letter should be sent to the complainant and the person about whom the complaint is made in order to confirm that there is no offence and that the Local Planning Authority will not be taking any further action. A copy of the letter should be kept in the ENFIS system and on the hard file and the date of closing the complaint noted on ENFIS and the hard file.

STAGE 7: If there is a development

If there is a development, then it is likely that one of the following is relevant:-

- A) The development is a permitted development (PD)
- B) The development is so small or unimportant that it is not reasonable to take the case any further (de-minimis)

With A and B a letter should be sent to the complainant and the alleged offender within 15 working days to confirm that the Local Planning Authority will not be taking further action and a copy of the letter placed in ENFIS and on the hard file, noting the date of closing the case and closing the file.

- C) Planning permission is needed for the development and it complies with the relevant policies and is, therefore, likely to be granted planning permission. Within 15 days of receiving the complaint, write to the complainant and grant the offender 28 days to submit a retrospective application. (A PCN may be needed in order to obtain further information on the offence and possibly a Land Registry if there is a lack of information regarding ownership).

With C, if a valid application is submitted within 28 days, the complainant must be informed. The file must be kept open pending the determination of the application. If the application is approved, then the file may be closed but another one started on any conditions requiring compliance

within a specific time.

If an application is not submitted, then a letter needs to be sent to the complainant to explain that taking enforcement action cannot be justified and a letter sent to the offender confirming this as well but to refer to the fact that the development has not been authorised.

- D) Planning permission is needed for the development and it is contrary to the relevant planning policies and the planning application is, therefore, likely to be refused. (In such cases, in particular with an alleged change of use, a PCN will be needed. It is also likely that an application will be needed for the land registry)

Write to the offender warning them to dispose of the development within 28 days or face formal enforcement action. (This period may vary depending on the nature of the offence). A letter also needs to be written to the complainant within 15 working days informing him/her of the situation and thereafter throughout the enforcement process.

TAKING ENFORCEMENT ACTION

STAGE 8: Taking enforcement action by serving an enforcement notice (including a listed building enforcement notice, breach of notice and notices under section 215 of the Act.)

The template for authorising enforcement action needs to be completed and provide all the other associated information. (Planning history, location plan, PCN etc). After receiving confirmation from the Team Leader, the information may be sent to the legal section with instructions to draft a Notice.

STAGE 9 : The Draft Notice

The draft notice will be sent to the Team Leader in order to confirm/agree upon the contents. The Team Leader will confirm/agree upon the final contents with the legal section.

STAGE 10 : Serving of Notice

Every notice within or near the county's boundaries shall be personally served by two Officers (unless there is a risk whereby there may be no serving by hand) in accordance with the protocol. After serving the notice the "Serving of Notice Certificate" template needs to be completed and a copy placed on the hard file and on ENFIS.

A copy of the notice is needed for the public register and on the file, and the Notice's relevant details need to be filled in ENFIS.

The complainant, along with the Community Council and the Local Member also need to be informed that the Notice has been served.

STAGE 11 : Appeal against a notice

In cases where there is an appeal against the notice, the complainant needs to be informed, an enforcement appeal file needs to be opened (a public file separate to the enforcement file), the details of the appeal need to be recorded on the appeal file and on the enforcement file in ENFIS. A copy of the Council's statement or evidence etc. Should be kept on the appeal file as well as on the enforcement file in ENFIS.

STAGE 12 : Monitoring of Compliance with the notice

The relevant officer should already have a date for the compliance with the notice in his/her diary.

The site should be visited at least once prior to the end of the period of compliance. This may be 14 days or more since it will, to some degree, be subject to the nature of the case and length of the period of compliance. Following the site visit unless there is compliance, a letter should be sent to the offender reminding him/her of the date of compliance and also drawing attention to the fact that non-compliance with the notice will be an offence – with the possibility of prosecution proceedings in the Magistrates Court.

STAGE 13 : Compliance with the notice

If there is full and acceptable compliance then a letter needs to be sent to the offender and the complainant confirming this and that no further action will be taken, unless there is any change in circumstances.

The hard file and the file on ENFIS may then be closed.

STAGE 14 : Non-compliance with the notice

If there is non-compliance with the notice, consideration must be given to prosecuting in the Magistrates Court and/or taking direct action. This needs to be discussed with the Team Leader.

A letter will need to be written to the offender and complainant updating them on the situation.

With a prosecution case a witness statement needs to be provided, with all the relevant evidence in accordance with the template. After receiving confirmation from the Team Leader, the information may be forwarded to the legal section with instructions for the case to be taken to the Magistrates Court.

A letter will need to be written to the complainant updating him and to the offender (subject to the nature of the case).

(Cases involving unauthorised adverts usually immediately become a prosecution case (subject to justification) but the template will need to be completed for the authorisation of enforcement action as well as the template for the witness's statement).

Direct action will be subject to the nature of the offence and will need to be decided by /discussed with the Team Leader, Planning Manager (Arfon Area), Group Planning Manager and the Head of Planning and Transportation

APPENDIX IV

Planning Enforcement Performance Indicators

In order to ensure an effective and efficient service to the customer it is important that the Council establishes indicators and targets in order to assess performance. The Council will adopt the national core indicators set by the Welsh Assembly Government, and will also set a local indicator as follows:

National Indicator

The national indicator relates to the percentage of enforcement complaints resolved during the year within 12 weeks of receipt. Resolved complaints shall be defined as:

- a) No breach found
- b) Permitted development
- c) Not expedient to take action
- d) Compliance (e.g. breach ceased)
- e) Retrospective planning application submitted
- f) Relevant enforcement notice served

The target set is 60% of all complaints resolved to be resolved within 12 weeks of receipt and this will be measured on a quarterly basis.

There is also an indicator relating to success at enforcement appeal and the target set by the Council in this respect is 60%.

Local Indicator

The Council considers that it is important to give priority to breaches of planning control where the overall impact of compliance brings positive benefits to a locality. These cases include proactive enforcement work dealing with issues such as untidy land and listed buildings. It is therefore intended to set targets for the number of proactive cases generated over the next 3 years and these targets are as follows:

For 2006/07 10 cases

For 2007/08 15 cases

For 2007/09 20 cases

NOTES

1. The performance indicators will be subject to review by the Team Leader, Enforcement, Minerals and Waste, in liaison with the Head of Planning and Transportation, the Planning Group Manager and the Planning Manager (Arfon Area).