

Title of Report:	Planning Enforcement Strategy
Committee Report Submitted To:	Planning Committee
Date of Meeting:	22 September 2021
For Decision or For Information	For Decision

Linkage to Council Strategy (2021-25)	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Head of Planning

Budgetary Considerations	
Cost of Proposal	Nil
Included in Current Year Estimates	
Capital/Revenue	
Code	
Staffing Costs	

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes	Date: 08/09/2021
	EQIA Required and Completed:	No	Date:08/09/2021
Rural Needs Assessment (RNA)	Screening Completed	Yes	Date: 08/09/2021
	RNA Required and Completed:	No	Date: 08/09/2021
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

1.0 Background

- 1.1 The purpose of the Planning Enforcement Strategy is to set out how Council's Planning Enforcement Team will undertake the role of enforcing planning control in addition to setting out the standards of service the public can expect.
- 1.2 The Council's function as the local planning authority for Causeway Coast and Glens Borough is set out in the Planning Act (Northern Ireland) 2011 ('the Act'). The main enforcement powers available to the Council in relation to Planning are contained in Part 5 of the Act. Section 138 of the Act sets out Council's power to take formal enforcement action on unauthorised development in breach of planning control where it is considered expedient to do so.

2.0 Details

- 2.1 The key objectives of planning enforcement are set out within the strategy as
- Bring unauthorised development under control
 - Remedy the undesirable effects of unauthorised development including, the removal or cessation of unacceptable development; and
 - Take legal action against those who ignore or flout planning legislation.
- 2.2 The revised Strategy sets out how to report a breach and how we respond to complaints, our procedures and priorities. It sets out 7 Service Standards against which performance will be assessed.
- 2.3 A new procedure introduced through this revised strategy is in relation to certain advertisements. Unauthorised advertisements account for a large proportion of cases taken to court for prosecution as direct offences. The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 and the Planning Act (Northern Ireland) 2011 provides Council with powers to
- remove signage
 - recover summarily as a civil debt any expenses reasonable incurred by it in that behalf;
 - prosecute for breach of Section 175 of the Planning Act (Northern Ireland) 2011
- 2.4 The revised Strategy includes provision to remove certain signage that does not have consent.

3.0 Recommendation

- 3.1 **IT IS RECOMMENDED** that the Planning Committee **AGREE** to implement the attached Planning Enforcement Strategy.



**Causeway
Coast & Glens
Borough Council**

Planning Enforcement Strategy

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1 Introduction

This Strategy describes how the Council will undertake the role of enforcing planning control in addition to setting out the standards of service the public can expect.

The Council's function as the local planning authority for Causeway Coast and Glens Borough is set out in the Planning Act (Northern Ireland) 2011 ('the Act'). The main enforcement powers available to the Council in relation to Planning are contained in Part 5 of the Act. Section 138 of the Act sets out Council's power to take formal enforcement action on unauthorised development in breach of planning control where it is considered expedient to do so. As planning enforcement is a discretionary function it must be exercised fairly and in the public interest. Where a satisfactory outcome cannot be achieved through negotiation, formal enforcement action may be taken where it is considered reasonable, expedient, proportionate, and in the public interest to do so.

Causeway Coast and Glens Borough Council places importance on protecting and enhancing the environment. It recognises that the integrity of the development management process depends upon the Council's commitment to take effective action against unauthorised development where it is considered expedient to do so.

This Enforcement Strategy explains how the Council will manage complaints relating to breaches of planning control.

Service Standard 1:

We shall assess our performance against the Service Standards set out in this Strategy.

2 General Approach to Enforcement

The key objectives of planning enforcement are to, where necessary,

- Bring unauthorised development under control
- Remedy the undesirable effects of unauthorised development including, the removal or cessation of unacceptable development; and
- Take legal action against those who ignore or flout planning legislation.

Under the provisions of Part 5 of the Act, Council has powers to take enforcement action against unauthorised development when it considers it expedient to do so, having regard to the provisions of the local development plan and any other material considerations. This means that the Council must make a judgement in each case as to whether the unauthorised development harms the amenities and existing use of the land and buildings that ought to be protected in the public interest to the extent that formal enforcement action should be taken. Therefore, any action taken should be proportionate to the scale and impact of the unauthorised development.

In considering expediency and determining the most appropriate course of action in response to alleged breaches of planning control, Council will take into account

- the provisions of the local development plan and planning policies;
- public safety;
- public amenity;
- road safety;
- the extent of the breach;
- potential impact on the environment; and
- other material considerations.

Service Standard 2:

In providing planning enforcement we aim to carry out our duties in accordance with the following key values:

Independence – making our decisions based on fair, impartial and objective assessment of what is in the public interest and what level of harm has occurred.

Integrity – being as open as possible in our dealings with the public and other interested parties while preserving the confidentiality of complainants and the soundness of the case where it is likely to result in formal action.

Sensitivity – recognising that the needs of the public and other interested parties can be different

Professionalism – investigating, recording and presenting cases thoroughly, critically and accurately.

3 Breach of Planning Control

A breach of planning control occurs when development or certain other activities takes place without the necessary planning permission or consent.

Section 131 of the Act defines a breach of planning control as:

- Carrying out development without the planning permission required; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted.

The following are examples of offences under the Act and associated Regulations:

- unauthorised works to and demolition of a listed building,
- unauthorised display of advertisements
- unauthorised demolition of a building within a Conservation Area
- unauthorised works to trees covered by a Tree Preservation Order or within a Conservation Area
- non-compliance with a submission notice, enforcement notice, breach of condition notice, stop notice, listed building notice or hazardous substances contravention notice.

Investigations are carried out in accordance within the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (insofar as it applies to those being interviewed by a non-police agency) and with the Criminal Procedures and Investigations Act 1996.

The following are examples of what is not a breach of planning control:

- carrying out work which is not development as defined under Section 23 of the Planning Act (Northern Ireland) 2011
- carrying out works which fall within The Planning (General Permitted Development) Order (Northern Ireland) 2015 and as amended.
- carrying out work which already benefits from planning permission or other planning consent e.g. advertisement consent;
- boundary or ownership disputes;
- breaches of deeds or covenants unless prevented by a specific planning condition;
- removal of bushes and trees provided they are not protected by a Tree Preservation Order or are within a Conservation Area or prevented by a specific planning condition;
- obstruction of a public road or right of way;
- homeworking, such as child minding or the use of a room by the householder as an office, where the residential use remains the primary use and there is no adverse impact.

The purpose of planning enforcement is to resolve the breach rather than to seek punitive action. Action taken must be proportionate to the scale of the breach. Formal enforcement action will only be considered where a satisfactory outcome cannot be achieved by negotiation and it is considered in the public interest to seek remedial action. The Council can therefore determine that no action is an appropriate outcome in the public interest having assessed all of the relevant circumstances in a particular case.

Planning enforcement also addresses the physical display of advertisements such as signs and advertisement hoardings. The actual content of an advertisement is not covered by planning control.

4 Reporting a Breach of Planning Control

If you are concerned that a development is taking place without the necessary permission or consent, you should complete the **Enforcement Complaint Form** and email to planning@causewaycoastandglens.gov.uk or

- notify the Council's Planning Enforcement Section in writing, email, telephone or in person clearing titling the subject 'Planning Enforcement Complaint';
- Provide the full address of the site where the alleged breach is occurring (a site location plan may be required to clearly identify the location of site);
- Details of what has occurred and dates of when it occurred; and,
- Contact details of person reporting the alleged breach

You will be required to provide your name and contact details and clearly mark your correspondence '*Planning Enforcement Complaint*'. Please note that **anonymous complaints will not be investigated**.

Personal information will not be released without the permission of the complainant in accordance with the principles of the Data Protection Act 2018; The Freedom of Information Act 2000; and, the Environmental Information Regulations 2004.

However, if the investigation proceeds to formal action, resulting in an appeal to the Planning Appeals Commission or prosecution in the High Court, your information may be shared with the Commission or Court for legal reasons and it may not be possible for Council to guarantee the anonymity of the complainant.

5 How we respond to information provided

You must clearly mark your correspondence '*Planning Enforcement Complaint*' otherwise this will delay acknowledgement of receipt of your complaint and the opening of a case, where relevant, to investigate the alleged breach. For example, if your complaint regarding alleged unauthorised development is contained within a letter of representation on a planning application, this will delay the identification of your complaint, acknowledgement and the opening of an enforcement case to investigate.

When an enforcement complaint is received by the Planning Enforcement Section within Council it will be registered on the Council's Planning Enforcement database system. The complaint will be acknowledged within 5 working days of receipt by the Planning Enforcement Section.

Service Standard 3:

Complainants will receive a written or email acknowledgement within 5 working days of being received by Council's Planning Enforcement Section and provided with a case reference and contact details for the investigating officer.

Updates on the progress of the investigation will normally not be provided prior to conclusion of the case. Information which may prejudice consideration of a case or judicial proceedings will normally be withheld until the case is concluded or the Court orders disclosure of information. This is because the public has a strong interest in allowing prepared evidence to be withheld so as not to potentially inhibit and prejudice the course of justice. Meetings to discuss ongoing cases will normally be considered inappropriate while an investigation is ongoing.

6 Enforcement Procedures and Priorities

When an enforcement complaint is received, registered and acknowledged, it will be processed in the following way:

- Cases will be prioritised with priority 1 cases given priority over all other breaches.
- The site planning history will be checked
- Visit the site, if necessary, in a timely manner having regard to the priority of the case
- Establish whether or not we believe there is a breach of planning control
- Find out the details of the land owner and those with an interest in the land
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner)
- Issue a Planning Contravention Notice (a formal request for information) if necessary
- Inform the complainant when case reaches target conclusion
- Inform the complainant on closure of the case

If it is determined that a breach of planning control has not occurred, the case will be discussed with an authorised officer, the case shall be closed and the complainant advised accordingly.

If a breach of planning control is determined, the case will be considered further. This may require the issuing of a Planning Contravention Notice requesting information on such issues as the detail of those people who may have an interest in the land and details of the development taking place.

In reviewing the case the officer will consider:

- the provisions of the local development plan and planning policies;
- public safety;
- public amenity;
- road safety;
- the extent of the breach; and,
- potential impact on the environment.

Investigating complaints is often complex and time consuming. Therefore, priority given is determined by the guiding principle that any action in response to a breach should be proportionate to the harm it causes. The priorities which reflect this principle are as follows:

Priority 1:

- unauthorised works to a Scheduled Monument
- full or partial demolition of, or significant works to a listed building
- Contravention of Hazardous Substance Control
- breaches of planning control/advertisement consent which are seriously detrimental to public highway safety or give rise to danger to the public
- unauthorised felling/works to trees protected by a Tree Preservation Order or within a Conservation Area
- demolition of a building in a Conservation Area
- development which may result in significant damage to the environment, for example, development which may have a significant impact on a European site; development that requires an Environment Statement under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

Priority 2:

- Any other breach of planning control

In cases relating to unauthorised development that is considered to have a significant impact on European Designated sites or unauthorised EIA development it may not be possible to identify these as Priority 1 cases on receipt of complaint. Therefore such cases may be reprioritised to Priority 1 after site inspection.

Service Standard 4:

Site visits for 90% of Priority 1 cases will take place within 5 working days of receipt of complaint.

Site visits for 90% of Priority 2 cases will take place within 30 working days of receipt of complaint.

As enforcement is a discretionary power, depending on the nature and extent of the breach the Council may seek to deal with the unauthorised development in a number of ways.

In many cases the unauthorised development can be resolved through discussions with the landowner(s)/operator and the breach remedied within a specified timeframe. A Submission Notice may be served inviting the offender to regularise the development on a without prejudice basis through the submission of a retrospective planning application/application for consent. Where the breach remains unresolved, following the expiry of the date for compliance, formal enforcement action will be considered.

Enforcement action may be held pending the assessment of a retrospective planning application. However, if a breach is approaching the date for immunity for taking action, is causing serious harm or is unlikely to be granted permission/consent, progression of formal enforcement action will be considered.

A decision to proceed with formal enforcement action or close a case must be agreed by one of the appointed officers listed in the Scheme of Delegation. All actions taken in response to a breach of planning control will be proportionate to the harm being caused and in accordance with the Council's priorities listed above. Planning

Enforcement Officers will use their professional judgement to decide if further action is expedient, based on experience, case law and the likelihood of success. The Council will not normally pursue those minor breaches of planning control where it is not considered expedient to do so.

Service Standard 5:

Priority 1 cases – discuss and agree course of action on 95% of cases within 10 working days of receipt of complaint

Priority 2 cases – discuss and agree course of action on 95% of cases within 12 working weeks of receipt of complaint

The length of time taken to resolve a case or take action can be affected by a number of factors. Progress may be delayed due to the need to gather further evidence, to allow negotiations to take place or for formal procedures to be concluded.

Failure to comply with the requirements of the 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). Enforcement Notices, Listed Building Enforcement Notices, Stop Notices and Breach of Condition Notices are recorded in the Planning Register in accordance with Section 242 of the Planning Act (Northern Ireland) 2011. Notices, once they come into effect (with the exception of Breach of Condition Notices) are also recorded on the Statutory Charges Register held by Land & Property Services within the Department of Finance. The purpose of this is to make those parties who have an interest in the land aware of the Notice as the responsibility to comply with the Notice will transfer with the sale of any land/buildings.

Service Standard 6:

95% of Complainants will be notified in writing or by email within 10 working days of case closure detailing the reason for the case being closed.

7 Appeals

Depending on the type of Notice the recipient may have the right to lodge an appeal to the Planning Appeals Commission before the Notice takes effect. This will suspend the effect of the Notice until the outcome of the appeal.

An appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, Listed Building Enforcement Notice, Hazardous Substances Contravention Notice and Section 64 Notice (replacement of trees). There is no right of appeal to a Breach of Condition Notice.

The timeframe for hearing an appeal and issuing a determination is a matter for the PAC. Additional information on the planning appeals process can be obtained from the PAC website www.pacni.gov.uk

8 Other Enforcement Powers

The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as Direct Action). Similar powers allow the Council to undertake urgent works to listed buildings. In all cases the Council will seek to recover the costs of undertaking the works from the landowner which may include court proceedings. While this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and therefore the preferred method to secure compliance will be to prosecute the landowner and/or the person in control of or who has an estate in the land to which the Notice relates.

The Council also has the power to remove certain advertisements that do not have consent. If the person who put up the advertisement can be identified, they will be given at least 5 working days notice that the Council intends to take the advertisement down. If they cannot be readily identified, then the advertisement can be removed immediately.

If a breach of planning control is considered to be causing immediate harm, a Stop Notice or Temporary Stop Notice may be issued which would bring about the cessation of certain types of unauthorised works. Before taking such action the Council will give consideration to the positive and negative consequences of serving such Notices.

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

9 Performance Targets and Statutory Time Limits

The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015 sets out the legislative target for enforcement

Service Standard 7:

Bring 70% of cases to a target conclusion within 39 weeks of receipt of initial complaint. Target conclusion means case closure, submission of a retrospective planning application, formal enforcement action, or summons to court.

The statutory time limits for taking formal enforcement action is set out in Section 132 of the Planning Act (Northern Ireland) 2011.

- 5 year limit –
 - where there has been a breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operation in, on, over or under land, no enforcement action may be taken after the period of 5 years beginning with the date on which the operations were substantially completed.
 - where there has been a breach of planning control consisting of the change of use of any building to use as a dwelling house, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.

- 09 December 1978 - unauthorised works to listed buildings, including demolition and non-compliance with a condition attached to a consent, no enforcement action can be taken in relation to works which occurred before 9th December 1978.
- 10 year limit - unauthorised advertisement, no enforcement action can be taken against an advertisement displayed on a site that has been continually displayed for the proceeding 10 years.
- In the case of any other breach of planning control, no enforcement action may be taken after the end of 5 years beginning with the date of the breach.

10 Monitoring EIA Development

Regulations 24 and 25 of the Planning (Environmental Impact Assessment) Regulations 2017 allow the Council to impose monitoring measures to a planning permission for EIA development. Submission of monitoring measure information will be processed through means of a discharge of condition application. Where there is a failure to submit the required monitoring measure information, the Council will consider the priorities listed above and assess the need to take enforcement action by way of issuing a Breach of Condition Notice.

11 Council Contacts

Should you have an enforcement enquiry please contact:

Planning Department – Enforcement Section
 Causeway Coast and Glens Borough Council
 Cloonavin
 66 Portstewart Road
 Coleraine
 BT52 1EY

Email: planning@causewaycoastandglens.gov.uk

Telephone: 028 7034 7100